

IN THE SUPREME COURT OF OHIO

CITY OF GROVE CITY :

Plaintiff-Appellee, :

vs. :

ROLAND BUCK :

Defendant-Appellant. :

CASE NO.

11-1163

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF ROLAND BUCK**

Counsel for Appellant:

Joseph D. Reed (0025938)
713 S. Front Street
Columbus, Ohio 43206
Telephone: (614) 449-1124
Fax: (614) 445-7873

Counsel for Appellee:

Schottenstein, Zox & Dunn Co., LPA
Stephen Smith Jr., Asim Z. Hague
and Morgan Masters
41 S. High Street, Suite 2600
Columbus, Ohio 43215
Telephone: (614) 462-2700
Fax: (614) 462-5135

FILED
JUL 07 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

The right to a fair trial is the foundation of our legal system and a right guaranteed by Article I § 10 of the Constitution of Ohio, and the Sixth and Fourteenth Amendments to the Constitution of the United States of America. This right was abrogated when the trial Court refused to instruct the jury on the defense of self-defense.

This case is out of the heartland of cases as it involves a series of physical confrontations between parties who lived together. Whereas, the opening blow was characterized as an accident by the defendant, it was the subsequent actions which made up the bulk of the assault. Those subsequent actions were clearly the result of the defendant's defense of self or others.

See Statement of Facts Infra

STATEMENT OF THE CASE AND FACTS

A. STATEMENT OF THE CASE

Roland Buck was charged with domestic violence in violation of RC§2919.25 and assault in violation of RC§2903.13

A jury found Buck guilty on both counts and the Court imposed a jail sentence of fifteen (15) days in jail, and a fine and court costs. Mr. Buck timely appealed his conviction to the Franklin County Court of Appeals for the Tenth Appellate District which affirmed the decision of the trial court. Roland Buck is now before this Court seeking reversal of that Decision.

B. STATEMENT OF FACTS

Defendant-Appellant Roland Buck and Corina Boyce resided together at 4789 Edgerton Dr., Grove City, Ohio on March 29, 2009 (pp 27).

On that date, a discussion commenced in the parties' upstairs office of their residence (pp 30). During the argument, Ms. Boyce began slamming the \$2,000 laptop computer belonging to her employer against the desk (pp 107). Fearing she may damage it, putting her further in a financial hole, Buck reached to stop her. As she swung the computer towards her right shoulder, and Buck's face, he reached to block it and struck Ms. Boyce glancing blow (pp 108).

This sent Ms. Boyce into a rage. She hurled bowls and waste cans at Mr. Buck up in the office (pp 108-109). She bolted downstairs in a rage, where Mr. Buck's nine (9) year old daughter Danielle was watching television. Fearing that she may harm his daughter, Buck chased after her (pp 100).

Ms. Boyce proceeded into the kitchen area, trashing furniture along the way (pp 112). Mr. Buck got a hold of her in the kitchen and attempted to hold her down until she could calm down and

prevent her from harming him and/or Danielle (pp 112). At one point Ms. Boyce managed to break a wine bottle on the kitchen floor and cut Mr. Buck with it (pp 64).

Mr. Buck testified that he was protecting himself and his daughter from Ms. Boyce (pp 120). Danielle Buck testified that Ms. Boyce was jabbing at Mr. Buck with the broken wine bottle over her shoulder while he was trying to hold her from behind (pp 148). Ms. Boyce also tried to wrap some electrical wires first around Mr. Buck's neck and then her own (pp 149-150).

Finally, Ms, Boyce calmed down enough for Mr. Buck to get his daughter out of the house and to exit the house himself (pp 124). Police arrived and Mr. Buck was subsequently charged with domestic violence and assault.

PROPOSITION OF LAW NO. 1

THE FAILURE OF THE TRIAL COURT TO INSTRUCT THE JURY ON THE DEFENSE OF SELF-DEFENSE DEPRIVED ROLAND BUCK OF HIS RIGHT TO A FAIR TRIAL. U.S. CONST., 5TH, 6TH & 14TH AMENDMENTS; ARTICLE I, §2, 10 & 16 OF THE CONSTITUTION OF THE STATE OF OHIO.

PROPOSITION OF LAW

At the conclusion of the testimony, counsel for the Defendant requested an instruction to the jury on self-defense (pp 161). Initially the government did not have an objection and the trial Court seemed inclined to give the instruction (pp 162). After argument by both sides, the Court denied the defendant's Motion for the instruction on self-defense (pp 168). Defendant timely objected (pp 203).

Ohio has long recognized the defense of self-defense as a justification for actions which otherwise would be a crime. *State v Shipp* (1936) 22 O.L. Abs. 104, 1936 W.L. 2081 (2nd Dist.). It is not a denial of the use of force against another but instead, a legal rationalization which decriminalizes the act.

Self-defense is an affirmative defense and as such, the defendant has the burden of proof to establish the affirmative defense by a preponderance of the evidence R.C. 2901.05. When the defendant relies on specific, relevant matters to provide an exception from criminal liability, the burden of proving those specifics is on them. *State v Seppienza* (1911) 84 Ohio St. 63. So for the last on hundred years, Ohio jurisprudence has recognized self-defense and place the burden of proof on the defendant to prove, by a preponderance of the evidence, that he was entitled to that exemption from liability. However, in order for a jury to consider granting that exception, it must be made part of the jury's instruction of law.

A court should give requested jury instructions where evidence was adduced at trial which would lead a reasonable mind to support the conclusion sought by the instruction. *Berbe v Col. Comm. Cable Access* (1999) 136 Ohio App. 3d. 281, 736 N.E. 2d. 517 (10th Dist.). Of course, the Court should not instruct a jury where there is no evidence to support a finding on that issue. *Pesek v Univ. Neurologistics Assn. Inc.* (2008) 87 Ohio St. 3d 495. In case *subjudice*, the defendant presented sufficient evidence to warrant the requested instruction.

Appellant testified that on the day in question he and the alleged victim were having a conversation in the upstairs office of the home they shared when the alleged victim became highly agitated. She began banging her employer's \$2,000 laptop on the desk in front of her, literally shattering it on her desk, (pp 107). She proceeded to pick-up and slam a second laptop when Appellant intervened. He was standing next to her when she flung the laptop violently toward his face. In trying to block the laptop, his hand accidentally hit her on the side of the face (pp 108).

Her reaction was to go into a rage, hurling object at him (pp 108-109). She then bolted downstairs where Appellant knew his nine (9) year old daughter was present and possible in danger (pp 110). Appellant tried to keep her from either harming his daughter or destroying his property

(pp 112-113). At one point Ms. Boyce broke a wine bottle and attempted to stab Mr. Buck with the jagged edge (pp 116). She also managed to rip some wires out of the wall and wrap them first around his neck and then around her own (pp 68). Defendant and his daughter testified that Ms. Boyce was hysterical and they were in fear of her.

Defendant presented sufficient evidence, from both himself and his daughter, to warrant the requested jury instructions. A trial court must fully and completely give the jury all of the instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder. *State v Comen* (1990) 50 Ohio St. 3d. 206. Instruction on affirmative defenses must be given when supported by the evidence. *State v Proctor* (1997), 51 Ohio App. 2d. 151.

In this case, evidence was presented that the initial melee occurred when Ms. Boyce began slamming her employer's laptop on the desk then flung it over her shoulder toward Mr. Buck (pp 108). The rest of the acts, chasing her, holding her down etc. were done in fear of harming Mr. Buck and/or his daughter, Danielle. Although it would be up to the jury to assign the proper weight to their testimony, they were unable to do so in the absence of the requested instruction.

The Court's failure to give the requested instruction is not harmless error. It prevented the Defendant from arguing the issue to the jury and preventing the jury from determining whether there was a legal justification for Mr. Buck's actions on March 29, 2009. Failure to give a proper instruction voids the jury's verdict and requires a new trial. *Sullivan v Louisiana* (1993) 508 U.S. 275.

CONCLUSION

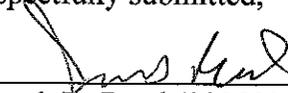
This case presents a series of acts which are unique to the law but not to the normal actions in cases of domestic violence. It is increasingly reported that the initial act may be, as here, an act of inadvertence or accident. It then escalates to a self-defense situation as one of the parties unleashes physically on the other party in retaliation for the original act.

In this case, Buck indicated he struck Ms. Boyce by accident when she swung a laptop computer at him. However, most of the testimony the jury heard described an ongoing melee which started upstairs and ended up in the kitchen. All of the pictures shown to the jury documented injuries which occurred during the latter part of the confrontation. There was ample evidence introduced to support a self-defense instruction on the latter part of the battle

The problem this case poses is how does the jury distinguish the two (2) parts of the battle when it is charged in only one count. The only just way would be to permit the jury to contemplate both accident, with the first blow, as well as self-defense for the subsequent activity. Only then could the defendant present a rational defense to the charges herein.

Self defense and accident need to be mutually exclusive when there are a number of acts that take place during one incident. Jurors should be permitted to fully weigh all the legal defenses while deliberating on the issue of guilt or innocence. The trial court denied Buck a fair trial by refusing to give the requested instructions.

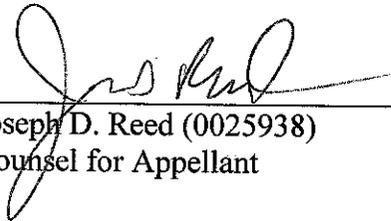
Respectfully submitted,



Joseph D. Reed (0025938)
713 S. Front Street
Columbus, Ohio 43206
Telephone: (614) 449-1124
Fax: (614) 445-7873
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ROLAND BUCK'S NOTICE OF APPEAL was forwarded to Schottenstein, Zox and Dunn Co. L.P.A., 41 S. High Street, Suite 2600, Columbus, Ohio 43215 on this 8 day of July, 2011.



Joseph D. Reed (0025938)
Counsel for Appellant

[Cite as *Grove City v. Buck*, 2011-Ohio-2549.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Grove City,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1039
Roland G. Buck,	:	(M.C. No. 2009 CRB 7334)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 26, 2011

Schoffenstein, Zox & Dunn Co., L.P.A., Stephen J. Smith, Jr., Asim Z. Haque and Morgan M. Masters, for appellee.

Joseph D. Reed, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶1} Roland G. Buck ("appellant") is appealing from his conviction on a misdemeanor charge of domestic violence. He assigns a single error for our consideration:

I. THE TRIAL COURT ERRED WHEN IT REFUSED TO INSTRUCT THE JURY ON SELF DEFENSE, DEFENSE OF OTHERS AND DEFENSE OF PROPERTY.

{¶2} In order to address the merits of this assignment of error, we need to set forth some of the pertinent evidence before the trial court.

{¶3} On March 29, 2009, appellant was living with C.B. when the two started arguing. The argument escalated from mere words to physical confrontation. Appellant would later admit to slapping C.B. a single time, but called the contact accidental. After the slapping, appellant later physically restrained C.B. for an extended period of time and would not allow her to leave or to call police. Much later, he relented and called the police himself, handing the telephone to C.B. after he made the connection.

{¶4} Upon arriving at the residence, police found C.B. with a swollen eye and bruising visible on her face, arms and legs.

{¶5} Eventually, appellant apologized to C.B., both via email and via telephone message. Neither message mentioned self-defense, defense of others, or defense of property. At trial, appellant attempted to assert one or more of those defenses. The trial court did not feel the defenses applied under the circumstances and refused to give jury charges on the subject. That refusal is at the heart of the appeal.

{¶6} Appellant admits to doing physical harm to C.B. He claims that the first instance of physical harm came when he slapped her "accidentally." By claiming the slap was accidental, he gave up any claim that the physical harm he inflicted then was done in self-defense, in defense of others, or in defense of property. The judge was clearly correct in refusing to give a self-defense or related jury charge as to this slapping.

{¶7} Appellant claimed that the rest of the physical harm he inflicted on C.B., was inflicted in self-defense, defense of C.B. herself or of appellant's daughter, or in defense of property at the residence. On such a defense, ~~appellant had the burden of~~ proof by a preponderance of the evidence. The trial court judge was within his discretion to find that appellant and his counsel could not possibly persuade a rational jury of such

defense or defenses and therefore appellant was not entitled to a jury charge on such a defense or defenses.

{¶8} Appellant admitted that he blocked C.B. from calling police for a sustained period of time. That admission is inconsistent with a claim he thought he was legally justified in inflicting the physical harm clearly visible to police when they finally could respond to the report of domestic violence. His claim at trial that he blocked C.B. from calling police because he did not want his daughter, D.B. "exposed to the police" seems incredible. He could expose his daughter to an extended confrontation with C.B. which resulted in C.B. having a swollen eye and visible bruising to her face, arms and legs, but wanted to protect his daughter from exposure to the police. The more apparent explanation is that appellant wanted to protect himself from prosecution for domestic violence.

{¶9} As noted earlier, appellant admitted to doing physical harm to C.B. and apologized for it repeatedly. This activity is more consistent with a hope to avoid the consequences of the physical harm he inflicted than in a belief that he was justified in harming C.B.

{¶10} The trial judge was within his discretion to refuse the requested jury charge. The sole assignment of error is overruled. The judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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COURT OF APPEALS
FRANKLIN CO OHIO

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

2011 MAY 26 PM 1:10
CLERK OF COURTS

City of Grove City, :

Plaintiff-Appellee, :

v. :

Roland G. Buck, :

Defendant-Appellant. :

No. 10AP-1039
(M C No. 2009 CRB 7334)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on May 26, 2011, appellant's assignment of error is overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Municipal Court is affirmed. Costs shall be assessed against appellant.

TYACK, BROWN & FRENCH, JJ.

By *Gary Tyack*
Judge G. Gary Tyack