

STATE OF MAINE
HANCOCK, ss.

SUPERIOR COURT
DOCKET NO.: CR-07-135

STATE OF MAINE,)
)
v.) DEFENDANT'S MOTION
) FOR NEW TRIAL
VLADEK FILLER,) M.R.Crim.P 33
)

NOW COMES, the Defendant, Vladek Filler, by and through undersigned counsel and hereby states the following:

1. At trial, Ligia Filler testified that on April 20, 2007 she was pulled from the bathroom and pushed on a chair by her husband causing a bruise on her left upper underarm from a chair. Ligia Filler testified that she left early in the morning on April 21, 2007 and moved to live with her friend Linda Gleason. She further testified she did not observe any bruise or feel any pain on her arm on April 20, April 21, or April 22, 2007.
2. Ligia Filler testified that she first felt pain and found a bruise on her upper arm for the first time while taking a shower prior to meeting with Gouldsboro Police Chief Guy Wycoff on Monday April 23, 2007. Prosecution introduced an undated photograph of Ligia Filler crying and showing a bruise on her upper arm. The Defense objected citing Ligia Filler not knowing when or where she got this bruise which did not exist for 3 days after her last contact with defendant on April 20, 2007. The Court overruled the objection and allowed the photograph in to evidence.
3. On April 22, 2007, two days after Ligia Filler alleges she was assaulted, Sgt. Harry Larrabee of the Gouldsboro Police testified he received a call from Hancock County RCC. Without interviewing Ligia Filler in person or obtaining a written statement, Sgt. Larrabee traveled to interview Vladek Filler and his 10 year old son Nathan Filler in Gouldsboro who both denied any assault occurred. Sgt. Larrabee criminally charged Vladek Filler with Class D assault anyway and then traveled to meet and interview Ligia Filler in person in Steuben.
4. Sergeant Larrabee testified he interviewed 10 year old Nathan Filler who said he did not want to live with his mother, but wanted to remain with his father.
5. Linda Gleason testified that when Sgt. Larrabee drove up to Ligia Filler's new residence in Steuben without having her 10 year old son Ligia Filler immediately fainted and fell down and had to be carried in to the house.

6. Sgt. Larrabee testified to interviewing Ligia Filler on April 22, 2007 (two days after the alleged incident). She told him there were no bruises. He further testified to inspecting the full length of both her arms from top to bottom on all sides and observing no bruises on her arms whatsoever on April 22, 2007.
7. Gouldsboro Police Chief Wycoff testified that he met and accompanied Ligia Filler on April 23, 2007 to retrieve some of her belongings from the Gouldsboro house. For the first time, Ligia Filler produced a bruise on her upper arm. Chief Wycoff saw a chair inside the house and spoke to Ligia Filler about the possibility of the bruise coming from it's armrest. He then had Ligia Filler pose for a picture on the chair showing her bruise
8. The bruise as depicted in State's does not appear to be in the shape of a hand or fingers.

ARGUMENT

The conviction is based on legally incompetent and medically impossible evidence of pain and bruising appearing for the first time on the 4th day after Ligia Filler alleged she was pushed by her husband.

The photographs marked in the State's exhibits show Ligia Filler's bruise and the toilet area. The photos illustrate Ligia Filler's left upper arm would be positioned farthest away against the wall if she was sitting on that toilet. Only Ligia Filler's right arm would be exposed in a way to allow her to be grabbed or pulled from that toilet. The bruise does not appear to be caused by fingers grabbing the arm. Since Vladek Filler is left handed, had he grabbed Ligia Filler at all, it would have been by her right arm leaving marks on her right arm. However, as the police photo shows, the bruise produced by Ligia Filler days later is on her left arm.

The evidence presented as to Count 7 was utterly inadequate to support a finding, beyond a reasonable doubt, that Mr. Filler assaulted his wife on April 20, 2007. Given the NOT GUILTY verdicts reached in Counts 1 and 2, the result was most likely caused by compromise on the part of the jury and is not supported by competent evidence.

[¶ 10] We review whether evidence is sufficient to support a conviction by viewing that evidence in the light most favorable to the State to determine whether the fact-finder could rationally have found each essential element of the crime beyond a reasonable doubt. *Bickart*, 2009 ME 7, ¶ 46, 963 A.2d at 195; *State v. Tai*, 629 A.2d 594, 595 (Me.1993).

WHEREFORE as the State failed to meet its burden of proof, Defendant is entitled to a judgment of acquittal. In the alternative to a judgment of acquittal, Defendant respectfully requests a new trial on Count 7 of the indictment.

Dated June 16th, 2011

Stephen C. Smith, Esq.
Smith Law Offices, P.A.
Attorney for Defendant
9 Central St, Suite 209
Bangor, ME 04401
207-941-2395