

FILED
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Starcher, J., dissenting:

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I join in Justice Albright’s thoughtful dissent. I also write separately to express my personal view of the instant case.

To me, the instant case is not about “self-defense.” It is about the right of a mother to protect her child, and the right of a homeowner to stop a criminal from committing a violent crime in her home.

Valerie Whittaker shot a man who had brutally beaten her many times, and who came into her home in violation of a court order and feloniously attacked her daughter. Her response was what, I believe, most people would like to have the courage to do. Under these undisputed facts, I would simply reverse Ms. Whittaker’s conviction. The evidence in this case permitted only one result – justifiable homicide in the defense of a child and the sanctity of the home. The jury should have been so directed.

The facts in the instant case resemble the facts of *State v. Miller*, 204 W.Va. 374, 513 S.E.2d 147 (1998). In that case, a woman was convicted of a homicide against a man who had horribly battered her – and the State of West Virginia utterly failed to protect her.

In my concurrence in the *Miller* case, I said:

David Stinson’s threats, curses, and rages – his backhands to Penny Miller’s face, his fist punching her belly, his foot kicking

her as she lay on the floor – Penny’s puffy lips and swollen eyes, her cuts and bruises and bandages, her loose teeth and bleeding gums – the nights of terror for Christopher and Cheyenne, the curses and the blows landing on their mother – the lies, the insults, the broken promises – the fear, shame, isolation, failure, resignation and numbness – all of this, the fruits of David Stinson’s abuse – *came home to roost* when David Stinson was shot to death by his own son.

One may wonder, as Davis Stinson lay bleeding to death on a trailer porch, did he have time to feel that he had finally been brought to account for his crimes – and by a person uniquely qualified to appreciate their gravity?

In the *Miller* case, as in the instant case, this Court shied away from squarely and fairly confronting the issues before it. As Justice Albright suggests in his dissent, rhetoric from this Court decrying domestic violence is no substitute for strictly enforcing fairness in the courts for women who take action against their abusers.

Accordingly, I dissent.¹

¹The reality of the instant case, I fear, is that because Ms. Whittaker is no longer incarcerated, the majority has given “short shrift” to her legitimate legal and human claims.