

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

v.

JULENE SIMKO

Appellant.

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Case No. _____

Appeal from the Lorain County
Court of Appeals, Ninth Appellate District

Court of Appeals Case No. 18CA011267

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JULENE SIMKO**

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**EXPLANATION OF WHY THIS FELONY CASE RAISES A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS A MATTER OF GREAT GENERAL AND
GREAT PUBLIC INTEREST**

There is nothing more sacred to our Judicial system than the right to be proven guilty beyond a reasonable doubt. This is true whether the trier of fact is a jury or a Court. However, as the case law has developed over the years, there has been strong deference to Trial Court Judges rendering decisions in which they are presumed to have known the law. As a result, in cases like this case at hand, Defendants are often punished when Trial Courts do fail to apply the law correctly.

In this case, Appellant is not just dissatisfied with the rendering of the Trial Court's decision that convicts her, but with the manner in which the Trial Court applied the law in convicting her. The Trial Court used an incorrect standard in unfairly shifting the burden on Ms. Simko to prove that she didn't murder Mr. Simko instead of requiring the State prove Ms. Simko committed the crime beyond a reasonable doubt.

The requirement that the government prove a defendant's guilt " 'beyond a reasonable doubt' " is "an ancient and honored aspect of our criminal justice system [that] defies easy explication." Victor v. Nebraska, 511 U.S. 1, 5 (1994). However, this Trial Court did not understand this ancient and honored concept. It is well established that a criminal defendant cannot be convicted of a crime "except upon proof beyond a reasonable doubt" of every element of the crime charged. In Re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368, 375 (1970).

The Trial Court in its lengthy recitation of its verdict explained that it had three theories of how Mr. Simko was shot. The three theories were as follows: 1) Ms. Simko shot and killed her husband; 2) a stranger came into the house to rob the house; or 3) there was an assassin. The Trial Court concluded that, although the State did not come close to proving a motive, that it could not find that a stranger came into the home to rob the house or that an assassin killed Mr. Simko so that there was no other option than to convict Ms. Simko.

The right to have the State prove a Defendant guilty beyond a reasonable doubt is the very cornerstone of our justice system. It is a right guaranteed to all citizens through both the United States Constitution and the Ohio Constitution. Not only did the Trial Court violate Ms. Simko's right to be proven guilty beyond a reasonable doubt but the Ninth District Court of Appeals affirmed its decision in allowing this miscarriage of justice.

While it is often presumed that Trial Court Judges follow the law this is a time when it is clear that the Trial Court Judge did not follow the law and violated Ms. Simko's very basic but precious right to be proven guilty beyond a reasonable doubt.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the defendant from conviction except upon proof beyond a reasonable doubt of "all of the elements included in the definition of the offense of which the defendant is charged." Patterson v. New York, 432 U.S. 197, 210, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977); accord see In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); Speiser v. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958). The United States Supreme Court has recognized that the state has the power to " 'regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion,' and its decision in this regard is not

subject to proscription under the Due Process Clause unless ‘it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.’ ” Patterson at 201-202, quoting Speiser at 523 and Snyder v. Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed. 674 (1934), respectively.

The concept of “due process” has its foundation in the Fourteenth Amendment to the United States Constitution, which States that no State shall “deprive any person of life, liberty, or property, without due process of law.” United States Constitution, Fourteenth Amendment. Within the Ohio Constitution, there is a “due course of law clause” which provides: “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.” Ohio Constitution, Article 1 §16. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every element of a charged criminal offense beyond a reasonable doubt.

ORC 2901.05 states in relevant part as follows:

“Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution.”

The due process clauses of the Fifth and Fourteenth Amendments require the prosecution in federal and state criminal cases to prove guilt beyond a reasonable doubt of every element of a charged offense. See In re Winship, 397 U.S. 358, 363 (1970). “A doctrine establishing so fundamental a substantive constitutional standard” requires “more than simply a trial ritual.” Jackson v. Virginia, 443 U.S. 307, 316-17 (1979). It “must also require that the factfinder will rationally apply that standard to the facts in evidence.” Id. at 317.

This matter is also a matter of great public concern. This case has been featured on the TV show “Snapped” and has elicited great public interest in Lorain County. This case is a felony matter and the stakes are high. Ms. Simko has been sentenced to a life sentence. Not only is this Court expressed a deep desire for conviction integrity but so has the nation and almost all justice reform advocates.

This case comes before us at a unique time in this Court’s history in which Chief Justice O’Connor convened a task force on Conviction Integrity and Postconviction Review. The taskforce is to “analyze current practices and recommend improvements to further our standards of justice.” This Court would be doing this work a disservice by not hearing this case now before it gets to further post-conviction review as there is clearly a miscarriage of Justice in the wrong standard being used to convict Ms. Simko. Additionally, the three-theory conviction lends itself to a conviction integrity question. The Trial Court used an incorrect standard and improperly shifted the burden on Ms. Simko in convicting her.

STATEMENT OF THE CASE AND FACTS

Jeremy Simko was shot in the back of the head while he was sleeping on November 18, 2009. The State alleged that Ms. Simko shot her husband and tried to develop a motive. As the appellate court addresses, much of the testimony centered around the security measures the Simkos took at their home and adjacent barn, their relationship particularly their sexual relationship, and their financial situation. However, the Trial Court found that the State “didn’t come close” to establishing a motive.

The day before Mr. Simko was murdered, the couple spent the day canning pumpkins and watching television before bed. Before they went to bed, Mr. Simko secured their dogs around the perimeter of the property. The couple went to bed together but at some point, during the night, Ms. Simko went to the third floor of the home. Ms. Simko commonly slept on the third floor because Mr. Simko snored.

Ms. Simko awoke to a loud noise which she initially thought was Mr. Simko shooting a coyote from the bedroom window as he had done in the past. She waited a few minutes before going downstairs to the bedroom but when she did Mr. Simko was lying in the bed in blood. She grabbed a 9mm gun from her nightstand and shot two rounds into the hallways as a warning shot to the intruder. She called 911 screaming and crying, telling the 911 operator that someone shot her husband, and begging for first responders to hurry while she performed CPR.

Over five years later, on December 18, 2014, Julene Simko was indicted on six counts as follows: Aggravated Murder, in violation of RC 2903.01(A), with a specification; Murder, in violation of RC 2903.02(A), a specification; Murder, in violation of RC 2903.02(B) with a specification; Felonious Assault, in violation of RC 2903.11(A)(1), a felony of the second degree with a specification; Felonious Assault, in violation of RC 2903.11(A)(2), a felony of the second

degree with a specification; and Tampering with Evidence, in violation of RC 2921.12(A)(1), a felony of the third degree with a specification.

In September 2017, the matter proceeded to a multi-day bench trial. The trial court convicted Ms. Simko of all counts.

After nearly a month of deliberation, on October 20, 2017, the trial the court found Ms. Simko guilty on all six counts. The Court, on more than one occasion during the verdict, stated that its deliberations revolved around whether someone else committed the crime, in particular, two “mystery people” – a stranger-robber, or an assassin. Ultimately, just before concluding that Ms. Simko was guilty, the Trial Court again noted that of the three individuals – the stranger-robber, the assassin, and Ms. Simko – that Ms. Simko would have the easiest and closest access to Mr. Simko.

Ms. Simko was sentenced on October 26, 2017 to life in prison on count one, no sentences as a merger on counts two through five, and twenty-four (24) months in prison on count six. An additional three (3) years was imposed as a mandatory, consecutive term pursuant to RC 2929.14(C)(1). The Trial Court, at the time of the verdict, gave a long explanation for the verdict.

Ms. Simko appealed the decision of the Trial Court to the Ninth District Court of Appeals, who affirmed their decision on April 26, 2021.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

First Proposition of Law

The Trial Court violated Ms. Simko's Due Process rights as afforded under the Fourteenth Amendment of the U.S. Constitution and Article 1 §16 of the Ohio Constitution when it shifted the burden of proof to Ms. Simko and did not require the State to prove Ms. Simko guilty beyond a reasonable doubt.

A. Introduction

The right to have the State prove a Defendant guilty beyond a reasonable doubt is the very cornerstone of our justice system. It is a right guaranteed to all citizens through both the United States Constitution and the Ohio Constitution. It is also explicitly provided for in the Ohio Revised Code.

The concept of "due process" has its foundation in the Fourteenth Amendment to the United States Constitution, which States that no State shall "deprive any person of life, liberty, or property, without due process of law." United States Constitution, Fourteenth Amendment. Within the Ohio Constitution, there is a "due course of law clause" which provides: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." Ohio Constitution, Article 1 §16. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every element of a charged criminal offense beyond a reasonable doubt.

ORC 2901.05 states in relevant part as follows:

"Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution."

The Trial Court discussed its verdict in great detail, explaining its thought process in deliberations for purposes of appellate review. "I'm going to advise you of some of the things that

I went through in my deliberations and thought process, both during the trial and during my deliberations, whether it be for the benefit of the parties, or for purposes of the appellant, or whether it be for the benefit of the Court of Appeals.” Tr. 1451.

“I don't think it, in my mind, ever changed what the burden of proof was on the State of Ohio in that regard, but it certainly had an impact as to how I viewed the evidence, and to see whether, at the same time there was sufficient evidence to find the Defendant guilty, **was there insufficient evidence to find that somebody else could have done it.**” Tr. 1456

And, so, ultimately, to a certain extent, **this Court had to decide whether there was a third party that might have caused this.** Tr. 1457.

The Court established what it felt were three possibilities of what happened to Mr. Simko –

- 1) Ms. Simko shot and killed her husband; 2) a stranger came into the house to rob the house; or
- 3) there was an assassin. Tr. 1457.

The Court proceeded to establish how a stranger would break into the home, and why the stranger may want to break into the home. Tr. 1457-1463. The Court continues to explain for a long period of time about all these possibilities of a stranger breaking into the home before concluding that, there was “insufficient evidence” that a robber-stranger killed Mr. Simko. Tr. 1463.

The Court undoubtedly used the wrong standard in convicting Ms. Simko. The Court, on more than one occasion, stated that its deliberations revolved around whether someone else committed the crime. See Volume Nine of transcripts, generally. In placing the emphasis on whether someone else did this crime, it used the wrong standard. The standard, as well established by the Constitution and revised code, is that the State must prove Ms. Simko committed this crime beyond a reasonable doubt. Instead, the Court used a standard that no one else could have done this crime, so Ms. Simko must have done it.

Ultimately, just before concluding that Ms. Simko was guilty, the Trial Court again noted that of the three individuals – the stranger-robber, the assassin, and Ms. Simko – that Ms. Simko would have the easiest and closest access to Mr. Simko.

“But, more notably, of the three potential killers here, a stranger-robber, an assassin, or Mrs. Simko, the one who would have had the easiest -- and the easiest to get close access to the defendant [sic] would have been Mrs. Simko. And the individual who would have been least concerned about getting extremely close to the defendant [sic] would be Mrs. Simko.”

The Trial Court again compares Ms. Simko’s actions to that of two mystery people. Instead of reviewing and evaluating the evidence to see if the State has proven Julene Simko guilty beyond a reasonable doubt, the Court concluded that of the three individuals that the Trial Court established on its own – two mystery people and Ms. Simko –that the two mystery individuals were not guilty which by default made Ms. Simko guilty. However, it is well established law that regardless of the actions of others, the State must prove only Ms. Simko, the defendant, guilty beyond a reasonable doubt.

ORC 2901.05(E) defines Reasonable Doubt as follows:

"Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

There is no provision in the statute that allows for the trier of fact to consider that, because other individuals could not have committed the crime, the Defendant must be guilty by default. In fact, the statute specifically states that Reasonable Doubt is when the trier of fact is “convinced of the truth of the charge.” Here, the Trial Court never indicates that it is convinced of the truth of the charge – that the evidence proves that Ms. Simko committed the murder- instead, it only establishes that it would have been difficult for others to have committed the crime. The lack of

evidence that Ms. Simko committed the crime is established by the fact that the Court only convicts her by default because the other two individuals, apparently created as mystery people, were not guilty beyond a reasonable doubt.

The Trial Court erred because it used an incorrect standard in convicting Ms. Simko. The correct legal standard, as is well established and one of the if not the most important principle of our justice system, is that the Court must be convinced, beyond a reasonable doubt, that Ms. Simko was guilty beyond a reasonable doubt. Instead, the Court was not convinced that the mystery individuals were guilty beyond a reasonable doubt, so it convicted Ms. Simko by default. The advantage in this proceeding that this Honorable Court has is a very clear record of the Trial Court's error in its deliberations. The Trial Court notes that it did not need to go into such great detail in its analysis of the conviction at the time of the verdict but it did, partially in part for purposes of review by this Court. "And, theoretically, I could just sit here and tell you what the decision of the Court is with regard to this matter." Tr. 1451. However, the Trial Court did not just tell the verdict. Instead, the Trial Court explained for thirty-four (34) pages of transcripts the reason for the conviction, and the Trial Court's thought process during deliberations. In doing so, the Trial Court undoubtedly and unequivocally used the incorrect standard to convict Julene Simko of crimes that placed her in prison for the rest of her life. As such, this Court has no option but to reverse the errors of the Trial Court and to remand this proceeding for a new trial in which the trier of fact can establish guilt or innocence based on the correct standard of law in reviewing the evidence as it relates to Ms. Simko, and not how it relates to the two mystery individuals established by the Trial Court.

CONCLUSION

This is a matter of great general interest and involves a substantial constitutional question. Julene Simko, respectfully urges this Court to accept jurisdiction of this appeal. Upon consideration, this Court should accept this appeal so that it may consider whether the Trial Court Judged erred in using an incorrect standard of review and shifting the burden of proof to Ms. Simko. Justice requires further review of this matter.

Respectfully submitted,

/s/ Giovanna V. Bremke

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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was served on Appellee via electronic mail, this 8th day of June, 2021 to Assistant Lorain County Prosecutor Brian Murphy at brian.murphy@lcprosecutor.org.

/s/ Giovanna V. Bremke

GIOVANNA V. BREMKE (#0090478)