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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-v- **No. 164055**

MENAYETTA MITCHELL YEAGER
Defendant-Appellant.

Third Circuit Court No. 17-008290-01-FC
Court of Appeals No. 346074

PLAINTIFF-APPELLEE'S ANSWER TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

Filed under AO 2019-6

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COUNTERSTATEMENT OF JURISDICTION

The People concur with the Defendant's statement of appellate jurisdiction for purposes of his application for leave to appeal.

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

In order to prove ineffective assistance of counsel, the defendant must show that trial counsel's performance fell below an objective standard of reasonableness and that the defendant suffered prejudice. Here, the Defendant claims that trial counsel was ineffective for failing to request an instruction on voluntary manslaughter, but the Defendant's own testimony was that she shot Mr. Brooks in self-defense. Therefore, where there was no ground to request the instruction, has the Defendant shown ineffective assistance of counsel?

The Court of Appeals answered this question, "No."

The People answer, "No."

The Defendant answers, "Yes."

II.

A published case that has not be overruled may be relied on under the theory of stare decisis. Here, the Court of Appeals relied on the case of *People v Raper* to determine that the Defendant was not entitled to a new trial. Since that case is still good law, contains correct reasoning, and was correctly decided, is there a basis upon which to overrule the Court of Appeals decision in this case?

The Court of Appeals answered this question, "No."

The People answer, "No."

The Defendant answers, "Yes."

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COUNTERSTATEMENT OF QUESTIONS PRESENTED (CONT.)

III.

To prove ineffective assistance of counsel two components must be met – counsel must make a serious error and the deficient performance must prejudice the defense such that if the error had not been committed there would be a reasonable probability of a different result. Here, the Defendant complains that trial counsel did not call an expert in battered spouse syndrome but does not supply any proof that the Defendant suffered from such a syndrome or that it applied to the circumstances of this premeditated killing. Where the Defendant cannot make both showings necessary for ineffective assistance of counsel claims, has the Defendant met her burden?

The Court of Appeals answered this question, "No."

The People answer, "No."

The Defendant answers, "Yes."

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COUNTERSTATEMENT OF FACTS

The People do not dispute the Defendant's statement of facts. The Defendant was convicted following a jury trial of first-degree premeditated murder,[1] and felony firearm.[2] The Defendant was sentenced to life without the possibility of parole for first-degree murder, and the mandatorily consecutive two years for felony firearm.

The facts of the trial are summarized as follows: In the early morning hours of August 27, 2017, the Defendant's boyfriend, Jonte' Brooks, stole her white Ford minivan.[3] According to the Defendant, Mr. Brooks had pushed her out of the vehicle and driven away, leaving her stranded in the street.[4] LaBarren Borom was inside his house when his son alerted him that someone was arguing outside and a car had driven on to his lawn.[5] Mr. Borom exited his house to see what was going on and decided to get his truck and drive down the street to see what had happened.[6] When he drove down the street he saw the Defendant screaming into her cell phone to someone to bring her car back.[7] The Defendant asked him if he could take her to her mother's

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[1] MCL 750.84.
[2] MCL 750.227b; 10/18/2018, 12-13.
[3] 8/15/2018, 16.
[4] 8/15/2018, 18.
[5] 8/14/2018, 26.
[6] 8/14/2018, 27.
[7] 8/14/2018, 27.

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car, and he agreed.[8] The Defendant got into the front seat of his truck.[9]

The Defendant first asked LaBarren Borom to take her to the gas station at Warren and Van Dyke where the victim told her he would return the minivan to her.[10] The victim then called back and changed the meeting location to a different gas station at Mack and Van Dyke.[11]

As the Defendant and Mr. Borom were about to leave after waiting for the victim to arrive at the gas station, they saw the victim pull into the parking lot of the gas station.[12] The Defendant grabbed a gun, hopped out of the truck, and immediately started shooting at the minivan.[13] The victim pulled out of the gas station parking lot and drove down the street and the Defendant followed on foot firing the gun.[14] The Defendant got back into Borom's truck and said, "follow him."[15] Mr. Borom followed the white minivan but then decided to turn away to his house because he saw the police.[16] The minivan crashed into a wall and the victim died of a gunshot wound to the right upper back.[17] The victim crashed the minivan into a wall of a church

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[8] 8/14/2018, 29.
[9] 8/14/2018, 29.
[10] 8/14/2018, 30.
[11] 8/14/2018, 30.
[12] 8/14/2018, 31.
[13] 8/14/2018, 32.
[14] 8/14/2018, 33.
[15] 8/14/2018, 33.
[16] 8/14/2018, 34.
[17] 8/13/2018, 193.

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located at 3544 Iroquois Street.[18] No gun was found inside the minivan.[19] The Defendant fled the scene but turned herself into police the next day.[20]

The Defendant testified at trial that the victim had taken her minivan and refused to give it back.[21] He had threatened to kill her and Mr. Borom over the phone.[22] Mr. Borom pulled into a gas station and then the victim pulled into the gas station after them.[23] The Defendant claimed that she was going to get out and run but Mr. Borom handed her a gun.[24] At that point, she got out of the truck and shot at the minivan two or three times.[25] She claimed that she shot at the minivan because she was scared because she thought the victim was going to kill her that day.[26] She denied ever telling Mr. Borom to follow the victim.[27]

Following the Defendant's conviction, appellate counsel filed a timely claim of appeal in this case and a motion to remand in the Michigan Court of Appeals. The Court of Appeals remanded the case back to the trial court for an evidentiary hearing limited to the issue of whether defendant's trial counsel rendered ineffective assistance of

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[18] 8/14/2018, 83-84.
[19] 8/14/2018, 86.
[20] 8/15/2018, 38.
[21] 8/15/2018, 41.
[22] 8/15/2018, 46.
[23] 8/15/2018, 24.
[24] 8/15/2018, 24.
[25] 8/15/2018, 24.
[26] 8/15/2018, 24.
[27] 8/15/2018, 26.

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counsel by failing to request an instruction on voluntary manslaughter as a lesser included offense to murder, in an order dated November 9, 2020. The motion hearing was conducted on Tuesday, August 31, 2021, and the trial court made its decision granting a new trial on September 28, 2021. The People cross-appealed from this decision granting a new trial. The Court of Appeals reversed the trial court's decision to grant a new trial and ruled in an unpublished decision that the rule of *People v Raper* is still good law, especially in this case where the evidence of premeditation was strong.[28]

Other facts will be referenced as necessary within the brief.

[28] *People v Yeager*, unpublished per curiam COA opinion, issued December 21, 2021, no. 346074.

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ARGUMENT

I.

In order to prove ineffective assistance of counsel, the defendant must show that trial counsel's performance fell below an objective standard of reasonableness and that the defendant suffered prejudice. Here, the Defendant claims that trial counsel was ineffective for failing to request an instruction on voluntary manslaughter, but the Defendant's own testimony was that she shot Mr. Brooks in self-defense. Therefore, because there was no ground to request the instruction, the Defendant has not shown ineffective assistance of counsel.

Standard of Review

The People do not dispute Defendant's statement of the standard of review. The standard of review for ineffective assistance of counsel claims is whether defense counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial.[29] In *People v Pickens,*[30] the Michigan Supreme Court adopted the standard set forth in *Strickland v Washington*.[31] The following must be established in order to mandate reversal under a Sixth Amendment claim of ineffectiveness of counsel:

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[29] *People v Pickens*, 446 Mich 298 (1994).

[30] *Id.*

[31] *Strickland v Washington*, 466 US 668 (1984).

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- First, defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as 'counsel' guaranteed defendant by the Sixth Amendment.

- Second, defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable.[32]

Discussion

Trial counsel was not ineffective in failing to request a manslaughter instruction when his own client testified on numerous occasions that she shot the victim in self-defense and denied having hot blood or shooting in the heat of passion. The Defendant testified repeatedly that she shot the victim because she was scared. Listening to and abiding by the testimony of a defendant and crafting a reasonable defense around it, even if there are other options available, should not be considered ineffective assistance of counsel. Perhaps some individuals would be provoked under the circumstances of this case, but the Defendant denied that she was provoked.[33] The test for determining if the requisite mindset for manslaughter exists is both a subjective and objective test, that is, would a reasonable person in the

[32] *Id.*
[33] GH, 61: 69; 73; 75. 8/15/2018, 24-25.

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same situation act out of hot blood, and did this defendant act out of hot blood.[34] To ignore the fact that the Defendant denied killing her boyfriend out of the heat of passion or due to hot blood is to deny the reality of the situation and essentially relegates the Defendant's testimony as a nullity.

Failing to request a particular jury instruction can be a matter of trial strategy and trial counsel is given wide discretion in matters of trial strategy.[35] Manslaughter is a necessarily included lesser offense of murder which must be instructed on only where there is evidence to support the instruction.[36] An inferior-offense instruction is appropriate only when a rational view of the evidence supports a conviction for the lesser offense.[37] Under Michigan law, second-degree murder can be reduced to voluntary manslaughter if the element of malice (i.e., the intent to kill, to commit great bodily harm, or to create a very high risk of death or great bodily harm) "is negated by the presence of provocation and heat of passion."[38]

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[34] The element of intent is determined by deciding if the particular defendant (subjective intent) had the requisite intent necessary for voluntary manslaughter. *People v Mendoza*, 468 Mich 527, 535 (2003); What is considered adequate provocation is measured by the reasonable person standard, that is, that which would cause the reasonable person to lose control. *People v Pouncey*, 437 Mich 382, 389 (1991).

[35] *People v Unger*, 278 Mich App 210, 242 (2008); *People v Dunigan*, 299 Mich App 579, 584 (2013).

[36] *People v Mendoza*, 468 Mich 527 (2003).

[37] *People v Cornell,* 466 Mich 335, 357 (2002); *People v Mendoza*, 468 Mich 527, 545 (2003).

[38] *People v Mendoza*, 468 Mich 527, 540 (2003).

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The standard jury instructions for voluntary manslaughter are both as follows:

M Crim JI 16.8 Voluntary Manslaughter

> (1) [The defendant is charged with the crime of _____ / You may also consider the lesser charge of*] voluntary manslaughter. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
>
> (2) First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].
>
> (3) Second, that the defendant had one of these three states of mind: [he / she] intended to kill, or [he / she] intended to do great bodily harm to [*name deceased*], or [he / she] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [his / her] actions.
>
> [(4) Third, that the defendant caused the death without lawful excuse or justification.]

M Crim JI 16.9 Voluntary Manslaughter as a Lesser Included Offense of Murder:

> (1) The crime of murder may be reduced to voluntary manslaughter if the defendant acted out of passion or anger brought about by adequate cause and before the defendant had a reasonable time to calm down. For manslaughter, the following two things must be present:
>
> (2) First, when the defendant acted, [his / her] thinking must be disturbed by emotional excitement to the point that a reasonable person might have acted on

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> impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been the result of something that would cause a reasonable person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide.
>
> (3) Second, the killing itself must result from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and return to reason. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

Since the Defendant never testified at either the trial or at 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 based on the lack of a request for the instruction. Moreover, the Defendant has not shown prejudice. There is no reasonable probability given the circumstances of the crime that the jury would have found her guilty of manslaughter instead of first-degree murder. In its ruling, the trial court consistently erroneously conflated the standard of ineffective assistance of counsel with the standard used for newly discovered evidence. The trial court made the following ruling in relevant part:

> THE COURT: Uh, for these reasons, uh, based upon this record, uhm, the Court finds that a reasonable juror could find that, based on the evidence, that this defendant was guilty of voluntary manslaughter, and not first-degree murder. And based on that, the Court must grant Ms. Yeager, uh, a new

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trial.[39]

By making this ruling, the trial court illustrated that it used the wrong standard to evaluate trial counsel's performance. The test is not whether a jury could have reasonably found the Defendant guilty of a lesser crime. The question for ineffective assistance of counsel claims is whether but for counsel's deficient performance there is a reasonable probability that the outcome of the trial would have been different. The prosecution's evidence in this case was very strong – the Defendant was captured on surveillance video shooting seventeen times at the victim's van as it drove away.[40] This evidence alone dictates that the Defendant was properly found guilty of first-degree murder for her crime. The requisite prejudice does not exist in this case. In this case, the absence of a jury instruction on manslaughter does not undermine the result of the trial where there was overwhelming evidence of the Defendant's guilt. There should be strong confidence in the outcome of the trial where the evidence clearly supported the verdict and the Defendant's own testimony did not amount to voluntary manslaughter.

[39] 9/28/2021, 19.
[40] 8/14/2018, 141; 8/13/2018, 215.

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II.

A published case that has not been overruled may be relied on under the theory of stare decisis. Here, the Court of Appeals relied on the case of *People v Raper* to determine that the Defendant was not entitled to a new trial. Since that case is still good law, contains correct reasoning, and was correctly decided, there is no basis upon which to overrule the Court of Appeals decision in this case.

Standard of Review

The People do not dispute the Defendant's statement of the standard of review. A trial court's ruling on a motion for new trial is reviewed for an abuse of discretion.[41] An abuse of discretion occurs when the decision falls outside the range of principled outcomes.[42] Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law.[43] A judge must first find the facts, then must decide whether those facts establish a violation of the defendant's constitutional right to the effective assistance of counsel.[44] A trial court's findings of fact are reviewed for clear error.[45] Questions of constitutional law are reviewed de novo.[46]

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[41] *People v Miller*, 482 Mich 540, 544 (2008).
[42] *Id.*
[43] *People v Grant*, 470 Mich 477, 484 (2004).
[44] *People v Riley,* 468 Mich 135, 139 (2003).
[45] *People v LeBlanc,* 465 Mich 575, 579 (2002).
[46] *People v Grant*, 470 Mich 477, 484–85 (2004).

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Discussion

A. People v Raper presents the current state of the law and should be followed in this case.

The trial court's ruling granting the Defendant a new trial completely ignored the rule set out in *People v Raper* so the Court of Appeals was correct when it reversed the trial court's granting of a new trial.[47] In *People v Raper*, the defendant was charged with first-degree murder. The jury was instructed on first-degree murder and second-degree murder and found defendant guilty of first-degree murder. On appeal, the defendant claimed it was ineffective assistance of counsel not to have requested the jury instruction on the lesser included offense of voluntary manslaughter. The Court of Appeals in *Raper* held that the jury's rejection of second-degree murder in favor of first-degree murder reflected an unwillingness to convict on a lesser included offense such as manslaughter, holding:

> Thus, even if defendant's trial counsel had requested a manslaughter instruction and the trial court had failed to give such an instruction, such error would have been harmless. For the same reason, defendant cannot show that his counsel's failure to request a manslaughter instruction caused him prejudice. Accordingly, defendant cannot sustain his claim of ineffective assistance of counsel.[48]

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[47] *People v Raper*, 222 Mich App 475 (1997).

[48] *People v Raper*, 222 Mich App 475, 483–84 (1997), citing *People v Launsburry,* 217 Mich.App. 358, 362 (1996).

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The holding of *People v Raper* has been cited with approval many times since it was issued.[49] The same reasoning must apply here where the claim on appeal is identical.[50] The Defendant was charged with first-degree murder, the jury was instructed on second-degree murder, and the jury convicted the Defendant of first-degree murder, thus displaying an unwillingness to convict on a lesser charge. Under MCR 7.215(C)(2), a published opinion of the Court of Appeals has precedential effect under the rule of stare decisis.[51]

Although the Defendant argues that the holding of *People v Raper* should not be followed, there is no evidence that the case was wrongly decided. By finding that the Defendant acted with

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[49] See, e.g., *People v Davidson*, COA unpublished decision, no. 336176, issued January 8, 2019; *People v Pagan*, COA unpublished decision, no. 325558, issued May 23, 2017; *People v Young*, COA unpublished decision, no. 324607 & 324608, issued March 10, 2016; *People v Lasley*, unpublished COA decision, no.322969, issued December 10, 2015; *People v Davis*, unpublished COA decision, no. 302401, issued April 17, 2012; *People v Keys*, unpublished COA decision, no. 277649, issued February 12, 2009.

[50] See also *People v Smith*, 143 Mich App 122 (1985), where the court found harmless error where the jury instruction for simple assault was not given, and the defendant was found guilty of assault with intent to do great bodily harm less than murder (finding that the jury implicitly found that the mens rea for simple assault did not exist). Also, *People v Flinnon*, 78 Mich App 380 (1977), holding that it was not reversible error for the trial court to not instruct the jury on reckless discharge of a firearm where the defendant was found guilty of assault with intent to murder.

[51] "[S]*tare 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.'" *Ramos v Louisiana*, __ US __, 140 S Ct 1390, 1411 (2020) quoting *Payne v Tennessee*, 501 US 808, 827 (1991).

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premeditation when she shot the victim, the jury necessarily rejected the idea that she acted on impulse in the heat of passion. The jury was instructed as follows:

> In count one, the defendant is charged with the crime of first-degree premeditated murder. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt:
>
> First, that the defendant caused the death of Jonte Brooks. That is, that Jonte Brooks died as a result of a gunshot wound.
>
> Second, that the defendant intended to kill Jonte Brooks.
>
> Third, that this intent to kill was premeditated. That is, thought out beforehand.
>
> Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing, and thought about, and chose her actions before she did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed, under the circumstances of this case. *The killing cannot be the result of a sudden impulse, without thought or reflection.*
>
> Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.[52]

[52] 8/15/2018, 129-130 (emphasis supplied).

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"It is well established that jurors are presumed to follow their instructions."[53] Following the instructions in this case would mean that the jury specifically found that the killing was not a result of a sudden impulse without thought or reflection, that is, that the mens rea required for voluntary manslaughter did not exist in this case. Rather, the jury found that the Defendant had acted with premeditation and deliberation, completely at odds with the mental state required for voluntary manslaughter. Therefore, the Defendant's conviction should be affirmed.

[53] *People v Graves*, 458 Mich 476, 486 (1998).

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III.

To prove ineffective assistance of counsel two components must be met – counsel must make a serious error and the deficient performance must prejudice the defense such that if the error had not been committed there would be a reasonable probability of a different result. Here, the Defendant complains that trial counsel did not call an expert in battered spouse syndrome but does not supply any proof that the Defendant suffered such a syndrome or that it applied to the circumstances of this premeditated killing. Since the Defendant cannot make both showings necessary for ineffective assistance of counsel claims, the Defendant's claim must fail.

Standard of Review

The People do not dispute the Defendant's statement of the standard of review. Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.[54] In *People v Pickens,*[55] the Michigan Supreme Court adopted the standard set forth in *Strickland v Washington*.[56] Therefore, the following must be established in order to mandate reversal under a Sixth Amendment claim of ineffectiveness of counsel:

- First, defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as 'counsel' guaranteed defendant by the Sixth Amendment.

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[54] *People v LeBlanc*, 465 Mich 575, 579 (2002).
[55] *Id.*
[56] *Strickland v Washington*, 466 US 668 (1984).

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- Second, defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable.[57]

Discussion

A. Trial counsel cannot be held to be ineffective for failing to present an expert witness on a completely speculative basis.

Trial counsel cannot be found to be ineffective for failing to present an expert witness on a theory that has not been shown to apply or be relevant to the Defendant. To establish a claim of ineffective assistance of counsel, "a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial."[58] To demonstrate prejudice, a defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[59] A defendant must also

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[57] *Id.*

[58] *People v Pickens,* 446 Mich 298, 302-303 (1994).

[59] *People v Johnson,* 451 Mich 115, 122 (1996), quoting *People v LaVearn,* 448 Mich 207, 216 (1995), quoting *Strickland v Washington,* 466 US 668, 694 (1984).

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overcome the strong presumption that the challenged action is sound trial strategy.[60]

MRE 702 governs expert testimony and provides that an expert witness may testify if the trial court determines that scientific, technical, or other specialized knowledge will assist the trier of fact. "[E]xpert testimony regarding the battered woman syndrome is admissible only when it is relevant and helpful to the jury in evaluating a complainant's credibility and the expert witness is properly qualified."[61] The Defendant argues that an expert on battered woman syndrome (or battered spouse syndrome) would have testified in her favor but presents nothing to back up that claim by way of affidavit or otherwise. The Defendant has the burden of establishing the factual predicate for her claim of ineffective assistance of counsel and she has not done so in this case.[62]

Generally, battered woman syndrome testimony is relevant and helpful when needed to explain a complainant's actions, such as prolonged endurance of physical abuse accompanied by attempts at hiding or minimizing the abuse, delays in reporting the abuse, or recanting allegations of abuse.[63] If relevant and helpful, testimony regarding specific behavior is permissible.[64] From a review of the facts of the case there is nothing suggesting that the Defendant suffered from battered spouse syndrome or that expert

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[60] *People v LeBlanc*, 465 Mich 575, 578 (2002).
[61] *People v Christel*, 449 Mich 578, 579–80 (1995).
[62] *People v Dendel*, 481 Mich 114, 125 (2008).
[63] *Id.*
[64] *People v Christel*, 449 Mich 578, 580 (1995).

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testimony was necessary to explain her actions on the day of the murder. The Defendant did not delay in reporting abuse or recant any allegations of abuse. In fact, the Defendant called the police during the event to report that her boyfriend had stolen her minivan and testified that she called the police three or four times that day to report the victim.[65] There is nothing to suggest that the battered spouse syndrome was the reason that she grabbed her gun, got out of the truck, ran after the victim and shot at the vehicle seventeen times as the victim drove away. The Defendant has not presented, even in a conclusionary way, any set of circumstances that would present the battered woman syndrome as a viable defense making expert testimony necessary in this case.

Battered woman syndrome is where a woman acts out of self-defense after years of physical abuse at the hands of her domestic partner. All violent relationships don't necessarily present a situation of battered woman syndrome. If they did, every criminal case between a boyfriend and a girlfriend would need an expert witness. Rather, battered woman syndrome (or battered spouse syndrome) presents itself in a unique set of circumstances.

In this case, the Defendant testified that she acted out of self-defense because she felt that the victim was going to kill her, not due to years of domestic abuse. Expert testimony may be received when it is "necessary" or "helpful" to the trier of fact in deciding an issue that

[65] 8/15/2018, 19.

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is material.[66] There was nothing in this case that would lead to the conclusion that expert testimony was necessary in order for the jury to understand why the Defendant acted as she did. The issues in the case were very straight forward and obvious.

Decisions regarding what witnesses to call at trial are generally matters of trial strategy that will not be second-guessed on appeal nor should the court assess counsel's competence with the benefit of hindsight.[67] The fact that the Defendant now thinks she should have had an expert witness does not mean that trial counsel's performance was objectively unreasonable such that he was ineffective. Here, even if such testimony had been presented there is no reasonable probability of a different result given the circumstances of the shooting. The Defendant shot at the minivan seventeen times as it was driving away.[68] The Defendant told Mr. Borom to "follow that bitch" when they were in his truck at the gas station.[69] The Defendant has not shown how these actions would be consistent with or necessitate testimony regarding battered spouse syndrome and, therefore, her claim of ineffective assistance of counsel is without merit.

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66 *People v Wilson*, 194 Mich App 599, 602 (1992).
67 *People v Horn*, 279 Mich App 31, 39 (2008).
68 Seventeen shell casings were found at the scene. 8/14/2018, 141.
69 8/14/2018, 34.

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RELIEF REQUESTED

THEREFORE, the People respectfully request that this Honorable Court deny leave to appeal.

Respectfully submitted,

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Dated: March 3, 2022

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body font is 12 pt. Century Schoolbook set to 150% line spacing. This document contains 5314 countable words.

/s/ *Deborah K. Blair*

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