

## **Final Examination** **CRIMINAL LAW**

**College of Law || West Virginia University || Instructor: James R. Elkins || Fall, 2005**

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**Instructions:** The time allocated for the examination is 2 ½ hours. The examination consists of a single question. Your response to this examination question will account for 50% of your final grade. The examination must be taken in the assigned examination room.

**Open Book Exam:** This is an open-book exam. You are allowed, during the exam, to use any materials or notes you may have brought with you to the examination room. You are not permitted to confer with fellow students, or any other person, while taking the examination. Consequently, you should refrain from conversations with fellow students during the examination, whether inside the examination room or outside it.

**Examination Numbers:** Please place your examination number on *each* examination booklet you use. Do not place your name on the examination blue books!

**Examination Blue Books:** You are allowed to use as many Blue Books for your examination as you may think necessary to fully and completely answer the question. All of your examination must be confined to examination Blue Books. Please write *legibly*. Use only the front side of each Blue Book page (this means that you should not write front and back of the same page). Please number your exam blue books: ①, ②, ③, ④. Double check to see that your examination number is placed on each Blue Book.

**Questions About the Exam:** There should be no reason to consult with the instructor during the course of the examination. If you encounter a problem or find a discrepancy (factual or legal) with any aspect of the exam question, you should resolve it by setting out the discrepancy and noting any facts or assumptions necessary to deal with the problem/discrepancy.

**Jurisdiction:** In answering the examination question you should focus on basic principles and doctrines of criminal law, and in doing so you may include as part of these basic principles and doctrines any West Virginia cases you were assigned or surveyed in the “instructor’s notes.” You should, of course, note (and explain as necessary and as time permits) those legal doctrines in which different jurisdictions take significantly different approaches to a particular legal doctrine or legal defense.

**Advice:** Read the question carefully and organize your answer. If the examination question raises more issues than you can fully discuss in the allocated time, you should focus on the most relevant and significant issues related to the issues presented.

**Writing on the Examination:** You may underline or take notes on the examination question and are permitted to keep the examination after the exam is completed.

**Criminal Law—Examination—Fall, 2005—Professor James R. Elkins**

**Please read the following excerpt from an opinion of the Supreme Court of Valdalia considering a defendant’s appeal of her jury conviction of 1<sup>st</sup> degree murder. You are to complete the appellate court’s opinion resolving all issues which you expect defense counsel for Sabrina Front to raise in her efforts to overturn defendant’s conviction.**

Defendant appeals from a conviction of 1<sup>st</sup> degree murder handed down by jury on September 21, 2005. The facts in this tragic case as developed at trial are as follows: The evidence presented by the State established that at approximately nine o’clock on the evening of the events in question, forty-nine-year-old Virginia Hahn, an avid jogger, left her home at 805 Salisbury Road in Blakesburg, to run. At eleven o’clock on the same evening, William Nelson and his wife returned to their home at 812 Salisbury Road and discovered Hahn’s body in their front yard. An autopsy revealed that Hahn, who was five feet tall and weighed ninety-four pounds, died from a heart attack. An autopsy found that, contemporaneous to the time of the heart attack she sustained multiple dog bites, by two different dogs. The autopsy report states that multiple wounds and lacerations from the dog bites resulted in substantial bleeding which, to avoid loss of life, would have required timely emergency medical care. The autopsy report reflects no indications that the defendant had a previous history of heart disease or defect.



Ralph David who lives two houses away from the Hahn residence on Salisbury Road, testified that on the evening of Hahn’s death, he saw two pit bulls in his yard, both owned by defendant, Sabrina Front. The dogs, Phantom and Magus, aggressively approached him and growled. David ran the dogs off from his property.

Several witnesses testified to seeing Magus and Phantom running loose in the neighborhood prior to the hours of the attack. Kevin Last, another neighbor, testified that he often walked by the defendant’s yard and the dogs would growl and lunge at him from behind the fence. Kevin Last told defendant on several occasions that her dogs were a menace, and that they were going to “chew somebody up alive” if they were not kept restrained. The defendant told him that she had several incidents with prowlers and that she needed the dogs for protection. She told him, “how is a woman going to protect herself, if she doesn’t have guard dogs? I don’t like guns. People know realize it, but these dogs are smarter than people.”

Dooley Robinson, another of defendant’s neighbors, testified that he had had an encounter with Phantom and Magus only a week prior to Hahn’s death. Robinson was outside in his yard with his three-year-old granddaughter when defendant came outside with her dogs. The dogs bolted from defendant and ran toward Robinson’s granddaughter. Robinson got between the dogs and the child, but had some difficulty keeping the dogs away from her. Defendant finally got the dogs under control but Robinson, upset at the aggressiveness of the dogs, telephoned the police to report the incident and to see if something couldn’t be done about the dogs.

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Sherri Lousey testified that she had lived with defendant when she first obtained Phantom and Magus and that she had tried to take care of the dogs. According to Lousey, defendant taught the dogs to be extremely aggressive and rewarded them when they growled at people. She had attended, with the defendant, two different “attack training schools” where Phantom and Magus were trained to be aggressive toward anyone other than their owner.

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Blakesburg police officer, Wayne Jason, testified that he had, on three previous occasions, been called to deal with defendant’s dogs which were being allowed to roam free. On the third visit, defendant Front had responded, “Oh my God, what have they done now? I hope they haven’t attacked someone.” On two of those three occasions Officer Jason issued citations for violation of Blakesburg City Code §8-2. The provision, which was in effect at the time of Virginia Hahn’s death, provides that:

No dog shall be left unattended beyond an apartment, house, dwelling, or yard and allowed to roam within the city limits. Dogs taken beyond their owner’s property must be restrained by leash or other means. Dogs maintained on private property must be restricted to the owner’s property by a tether, rope, chain, fence or electronic devices. Fencing, as required herein, shall be adequate in height, construction and placement to keep a resident’s dogs confined at all times when they are not under the direct control of their owner.

On cross-examination, Officer Jason, related to the jury the fact that he had also been dispatched to the defendant’s house on two occasions to investigate a prowler on her property. The dogs were on these occasion kept in a fenced-in part of the yard, but were extremely aggressive, growled at him, and lunged at the wire fence when he surveyed the defendant’s property during the course of his prowler investigation. The defendant told him that she needed the dogs for protection, telling him, “the world is full of people bent on evil. These dogs may look mean to you, but they are far much more intelligent than most human beings.”

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The state called Phil Neil of the State Crime Lab who testified that hairs removed from Hahn’s clothing were canine and matched hairs taken from Phantom and Magus. A forensic serologist found human blood on Phantom’s collar, but the blood could not be typed. A forensic odontologist testified that dental impressions taken from Phantom and Magus were compatible with bite wounds suffered by Hahn. When questioned by the defense, the forensic odontologist, admitted that, “we cannot say, based on the bit wounds that Ms. Hahn’s suffered were by these particular pit bulls, we can say with certainty that the bits were by this breed of dog due to the particular configuration of their teeth.”

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Animal psychologist Wayland West, a specialist in applied animal behavior, testified for the prosecution on Phantom and Magus's aggressive tendencies. He evaluated Magus and Phantom for aggressive propensities using a "dominant stare test," a "startle test," and a "jogger test," and the dogs, based on these tests, were extremely aggressive. When conducting the jogger test, West moved a stuffed model through the dogs' field of vision. When the model was still, the dogs did not show predation; however, when the model moved, Phantom lunged at it, tore at it viciously with his teeth. West testified that based on the tests and his observations of the dogs that they exhibited predatory tendencies. West concluded that an attack on a person by Phantom and Magus would be consistent with his observations of the dogs' behavior. He further concluded that the dogs had acted in a manner in which they had been trained, based both on his evaluation of the dogs and his study of the training methods of the training school that both dogs had attended.

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Animal behavioralist, Peter Melzer, who testified for the defense, found significant problems with Wayland West's evaluation. Reviewing West's evaluation and videos made of the tests, Melzer testified that the preferred method for evaluating animal behavior is to place more reliance upon background information regarding prior behavior of the dogs and that the tests performed by West were often used but resulted in a significant number of false positives (findings that some dogs are overly aggressive, when they turn out, using other techniques and methods of evaluation to be far less aggressive). Melzer testified that in his professional view, the aggression of Magus and Phantom seen in the West videos could be attributed to the manner in which the tests were administered.

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The prosecution presented the testimony of Rhonda Sherburne, a resident of Tennessee, who testified that she had been attacked by a pit bull, named Logos, when the defendant lived on her street in Wileyville, Tennessee in 2000. She had repeatedly warned the defendant that Logos was dangerous and had been assured that he would be restrained. Some teenagers, on a dare, had released Logos from the fenced in area of the defendant's yard, but managed to get away before being attacked. Ms. Sherburne was mauled by Logos and suffered serious puncture wounds to her arms and legs and was saved, in her view, from a fatal mauling, when one of the teenagers who had been in the group that released Logos came to her aid. She decided not to pursue a criminal prosecution, when the defendant agreed to pay her medical bills and payment of \$50,000 for lost wages and for pain and suffering. Logos had been trained at the same attack training center as Magus and Phantom.

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Defendant presented several witnesses who testified that Phantom and Magus were friendly and playful and responded to defendant's commands to sit, lay, roll-over, and fetch. One witness's nine-month-old daughter played with the dogs and grabbed their tails, yet the dogs never growled or acted negatively toward the child. Several witnesses testified that they had never seen defendant abuse the dogs and that they were no more likely to be running around the

neighborhood than anyone else's dogs.

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The defense presented a medical sociologist, Dr. David Phillips, a well-known authority on mortality trends and the social and psychological factors affecting heart failure and heart disease, who was on the faculty at the University of California, San Diego. Dr. Phillips testified that his research had confirmed, statistically, that heart attacks of the kind suffered by Virginia Hahn can be brought about by extreme psychological stress. Dr. Phillips observed that previous laboratory studies had confirmed cardiovascular changes during psychological stress but that these studies had examined only low-level stressors and that generalizations which could be drawn from these studies had been speculative. His research had shown, for the first time, that fatal heart attacks can be precipitated by extreme stress induced by fright. Dr. Phillips, in his research, published in the December 2001 issue of the *American Medical Journal*, established, he argued, conclusively, that people can literally be scared to death.

When asked by the defense how he took up his research into heart attacks induced by fright, he replied, "I have often wondered if people could indeed die by fright and if so, how this could be investigated quantitatively. I recalled that in Arthur Conan Doyle's 'The Hound of the Baskervilles,' Sir Charles Baskerville dies of a fatal heart attack, apparently because he is frightened to death by the hound. Since Arthur Conan Doyle was, as you may remember, a physician as well as an author, and so I wondered if his story was based on medical intuition or literary license. Are fatal heart attacks and fright, what we in medicine might call stress, linked in fact as well as fiction? My research confirms that in situations like that faced by Virginia Hahn, the heart can be so stressed that it malfunctions, and the person dies. I have now shown, based on my research, that the answer is 'yes,' we can be scared to death."

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Defense counsel, upon his first meeting with Sabrina Front, found her to be quite difficult to deal with. She spoke of great affection for Magus and Phantom, her two pit bulls, but seemed totally unable to focus on the fact that her dogs were involved in the death of the jogger, Virginia Hahn. When defense counsel attempted to discuss the pens in which they dogs had been kept and whether the dogs had been allowed to run free, she told him: "Every dog is by nature free. It is by occasion of our own evil, evil concocted by human beings, that we must restrain dogs." When asked by her defense counsel if she had received prior warnings about her dogs from the police, or from neighbors, she said, "evil people have trouble with my dogs, it's with dogs like Phantom and Magus that we can best respond to the evilness of people."

Defense counsel raised these matters at a hearing of the trial court to consider pre-trial motions and told the judge: "I think my client is a little wacky. What she needs is for a lawyer is a combination animal rights activist and priest. As you know I happen to only be a lawyer. I can't make much sense of 90% of what she's talking about. It makes planning a defense awfully difficult." The trial court judge inquired as to whether defense counsel thought his client was mentally-ill, defense counsel served notice on the prosecution and the court that he planned to

raise an insanity defense but that the defendant opposed any efforts to delay the trial. She was, he said, “more than willing to be found crazy in her devotion to her dogs. She looks forward to the trial where she could make her views about animals better known.”

When defense counsel declined to file a formal motion to have his client evaluated to determine whether she was competent to stand trial, the trial court stated that he was predisposed, based on defense counsel’s representation, and his interaction with her during previous pre-trial hearings at which she had replied to all his questions in a way that indicated that she understood the nature of the legal proceedings, and could act sensibly to aid counsel in her defense. The prosecutor argued that it didn’t make much sense to have the case tried and overturned on appeal on the grounds that she was incompetent to stand trial. The trial court replied, according to the transcript of the hearing: “she’ll have to stand trial sooner and later, and it might as well be now as later. The defendant may be a bit odd, she may be a zealot of some kind, but she’s not so mentally-ill that she cannot stand trial. I see no reason to order an evaluation of her competence to stand trial.”



The defense proceeded to put on a defense based on defendant’s mental condition at the time of the offense. Dr. Sally Wiggins, a defense psychiatrist evaluated defendant over a period of six days, three hour interviews each day, taking an extensive psychological history of the defendant. At the age of twelve, the defendant became a vegetarian as a way of curing herself of bulimia.<sup>1</sup> Later, as a college student, she joined various animal rights and animal liberation groups. It was as a member of a radical animal liberation group that she first developed a fascination for pit bulls. As she became more radical, the more aggressive she trained her dogs to be. The more she became involved with her dogs the less concern she began to show for other human beings. It was during her college years that the defendant first began to think that her dogs could intuit her feelings and were capable of complex emotions, indeed, more complex than the array of emotions demonstrated by human beings. After working at various jobs and leaving in several different states, the defendant began to isolate herself and spend all her time with dogs. She decided to commit suicide.

In respond to Dr. Wiggins’s request, the defendant prepared the following narrative statement of the decision not to take her own life:

For a good part of each day, I would walk with Logos [the pit bull she owned at the time]. It was on these walks with Logos that I compelled myself to become more aware of how I was perceiving reality, responding to others, recognizing the impact of others on me. And one day, after I decided to end my life, I came upon a purpose for life. It was a huge thing to learn, a kind of religious revelation. I had

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<sup>1</sup> Bulimia is defined as uncontrolled episodes of overeating (binging) and usually followed by purging (self-induced vomiting), misuse of laxatives, enemas, or medications that cause increased production of urine, fasting, or excessive exercise to control weight.

no life to live, but in taking my own life the lives of animals like Logos would be worsened. The reason to live was to continue to look after Logos, and future animals I might have in my life. I had no reason to believe that my life was otherwise worth living, or that I could have a purpose that would spring from genuine human relatedness. It was after this that I started talking with Logos, species to species. I have been able to do that with other animals, as I can with Phantom and Magus.<sup>2</sup>

Dr. Wiggins diagnosed the defendant as suffering from a narcissistic and obsessive personality disorder, with delusional features.<sup>3</sup> The mental illness, according to Dr. Wiggins, manifested itself in a near total disorder for the well-being and regard of others. The defendant found that she could communicate with dogs but not with her fellow human beings. As the dogs seemed to love her with a regard that seemed total and mystical, the defendant found a purpose in life—to care and nurture the dogs and in doing so she found a justification for continuing to live. She believed, that her best link to reality was in her relationship to dogs, and that without dogs there would be no meaning in life. She was, Dr. Wiggins concluded, suffering from a chronic delusional system in which reality was based on her relationship with animals, her regard for and communication with them, dogs being, according to the defendant, the primary conduit of all animal to human communications.

Dr. Wiggins, when asked whether the defendant’s mental illness—her grandiosity and narcissistic personality disorder—were of such seriousness that she could not appreciate the wrongfulness of her actions, replied that she was extremely limited in her capacity to appreciate any criminal wrongfulness that might arise from her failure to confine Phantom and Magus, and was totally unable, given her delusional system, to appreciate the possibility that the death of a person occasioned by her dogs, Magus and Phantom, could be wrong in the truest sense of that word. Dr. Wiggins specifically noted that: “This inability to emotionally appreciate her acts in relation to the victim is directly related to her delusional belief system.” Dr. Wiggins further noted that the defendant can generally conform her acts to the law, but in matters dealing with Phantom and Magus, she cannot, because “the dogs represent the special powers that can be best be communicated to us human beings through animals and that these animal-to-human communications are highest representations of true reality.”

Dr. Aphonso Bleuler, a psychiatrist, evaluated the defendant, and testified on behalf of the state that defendant had a personality disorder with narcissistic features and was susceptible to philosophical and “new age” writings which emphasize the emotional life of animals. He

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<sup>2</sup> The defendant belatedly admitted that in her personal statement she had been influenced by and had copied various phrases from Alice Koller’s *The Stations of Solitude* (William Morrow and Company, 1990).

<sup>3</sup> The mental illness has long been recognized by mental health professionals and appears in the DSM-IV-R.

concluded that the defendant had consciously sought out and voluntarily adopted a set of philosophical beliefs and that these beliefs could be altered if she chose to do so.<sup>4</sup> Dr. Bleuler, using two new, and at present, unrecognized experimental techniques (whose clinical validity and reliability have not been established), found that the defendant was malingering when she reported conversations with dogs, and her belief that animals could communicate with human beings. Dr. Bleuler diagnosed defendant as having a personality disorder (otherwise unspecified) and was not delusional. Dr. Bleuler testified that, given his findings, and their obvious application to defendant's claims of insanity, he did not think it necessary, or ethical, for him a psychiatrist to deliver opinions on issues other than diagnosis and clinical findings. more appropriate for law than for psychiatrists.

At trial, Dr. Wiggins was asked whether she had considered the possibility that the defendant was malingering and she indicated that she did not. She testified that, "Sabrina Front is basically an open and honest person. There is nothing in her psychological make-up that would suggest that she is capable of serious falsehood or had any reason or motive to distort the true nature of her beliefs." She went on to testify that "defendant's delusional system is so thoroughly interwoven with her life history—a life history that I have fully explored. I found no occasion to do the kind of clinical testing for malingering that would be possible in a case where I might find evidence of malingering."



The state requested that the trial court instruct the jury on 1<sup>st</sup> and 2<sup>nd</sup> degree murder. The defense requested that no jury instructions be given on 1<sup>st</sup> and 2<sup>nd</sup> degree murder, but only on involuntary manslaughter. The trial court, after hearing defense counsel and prosecution on the question of jury instructions decided to give jury instructions, on 1<sup>st</sup> and 2<sup>nd</sup> degree murder, as well as voluntary and involuntary manslaughter. Defendant objected to giving any jury instructions other than involuntary manslaughter. The trial court gave the following jury instructions:

**First Degree Murder:** "My instructions to you on 1<sup>st</sup> degree murder are as follows: Murder of the first degree is an intentional killing, which is either premeditated and deliberation or a killing evidenced by a wicked and depraved heart, in circumstances attended by defendant's malice."

"To premeditate is to think of one's acts before they are undertaken. To deliberate on one's acts means to reflect, with a view to making a choice."

"As to malice, you may find malice exists when the killing itself is unpremeditated and

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<sup>4</sup> Dr. Bleuler adopts the theory that defendant's narcissism, which does not present itself as chronic, or sufficient to justify the diagnosis of narcissistic personality disorder, may be related to early affective deprivation. According to Dr. Bleuler, the better clinical view is that narcissists like the defendant are *unwilling* rather than *unable* to view the world other than the way they do. As he would put it, her narcissistic behavior is volitional, and thus a trait of her personality, rather than a disorder arising to the level of a mental illness.

unintended so long as you find that the defendant's intentional acts which led to the death of Virginia Hahn were such as to demonstrate to you a wicked, depraved and malignant heart, and that whatever her personal motives, she acted with a heart so devoid of social duty and deliberately bent on mischief, that her acts resulted in the death of Virginia Hahn."

"You may find malice in this case if you find that the defendant has, with wanton disregard for human life, engaged in acts which involve a likelihood that they will result in death, that Virginia Hahn's death was caused by acts of the defendant, the natural consequences of which were so exceedingly dangerous to life, and that these deliberate and premeditated acts were engaged in by the defendant knowing that her conduct seriously endangered the life of another, continued forth with these acts with conscious disregard for life."

"As for a definition of the phrase 'deliberately bent on mischief,' the law here is not, you must know, be concerned with the pranks of juveniles. A defendant deliberately bent on mischief is engaged in conduct that exhibits conscious indifference to consequences of likely or probable harm to another. It connotes acts which exhibit an extreme and deliberate indifference to consequences; it is conduct where the defendant, having reason to know her acts may injure another, continues these acts, being totally indifferent to whether they may seriously injure and bring about the death of another. It connotes conduct where the actor is conscious of her conduct, and with knowledge that deadly injury can result, intentionally engages in the wrongful act which brings about the killing of another."

"In your consideration of the evidence in this case, you may consider and determine whether defendant's failure to constrain her pit bulls, as the law requires, resulted in the pit bulls becoming deadly weapons. Moreover, if you find that these pit bulls, Magus and Phantom, were so maintained by the defendant that they were allowed to become deadly weapons, then you may find malice in this case unless there are circumstances to show that the defendant had sufficient excuse, justification or provocation for her acts and conduct."

**Second degree murder:** "If you find that the defendant's acts resulted in the death of Virginia Hahn, and defendant acted with malice but without deliberation or premeditation, then you may find her guilty of 2<sup>nd</sup> degree murder. I have already instructed you on the meaning of premeditation, deliberation, and malice and will not repeat those instructions here."

**Voluntary Manslaughter:** "Voluntary manslaughter is an unlawful killing that takes place by way of defendant's intentional acts in circumstances where you find no evidence of a malignant, depraved heart, or wantonness. If you bear in mind that voluntary manslaughter is never attended by malice, that is, by the existence of a depraved and malignant heart, or wantonness, then you will not go astray. Most simply put, voluntary manslaughter is the unjustified taking of another person's life, under circumstance in which you find that the defendant did not premeditate and deliberate, and under circumstances which indicate there was no malice."

**Involuntary Manslaughter:** If you find that the death of Virginia Hahn was accidental and

unintended, but was the result of negligence, and that this negligence shows a reckless disregard for human life, then you may find the defendant guilty of involuntary manslaughter.”

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The trial court further instructed the jury that: “In order to find Sabrina Front committed any act of homicide, the state must prove that her alleged acts were a proximate cause of Virginia Hahn’s death, that is, her acts significantly and measurably contributed to her death. The state must, simply put, prove beyond a reasonable doubt, that the defendant caused Virginia Hahn’s death. On the matter of proximate cause, you are instructed that this means that but for defendant’s conduct, the death would not have resulted.”

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The defense made a formal objection in the record to each of the jury instructions given by the trial court.

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Based on the testimony of Dr. Wiggins, the defense requested a jury instruction on defendant’s sanity at the time of the offense and on diminished capacity. The trial court, on the basis of Dr. Bleuler’s testimony regarding the defendant’s malingering, found Dr. Wiggins’s testimony unconvincing, and that her failure to fully address the malingering issue resulted in defendant’s failure to produce credible, convincing evidence necessary to place her insanity defense and diminished capacity defense before the jury. The trial court did not give either of the requested jury instructions.

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The defense requested a jury instruction on self-defense, on the grounds that the defendant had shown by unequivocal evidence—in the testimony of Officer Jason—that a substantial reason she kept aggressive pit bulls was for her protection, for the defense of herself and her property, and that given this unrebutted testimony she was entitled to a jury instruction under the “relaxed standard” on self-defense that had previously been adopted by the Court in self-defense cases in this jurisdiction. The trial court did not, after hearing from the prosecution, give a self-defense jury instruction.

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