RECEIVED by MSC 10/16/2025 4:50:37 PM

State of Michigan
In the Supreme Court

**The People of the State of Michigan**

Plaintiff-Appellee,

MSC No. 168009

v.

**Gwendolyn Josephine Alexander**

Defendant-Appellant.

Case No. 364063

Circuit Court No. 20-001501-FC

---

# Gwendolyn Alexanders's Supplemental Brief

---

Michael L. Mittlestat (P68478)
Henry E. Schneider (P82476)
Assistant Defenders

Counsel for Gwendolyne Alexander

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450

Detroit, Michigan 48202
Phone: (313) 256-9833
mmittlestat@sado.org
hschneider@sado.org

Date: October 16, 2025

RECEIVED by MSC 10/16/2025 4:50:37 PM

# Table of Contents

Index of Authorities .....3

Statement of the Question Presented .....5

Introduction.....7

Statement of Facts .....7

Arguments.....14

**In diagnosing MA with "medical torture" Dr. Nazer was actually diagnosing Ms. Alexander's alleged misconduct toward MA and expressing the view that Ms. Alexander was culpable. In this trial involving charges of Torture and Child Abuse, the opinion testimony improperly invaded the province of the jury and was admitted in violation of MRE 702, MRE 703, and MRE 704. .....14**

Conclusion and Request for Relief .....34

*Gwendolyne Alexander *MLM*MSC MOAA*October 16, 2025

RECEIVED by MSC 10/16/2025 4:50:37 PM

# Index of Authorities

Page(s)

Cases

*Daubert v Merrell Dow Pharmaceuticals,* 509 US (1993)..... 13, 14, 15

*Gilbert v DaimlerChrysler Corp*, 470 Mich 749 (2004)..... 14

*Jackson v Virginia*, 443 US 307 (1979)..... 29

*Kotteakos v United States*, 328 US 750 (1946)..... 28

*McDonald v Pless*, 238 US 264 (1915)..... 29

*People v Ackley IV*, *on remand*, 336 Mich App 586, 591-592 (2021), *lv den* 508 Mich 967 (2021) .....passim

*People v Beckley*, 434 Mich 691 (1990) ..... 16, 26

*People v Carines*, 460 Mich 750 (1999)..... 13, 27, 30

*People v Carrick*, 220 Mich App 17 (1996) ..... 31

*People v Christel*, 449 Mich 578 (1995) ..... 17

*People v Duncan*, 494 Mich 713 (2013)..... 13

*People v Green*, 155 Mich 524 (1909)..... 23

*People v Harbison*, 504 Mich 230 (2019) ..... 22-24

*People v Kowalski*, 492 Mich 106 (2012) ..... 14, 24, 26

*People v LeBlanc*, 465 Mich 575 (2002)..... 13, 14

*People v Mateo*, 453 Mich 203 (1996) ..... 28

*People v McFarlane ("McFarlane I"),* 325 Mich App 507 (2018), *lv den after argument on application,* 505 Mich 1020 (2020) .....passim

*People v McGhee*, 268 Mich App 600 (2005)..... 24

*People v McGillen #2,* 392 Mich 278 (1994) ..... 21

*People v Peterson*, 450 Mich 349 (1995)..... 15, 17

*People v Robinson*, 386 Mich 551 (1972) ..... 30

*People v Row*, 135 Mich 505 (1904) ..... 15

*People v Smith*, 425 Mich 98 (1986) ..... 21, 22

*People v Thorpe*, 504 Mich 230 (2019).....16, 21, 22, 23

*People v Trakhtenberg*, 493 Mich (2012) ..... 31
*People v Young*, 425 Mich 470 (1986) ..... 28, 30
*Strickland v Washington*, 466 US 668 (1984) ..... 13, 31, 32
*United States v Addison*, 498 F2d 741 (DC Cir, 1974) ..... 15
*United States v Powell*, 469 US 57 (1984) ..... 29
*United States v Scheffer*, 523 US 303 (1998) ..... 15
*United States v US Gypsum* Co., 438 US 422 (1978) ..... 15

Statutes, Constitutional Provisions and Court Rules

MCL 257.85c(e). ..... 11
MCL 750.136b(2) ..... 18
MCL 750.85 ..... passim
Mich Const 1963, art 1, § 20 ..... 31
US Const, Amend VI ..... 31
MRE 702 ..... passim
MRE 703 ..... 12, 13, 24, 26
MRE 704 ..... 13-14

Other Authorities

M Crim JI 17.36 ..... 11, 17, 20, 21
M Crim JI 1.36 ..... 20
*To Serve and Protect? Officers as Expert Witnesses in Federal Drug Prosecutions*, 19 Geo. Mason L. Rev. 363 (2012) ..... 15



RECEIVED by MSC 10/16/2025 4:50:37 PM

RECEIVED by MSC 10/16/2025 4:50:37 PM

## Statement of the Question Presented

I. In diagnosing MA with "medical torture" did Dr. Nazer invade the jury's province by basing the diagnosis on Ms. Alexander's alleged misconduct and using terms that conveyed her expert opinion that Ms. Alexander was guilty of the crime of Torture?

Ms. Aleander answers: Yes

The Court of Appeals answered: No.

II. Did Dr. Nazer's opinion invade the jury's province where it was based on accounts describing Ms. Alexander's alleged misconduct and where it conveyed the expert's opinion that those accounts were credible and that they showed Ms. Alexander had committed a series of criminal and immoral acts?

Ms. Alexander answers: Yes

The Court of Appeals answered: No.

III. Was Dr. Nazer's diagnosis inadmissible under MRE 702 where the jury was in just as good a position to evaluate the evidence as the doctor, and where the opinion was relevant for no other reason than to tell the jury that an expert had thought Ms. Alexander was guilty?

Ms. Alexander answers: Yes

The Court of Appeals answered: No.

IV. Is reversal required under the plain error standard of review? Alternately, is reversal required where defense counsel unreasonably failed to object to the improper testimony and where there is a reasonable probability of a different outcome but for the error?

Ms. Alexander answers: Yes

The Court of Appeals answered: No.

RECEIVED by MSC 10/16/2025 4:50:37 PM

RECEIVED by MSC 10/16/2025 4:50:37 PM

## Introduction

Pending before this Court is oral argument on the application for leave to appeal to address whether, in this case where Gwendolyn Alexander was on trial for the crime of Torture involving her son, an expert improperly commented on her guilt by "diagnosing" the son with "medical torture" based on information provided to the expert by individuals alleging that Ms. Alexander had criminally mistreated him.

## Statement of Facts

Ms. Alexander and her codefendant, Erron "Rob" Scott, were tried together but by separate juries on charges of Torture, two counts of Second Degree Child Abuse, and Third Degree Child Abuse involving Ms. Alexander's six-year-old son MA, and on one count of Third Degree Child Abuse involving MA's three-year-old half-sister, RS.

In 2019 Ms. Alexander was raising three young children, MA, RS, and MS, an infant daughter. 274A. She was pregnant with another child and living with Mr. Scott, the father of RS and MS. 273A-274A. After being evicted from their home in June of that year, they moved with the children into a trailer parked on the property of Mr. Scott's mother, Renia Scott. 272A-274A, 282A. Although the trailer had a water supply, it did not have working toilet or bathing facilities. 283A-284A.

According to Ms. Scott, she initially took the lead in caring for the children during at least part of the day, and the children spent most nights in her house while her son and Ms. Alexander slept in the trailer. 274A-277A. Toward the end of 2019, Ms. Scott's health worsened, so Ms. Alexander and Mr. Scott assumed larger childcare roles. 283A-286A.

In January of 2020, Ms. Alexander contacted Ranisha Bowden, MA's godmother, to ask whether she would take custody of MA because she was overwhelmed and having trouble caring for him along with the

RECEIVED by MSC 10/16/2025 4:50:37 PM

other children. 166A-167A; 683A at 5:40-5:48. In response, Ms. Bowden called police to request a wellness check on MA. 168A.

Accompanied by Ms. Bowden, officers went to Ms. Scott's property. 196A-198A. According to one officer, the trailer was filthy, with rotting food in bags on the floor and water bottles containing urine elsewhere. 197A-198A, 201A. Pieces of zip ties were found on the ground near a lawn chair in front of the trailer, while at least one other zip tie was found beneath the sofa inside the trailer. 199A, 209A-210A.

Officers observed bruises to the side of MA's face and swelling on his neck. 198A. There were raised scarring or ligature marks on his wrists. 115A-118A, 197A-199A. Although there was no indication that MA was in pain, a paramedic gave him an ice pack. 115A-118A, 134A. Ms. Bowden believed MA "didn't look normal." 169A, 175A-176A. To her he seemed underweight, his hair was unkempt, he had black eyes or dark circles around his eyes, and she saw lacerations, or "scabs" on his wrists and ankles. *Id.*

The three children were removed and Mr. Scott and Ms. Alexander were arrested. 199A-200A. Later that afternoon, an emergency room physician examined the children, and they were released three hours later to the custody of a temporary guardian. 347A-371A.

Ms. Alexander later gave a police statement admitting that she had played a role in physically disciplining MA, and that on two occasions, she had bound his hands together when he could not be closely supervised, in order to keep him from getting into trouble and harming himself and his siblings. 683A.

At trial, MA, who was then eight years old, testified that when he was six, he lived with his mother and "Rob" in a trailer. 62A-63A, 81A-82A. According to MA, Rob "zip-tied" his hands together between five and ten times. 63A-64A, 69A-70A. Rob also tied his waist to the leg of a sofa to keep him from moving around. 64A-65A. He denied that his mother did any of the zip-tying, although he acknowledged she was sometimes asleep in the trailer when it took place. 64A-65A, 77A. MA

RECEIVED by MSC 10/16/2025 4:50:37 PM

did recall one time when Rob zip-tied him and then left for work. 91A-92A.

MA explained that he "got a scar" on his hands from being bound, but it healed, and he no longer had it. 66A. It hurt when Rob did that to him and he told his mother and Rob this, but Rob did not stop using the zip ties. 67A-68A. According to MA, Rob also hit him on the hands with a sandal. 67A. That also hurt, but it did not leave any marks. 67A-68A.

MA also testified that when he stayed in the trailer with his mother and Rob, he slept on the floor while his sister slept on the couch. 67A-68A. When he needed to, he used the bathroom in his grandmother's house nearby but sometimes he would "go outside." 69A, 86A.

RS, who was six years old at the time of trial, testified that, while nothing was done to her, her brother got into trouble and once got "zip-tied" as a result. 101A-102A. Only his wrists got zip-tied, and it was "Dad" who did it, although her mother was home when it happened. 103A-104A.

Dr. Shazia Maqbool of the Detroit Children's Hospital Emergency Room examined the three children the day they were removed from the trailer. 347A-348A. She observed no signs of trauma to MA's eyes, head, or nose. 349A. There were some "linear scars" on the skin of MA's wrists and ankles, and some swelling and tenderness around his ankles. 349A-350A. X-rays showed no fractures or sprains. He had some minor marks on his buttocks and knees. 356A-357A.

Photographs of MA's wrists, ankles, arms, buttocks, and torso area taken by police and medical providers were admitted at trial. 683A-705A; 351A-353A. Based on the tone and color of the marks Dr. Maqbool believed they had been left more than 24 hours before she examined him. 352A-353A. The doctor found nothing else of significance in her physical examination of MA. 352A-355A, 367A-368A. After spending a total of three hours at the emergency room, including check-in, triage, a visit to radiology, and physical examinations of all three children by the same physician, the children were discharged. 363A-364A.

RECEIVED by MSC 10/16/2025 4:50:37 PM

A redacted recording of Ms. Alexander's police interview was played for the jury. 317A; 683A. She described the living arrangements at Ms. Scott's property consistently with Ms. Scott's testimony; the children would spend most nights in the house and days in the trailer with her and Mr. Scott. 683A at 24:05, 32:40-32:50, 33:50-34:10, 39:14-39:20, 58:14-58:17, 58:44. Ms. Alexander also talked about the struggles she faced raising children while living in poverty and pregnant, with little support from her own family. *Id.* at 23:35-23:42, 1:12:04. She acknowledged the dirty conditions in the trailer when police arrived and explained she was working to get things cleaned up before her next child was born. *Id.* at 23:40. What she really wanted was to get her children out of the trailer. *Id.*

Ms. Alexander admitted that by early 2020, she had become overwhelmed by the responsibility of caring for the three children and felt compelled to ask Renisha Bowden to take custody of MA because he had grown out of control and was difficult to care for. 683A at 5:40-5:48. In recent months, MA had begun acting out in serious and concerning ways. *Id.* at 5:40-6:00, 8:00-8:57, 9:15-10:00, 21:00. He was making inappropriate sexual contact with other children, including RS and his cousins. *Id.* at 4:55-5:40, 8:00-8:55. He would sneak and steal food and hide it in places around the trailer, even though he was adequately fed at appropriate times. *Id.* at 17:20-17:54, 21:00 27:25-28:10. Once, she discovered he had stolen from a local market, which was particularly embarrassing because she was a regular customer there and the store owner was a friend. *Id.* at 18:12-19:05. Additionally, MA was expressing his anger in disturbing ways – recently he had deliberately defecated on himself after being told he could not have candy. *Id.* at 9:15-10:00.

She and Mr. Scott tried disciplining MA when he acted out. After being caught stealing or inappropriately touching someone, MA would receive a "whooping" on his bare bottom with a ruler or a belt, mostly from Mr. Scott but occasionally from Ms. Alexander. 683A at 16:45-16:53, 20:26-20:30, 47:05-47:15. One time Ms. Alexander tried to give MA a "smack" on the back of the head to stop him from getting into something, but he moved his head at the last moment, causing her to strike the side of his face and leave a mark. *Id.* at 47:29-47:38.

RECEIVED by MSC 10/16/2025 4:50:37 PM

Things got to the point that she and Mr. Scott did not feel comfortable turning their backs on MA – even momentarily – for fear that he would act out and endanger himself or his siblings. 683A at 21:00-21:20. MA's hands were occasionally bound together in front of his body with a belt or a strap when an adult could not closely supervise him, such as when they had to prepare meals or when she was forced to take a nap out of exhaustion. *Id.* at 17:53-17:67, 27:42-27:46, 34:23-34:26. Ms. Alexander did it twice, Mr. Scott did it other times; three times at her request. *Id.* at 17:53-17:57. She estimated that MA was bound for up to two hours at a time, but never during the night and only when adults could not give him their full attention. *Id.* at 31:55, 33:12-33:35. She believed the marks on MA's wrists were caused by him trying to squeeze or wrench his hands free from the strap or belt that was used to bind his hands. *Id.* at 20:50, 33:45-33:48. One of the marks, however, was made when MA grabbed a hot iron while her back was turned. *Id.* at 27:38-27:52.

At all times, Ms. Alexander maintained that MA was bound, not to punish or hurt him, but to protect him and the other children from harm. 683A at 21:00, 27:25-28:10, 33:16-33:30, 33:50-33:53, 59:52. She regretted doing this and expressed remorse, admitting that a parent who did such a thing to a child should spend some time in jail. *Id.* at 50:40-50:47.

Dr. Dena Nazer, Medical Director at Kids-TALK, was presented as an expert on child abuse pediatrics, and her testimony is at the center of this appeal. 387A-391A. She examined and evaluated MA and RS about six weeks after they were removed from Ms. Alexander's care. 391A-392A. As part of her evaluation, she reviewed the emergency room records, personally interviewed and examined MA, gathered information from his aunt, Monisha Bowden (Renisha Bowden's mother), and reviewed information provided to her by the people who forensically interviewed MA. 395A-396A.

A physical examination revealed slight marks or scars around MA's wrists and ankles, but nothing else of significance. 397A-398A. The doctor felt the marks were consistent with MA being zip-tied. 444A.

RECEIVED by MSC 10/16/2025 4:50:37 PM

Based on how others described MA's treatment at the hands of Ms. Alexander and Mr. Scott, Dr. Nazer testified that she reached a "diagnosis of medical torture" for MA. 393A-394A, 395A, 399A-400A; 706A-712A.[1] She described medical torture as a "clinical diagnosis" given to children:

> who have been exposed to at least two different physical assaults, so two physical assaults at two different times. And it's not just the physical assaults. To qualify for the diagnosis of medical torture, it has to be accompanied by at least two psychological maltreatments or two forms of psychological abuse.

400A-401A. In expanding on her determination that the prerequisites for the diagnosis had been met, Dr. Nazer indicated several times that there had been "abuse" involved in the treatment of MA. 400A, 402A, 407A. She further explained that part of diagnosis depended on her assessment of the "criminology [sic] of the psychological maltreatment." 420A.

Dr. Nazer also evaluated RS. 402A-403A. Although she saw no evidence of physical injury, the doctor concluded that RS also was a victim of "medical torture" based on the information she obtained outside of any physical examination. 403A-404A, 409A; 713A-716A. When asked how she could have concluded this without seeing any physical injuries, Dr. Nazer explained that such a diagnosis does not depend on the presence of any physical or psychological injury. They can and often are based exclusively on eyewitness accounts of the child's treatment. 451A-452A, 453A-454A.

At the close of the evidence, the trial court instructed both juries that to convict each defendant of Torture, the prosecution had to prove

---

[1] The parties agreed that Dr. Nazer's two written reports regarding the children would be redacted to remove inadmissible and prejudicial evidence before being admitted as PX 32 and PX 33. 414A-419A. While all the pertinent trial exhibits were provided to undersigned counsel, he received only unredacted versions of these two reports with lines drawn threw the sections designated for blacking out.

RECEIVED by MSC 10/16/2025 4:50:37 PM

beyond a reasonable doubt that: (1) they had custody or physical control over MA, (2) they did so without MA's consent or without lawful authority, (3) they intentionally inflicted "serious visible disfigurement" (i.e. "great bodily injury") to MA, and that; (4) they specifically intended for MA to suffer cruel or extreme physical pain or mental pain and suffering. 605A-606A; M. Crim. JI 17.36; MCL 750.85(1), (2)(c); MCL 257.85c(e). No aiding and abetting instruction was given, and the prosecutor did not pursue an accomplice liability theory.

Ms. Alexander was found guilty of Torture and the two Child Abuse counts involving MA but not guilty of the Third Degree Child Abuse count involving RS. 628A-630A. Mr. Scott's jury acquitted him of Torture and of Third Degree Child Abuse involving RS, but found him guilty of the remaining counts. 648A-652A.

Ms. Alexander was sentenced to 17 to 30 years in prison on the Torture count and concurrent 6 to 10-year sentences for the two Child Abuse Counts. 2A-3A.

Ms. Alexander appealed, arguing the evidence was insufficient to convict her of Torture, that Dr. Nazer invaded the province of the jury and violated MRE 702 by "diagnosing" MA with medical torture, that Dr. Nazer's testimony also violated MRE 703 because her opinion was based on facts that had not been admitted into evidence, and that her sentence was based on incorrectly-scored guidelines.

In a published opinion, the Court of Appeals affirmed the convictions but remanded for resentencing upon finding that OV 7 had been improperly scored. 717A-731A.

This Court has scheduled oral argument on Ms. Alexander's leave application and ordered briefing on whether Dr. Nazer's diagnosis testimony improperly invaded the province of the jury. 732A.

RECEIVED by MSC 10/16/2025 4:50:37 PM

## Arguments

**In diagnosing MA with "medical torture" Dr. Nazer was actually diagnosing Ms. Alexander's alleged misconduct toward MA and expressing the view that Ms. Alexander was culpable. In this trial involving charges of Torture and Child Abuse, the opinion testimony improperly invaded the province of the jury and was admitted in violation of MRE 702, MRE 703, and MRE 704.**

### Issue Preservation & Standard of Review

This Court reviews de novo whether the lower court properly interpreted and applied the rules of evidence. *See People v Duncan*, 494 Mich 713 (2013). The question of whether a witness invaded the province of the jury is reviewed *de novo*. *People v McFarlane ("McFarlane I"),* 325 Mich App 507, 517 (2018), *leave denied after argument on application*, 505 Mich 1020 (2020) ("McFarlane II"). Because there was not an objection to Dr. Nazer's testimony on the specific grounds argued here, this Court must review for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763 (1999).

Alternatively, Ms. Alexander contends that trial counsel was ineffective in allowing Dr. Nazer to give improper opinion testimony. A claim of ineffective assistance of counsel is reviewed *de novo* under the two-part test of *Strickland v Washington*, 466 US 668 (1984); *People v LeBlanc*, 465 Mich 575, 579 (2002).

### Discussion

A trial court may admit testimony of a qualified expert witness if the expert can offer "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. . . ." MRE 702. Unlike an ordinary witness, "an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation." *Daubert v Merrell Dow Pharmaceuticals,* 509 US 709 (1993). This latitude risks admission of

RECEIVED by MSC 10/16/2025 4:50:37 PM

"powerful and quite misleading" testimony. *Id.* at 595. And in criminal cases, expert testimony can contribute to wrongful convictions.[2]

A trial court "may admit evidence only once it ensures, pursuant to MRE 702, that expert testimony meets that rule's standard of reliability," and is helpful to the jury for a proper purpose. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 782 (2004). The court's gatekeeping responsibility to evaluate all expert evidence is "mandated by MRE 702 irrespective of whether the proffered evidence is 'novel' " long-recognized, or based on the witness's training and experience. *Id.* at 782 n52.

To properly perform its gatekeeping function, a court must answer two questions: is the proposed expert opinion reliable and is it relevant? *Daubert*, 509 US at 709; *People v Kowalski*, 492 Mich 106, 120 (2012). This involves "a searching inquiry, not just of the data underlying expert testimony, but also of the manner in which the expert interprets and extrapolates from those data." *Gilbert*, 470 Mich at 782. An opinion is relevant if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." MRE 702. But if the subject of the expert testimony is not relevant for a proper purpose or "if the average juror does not need the aid of expert interpretation to understand a fact at issue, then the proffered testimony is not admissible because 'it merely deals with a proposition that is not beyond the ken of common knowledge.'" *Kowalski*, 492 Mich at 122, *quoting Gilbert*, 470 Mich at 790.

While an expert's opinion is not inadmissible simply because it touches on issues that the jury must decide, MRE 704, the ultimate issue of a defendant's guilt is solely for the jury, so courts have formally carved out some matters that are so central to the jury's function that no

[2] According to the National Registry of Exonerations, false or misleading forensic evidence played a role in 29 percent of the 3,743 recorded wrongful convictions for which the defendants were later exonerated. See National Registry of Exonerations, found at, https://exonerationregistry.org/exonerations-contributing-factor.

witness, expert or otherwise, is permitted to intrude into them through opinion. *People v Row*, 135 Mich 505, 506-507 (1904). An expert may not: (1) testify that the crime occurred; (2) vouch for the veracity of the complainant, or 3) "testify whether the defendant is guilty." *People v Peterson*, 450 Mich 349, 352 (1995). Additionally, experts may not come "too close" to giving opinions on the central jury questions of witness credibility, on the defendant's guilt, on the legal implications of certain conduct, or on the defendant's state of mind. *McFarlane I,* 325 Mich App at 517 (collecting cases), quoting *Peterson,* 450 Mich at 374.

There are two reasons why courts do not want experts to come "too close" to giving such opinions. First, a wide berth is necessary to protect the sacrosanct constitutional requirement that all facts necessary to convict must be found by a jury based on proof beyond a reasonable doubt. *See United States v Scheffer*, 523 US 303, 313 (1998) ("a fundamental premise of our criminal trial system is that the jury is the lie detector.") (cleaned up); *United States v US Gypsum* Co., 438 US 422, 446 (1978) (ultimately the decision [in a criminal case] on the issue of intent must be left to the trier of fact alone). Secondly, lay jurors can overvalue expert opinions or fail to appreciate that experts are not there to tell them how they should vote but to understand the evidence. Edward J. Imwinkelreid, *Evidence Law and Tactics for the Proponents of Scientific Evidence in SCIENTIFIC AND EXPERT EVIDENCE* 33, 37 (Imwinkelreid ed. 1981); *Daubert*, 509 US at 595 ("[E]xpert evidence can be both powerful and quite misleading…."); *United States v Addison*, 498 F2d 741, 744 (DC Cir, 1974) ("[S]cientific proof may in some instances assume a posture of mythic infallibility in the eyes of a jury of laymen.") (citation omitted). This creates an intolerable risk that lay jurors will defer to the experts, effectively ceding their mandate to determine blameworthiness. See Brian R. Gallini, *To Serve and Protect? Officers as Expert Witnesses in Federal Drug Prosecutions,* 19 Geo. Mason L. Rev. 363, 365-66 (2012). Such danger is particularly acute when the consequences of the verdict are viewed as significant; when faced with the "awesome dilemma" of convicting an innocent person of a heinous crime or letting a guilty criminal go free, "an expert will often represent the only seemingly objective source, offering [the jury] a much



RECEIVED by MSC 10/16/2025 4:50:37 PM

RECEIVED by MSC 10/16/2025 4:50:37 PM

sought-after hook on which to hang its hat." *People v Beckley*, 434 Mich 691, 722 (1990), *accord People v Thorpe*, 504 Mich 230, 257 (2019).

Dr. Nazer's "diagnosis" that MA was a victim of "medical torture" violated MRE 702 and came more than "close" to invading the jury's province. Her opinion was not based on an assessment of MA's physical or mental condition. Rather, the diagnosis was a characterization of how MA was allegedly mistreated by the defendants. Labelling that alleged mistreatment as "medical torture" clearly conveyed the expert's opinion that the defendants were culpable and guilty of the crime of Torture. This was repeated and compounded when the expert explained the underlying bases for that opinion using terms that reflected her view that defendants had committed a series of criminal or immoral acts that added up to "medical torture".

Additionally, essential to the expert's opinion was eyewitness accounts of Ms. Alexander's and Mr. Scott's alleged misconduct towards MA, which the expert necessarily found credible and from which she made findings of fact that touched on issues of their guilt. Exclusive reliance on such testimonial hearsay may be acceptable and necessary for a pediatric expert like Dr. Nazer to help make best-interest assessments, recommend treatment, and determine appropriate custody for children. But at a criminal trial, it is improper for an expert to give an opinion that conveys her belief in the credibility of those declarants and in the weight of the information they provided in a manner that reflects on the accused's culpability.

And finally, the opinion simply was not helpful to the jury in understanding any fact at issue in the case; instead, the sole purpose it served was to improperly tell the jury that they should conclude Ms. Alexander was guilty of Torture. MRE 702.

**The "medical torture" diagnosis addressed Ms. Alexander's alleged misconduct rather than MA's condition, and it included terms that conveyed the expert's belief that Ms. Alexander was guilty of the crime of Torture.**

As for the lead charge of Torture, the pivotal questions for the jury were whether Ms. Alexander intentionally caused great bodily injury to

RECEIVED by MSC 10/16/2025 4:50:37 PM

MA, whether his wounds constituted "serious visible disfigurement", and whether she specifically intended for MA to suffer cruel or extreme physical pain or mental pain and suffering. M. Crim. JI 17.36. 605A-606A.

Dr. Nazer's role ostensibly was to examine MA and assess any harm that was done to him, physically or possibly mentally. But while cloaked in terms of something that afflicted MA, her ultimate diagnosis actually focused on Ms. Alexander's alleged conduct and addressed her culpability. This Court has held that similar testimony addressing a complainant's condition can invade the jury's province when it implicates the defendant. For instance, experts may explain the common behaviors associated with a person suffering from battered spouse syndrome so that jurors can better understand actions by the complaining witness that may seem inconsistent with a credible claim of abuse at the defendant's hands. *People v Christel,* 449 Mich 578, 590-592 (1995). Experts may not, however, testify that the complainant in fact suffers from battered spouse syndrome because such an opinion clearly points the finger at the defendant as the cause of the condition. *Id.* Similarly, experts may describe behaviors commonly associated with "child sexual abuse accommodation syndrome" to assist lay jurors in understanding why children would delay or recant allegations of sexual abuse by adult family members. *Peterson,* 450 Mich at 373-374. But for the same reason *Christel* drew such a line, they normally cannot opine that the complainant's behavior fits the profile of a child suffering from such a condition. *Id.*

And more recently, the Court of Appeals applied this rule in a straight-forward fashion to consider expert testimony that "references accepted medical terminology that might be misunderstood by laypersons as conveying emotional or legally conclusory connotations." *People v Ackley (Ackley IV), on remand,* 336 Mich App 586, 591-592 (2021), *lv den* 508 Mich 967 (2021); *McFarlane I*, 325 Mich App at 515. In *McFarlane I,* a pediatrician testified at a trial on child abuse charges that she diagnosed the victim with "definite pediatric physical abuse" and "abusive head trauma" based on a set of injuries that fit the pattern of children afflicted with these conditions. *Id.* at 518-519. While

RECEIVED by MSC 10/16/2025 4:50:37 PM

acknowledging the term "abusive head trauma" is an accepted diagnosis in the medical community and that experts may opine on whether injuries are consistent with accident or intentional force, the court held that using such terms in trial testimony invades the province of the jury:

> an expert goes too far when he or she diagnoses the injury as "abusive head trauma" or opines that the inflicted trauma amounted to child abuse. The ordinary understanding of the term "abuse"—as opposed to neglect or carelessness—implies a level of willfulness and moral culpability that implicates the defendant's intent or knowledge when performing the act that caused the head trauma. An expert may not offer an opinion on the intent or criminal responsibility of the accused.
>
> * * *
>
> [The terms "abusive head trauma" and "child abuse"] strongly suggested that it was [the expert's] opinion that whoever inflicted the injuries on KM did so with culpable state of mind; that is, her testimony plainly implicated whether defendant "knowingly or intentionally" caused serious physical harm to KM within the meaning of MCL 750.136b(2). Because [the expert] was in no better position than the jury to assess the intent that defendant had when he acted, her belief that his actions were abusive or amounted to child abuse were irrelevant and inadmissible as a matter of law. . . .

*Id.* at 523–25 (cleaned up).

Proceedings in the wake of *McFarlane I* reflect agreement with its reasoning and a recognition that it establishes a firm line barring the use of such terminology. *McFarlane II*, 505 Mich at 1059 (2020) (Justices Cavanaugh and McCormack concurring in order denying prosecutor's application for leave to appeal while agreeing with *McFarlane I's* reasoning); s*ee also Ackley IV, On Remand*, 336 Mich App 586, 591-592 (2021), *lv den* 508 Mich 967 (2021) (interpreting this Court's rulings as endorsing *McFarlane I* and of adopting "a *per se rule* that" that a diagnosis of "abusive head trauma" is improper). Additionally, our Court

RECEIVED by MSC 10/16/2025 4:50:37 PM

of Appeals has recognized that other diagnostic terms are similarly problematic and can also invade the jury's province:

> [i]n the future, the bench and bar must be mindful of any impermissible words used by experts, and experts should be cautioned that some words and phrases may be accepted medical terminology but are unacceptable in a Michigan courtroom.

*Ackley IV,* 336 Mich App at 593–94.

The common thread of these cases is that an expert's testimony addressing the complainant's mental or physical condition can be problematic when it strays from the diagnostic to the etiologic and suggest the accused caused the condition. When, in doing so, experts use terminology that telegraphs their opinion of the defendant's criminality and culpability, their opinions invade the province of the jury.

Dr. Nazer's diagnosis crossed that line by a large margin. Where the above cases involved an expert diagnosing the complainant in a manner that suggested the accused caused it, Dr. Nazer did the opposite. She assessed the defendants' alleged misconduct, then expressed an opinion that such conduct created a likely 'condition' suffered by MA, which she labelled "medical torture." The 'symptoms' she identified were actually Ms. Alexander's alleged conduct. The defendants' conduct *was* the 'condition'; the etiologic and diagnostic were one in the same. To put it differently, Dr. Nazer did not "diagnose" MA; rather she "diagnosed" Ms. Alexander's conduct, and she did so in a way that conveyed her expert opinion that Ms. Alexander was guilty.

This was improper and highly prejudicial. Saying that MA had a condition created by being "tortured" at the hands of his adult caretakers hardly concealed the expert's view that the person on trial for the crime of "Torture" was culpable. Not only do the diagnosis and the crime have overlapping titles, but the word "torture" as commonly understood speaks to the *mens rea* required to establish guilt under MCL 750.85. Ordinary dictionary definitions of the term "torture" include:

RECEIVED by MSC 10/16/2025 4:50:37 PM

- "[T]he infliction of intense pain. . . *to punish, coerce, or afford sadistic pleasure*." (emphasis added) *Webster's Online Dictionary*, found at https://www.merriam-webster.com/dictionary/torture.

- "[T]he act of causing great physical or mental pain in order to persuade someone to do something or to give information, *or to be cruel to a person or animal*." (emphasis added) *Cambridge Dictionary,* found at https://dictionary.cambridge.org/us/dictionary/english/torture

- "[T]o cause great physical or mental pain to someone *intentionally*." (emphasis added) *Id.*

All these connote a "level of willfulness and moral culpability that implicates" the intentional infliction of great bodily harm and the specific intent to cause MA "to experience suffer cruel or extreme physical pain or mental pain and suffering" in her treatment of MA. *McFarlane I,* 325 Mich App at 323-325; M Crim JI 1.36(4), (7).

It is true that Dr. Nazer declined to address whether her diagnosis met a legal standard. 424A. And as the prosecutor argued below, "torture" also has less inflammatory connotations, just as the term "abusive" does. *See McFarlane I, supra.* But in explaining how she reached her diagnosis, Dr. Nazer made it clear that she was using "torture" literally to connote egregious mistreatment rather than colloquially to hyperbolically to describe something more benign. "Medical torture", she explained, is an uncommon diagnosis that is "reserved for severe cases" of "severe" mistreatment of the child. 420A. Such a diagnosis is made only if, upon hearing what others have to say about the child's treatment, the evaluator concludes the child had been physically assaulted twice and psychologically abused twice. 400A-401A. The former is essentially a legal conclusion, and the latter reflects an opinion on the moral and legal culpability of the "assailant". Indeed, "psychological abuse" or "mistreatment" overlaps significantly with the Torture statute's requirement that the defendant specifically intend for the victim suffer "cruel or extreme . . . .mental pain and suffering." M. Crim. JI 17.36; MCL 850.85.

RECEIVED by MSC 10/16/2025 4:50:37 PM

Dr. Nazer as much said Ms. Alexander acted criminally when elaborating on the foundation for her conclusion. She not only testified that MA was physically assaulted, but several times, she also said that he had been "abused," the very term deemed improper in *McFarlane I,* because it implied the defendant acted intentionally. 400A, 402A, 407A. Moreover, Dr. Nazer explained that her diagnosis depended on her assessment of the "the criminology [*sic*] of the psychological maltreatment." 420A. By saying that the alleged psychological mistreatment reached the level of "criminology" (read "criminality") needed to make the medical torture diagnosis, the expert clearly conveyed her opinion that all the elements of the crime of Torture, including the specific intent to cause "cruel or extreme. . . mental pain and suffering," were met. M Crim JI 17.36.

**Dr. Nazer invaded the jury's province by reviewing witness accounts of alleged misconduct by Ms. Alexander, assessing the declarants' credibility, and weighing the evidence to make factual determinations regarding culpability.**

Not only did Dr. Nazer's ultimate opinion reflect on Ms. Alexander's culpability, but it also was the result of her judging the weight, credibility, and significance of witness accounts of Ms. Alexander's alleged mistreatment of MA. This Court has forbidden such misuse of experts in CSC prosecutions, where physicians often examine complainants after they've accused someone of sexual assault. At trial, the physician may not tell the jury that the complainant was actually sexually assaulted where such an opinion is not based on any physical symptoms or medical assessment, but only on the complainant's account of the alleged assault given to the physician during the examination. *See People v McGillen #2,* 392 Mich 278 (1994); *People v Smith,* 425 Mich 98 (1986); *People v Harbison*, 504 Mich at 230 (2019). There are three overlapping reasons for this. First, such opinions are not medical determinations based any actual symptoms, but upon the physician doing precisely what the jury is charged with doing – listening to the complainant's story, evaluating her demeanor, and making factual findings. Second, such opinions vouch for the complainant's credibility

RECEIVED by MSC 10/16/2025 4:50:37 PM

because, by opining that an assault actually occurred, the physician is necessarily saying she found the complainant's story credible. And third, the testimony on this ultimate question simply is not helpful to the jury MRE 702. As this Court explained, this is "a straightforward bright-line test that trial courts can readily observe. . ." *Harbison,* 504 Mich at 262. A medical expert's diagnostic opinion is "objectionable when it is solely based 'on what the victim ... told' the physician. Such testimony is not permissible because a 'jury [is] in just as good a position to evaluate the victim's testimony as' the doctor." *Id.,* quoting *Smith*, 425 Mich at 109.

While it did not produce a diagnosis of sexual assault, the basis of Dr. Nazer's opinion was materially the same as the above cases, and the process she employed to reach her diagnosis was similarly improper. First, it is readily apparent that MA's physical or psychological condition were neither necessary nor sufficient to reach the diagnosis of medical torture. Instead, the diagnosis was "based on information that [Dr. Nazer] received from" others about Ms. Alexander's conduct. 400A-401A. It required Dr. Nazer to "obtain information from other sources regarding [MA's] treatment at home." 411A. And "[e]ven if the physical examination. . . [was] normal," Dr. Nazer considered "everything together [from eyewitness accounts]," to conclude that MA had been physically and psychologically abused, and ultimately a victim of medical torture. *Id.* It is readily apparent that MA's physical condition was at most, corroborative of Dr. Nazer's diagnosis. This is supported by the fact that expressed the same opinion about RS even though RS's physical examination was normal and there were no observed injuries. 403A-404A, 409A-411A.

Although there was no reason to doubt Dr. Nazer's expertise and ability to make clinical assessments in this way so that decisions can be made regarding the child's best interests, expressing an expert opinion at a criminal trial through this process placed her testimony on the wrong side of *Harbison's* "bright line" rule. 504 Mich at 262. While the expert in *Harbison* heard about the alleged crime from only the complainant, Dr. Nazer heard three witnesses' accounts of Ms.

RECEIVED by MSC 10/16/2025 4:50:37 PM

Alexander's conduct: MA himself, the individuals who forensically interviewed MA, and from Monisha Bowdin, MA's aunt. 393A-396A, 706A.

And Dr. Nazer did what *Harbison* and its predecessors said experts must not do. She processed those various witness accounts and gave an opinion that reflected an assessment of Ms. Alexander's and Mr. Scott's conduct toward MA. Dr. Nazer necessarily believed those witness accounts and conveyed that belief to the jury by characterizing allegations of wrongdoing as established facts.[3] 400A. Not only did Dr. Nazer opine on credibility, but she expressed other judgments that are reserved for the jury, including that Ms. Alexander had committed assaults and psychological abuse, the latter of which included "isolation, deprivation, or intimidation" of MA. *Id*. A.[4] These were drawn from witness accounts the jury had or should have heard at trial, and they were conclusions about Ms. Alexander's culpability that the jury had the exclusive authority to make.

In fact, this expert went beyond *Harbison* because she heard and considered evidence beyond what was presented to the jury. While the jury heard from MA, RS, and from Ms. Alexander herself, neither the

[3] Notably, defense counsel was compelled to challenge the credibility and reliability of the people who described the defendants' alleged behavior in cross examining Dr. Nazer, seeking to show that children are susceptible to influence by their adult caretakers, and that they do not possess the same ability to distinguish the fantastical from the factual. 431A-432A.

[4] Parents are allowed certain level of physical discipline of a child that might otherwise be deemed criminal. *People v Green,* 155 Mich 524, 533 (1909). It is for the jury to determine whether physical force applied by a parent crosses the line into criminality, and not for an expert to tell them that a parent's conduct constitutes an "assault."

RECEIVED by MSC 10/16/2025 4:50:37 PM

forensic interviewers nor Monisha Bowden[5] testified. Furthermore, while the jury heard from the testimony and Ms. Alexander's recorded statement that MA was physically disciplined and bound, Dr. Nazer heard allegations that Ms. Alexender did far more than that. This includes claims that MA was isolated, made to sleep outside while bound, deprived of food and bathroom facilities, and intimidated. 447A-448A, 400A, 706A, 707A. As previously argued, Ms. Alexander contends that admission of Dr. Nazer's testimony violated MRE 703 because it was based on facts and data that was not "in evidence." Beyond that, signaled to jurors that she possessed additional evidence beyond what the jury had that Ms. Alexander acted more egregiously and culpably than was described by the trial witnesses and police statement. Cf *People v McGhee,* 268 Mich App 600, 630 (2005)(improper for prosecutor to imply that there is evidence pointing to guilt that the jury was not privy to).

**Dr. Nazer's opinion was not relevant for a proper purpose and did not assist the jury to understand the evidence or determine a fact at issue under MRE 702.**

MRE 702's requirement that expert testimony must "help the trier of fact to understand the evidence or to determine a fact in issue" largely boils down to whether it is relevant for a proper purpose, or whether the concepts the expert discusses are beyond the ken of the average juror. *Kowalski*, 492 Mich at 122. Expert testimony should be excluded "if it is not relevant to the facts of the case or is offered for a proposition that does not require the aid of expert interpretation." *Id.* The bulk of Dr. Nazer's testimony should have been excluded on both those grounds.

The jury was in as good a position as Dr. Nazer to hear and evaluate the trial witnesses and police statement describing Ms. Alexander's alleged conduct, determine the witnesses' credibility and the weight of

[5] Ranisha Bowden, Monisha Bowden's daughter, testified at trial to her decision to contact authorities about MA and gave limited testimony of her impression of MA's condition on the day he was removed from Ms. Alexander's custody. 165A-186A.

RECEIVED by MSC 10/16/2025 4:50:37 PM

the evidence, and make findings on whether they described conduct establishing the elements of "Torture" and "Child Abuse" in accordance with the trial court's instructions. Indeed, beyond being trained on the factors used in her field to determine how to diagnose a child with medical torture, Dr. Nazer did nothing a jury could not or should not do to reach her conclusion. She listened to witness accounts. She found them credible. She made factual determinations and moral judgments as to what Ms. Alexander's described conduct added up to (assault and psychological abuse), and she plugged those factors into the diagnostic matrix, which produced her "diagnosis."

This is no knock on Dr. Nazer's expertise, nor is it meant to diminish the importance of expert evaluations in the child welfare realm. But what is necessary to protect and treat children is distinct from what is necessary to ensure that the accused receives a fair trial by limiting evidence the jury may consider; particularly where that evidence is testimony that threatens to distort the jury's role as factfinder.

Overall, beyond assessing the severity of MA's wounds and opining whether they were consistent with MA being zip-tied, Dr. Nazer's ultimate diagnosis had no relevance for a proper purpose. In this regard a comparison of what the prosecutor had to prove and what the expert had to say illustrates the lack of relevance of the medical torture diagnosis:

| **Element** | **What the expert had to offer about the element** |
|---|---|
| Ms. Alexander had custody and physical control over MA and restricted his movement | Not in dispute. Dr. Nazer had nothing relevant to say about it |
| Ms. Alexander exercised control without MA's consent or lawful authority | Legal determination upon which Dr. Nazer could not opine. |

RECEIVED by MSC 10/16/2025 4:50:37 PM

| **Element** | **What the expert had to offer about the element** |
|---|---|
| Ms. Alexander specifically intended for MA to suffer cruel or extreme physical pain or mental pain and suffering | A defendant's specific intent is exclusively a jury question based on the direct and circumstantial evidence presented at trial. The severity of MA's injuries and any trauma he suffered was relevant to that, but the diagnosis did nothing to properly aid the jury in that regard. |

That is all that was at issue in this case, which raises the glaring question; how does "diagnosing" MA with "medical torture" based primarily on Ms. Alexander's alleged misconduct assist the jury in understanding the above elements? Likewise, how does a doctor's opinion that Ms. Alexander committed physical assaults and psychological abuse properly assist the jury in understanding the evidence related to those elements. The expert testimony may have "assisted" the jurors in deciding guilt; but only in the sense that it told them that Ms. Alexander's accusers were credible, that there was off-record evidence showing there was additional misconduct, and that ultimately Ms. Alexander was guilty. Put differently, the "diagnosis" brought nothing to the table other than to present an expert who possessed "specialized knowledge for discerning the truth" about whether Ms. Alexender was guilty of Torture. *Kowalski*, 492 Mich at 129 (quoting *Beckley,* 434 Mich at 727-728).

**Admitting Dr. Nazer's improper opinion testimony was plain, outcome determinative error and reversal is required under *People v Carines*.**

Allowing Dr. Nazer to testify that she had diagnosed MA with "medical torture", invaded the province of the jury and violated MRE

RECEIVED by MSC 10/16/2025 4:50:37 PM

703. It was plain, outcome determinative error that requires reversal. *Carines,* 460 Mich at 763.

It is plain because it does not require a linguistic expert to see the problem with giving a torture diagnosis in a trial on charges of Torture. It is plain because this trial occurred four years after *McFarlane I* deemed very similar diagnostic terms improper, and more than a year after *Ackley IV* served notice to the bench and bar that such terms must be avoided. And it is plain because the diagnosis and the basis for it violated this Court's clear precedents that limit expert opinions to avoid invading the province of the jury.

The plain error was outcome determinative. Ms. Alexander contends, as she had below, that the prosecution failed to present sufficient evidence to prove she inflicted the degree of injury and acted with the requisite intent necessary to convict her of Torture. MCL 750.85. Even if the evidence survives a sufficiency challenge, it cannot be disputed that this was a close case. Any jury could find that, while Ms. Alexander acted wrongfully, she did not specifically intend to cause the level of injury or suffering required to convict her under MCL 750.85. Additionally, any rational factfinder could have examined the photographs and listened to the properly admitted medical testimony and concluded that MA's wounds did not rise to the level of "serious visible disfigurement."

Dr. Nazer's diagnosis likely pushed an otherwise hesitant and skeptical jury across the line separating a reasonable doubt from a conviction. The expert all but told the lay jurors how to decide the case by diagnosing MA with being the victim of "torture." While Dr. Nazer stopped short of calling her diagnosis a legal one, the prosecutor invoked her testimony as material evidence the jury should rely on to find MA was in fact "Tortured" in the legal sense as well. 567A[6], 570A. The

[6] Regarding Dr. Nazer's diagnosis the prosecutor argued:

> it showed the severity of the abuse that [MA] and [RS] suffered. It showed that it was more than one occasion and

RECEIVED by MSC 10/16/2025 4:50:37 PM

improper testimony was the difference maker in this close case, and the error was outcome determinative.

The Court of Appeals reasoned that any error was harmless because Ms. Alexander admitted doing things that may have harmed MA, Dr. Nazer would still have been able to tell the jury that MA's injuries were not accidentally inflicted, and because the emergency room doctor had concluded there was "possible child abuse." 724A-725A. This reflects a fundamentally flawed prejudice analysis. In determining prejudice "the reviewing court should not focus alone on the sufficiency of the evidence that supports the verdict," nor may it affirm "simply because it concludes the jury reached the right result." *People v Mateo*, 453 Mich 203, 241 (1996). The mere fact that the remaining properly admitted evidence *may* survive a sufficiency challenge does not render an evidentiary error harmless. Rather, the reviewing court must "determine how the improper evidence might have affected the jury's decision." *People v Young*, 425 Mich 470, 505 (1986), citing *Kotteakos v United States,* 328 US 750, 763 (1946). "Where the error asserted is the erroneous admission of evidence, the court engages in a comparative analysis of the likely effect of the error in light of the other evidence." *Mateo,* 453 Mich at 241.

Here, while many of MA's injuries and some of Ms. Alexander's actions were not in dispute, the pivotal question for the jury was whether those actions and injuries amounted to the crime of Torture which, as discussed above, hinged on Ms. Alexender's specific intent and the degree of MA's injuries. MCL 750.85. Dr. Nazer expressed an opinion on intent, which was solely the jury's province, and given the evidence

---

> it had a psychological impact on them. That's why she did medical abuse.
>
> But she reviewed all the records. She reviewed the medical records and the photographs and some other records and that's how she came her conclusion. And she also talked to [MA] and she also talked to [RS] and heard about the abuse, just like you did. [567A]

RECEIVED by MSC 10/16/2025 4:50:37 PM

in this case, the jury could have harbored a reasonable doubt over whether Ms. Alexander intended to commit Torture.

The Court of Appeals also concluded any error was harmless because the jury heard the same improper opinion regarding RS and acquitted Ms. Alexander of the third degree child abuse charge involving her. 725A. The court also cited the fact that same testimony was presented with regard to Mr. Scott and he was acquitted of Torture. *Id.* There are two glaring flaws in this reasoning.

First, Ms. Alexander was not accused of Torture with regard to RS, only third degree child abuse. As the improper testimony addressed a different charge than the jury was called upon to deliberate with regard to RS, the acquittal on that charge is largely irrelevant.

Secondly, a *different* jury acquitted Mr. Scott of Torture. Positing that one jury was unaffected by improper evidence based on a separate jury's verdict is at best, speculative because it is impossible for a court to be certain of the grounds for the verdict without improperly delving into the jurors' deliberations and thought processes. *McDonald v Pless,* 238 US 264 (1915). A jury has the unfettered power to return a not-guilty verdict for permissible or impermissible reasons. *United States v Powell*, 469 US 57, 63 (1984) (cleaned up); cf also *Jackson v Virginia*, 443 US 307, 317 n.10 (1979) (juries can acquit "even if the evidence of guilt is overwhelming"). Inconsistency between different juries' verdicts is far from an accurate gauge for determining a jury's reasons for acquitting. *Id.*

Mr. Scott's verdict is even less illuminating because the two juries heard different evidence and different arguments from different defense attorneys, who conducted separate voir dires and selected different jury panels from different venires. Ms. Alexander's jury heard only Ms. Alexander's police statement and not Mr. Scott's, while Mr. Scott's jury heard only Mr. Scott's police statement. 250A-266A, 309A-320A, 683A. And two witnesses testified in support of Mr. Scott's innocence and said little to nothing about Ms. Alexander, while Ms. Alexander's attorney presented no defense. 465A-499A. As all things were not equal between

RECEIVED by MSC 10/16/2025 4:50:37 PM

the two cases, Mr. Scott's verdict is not an appropriate measure of the impact the improper evidence had on Ms. Alexander's jury.

Thus, the proper gauge for outcome-determination is that described above – the reviewing court looks at all the evidence presented to *this* jury, compares the properly-admitted evidence for and against the defendant's guilt, and seeks to determine how *this jury* might have been impacted by being told that Ms. Alexander medically tortured her son. *Young*, 425 Mich at 505. In light of all the properly admitted evidence and given the close questions as to whether Ms. Alexander inflicted the degree of injury and acted with the specific intent required to convict, the improper expert testimony likely provided the jury "a much sought-after hook on which to hang its hat" to improperly convict. *Beckley*, 434 at 722.

Finally, the significant role that the improper opinion played in this close case rendered Ms. Alexander's trial fundamentally unfair, in both effect and appearance. *Carines*, 460 Mich at 772-773; *cf Ackley IV*, 336 Mich at 593. It is well-known that juries must decide cases based on facts and proof beyond a reasonable doubt, not on how some "expert" tells them to vote, which occurred here. Dr. Nazer's opinion testimony represents a blatant and serious violation of the rule against invading the province of the jury most recently mapped out in *McFarlane* and *Ackley,* but that has been around for decades.[7] As such, the error undermined the fairness, integrity, and public reputation of this trial, and reversal is required.

---

[7] In *Ackley IV,* the Court of Appeals noted that "a deliberately or intentionally created error may constitute an affront to the integrity of the proceedings that precludes a finding of harmlessness irrespective of the error's practical effect on the outcome." 336 Mich at 593, *citing People v Robinson*, 386 Mich 551, 562-564 (1972). Ms. Alexander makes no claim that the prosecutor or the court maliciously or intentionally violated her rights by allowing the improper testimony. However, given the stark similarities between Dr. Nazer's testimony and that in the *McFarlane* and *Ackley* line of cases, and *Ackley's* explicit directive regarding such testimony, the error certainly undermines the fairness, integrity, and public reputation of this closely contested trial.

RECEIVED by MSC 10/16/2025 4:50:37 PM

**Reversal is Required under *Strickland v Washington.***

Alternatively, reversal is required because trial counsel's failure to object to the improper opinion testimony deprived Ms. Alexander of her constitutional right to the effective assistance of counsel. US Const, Amend VI; Mich Const 1963, art 1, § 20. *Strickland*, 466 US at 686; *People v Trakhtenberg,* 493 Mich 338 (2012). A successful claim of ineffective assistance of counsel requires the defendant to show that: (1) that trial counsel performed deficiently and (2) that he or she suffered prejudice as a result of counsel's missteps. *Strickland*, 466 US at 687.

The first *Strickland* prong is met when defense "counsel's representation fell below an objective standard of reasonableness…. considering all the circumstances." *Strickland*, 466 US at 688. To establish the second prong, the 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. A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *Id* at 694.

On several occasions, defense counsel sought to exclude or limit portions of Dr. Nazer's testimony in a clear effort to blunt the powerful impact this expert would have on the jury. 392A, 397A, 401A, 404A-405A, 408A-409A, 414A-415A. Yet counsel's failure to object on the grounds that the testimony invaded the province of the jury and violated MRE 702 fell below the objective standard of reasonableness. Knowledge of the law applicable to the defendant's case is of course essential to a rendering of effective assistance. *People v Carrick*, 220 Mich App 17, 22 (1996). Defense counsel's apparent failure to understand MRE 702 and heed the guidance of *McFarlane I* and its precedential foundation was unreasonable. Where, as here, an expert far exceeds what the law permits by phrasing her opinion in terms of the legal requirements for a conviction, it is incumbent upon any reasonable defense attorney to prevent the jurors from hearing it. Given the clear authority barring Dr. Nazer's opinion and obvious factors pointing to its devastating prejudicial impact, the lack of an objection was unreasonable.

Prejudice is established as well because the error undermined confidence in the outcome of the trial. *Strickland*, 466 US at 687. To establish *Strickland* prejudice, "[t]he defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case," *Id.* at 694, nor must she show by a preponderance of the evidence that the outcome was affected by the error. Instead, she need only show a reasonable probability that, but for the error, the result of the proceedings would have been different. *Id.* at 693-694.

Here, for many of the reasons the plain error was outcome determinative under the *Carines* test, counsel's failure to prevent Dr. Nazer's improper testimony was prejudicial under *Strickland*. In a close circumstantial case such as this, failing to prevent the jury from hearing a respected expert "diagnose" the complainant of being the victim of the very crime with which Ms. Alexander charged undermines all confidence in the trial's outcome. *Strickland*, 466 US at 687.



RECEIVED by MSC 10/16/2025 4:50:37 PM

RECEIVED by MSC 10/16/2025 4:50:37 PM

## Conclusion and Relief Requested

For the reasons set forth above, Ms. Alexander respectfully requests that this Court reverse her conviciton on the grounds that improper prejudicial expert testimony was presented at her trial.

Respectfully submitted,

**State Appellate Defender Office**

/s/ Michael L. Mittlestat
Michael L. Mittlestat (P68478)
Assistant Defender

/s/ Henry E. Schneider
**Henry E. Schneider (P82476)**
Assistant Defender

*Counsel for Gwendolyn Alexander*

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450
Detroit, Michigan 48202
Phone: (313) 256-9833

Date: October 16, 2025

RECEIVED by MSC 10/16/2025 4:50:37 PM

## Certificate of Compliance

I hereby certify that this document contains 8,970 countable words. The document is set in Century Schoolbook, and the text is in 12-point type with 18-point line spacing and 12 points of spacing between paragraphs.

Respectfully submitted,

**State Appellate Defender Office**

/s/ Michael L. Mittlestat
Michael L. Mittlestat (P68478)
Assistant Defender

*Counsel for Gwendolyne Alexander*

State Appellate Defender Office
3031 West Grand Boulevard, Suite 450
Detroit, Michigan 48202
Phone: (313) 256-9833
mmittlestat@sado.org

Date: October 16, 2025