

NC Appeals Court Tosses Assault Conviction Based On Speculation

Donald Edward Sweat was arrested in February 2007 and charged in Lee County, North Carolina with assault with a deadly weapon inflicting serious injury. Unable to post his \$75,000 bail, he remained jailed until his April 2008 trial. He was convicted and sentenced to a minimum of 93 months and a maximum of 121 months imprisonment.

On April 7, 2009 the North Carolina Court of Appeals reversed his conviction on the basis of insufficient evidence: no one identified him as the perpetrator and there is no evidence he was at the crime scene. He was released several weeks later after almost 27 months of incarceration from the time of his arrest. The following are excerpts from the Court of Appeals' opinion in *North Carolina v. Donald E. Sweat*, No. 08-848 (NC COA, 4-7-2009):

The State's evidence tends to show that between 7:00 p.m. and 9:00 p.m. on 23 February 2007, brothers Joe and John Hunter were returning from a turkey shoot when they drove to check John's mailbox, which was located on Cletus Road about a mile and a half from John's home. The mailbox had been moved temporarily to the intersection of Cletus and Buchanan Roads while construction was being done on Cletus Road. Joe was driving the car when they pulled up to the mailbox. John stepped out of the car to check the mailbox, which was empty, and when he

turned back toward the car, he was attacked by an assailant. He was struck in the face and knocked to the ground, and struck in the face several more times as he tried to get up. John's cheekbone was cracked and his jawbone was broken by the blows. At that time, Joe Hunter got out of his car and told the assailant to leave John alone. The assailant threatened to kill Joe if he didn't get back in the car. Joe retreated. Meanwhile, John Hunter searched for his glasses which had been knocked off his face when he was hit. When he finally did find them, they were broken. John requires his glasses to see.

After the assailant forced Joe Hunter to retreat, he came back and put some type of knife to John's throat and told John if he moved, he would kill him. When John tried to get up again, the assailant cut John across the arm. The slash went through the sleeve of John's coat, and the cut later required nine stitches. The assailant told John, "I'm going to cut your damn head off." The assailant then left the scene. The Hunters then drove to John's house where they called the police at approximately 9:08 p.m. Neither John nor Joe could identify the assailant, and the only description they could give was that the assailant was a man or a boy. Neither of the two had seen defendant prior to being in court and neither could identify him as the attacker.

Defendant did not present any evidence. At the close of the evidence, defendant moved to dismiss the charge on the basis of insufficient evidence. The trial court denied the motion. The jury returned a verdict of guilty of assault with a deadly weapon inflicting serious injury.

Defendant argues that the State failed to produce sufficient evidence of his identity as the perpetrator of the crime. Defendant contends no evidence shows that defendant was present at the scene of the crime, and that his motion to dismiss should have been granted.

In reviewing a decision on a motion to dismiss for lack of sufficiency of the evidence, we must view the evidence in the light most favorable to the State.

The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both.

None of the witnesses, notably the victim and the victim's brother who were at the scene of the attack, could identify defendant as Mr. Hunter's attacker. No evidence was presented that defendant's razor blade had any blood on it, nor do any of defendant's statements tie him to the specific attack on Mr. Hunter that night or provide any details that would place him at the scene of the crime. At most, the State's evidence raises a suspicion of guilt. However, mere suspicion or conjecture of defendant's identity as the perpetrator of the attack on Mr. Hunter, even if strong, is not sufficient to survive a motion to dismiss. The evidence allows an inference that defendant had the opportunity to commit the crime, nothing more. ... Thus, we conclude that the trial court erred in denying the motion to dismiss and we reverse the judgment and commitment for assault with a deadly weapon inflicting serious injury.

Reversed. Opinion is unpublished per N.C. Rule 30(e).

WV Supreme Court Broadens Self-Defense To Cover Battered Women

By Angie Rosser

The West Virginia Supreme Court of Appeals directed the acquittal and immediate release of Tanya Harden, a battered woman terrorized by life-threatening violence who killed her husband to protect herself and the lives of her children. She had been incarcerated for four years and nine months. (*West Virginia v. Harden*, No. 34268 (WV Sup Ct, 06-04-2009))

The court's opinion offered groundbreaking standards related to the relevance of past abuse and lethal threats faced by victims of domestic violence.

Tanya Harden's story is one shared by many



Tanya Harden the day of her arrest September 5, 2004.

women suffering from the violent and controlling behavior of abusive partners. Since her marriage at age 16, her husband prohibited her from working outside the home, from getting a driver's license and from having friends or family over without his permission and supervision.

In addition to being coerced and controlled, battered women endure repeated acts of violence and terror over time, comparable to the brutality survived by Tanya Harden documented in this case. The record states that for several hours her husband beat her with his fists and with the butt and barrel of a shotgun, threatened repeatedly to kill her and her children, and sealed the brutality with the vengeful crime of rape. The beatings and rape resulted in multiple severe injuries and frac-

tures of her face, arms and chest. Tanya Harden and her children are fortunate to be alive.

The recent decision by the Supreme Court recognizes that this battered mother took necessary steps to protect herself and her children. In the complex and dangerous dynamic of domestic violence, the legal system must consider past acts and patterns of abuse that cause a victim to know that further violence and death are imminent. This case is a clear example of self-defense, affirming that all individuals have the right to protect themselves in their own homes – regardless if the attacker is an intruding stranger or a cohabitating partner.

The prosecution against Tanya Harden ultimately failed in its attempt to argue that she had a responsibility to leave the home that evening to avoid further attacks from her husband. What would have resulted if she tried to escape after her husband had held a

Harden cont. on page 13