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## Recent Developments: Porter v. State

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## RECENT DEVELOPMENT

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**PORTER V. STATE: A SPOUSE SUFFERING FROM BATTERED SPOUSE SYNDROME DOES NOT HAVE TO EXPERIENCE ABUSE WITHIN MINUTES OF HIS OR HER DEFENSIVE ACTION TO BE ENTITLED TO AN IMPERFECT SELF-DEFENSE JURY INSTRUCTION; A CLAIM OF IMPERFECT SELF-DEFENSE IS NOT FORFEITED WHEN THE SPOUSE CONTRACTS A THIRD PARTY TO TAKE DEFENSIVE ACTION.**

**By: Tyler Marie Duckett**

The Court of Appeals of Maryland held that, pursuant to Maryland's battered spouse syndrome statute, a defendant who kills in a non-confrontational setting is entitled to a jury instruction on imperfect self-defense. *Porter v. State*, 455 Md. 220, 247-49, 166 A.3d 1044, 1060-61 (2017). This instruction does not require a spouse suffering from battered spouse syndrome to have experienced abuse within minutes or hours of his or her defensive action. *Id.* at 249, 166 A.3d at 1061. The court further held that a battered spouse who contracts a third party does not forfeit a claim to an imperfect self-defense instruction. *Id.* at 251, 166 A.3d at 1061-62.

In early 2010 in Baltimore County, Karla Louise Porter ("Porter") contracted with Walter Bishop ("Bishop") to kill her husband Ray Porter ("Ray") in exchange for \$400. Ray was shot and killed by Bishop after Porter sent him to fix the alarm at their gas station. A week later Porter was charged with first degree murder, three counts of solicitation to commit first degree murder, and other related crimes.

During the trial, Porter testified to several instances of verbal and physical abuse over the course of their relationship, including being beaten with various objects. Additionally, Porter stated that in the year preceding Ray's death, she was terrified on a daily basis. Porter also presented witnesses corroborating her claims of abuse and called two experts to establish that she suffered from battered spouse syndrome. At the conclusion of the trial, the court read the State's proposed jury instruction on imperfect self-defense. Those instructions required that Porter had used no more force than reasonably necessary to defend herself, that retreat from Ray had been unsafe, and that she had not been the aggressor. The jury subsequently found Porter guilty on all counts.

Porter filed a motion for a new trial alleging that the jury was inadequately instructed on how to evaluate evidence of battered spouse syndrome in the context of imperfect self-defense. The motion was denied, and Porter appealed. The Court of Special Appeals of Maryland affirmed, holding that Porter had not presented sufficient evidence to be entitled to an

imperfect self-defense jury instruction. Therefore, any error in delivering the instruction was harmless.

The Court of Appeals of Maryland granted *certiorari*. *Porter*, 455 Md. at 233, 166 A.3d at 1052. The court was asked to analyze the relationship between the elements of imperfect self-defense and the battered spouse syndrome statute. *Id.* at 234, 166 A.3d at 1052. Specifically, the court focused on whether Porter was entitled to a jury instruction on imperfect self-defense and if the trial court's erroneous jury instruction was harmless. *Id.* at 239-40, 166 A.3d at 1055-56.

The court began by assessing the legal structure of self-defense in Maryland. *Porter*, 455 Md. at 234-35, 166 A.3d at 1053. While perfect self-defense requires the defendant to have had a reasonable belief that they were in imminent danger, imperfect self-defense only requires an actual, subjective belief that they were in danger. *Id.* at 235, 166 A.3d at 1053. The defendant must produce some evidence on the issue of mitigation or self-defense. *Id.* at 240, 166 A.3d at 1056 (citing *Wilson v. State*, 422 Md. 533, 541, 30 A.3d 955 (2011)). Once the evidence has been presented, a defendant is entitled to a jury instruction explaining the elements of perfect or imperfect self-defense. *Porter*, 455 Md. at 240, 166 A.3d at 1056.

In order to determine whether Porter was entitled to an instruction on imperfect self-defense under the doctrine, the court analyzed the meaning of imminent or immediate. *Porter*, 455 Md. at 240, 166 A.3d at 1056. Specifically, the court reviewed the rationale for limiting self-defense to threats of imminent or immediate danger. *Id.* at 248, 166 A.3d at 1061. Self-defense is often limited to only these threats because a non-imminent threat may never come to fruition and because there are other ways to address a non-imminent threat besides responding with defensive force. *Id.* at 248, 166 A.3d at 1061 (citing Kit Kinports, *The Myth of Battered Woman Syndrome*, 24 Temp. Pol. & C.R. L. Rev. 313, 315 (2015)). However, experts testified that in a cyclical, abusive relationship, the threatened violence will eventually come to fruition, but the syndrome prevents the battered spouse from pursuing other options. *Porter*, 455 Md. at 247, 166 A.3d at 1060. Therefore, the court found these rationales were not undermined by a claim of self-defense when a battered spouse kills in a non-confrontational situation. *Id.* at 248, 166 A.3d at 1061.

The court next addressed the distinction between imminent and immediate. *Porter*, 455 Md. at 241, 166 A.3d at 1056. Porter argued that the imminent or immediate requirement was satisfied because she presented evidence that the threat of violence was always present. *Id.* The court found that the elements of imperfect self-defense required Porter to show that she actually feared either imminent danger or immediate danger and that it was unnecessary to prove both. *Id.* at 245, 166 A.3d at 1059. Further, the court noted that an imminent threat is not dependent on its proximity to the defensive act. *Id.* Rather, an imminent threat is one that places the defendant in immediate fear for their life. *Id.* This distinction aligns with the General Assembly's intent behind the battered spouse syndrome statute,

which allows testimony explaining how a spouse might fear imminent danger during a break between violent episodes. *Id.* at 245-46, 166 A.3d at 1059. Therefore, since Porter feared imminent danger, she was entitled to an instruction on imperfect self-defense. *Id.* at 249, 166 A.3d at 1061.

Next, the court addressed whether a person who contracts a third party to kill their abuser forfeits their right to an imperfect self-defense instruction. *Porter*, 455 Md. at 250, 166 A.3d at 1061-62. The court noted that imperfect self-defense negates the element of malice, but not premeditation. *Id.* A spouse claiming imperfect self-defense must show that he or she feared imminent or immediate danger; they do not have to prove that they acted spontaneously. *Id.* at 250, 166 A.3d at 1061-62. Thus, the means by which a spouse takes defensive action against an abuser does not impact whether he or she actually believed that they were in imminent danger at the time of the killing. *Id.* Therefore, Porter contracting a third party did not forfeit an imperfect self-defense instruction. *Id.*

Ultimately, the court held that Porter had met her burden of establishing that she was entitled to an imperfect self-defense instruction. *Porter*, 455 Md. at 252-53, 166 A.3d at 1063. Further, Porter demonstrated that the jury had considered the self-defense claim since it requested more information relating to battered spouse syndrome during deliberation. *Id.* Therefore, the erroneous instruction was not harmless. *Id.* at 253, 166 A.3d at 1063-64. The court thus vacated all of Porter's convictions and remanded the case. *Id.* at 255, 166 A.3d at 1065.

The dissenting opinion alleged that the majority's definition of imminent or immediate was too broad. *Porter*, 455 Md. at 259, 166 A.3d at 1067. The dissenting judges argued that the majority's holding allows evidence regarding battered spouse syndrome to be used unlimitedly. *Id.* They were concerned with how broadly this interpretation can be applied. *Id.* Further, they opposed the majority's holding on contract killings, alleging that under *stare decisis* it erroneously contradicts jurisprudence, which typically bars self-defense jury instructions in such cases. *Id.* at 263, 166 A.3d at 1069.

The Court of Appeals of Maryland concluded that a battered spouse is entitled to an imperfect self-defense jury instruction, if he or she presents some evidence that they feared imminent or immediate harm at the time of the killing. Additionally, the court held that a battered spouse does not forfeit this right if they contract a third party. This holding signals a progressive shift in domestic violence jurisprudence, by allowing a jury to consider evidence explaining a battered spouse's thoughts and decisions in taking action against his or her abuser. This will ensure that battered spouses are afforded fair trials by allowing juries to be presented with relevant evidence when considering the elements of self-defense in this context.