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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

MENAYETTA YEAGER

Defendant-Appellant
_____/

Supreme Court No. 164055

Court of Appeals No. 346074

Lower Court No. 17-8290-01-FC

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee
_____

ADRIENNE N. YOUNG (P77803)
Attorney for Ms. Yeager
_____

REPLY BRIEF TO APPELLEE-PLAINTIFF'S ANSWER TO MS. YEAGER'S APPLICATION FOR LEAVE TO APPEAL

STATE APPELLATE DEFENDER OFFICE

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I. A misunderstanding of law is per se deficient performance. Ms. Yeager's counsel had a demonstrable gap in requisite legal knowledge and his representation prejudiced her.

Trial counsel's demonstrated incomplete understanding of the relevant law is itself per se unreasonable. For this conclusion, Ms. Yeager cited to *Hinton v Alabama*, 571 US 263 (2014). This Court relied on *Hinton* in part in *People v Ceasor*, 507 Mich 884 (2021), finding Mr. Ceasor's counsel had performed deficiently because of his "mistaken belief" on the law regarding expert funds. As Justice Clement observed in her concurrence, "I cannot conclude that holding a mistaken belief regarding the application of a statute—a belief wholly unsupported by the statutory text—is anything but deficient performance." *Id.*

Nevertheless, the prosecutor still defends the indefensible, arguing that because Ms. Yeager "never testified at either the trial or the *Ginther* hearing as having the requisite mindset for manslaughter (acting out of passion or anger), there is no basis to find that she was provided ineffective assistance of counsel…" WCPO Answer Brief, 18. That conclusion is factually and legally inaccurate. Ms. Yeager's testimony supports the requisite mindset for manslaughter because fear and hysteria can generate the "heat of passion." But, no matter what one's client's version of the events is, defense counsel still must "bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland v Washington*, 466 US 668, 688 (1984) (citation omitted). Here, counsel did not.

The analysis of the second prong of *Strickland* is likewise flawed. The prosecutor cites surveillance video from the gas station where Ms. Yeager shot at Mr.

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Brooks to show that there was "overwhelming evidence" of her guilt no matter how bad counsel's performance may have been. WCPO Answer Brief, 19. This falls far short of a consideration of "the totality of the evidence before the judge or jury" as is required by *Strickland*. *Strickland*, 466 US at 695. This conclusion ignores everything that preceded Ms. Yeager's impassioned firing of an unfamiliar weapon, circumstances best summarized in Judge Beckering's concurring opinion:

> Testimony at trial showed that Brooks physically assaulted defendant by punching, kicking, and pulling her hair. He forcibly removed defendant from the driver's seat of her mother's van and attempted to hit her with the van several times. He then taunted and threatened defendant over the phone as she attempted to retrieve the van. According to testimony elicited by the prosecution, defendant was angry and frustrated with Brooks. She indicated that she was tired of him. After Brooks pulled into the gas station, he continued to taunt defendant. She then exited the truck and shot at the van 17 times as Brooks drove away. When she returned to the truck, she told Borom to follow Brooks. A reasonable jury could accept the evidence that indicated that defendant was stoked into a heat of passion and shot defendant before there was a lapse of time during which a reasonable person could control her passions and apply reason to the situation. Although defendant's taunts over the phone could not serve as adequate provocation, Brooks also physically assaulted defendant and attempted to run her over multiple times, including driving over people's lawns in an attempt to hit her, followed by carjacking and threats to kill her which kept her passions inflamed.

Yeager, unpub op at 4. (BECKERING, J, concurring).

Furthermore, it ignores the directive from *Strickland* that "[s]ome errors will have had a pervasive effect on the inferences to be drawn from the evidence." *Strickland* at 695-696. That is particularly true here. Murder and manslaughter have the same elements, only adequate provocation negates malice. *People v Mendoza*, 468 Mich 527,

540, citing *People v Scott*, 6 Mich 287, 295 (1995). Therefore, the "overwhelming evidence" of murder is also "overwhelming evidence" of manslaughter. Without an instruction on the same, the entire evidentiary picture is altered. *Strickland* at 696.

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II. Stare decisis does not preserve erroneous decisions in perpetuity. This Court should expressly overturn *People v Raper* as wrongly decided in part for the reasons stated herein and in the Court of Appeals' concurring opinion.

"The application of stare decisis…promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *People v Petit*, 466 Mich 624, 633 (2002). None of those factors are at play with *People v Raper*, 222 Mich App 475 (1997).

The prosecutor cites to six unpublished cases as evidence of reliance on *Raper*. WCPO Answer Brief, 22 n. 49. This is a far cry from a decision that is "so embedded, so accepted, so fundamental to everyone's expectations." *Petit,* 466 Mich at 635. Additionally, two of the cases "relying on" *Raper*, *Davidson* and *Keys*, correctly apply the holding from *Zak* to a request for involuntary manslaughter. Thus, only four of the unpublished opinions, *Pagan*, *Young*, *Lasley*, and *Davis*, apply *Raper* for its erroneous holding with respect to voluntary manslaughter. And further, "an unpublished opinion is not precedentially binding" and "should not be cited for propositions of law for which there is published authority." MCR 7.215(C)(1).

Therefore, the cases citing *Raper*, small in quantity and all unpublished, indicate that overruling *Raper* will not interfere with any "legitimate reliance or expectation interests." *Petit* at 635.

Additionally, because *Raper* conflicts with two of this Court's own precedent—*People v Beach*, 429 Mich 450 (1988) and *People v Mendoza*, 468 Mich 527 (2003)—

allowing the *Raper* decision to stand promotes inconsistent legal principles and undermines the integrity of the judicial system. This Court should not "close its eyes" to this error and allow additional application of the Court of Appeals' "misconstruction" on the basis of stare decisis. *People v Petit*, 466 Mich at 634.

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Raper is wrongly decided and there are no legitimate reliance interests on it. Rather than saving an erroneous decision, this Court should start to rehabilitate any damage *Raper* has done to the integrity of our judicial system. That starts with granting Ms. Yeager a new trial.

Respectfully submitted,

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