



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## **ENTRY ORDER**

JANUARY TERM, 2025

State of Vermont v. Brandon McRae*	}	APPEALED FROM:
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	CASE NO. 23-CR-01006
		Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conviction, by jury, of voluntary manslaughter and aggravated assault with a deadly weapon. He argues that the court erred in denying his motion for a judgment of acquittal. We affirm.

Defendant was charged with second-degree murder and aggravated assault with a deadly weapon following a violent incident in Rutland, Vermont. The decedent, Trevor Vandenburg, was stabbed multiple times and the decedent's companion, Raven Blanchard, was allegedly struck in the face with a wrench. The following evidence was presented at trial. On the evening in question, the decedent's neighbor heard Ms. Blanchard screaming and calling for help, stating that the decedent had been stabbed. The neighbor saw the decedent on the floor, "bleeding out." Ms. Blanchard was in an excited, emotional state and the neighbor heard her say that she had been "smoked in the head with a wrench." Ms. Blanchard said she had a wrench but the neighbor did not see it. The police, along with emergency medical services, arrived at the scene. The responding officer saw the decedent, who was struggling to breathe, and Ms. Blanchard, who was covered in blood with a "very, very swollen cheekbone." An officer found a bag that appeared to contain powdered crack cocaine hidden in the doorframe. A wallet with defendant's identification was found at the scene.

The officer learned that the stabbing occurred on Water Street, a block away. Another officer encountered defendant and a loose dog outside the decedent's apartment. Defendant took the dog and walked back toward Water Street. Police recovered a knife on the righthand side of Water Street, approximately twenty feet from the road's edge. The decedent's DNA was on the knife's blade.

Ms. Blanchard testified that she has a long struggle with addiction, and she stole to support herself. At the time of the incident, she was using heroin and cocaine daily. After using heroin, she and the decedent contacted defendant looking for more drugs. They arranged a sale for \$100 worth of cocaine and agreed to meet at a residence on Water Street. According to Ms.

Blanchard, the decedent began arguing with defendant after the money-drug exchange. The decedent hit defendant with a police baton and the decedent and Ms. Blanchard ran away. Ms. Blanchard heard defendant yell to someone inside to “grab the gun.” While they were running away, Ms. Blanchard heard a loud noise and saw the decedent on the ground. Defendant was “over the top of” the decedent. Ms. Blanchard tried to push defendant off the decedent, but defendant hit her in the eye on the right side of her face. Ms. Blanchard had a “huge cut,” and her eye was swollen shut for a week. Defendant left when a woman came outside of a residence, yelling. Ms. Blanchard tried to help the decedent and took him to the apartment where he was found by police. A photograph of Ms. Blanchard’s injuries was admitted into evidence.

A woman who lived on Water Street testified that she saw the aftermath of the incident. She saw three figures in the road and called for defendant, who walked towards her. She saw a “huge wrench” lying in the road. She also saw defendant holding the back of his head. Defendant told the woman that the decedent and Ms. Blanchard robbed him. In a later online conversation with defendant, the woman told defendant that the decedent had died, and defendant responded, “play stupid games, win stupid prizes.” Defendant indicated that he took an item from the decedent during the fight and threw it toward the river.

Defendant provided police with various accounts of what occurred. His recorded interviews were introduced into evidence. He initially said he was hit by a hammer wrench after being shortchanged in a cellphone sale. Defendant then acknowledged the drug sale and said that Ms. Blanchard had a knife. In his third account, defendant stated that the decedent and Ms. Blanchard underpaid him and when he brought up the shortfall, he was hit twice with a hammer wrench. Defendant went inside a residence to say he had been robbed and then chased down Ms. Blanchard and the decedent. Defendant caught up with them and they were armed with a knife and wrench. A tussle occurred in which defendant was trying to defend himself. Defendant hit Ms. Blanchard but only with his hands. Defendant said he obtained a knife from Ms. Blanchard but then said he did not do so. He claimed that he overpowered Ms. Blanchard while the knife was still in her hand, causing her to stab the decedent. He admitted throwing the knife away near where the altercation had occurred. When asked why he chased down the decedent and Ms. Blanchard, defendant said that he was “pretty mad he got hit by the hammer wrench” and wanted his cocaine back.

The State presented evidence that the decedent was stabbed four times on the left side of his torso, which caused his death. The decedent also had several blunt-force injuries and two sharp-force injuries.

Defendant moved for a judgment of acquittal at the close of the State’s case, arguing that the evidence showed that he acted in self-defense with respect to both charges. Taking the evidence in the light most favorable to the State, the court denied the motion, finding the jury must resolve the question of self-defense.

Defendant did not testify at trial. He presented a witness who knew Ms. Blanchard and the decedent. The witness testified that they visited his residence one day and he later discovered one of his wrenches was missing. Defendant did not present any other evidence.

With respect to self-defense, the jury was instructed in part that: “A killing is justified by self-defense if (1) [defendant] reasonably believed that he was in imminent danger of being killed or suffering great bodily harm; and (2) [his] use of deadly force was reasonably necessary to repel the perceived threat.” Additionally, the jury was informed that “[s]elf-defense permits only the amount of force that is reasonably necessary to repel the perceived harm,” and “[a]

person may use the amount of force that reasonably appears to be necessary under all of the circumstances known to him at the time.” See generally State v. Fonseca-Cintrón, 2019 VT 80, ¶ 11, 213 Vt. 11 (explaining that “defendant is justified in using a reasonable amount of force if [he] is not the aggressor in the encounter and reasonably believes . . . that [he] is in immediate danger of unlawful bodily harm from the adversary and . . . that the use of such force is necessary to avoid this danger” (quotations and alterations omitted)). Because defendant made a prima facie showing of the elements of self-defense, the State needed to “disprove self-defense beyond a reasonable doubt.” State v. Albarelli, 2016 VT 119, ¶ 13, 203 Vt. 551 (quotation omitted). The jury found defendant guilty of voluntary manslaughter and aggravated assault with a deadly weapon.

Defendant then filed a post-trial motion for judgment of acquittal and a new trial. As relevant here, defendant reiterated his self-defense argument. The court again denied the motion. It concluded that the evidence, taken in the light most favorable to the State, reasonably supported the jury’s verdict that the State proved, beyond a reasonable doubt, that defendant did not act in self-defense in killing the decedent or in striking Ms. Blanchard in the face with a wrench. With respect to the first charge, the court stated that the jury could have reasonably found the following. The decedent and Ms. Blanchard arranged to purchase illegal drugs from defendant at a residence in Rutland, and they went to the residence to make the purchase. Instead of paying for the drugs in full, they robbed defendant of the drugs. As part of the robbery, the decedent hit defendant over the head with a wrench, knocking defendant down and injuring defendant’s head. This occurred on the porch/outside steps of the residence where the purchase was occurring. The decedent and Ms. Blanchard then fled down the street. Defendant quickly went inside the residence and either yelled that he had been robbed or yelled to someone to get a gun. Defendant then exited the residence and chased Ms. Blanchard and the decedent down the street. He tackled the decedent and disarmed him of the wrench. Ms. Blanchard, who was unarmed, ran back to assist the decedent. As she approached defendant, he struck her in the face with the wrench, knocking her to the ground. Defendant then violently stabbed the decedent four times with a knife, leading to his death. Defendant left the scene and tossed the knife by the side of the road.

The court found that the evidence fairly demonstrated that the decedent started the conflict by hitting defendant with a wrench and robbing him. But it concluded that a reasonable jury could find that defendant did not act in self-defense because he did not have an imminent and reasonable fear of great bodily injury or death when he stabbed the decedent. There was a time lapse between the decedent’s assault of defendant and defendant’s stabbing of the decedent. The jury could reasonably find that defendant did not have a reasonable and imminent fear of great bodily injury or death when he stabbed the decedent but rather that defendant acted out of anger or vengeance in chasing the decedent down and stabbing him to death after the decedent was disarmed.

The court found that the evidence, taken in the State’s favor, also reasonably supported the jury’s verdict that the State proved, beyond a reasonable doubt, that defendant did not act in self-defense when he struck Ms. Blanchard in the face. The court referenced the facts set forth above and added the following. After defendant tackled the decedent, Ms. Blanchard turned around and saw defendant on top of her friend. She tried to intervene but as she approached defendant, he struck her in the face with a hard metal object, presumably the wrench defendant took from the decedent. Based on Ms. Blanchard’s testimony and the photographic evidence, the blow caused Ms. Blanchard’s injury. A reasonable jury could find that defendant used excessive force in defending himself by striking Ms. Blanchard, who was unarmed, in the face with a metal

wrench, taking into consideration that defendant was stronger and taller than Ms. Blanchard. The court thus denied defendant's motion for judgment of acquittal. This appeal followed.

Defendant argues that the State's evidence was insufficient to prove, beyond a reasonable doubt, that he was not acting in self-defense when he stabbed the decedent and struck Ms. Blanchard in the face. Defendant recounts his view of the evidence. According to defendant, he acted reasonably after being threatened by the decedent wielding a large wrench, and by Ms. Blanchard armed with a knife. He further maintains that although Ms. Blanchard testified that she was unarmed and did not have a knife, her testimony should not be credited because there was other testimony that she had carried a knife in the past.

We review the trial court's decision de novo, considering "whether the evidence, when viewed in the light most favorable to the State and excluding any modifying evidence, fairly and reasonably tends to convince a reasonable trier of fact that the defendant is guilty beyond a reasonable doubt." State v. Delisle, 162 Vt. 293, 307 (1994) (quotation and alterations omitted). Applying that standard, defendant's motion for a judgment of acquittal was properly denied. A reasonable jury could reject defendant's self-defense claims based on the evidence recounted by the trial court above. Defendant relies on modifying evidence and asks us to make credibility assessments on appeal. "It is well recognized in this State that the jury, being the trier of facts, is the sole judge of the credibility of witnesses and of the weight of their testimony." State v. Bishop, 128 Vt. 221, 228 (1969). Defendant fails to show that he was entitled to a judgment of acquittal here.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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William D. Cohen, Associate Justice

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Nancy J. Waples, Associate Justice