

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,)	
)	
Respondent,)	
)	
vs.)	No. SC 83782
)	
LARNA L. EDWARDS,)	
)	
Appellant.)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF CALDWELL COUNTY, MISSOURI
FORTY-THIRD JUDICIAL CIRCUIT
THE HONORABLE STEPHEN K. GRIFFIN, JUDGE

APPELLANT'S SUBSTITUTE REPLY BRIEF

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INDEX

	<u>Page</u>
TABLE OF AUTHORITIES.....	2
JURISDICTIONAL STATEMENT.....	3
STATEMENT OF FACTS.....	3
POINTS RELIED ON.....	4
ARGUMENT	6
CONCLUSION.....	9

TABLE OF AUTHORITIES

Page

CASES:

<i>State v. Carson</i> , 941 S.W.2d 518 (Mo. banc 1997).....	4, 8
<i>State v. Grier</i> , 609 S.W.2d 201 (Mo. App., W.D. 1980)	4, 7
<i>State v. Williams</i> , 787 S.W.2d 308 (Mo. App., E.D. 1990).....	4, 7, 8

CONSTITUTIONAL PROVISIONS:

U.S. Const., Amend. V.....	4, 6
U.S. Const., Amend. VI.....	4, 6
U.S. Const., Amend. XIV.....	4, 6
Mo. Const., Art. I, Sec. 10.....	4, 5, 6
Mo. Const., Art. I, Sec. 18(a)	4, 5, 6

STATUTES:

Section 563.033, RSMo 1994	4, 5, 6, 8
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OTHER:

MAI-CR3d 306.06.....	4, 5, 6
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JURISDICTIONAL STATEMENT

Appellant adopts and incorporates by reference the Jurisdictional Statement from her original substitute brief.

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Facts from her original substitute brief.

POINTS RELIED ON

I.

The trial court erred in overruling defense counsel's objection to instructing the jury on self-defense using an unmodified version of MAI-CR3d 306.06, because failure to modify the instruction violated Larna Edwards' rights to due process of law and to present a defense, guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the self-defense instruction failed to follow the substantive law of battered spouse syndrome found in Section 563.033, RSMo 1994, and caselaw interpreting that statute, under which the evidence must be weighed in light of how an otherwise reasonable person who is suffering from battered spouse syndrome would have perceived the situation. The failure to modify the instruction thereby precluded the jury from giving effect to Larna's defense of battered spouse syndrome.¹

State v. Williams, 787 S.W.2d 308 (Mo. App., E.D. 1990);

State v. Grier, 609 S.W.2d 201 (Mo. App., W.D. 1980);

State v. Carson, 941 S.W.2d 518 (Mo. banc 1997);

U.S. Const., Amends. V, VI and XIV;

¹ Appellant stands on her original substitute brief as to Points II, III and IV.

Mo. Const., Art. I, Secs. 10 and 18(a);

Section 563.033, RSMo 1994; and

MAI-CR3d 306.06.

ARGUMENT

I.

The trial court erred in overruling defense counsel's objection to instructing the jury on self-defense using an unmodified version of MAI-CR3d 306.06, because failure to modify the instruction violated Larna Edwards' rights to due process of law and to present a defense, guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the self-defense instruction failed to follow the substantive law of battered spouse syndrome found in Section 563.033, RSMo 1994, and caselaw interpreting that statute, under which the evidence must be weighed in light of how an otherwise reasonable person who is suffering from battered spouse syndrome would have perceived the situation. The failure to modify the instruction thereby precluded the jury from giving effect to Larna's defense of battered spouse syndrome.

Respondent contends that modifying the self-defense instruction to instruct the jury to apply a "reasonable battered person" standard rather than a "reasonable person" standard would invade the province of the jury by instructing the jury to assume the defendant is a battered spouse. Appellant asserts that the self-defense instruction must be modified, and has argued the Court of Appeals' proposed modification. However, if this Court accepts respondent's argument, this problem

could be easily remedied by including the words "If you find the defendant suffered from battered spouse syndrome" at the beginning of the instruction. This would not necessitate giving two self-defense instructions; the whole point is that the battered woman does not meet the elements of traditional self-defense. *State v. Williams*, 787 S.W.2d 308 (Mo. App., E.D. 1990). This modification would also answer respondent's correct assertion that battered spouse syndrome is not a separate defense of justification.

This does not answer the central question of whether the self-defense instruction must be modified at all in a battered spouse syndrome case. Respondent argues that it does not, because the instruction itself already allows for the defendant's subjective beliefs to be taken into consideration. Respondent relies on the following language from the second paragraph of the instruction:

"for a person to use force in self-defense, she must reasonably believe she is in imminent danger of harm from the other person. She need not be in actual danger but she must have a reasonable belief that she is in such danger." (Resp. Br. 31).

Respondent argues that this injects the defendant's *subjective* beliefs into the instruction and allows the jury to find that her perceptions have been altered by battered spouse syndrome. In fact, the word "reasonable," sprinkled liberally throughout this instruction, has the opposite effect. A "reasonable person" standard is an *objective* standard. *State v. Grier*, 609 S.W.2d 201, 206, n.2 (Mo. App., W.D. 1980). Without a modification, the jury could not give effect to the

substantive law of Section 563.033, RSMo 1994, in violation of *State v. Carson*, 941 S.W.2d 518 (Mo. banc 1997).

A battered person in Larna Edwards' situation holds an *objectively unreasonable belief*: that deadly force is necessary to protect herself. This is why the elements of classic self-defense cannot be met. And this is why the self-defense instruction must be modified to give effect to the legislature's recognition of the effect of battered spouse syndrome on self-defense jurisprudence. Without such a modification, the statute means nothing. The evidence can be presented, but the instruction compels the jurors to disregard it.

Instruction Number 7 did not follow the existing substantive law as expressed in Section 563.033 and construed in *Williams*. This Court should grant Larna Edwards a new trial.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court reverse her conviction and remand for a new trial.

Respectfully submitted,

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Certificate of Compliance and Service

I, Ellen H. Flottman, hereby certify to the following. The attached reply brief complies with the limitations contained in Rule 84.06 and Special Rule 1(b). The reply brief was completed using Microsoft Word, Office 2000, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the reply brief contains 969 words, which does not exceed twenty-five percent of the 31,000 words allowed for an appellant's brief.

The floppy disk filed with this reply brief contains a complete copy of this reply brief. It has been scanned for viruses using a McAfee VirusScan program, which was updated in October, 2001. According to that program, the disks provided to this Court and to the Attorney General are virus-free.

Two true and correct copies of the attached reply brief and a floppy disk containing a copy of this reply brief were mailed, postage prepaid this 6th day of November, 2001, to Shaun Mackelprang, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102-0899.

Ellen H. Flottman