IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

SARAH BOONE

Defendant.
_____/

CASE NO: 48-2020-CF-002603-O

DIVISION: 20

STATE'S MOTION IN LIMINE
TO EXCLUDE BATTERED SPOUSE SYNDROME EVIDENCE
OR
EXCLUDE MENTION OF BATTERED SPOUSE SYNDROME EVIDNECE
UNTIL THE DEFENDANT TESTIFIES
TO A JUSTIFIABLE USE OF DEADLY FORCE

COMES NOW, THE State of Florida, by and through the undersigned Assistant State Attorney, and states and alleges as follows:

INTRODUCTION

1. The Defendant has filed a notice, and an amended notice, of her intent to rely on Battered Spouse Syndrome evidence in this case.

2. Battered Spouse Syndrome is not actually a defense to a crime.

> The introduction of battered-spouse syndrome evidence to support a self-defense theory is not for the purpose of justifying a defendant's misperception of reality or to explain why an unreasonable belief was nonetheless justifiable due to her condition. Rather, the Florida Supreme Court has sanctioned the use of battered-spouse syndrome to show why the defendant's actions were *reasonable*—to show in spite of a reasonable perception of danger from the battering spouse, the battered defendant would remain in the home with her batterer where she may resort to the exertion of force against him to prevent imminent death or great bodily harm.

Oquendo v. State, 357 So. 3d 214 (Fla. 2nd DCA 2023); review granted *Oquendo v. State*, 2023 WL 7132836 (Fla. October 30, 2023); see *Weiand v. State*, 732 So. 2d 1044, 1048, 1053-55 (Fla. 1999).

FACTS

3. The Defendant has presented several accounts of what happened on February 23, 2020. She made a 911 call at approximately 1:00 p.m. on February 24, 2020, she spoke to a patrol deputy on body worn camera shortly thereafter, provided a statement to detectives a few hours later on February 24, 2020, and provided a second statement to detectives on February 25, 2020.
4. The Defendant retained Dr. Julie Harper as one of her Battered Spouse Syndrome experts in 2020. Over the course of the next several years, Dr. Harper interviewed the Defendant about the events of February 23, 2020, multiple times. Exhibit A at the hearing on this motion will be Dr. Harper's deposition which was taken on October 1, 2024. The State would direct the Court to pages 35, 37-39, 41-42, 44, 47-50, 52, 54-56, 66-67, 80-81, and 95 of Dr. Harper's deposition for the Defendant's statements about February 23, 2020.
5. The State retained Dr. Tonia Werner as its Battered Spouse Syndrome expert. Dr. Werner evaluated the Defendant on October 2, 2024, and Dr. Werner was deposed on October 4, 2024. Exhibit B at the hearing on this motion will be Dr. Werner's deposition. The State would direct the Court to pages 75-79 of Dr. Werner's deposition for the Defendant's statements about February 23, 2020.
6. The State is not asking the Court to make any credibility determinations about the Defendant's statements to the doctors—that would be for the jury to do…in the full context of a cross-examination with the Defendant's statements to law enforcement.
7. What the State is asserting is that *as a matter of law* what the Defendant told the doctors does not entitle her to a self-defense instruction nor does it entitle her to introduce evidence of prior instances of violence, reputation evidence of the

decedent's violence, or Battered Spouse Syndrome evidence to help the jury understand why what she did was objectively reasonable.

8. The Defendant told the doctors that because of past violence between her and the decedent, she had a generalized fear every day that the decedent would cause her serious bodily harm or kill her.
9. However, on this particular day, the decedent did not take an overt action, even in the slightest, that made her believe he would cause her serious bodily harm or death.
10. According to the Defendant, when she and the decedent woke up, the decedent wanted to drink alcohol. She did not, so in order to distract the decedent, she suggested that they instead clean the Defendant's townhome—which they did.
11. At the conclusion of the cleaning, the decedent still wished to consume alcohol, so the two of them began consuming alcohol. The Defendant did not want to consume alcohol, but she did so to placate the decedent.
12. The alcohol that they consumed was a chardonnay bottled by Woodbridge.
13. In order to prevent the decedent from becoming sad or upset, she kept him diverted by smoking cigarettes with him, drinking, enjoying each other's company, perhaps using the dartboard on her porch, and doing arts and crafts and puzzles.
14. Although it apparently would upset the decedent, the Defendant suggested he call his daughter, who did not like talking to him when he was drinking, or that he call his brother to tell his brother that the decedent had dragged the Defendant down the stairs the night before.
15. Having done these playful activities for numerous hours, there came a point where the Defendant and decedent were sitting on her couch in the downstairs living room, and the decedent tagged her and said "You're it." From past games of hide and seek, the

Defendant understood this to mean that he wanted to play hide and seek. She begrudgingly engaged in this game, as with everything else, to placate the decedent.

16. She ran up to the shower. After becoming cold, and perhaps some misunderstanding about the rules of hide and seek, she left the shower upstairs and returned downstairs to find the decedent placing himself in a suitcase to hide. At the time of his death, the decedent was only 103 lbs. and had a blood alcohol level of .138g/dL.
17. The Defendant saw him doing this and decided to zip the suitcase shut while the decedent was inside it. They were both laughing and there was still no animus between them on this day. The Defendant states she did not zip it completely shut—the decedent was able to poke a couple of fingertips through the gap left by the zipper.
18. And then…the decedent said he could not breathe. The decedent, obviously, got mad about not being able to breathe. The decedent's getting mad made the Defendant get mad. This reminded her of the past violence the decedent committed against her causing her to be unable to breathe at those times. This made her angry. The Defendant shook the suitcase. She lost control and the suitcase flipped. She hit the decedent's fingertips with the wooden baseball bat that was in the room.
19. Now, after having committed the independent forcible felonies of aggravated assault, aggravated battery, and the non-forcible felony of false imprisonment, the Defendant believed the decedent would kill her.
20. Despite believing the decedent would kill her, the Defendant flipped the suitcase over so it was right side up and she believed the decedent would be able to let himself out.
21. The Defendant's specific intent was for the decedent to feel like what it was like for her to choke and not be able to breathe. She intended for him to feel this for two

minutes and believed he would let himself out. And when that happened, if she died—she died.

22. She did not intend to kill him and she did not believe that leaving the decedent in the predicament she placed him in would kill him…his death was an accident.

LEGAL ANALYSIS

23. Battered Spouse Syndrome evidence is inadmissible if the defense is an accident rather than self-defense. *Wagner v. State*, 240 So. 3d 795 (Fla. 1st DCA 2017). The Defendant's testimony is that she intentionally zipped the suitcase out of levity and while kidding around with the decedent during a friendly game of hide and seek. Then, when the decedent informed her that he could not breathe, she intentionally decided, out of anger, to make him feel like he's trapped in there for a couple of minutes while she beat and shook the suitcase and hit his hand with a baseball bat. This is aggravated assault, aggravated battery, and false imprisonment. She stated that she flipped the suitcase right side up, saw that the decedent could get two fingertips through an opening, and she went upstairs to bed believing he would be able to get out in a couple of minutes. She had no intention to kill him, no intention to leave him trapped inside of the suitcase, and she did not even comprehend that he could die from this. The Defendant is thus still saying that the decedent's death was an accident—and she is not entitled to an instruction on self-defense or to supplant a self-defense case with reputation evidence, specific instances of past violence, or Battered Spouse Syndrome evidence. *Id.*; *Lantz v. State*, 263 So. 3d 279 (Fla. 1st DCA 2019).

24. The Defendant's statement that she perpetually lived in a state of fear of the decedent is not sufficient to allow for a self-defense instruction and all of the ancillary evidence of reputation testimony, specific acts of past violence, or Battered Spouse Syndrome

testimony. "However, before a defendant may introduce evidence of the victim's character, he must first show that there was an 'overt act by the victim at or about the time of the incident that reasonably indicated a need for self-defense.'" *Holland v. State*, 916 So. 2d 750, 760 (Fla. 2005); *quoting Quintana v. State,* 452 So. 2d 98, 100 (Fla. 1st DCA 1984); *quoting Williams v. State*, 252 So. 2d 243, 246 (Fla. 4th DCA 1971); *Reid v. State*, 213 So. 3d 1110, 1111 (Fla. 5th DCA 2017); *Rudin v. State*, 182 So. 3d 724, 726 (Fla. 1st DCA 2015) (Victim hit defendant with a 2 inch wide 4 foot long stick in the hand causing only minor injuries did not justify defendant's use of deadly force). Comparing the facts of those cases, it is clear there was not even the slightest overt act by the decedent in this case.

25. Prior to the Defendant committing aggravated assault, aggravated battery, and false imprisonment, there was no imminent threat from the decedent. *State v. Woodson*, 349 So. 3d 510 (Fla. 5th DCA 2022); *Morris v. State*, 325 So. 3d 1009, 1012 (Fla. 1st DCA 2012) ("[Y]ou can't just attack somebody as they walk into their front door and slash their throat with a knife because two days prior they sent you a threatening text message.")
26. If this evidence is improperly admitted, it would be a departure from the essential requirements of the law which would result in irreparable harm that cannot be corrected by a post judgment appeal. *Roberts v. State*, 2023 WL 3262633, *2 (Fla. 6th DCA May 5, 2023).
27. The State acknowledges that the Defendant is entitled to change her story yet again, so if the Court does not exclude this evidence now, the Defendant should be barred from mentioning Battered Spouse Syndrome evidence until the Defendant testifies to something that is a justifiable use of deadly force. *Ladd v. State*, 564 So. 2d 587 (Fla. 2nd DCA 1990) (BSS evidence properly excluded until defendant testifies when

that's the only source of information for the defense); *Medina v. State*, 260 So. 3d 419 (Fla. 3rd DCA 2018) (Not improper to exclude expert testimony until the facts are in evidence); *Wagner v. State*, 240 So. 3d 795 (Fla. 1st DCA 2017) (BSS not available if the defense is accident rather than self-defense).

I CERTIFY that a copy hereof has been furnished to James Sylivan Owens, James@jamesowenslaw.net, 6478 Hwy. 90, Suite C, Milton, FL 32570 and Kevin T. Beck, kevin@kevinbeck.law, PO Box 1401, 15 Via Entrada, Sandia Park, NM 87047-1401 and Tony L Henderson, tonyhendersonlawfirm@gmail.com, 6478 Hwy. 90, Suite C, Milton, FL 32570 by e-mail on this 6th day of October, 2024.

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