

4 Fla. L. Weekly D1804d**Criminal law -- Aggravated battery causing great bodily harm -- Jury -- Voir dire -- Trial court abused its discretion by refusing to allow defense counsel to question potential jurors as to their understanding and opinions regarding battered-spouse syndrome, the theme underlying defendant's theory of self-defense**

ASIA ROSHONDA SIMPSON, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 5D18-1104 July 12, 2019. Appeal from the Circuit Court for Orange County, John E. Jordan, Judge. Counsel: James S. Purdy, Public Defender, and Darnelle Paige Lawshe, Assistant Public Defender, Daytona Beach, for Appellant. Ashley Moody, Attorney General, Tallahassee, and Pamela J. Koller, Assistant Attorney General, Daytona Beach, for Appellee.

(HARRIS, J.) Asia Roshonda Simpson appeals her conviction and sentence for aggravated battery causing great bodily harm against her boyfriend, Eric Livingston. Simpson argues that the trial court improperly refused to allow defense counsel to question potential jurors as to their understanding and opinions regarding battered-spouse syndrome, which was the theme underlying her theory of self-defense. We agree and reverse.

The State charged Simpson by information with aggravated battery, alleging that she carried and discharged a firearm, causing serious bodily harm to Livingston. In response, Simpson filed a notice of intent to rely upon the battered-spouse syndrome defense.¹ In her notice, Simpson argued that she “was justified in using force during the alleged commission of the offense of Aggravated Battery. This justification was, in part, based on Ms. Simpson's experience as a battered woman and repeated victim of the alleged victim in this case, Eric Livingston.”

During jury selection, defense counsel discussed generally the “idea of self-defense,” asking the prospective jurors if they understood what it was and if the fact that a gun was involved would influence their decision. Defense counsel then attempted to ask the prospective jurors if anyone had heard of battered-spouse syndrome, a line of questioning to which the State promptly objected. At a sidebar conference, defense counsel advised the court, consistent with the notice Simpson filed, that the battered-spouse syndrome was its sole theory of defense. As defense counsel argued, “[t]hat's no different than saying self-defense. I need to know if someone is going to outright reject my theory of defense just on the basis of the idea of it, not the merits of what actually is in evidence. I wouldn't be getting into any specifics about examples or anything.”

The court ruled that any comment regarding the battered-spouse syndrome during voir dire would be an inappropriate discussion of the evidence and precluded defense counsel from inquiring into that specific topic. The trial court sustained the State's remaining objections to defense counsel's efforts to examine the venire's thoughts on the defense's theory.

At the conclusion of jury selection, defense counsel renewed his objection, arguing that he was not allowed to ask questions on Simpson's theory of defense. The trial court responded that it did not limit questioning based on Simpson's theory of defense, only the evidence to support that theory. After all members of the jury were chosen, defense counsel again renewed his objection regarding his request to question the venire panel members on battered-spouse syndrome. The objection was overruled and the jury was sworn.

In his opening statement, defense counsel conceded that Simpson shot Livingston, but that “months of abuse, physical abuse, emotional abuse, psychological, sexual abuse” preceded the shooting. Defense counsel stated that the jury would hear that Simpson tried to end her relationship with Livingston several times and that testimony from two doctors would show that she suffered from battered-spouse syndrome. Defense counsel suggested that this was a case of self-defense and Simpson, based on Livingston's systemic abuse, was in fear for her life.

When called to the stand, Simpson testified that her relationship with Livingston changed when they moved apartments because she was unable to move large boxes from the old apartment to the new one. She testified about a specific event of physical abuse where Livingston body slammed her and placed his right hand on her

neck and shoved her face into the floor. She testified to another incident wherein Livingston choked her as she slept, causing her to wake up. She further testified that after that incident, she slept in the closet because she did not want to fall asleep around Livingston.

Simpson also testified that she tried to leave Livingston a few times, and that on one occasion, he threw her onto the closet floor repeatedly as she attempted to stand back up. When he finally left the room, she called the police, but Livingston returned, took the phone from her, and threw it. After the police came, she testified that Livingston followed her to a homeless shelter, and ultimately, convinced her to return to the apartment with him. Their relationship improved until she found out that Livingston cheated on her and she ended the relationship. However, Simpson testified that before she could leave the apartment, Livingston forced himself on her again, and despite her pleas to stop, he persisted. She explained that soon after that incident she moved out of the apartment.

On the day of the shooting, Simpson returned to the apartment to get her belongings. She claimed that she did not inform Livingston when she would come by and did not expect him to be there; however, she did bring a gun for her protection. Upon arrival, she realized that he was likely there when she noticed his car outside. She called him to let him know that she was coming inside to get her belongings. Once inside the apartment, she testified that he verbally abused her and made her feel intimidated. After she did not react, he moved around the counter with what Simpson described as a “look in his eyes” that she had seen before. She explained that she saw him look at her that way when he abused her on previous occasions. As he walked towards her, she pulled out a gun and shot him because she believed that Livingston was going to kill her and felt that this was her only option. It was not until after she finished work later that night that she reported the shooting to the police.

After a lengthy proffer, the trial court permitted Dr. Charles Ewing, a forensic psychologist, to testify about battered-spouse syndrome and specifically permitted Dr. Ewing to testify using the term battered-spouse syndrome. Dr. Ewing explained to the jury the nature of battered-spouse syndrome and that it is generally considered to fall under post-traumatic stress disorder. After conducting an evaluation of Simpson, Dr. Ewing concluded that she suffered from battered-spouse syndrome at the time of the shooting. Dr. Kathleen McHugh, a clinical psychologist, also testified that in her professional opinion, Simpson suffered from battered-spouse syndrome on the day of the shooting and would have felt a heightened sense of being threatened.

The jury found Simpson guilty of aggravated battery causing great bodily harm (count one).² The jury also made special findings that Simpson did carry, display, use, threaten to use, or attempt to use a firearm, that she did actually possess a firearm during the commission of count one, that she did actually discharge a firearm during the commission of count one, and in doing so caused great bodily harm to Livingston. The jury found her guilty and the court sentenced her to twenty-five years in prison. This appeal followed.

The “purpose of voir dire is to ensure a fair and impartial jury.” *O'Hara v. State*, 642 So. 2d 592, 593 (Fla. 4th DCA 1994). “It is well-settled that trial courts have considerable discretion with regard to the voir dire examination of prospective jurors.” *Watson v. State*, 693 So. 2d 69, 70 (Fla. 2d DCA 1997) (citations omitted). However, “the judge ‘must allow counsel the opportunity to ascertain latent or concealed prejudgments by prospective jurors.’” *Hillsman v. State*, 159 So. 3d 415, 419 (Fla. 4th DCA 2015) (quoting *Campbell v. State*, 812 So. 2d 540, 542 (Fla. 4th DCA 2002)). “Whether a trial judge should have allowed interrogation of jurors on specific subjects is reviewed under an abuse of discretion standard.” *Id.* (citing *Davis v. State*, 698 So. 2d 1182, 1190 (Fla. 1997)).

This Court has recognized that no bright line rule can be fashioned to determine the limits a trial court may impose on voir dire because the complexities in each case are different. *Mendez v. State*, 898 So. 2d 1141, 1143 (Fla. 5th DCA 2005). While it is proper for a trial court to prohibit counsel from asking questions that are designed to obtain a preview of the prospective jurors' opinions of the evidence, *Hoskins v. State*, 965 So. 2d 1, 12-13 (Fla. 2007), a trial court abuses its discretion where it precludes questioning pertaining to the prospective jurors' willingness and ability to accept a valid legal theory. *Lavado v. State*, 492 So. 2d 1322, 1323 (Fla. 1986).

In *Lavado*, the Florida Supreme Court adopted the dissent's opinion of the district court, specifically quoting that “if he knew nothing else about the prospective jurors, the single thing that defense counsel needed to know was

whether the prospective jurors could fairly and impartially consider the defense of voluntary intoxication.” *Id.* at 1323. Similarly in *Stevens v. State*, 928 So. 2d 409, 410 (Fla. 3d DCA 2006), the Third District found that the trial court abused its discretion in depriving the defendant of the opportunity to discuss, or question the jury about, the defense of necessity during voir dire. In *Walker v. State*, 724 So. 2d 1232, 1234 (Fla. 4th DCA 1999), the Fourth District concluded that the trial court abused its discretion in precluding defense counsel from exploring the prospective jurors' understanding and opinion of the entrapment defense. Also, in *Harrison v. State*, 172 So. 3d 1018, 1023 (Fla. 1st DCA 2015), the First District found that the trial court abused its discretion in unreasonably limiting defense counsel's ability to question prospective jurors on the sole defense presented at trial.

As defense counsel argued in the cases cited above, here too, Simpson's defense counsel had no less of a compelling need to inquire into the venire's thoughts and opinions regarding the battered-spouse syndrome defense. The trial court abused its discretion in precluding such inquiry. Battered-spouse syndrome was at the heart of Simpson's defense, and because the trial court did not permit her attorney to inquire into possible juror bias on that issue, we are compelled to reverse Simpson's conviction and sentence and remand this matter for a new trial.

REVERSED and REMANDED (COHEN and LAMBERT, JJ., concur.)

¹“When in any criminal case it shall be the intention of the defendant to rely on the defense of battered-spouse syndrome at trial, no evidence offered by the defendant for the purpose of establishing that defense shall be admitted in the case unless advance notice in writing of the defense shall have been given by the defendant as hereinafter provided.” Fla. R. Crim. P. 3.201.

²Notably, the trial court also instructed the jury on battered-spouse syndrome, stating:

You have heard evidence that Asia Roshonda Simpson suffers from Battered Woman Syndrome and did at the time of the shooting on November 24th, 2015.

If you find the testimony that Asia Roshonda Simpson suffers from Battered Woman Syndrome credible, you should consider this evidence to assist you in determining whether Asia Roshonda Simpson acted in response to a reasonable fear of Eric Livingston on November 24th, 2015.