

STATE APPELLATE DEFENDER OFFICE

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May 11, 2012

Clerk
Wayne County Circuit Court
Criminal Division
Frank Murphy Hall of Justice
1441 St Antoine
Detroit, MI 48226

Re: People v Celita Sanford
Circuit Court No. 11-6124-01
Court of Appeals No. 307747

Dear Clerk:

Enclosed please find the original of the following: Praecipe; Notice of Hearing/Proof of Service; Motion for New Trial; Affidavit; and Brief in Support of Motion For New Trial for filing in your Court.

Thank you for your cooperation.

Sincerely,

Valerie R. Newman
Assistant Defender

VN/
Enclosure

cc: Wayne County Prosecutor
Hon. Lawrence S. Talon
Court of Appeals Clerk (Detroit)
Celita Sanford

RECEIVED by Michigan Court of Appeals 5/11/2012 2:57:29 PM

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

FILE WITH ASSIGNMENT CLERK
PRAECIPE FOR MOTION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

CELITA SANFORD,

Defendant-Appellant.

Court of Appeals No. 307747

Circuit Court No. 11-6124-01

Honorable Lawrence S. Talon

TO THE ASSIGNMENT CLERK: Please place Defendant-Appellant, Celita Sanford's

MOTION FOR NEW TRIAL

On the motion calendar for **Friday June 8, 2012, at 9:00 am**. This motion is to be heard by
JUDGE LAWRENCE S. TALON.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY:



VALERIE R. NEWMAN (P47291)

Assistant Defender

State Appellate Defender Office

Suite 3300 Penobscot

645 Griswold Street

Detroit, MI 48226

(313) 256-9833

Date: May 11, 2012

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STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

Court of Appeals No. 307747

-vs-

CELITA SANFORD

Circuit Court No. 11-6124-01

Defendant-Appellant.

Honorable Lawrence S. Talon

NOTICE OF HEARING

TO: WAYNE COUNTY PROSECUTOR

PLEASE TAKE NOTICE that on Friday June 8, 2012 at 9:00 am, the undersigned will move this Honorable Court to grant the within MOTION FOR NEW TRIAL.

STATE APPELLATE DEFENDER OFFICE

BY:


VALERIE R. NEWMAN (P47291)

Date: May 11, 2012

PROOF OF SERVICE

STATE OF MICHIGAN)
COUNTY OF INGHAM)

Valerie Newman, Attorney at Law, says that on May 11, 2012, she hand delivered one copy of: PRAECIPE, NOTICE OF HEARING/PROOF OF SERVICE, MOTION FOR NEW TRIAL, AFFIDAVIT, and BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL to:

Wayne County Prosecutor Appellate
Division 1100 Frank Murphy Hall of
Justice 1441 St Antoine Detroit, MI 48226



IDEN NO. 25842T-J / Valerie R. Newman

RECEIVED by Michigan Court of Appeals 5/11/2012 2:57:29 PM

STATE OF MICHIGAN
IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

CELITA SANFORD

Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

Court of Appeals No. 307747

Circuit Court No. 11-6124-01

Honorable Lawrence S. Talon

MOTION FOR NEW TRIAL

Defendant CELITA SANFORD, by and through her attorneys, the STATE APPELLATE DEFENDER OFFICE, by Valerie R. Newman and Meredith Krause, and moves this Honorable Court to grant the Motion For New Trial in this case and says in support thereof that:

1. Following a jury trial in this Court, Ms. Sanford was acquitted of second-degree murder. She was convicted of the lesser offense of voluntary manslaughter. She was also found guilty of felony firearm.
2. On November 11, 2011, this Court sentenced Ms. Sanford to 41 months to 15 years imprisonment for the manslaughter conviction consecutive to 2 years for the felony firearm conviction.

3. The State Appellate Defender Office was appointed to perfect an appeal and/or pursue post-conviction remedies on December 5, 2011.

4. Ms. Sanford now files a timely motion for new trial. MCR 7.208(B)(1)

5. There was no question at trial that Ms. Sanford shot and killed her partner with whom she resided, Andre Hairston.

6. Evidence at trial that Mr. Hairston abused Ms. Sanford over the course of their relationship in various ways, including but not limited to physical, mental and emotional abuse, was not contradicted.

7. Trial Counsel pursued two defenses at trial, self defense and accident.

8. The Court refused to instruct the jury on accident stating that the evidence did not support such an instruction. *Trial Transcript 10/12/11 (T) 88-89.*

9. The prosecution, in rebuttal closing remarks told the jury that Ms. Sanford never explained why Mr. Hairston got so angry. *Id. at 98.*

10. The prosecutor also argued in closing that Ms. Sanford could have retreated from the situation by leaving the home. *Id. at 65.*

11. The prosecution argued during closing that other people, including Ms. Sanford's mother testified they did not witness the abuse to imply that the abuse allegations were unfounded. *Id. at 62-63.*

12. Appellate Counsel contacted trial counsel to inquire whether trial counsel had consulted with an expert on domestic violence.

13. Trial Counsel responded that she had not and had not considered consulting with such an expert.

14. One way in which counsel can fail to meet her investigative duty is by failing to consult an expert when an expert's assistance would be critical to the defense. *Harrington v Richter*, __ US __; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011)

15. Battered Woman Syndrome is well recognized not only in the field of psychology, but also in our state's jurisprudence. *People v Wilson*, 194 Mich App 599 (1992); *People v Christel*, 449 Mich 578 (1995).

16. Counsel's failure to investigate the issue of battered woman's syndrome and expert testimony on that topic was deficient performance.

17. Where the prosecution relied heavily on factors that would have been explained by such an expert there is at least a reasonable probability of a different outcome had the expert testified.

18. Appellate Counsel has consulted with a domestic violence expert and attached her report to the Brief as an offer of proof.

19. Further issues and facts may be added as counsel continues her investigation in this case.

WHEREFORE, Defendant respectfully requests that this Honorable Court grant an evidentiary hearing on the issue of ineffective assistance of counsel or alternatively, grant a new trial.

STATE APPELLATE DEFENDER OFFICE

BY: 
VALERIE R. NEWMAN (P47291)

Date: May 11, 2012

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

CELITA SANFORD,

Defendant-Appellant.

Court of Appeals No. 307747

Circuit Court No. 11-6124-01

Honorable Lawrence S. Talon

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL

STATE APPELLATE DEFENDER OFFICE

BY: VALERIE R. NEWMAN (P47291)
Assistant Defender
MEREDITH KRAUSE (P72667)
Special Assistant Defender
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STATEMENT OF FACTS

Celita Sanford was originally charged with open murder and felony firearm for the shooting death of Andre Hairston. *PE 4; 10/3/2011 p. 220.*¹ Following the preliminary examination, the court found that “there’s no evidence of premeditation or deliberation here,” and the proofs only warranted a bind over to circuit court on second-degree murder, manslaughter, and felony firearm. *PE 47; 10/4/11 p. 31.* On October 14, 2011, after a nine-day jury trial before this Court, the jury acquitted Ms. Sanford of second-degree murder and found her guilty of voluntary manslaughter and felony firearm. *10/14/2011 p. 6.*

Ms. Sanford’s defense attorney argued that she shot Andre Hairston in self-defense after years of severe physical abuse and in the midst of a brutal attack. *10/4/11 p. 35; 10/6/11 p. 98; 10/12/11 p. 78.* The prosecution argued that Ms. Sanford was angry with Mr. Hairston when she learned that he was cheating on her, and when she found herself in control of a gun that Mr. Hairston had retrieved during an argument between the two, she shot Mr. Hairston. *10/4/11 p. 30-31.* Although Ms. Sanford testified at length about the physical abuse she suffered at the hands of Mr. Hairston over the years and on the day of the shooting, an expert on domestic violence was not called to testify, nor was there testimony given regarding battered women’s syndrome to support the reasonableness of her actions. *10/4/2011 p. 160-161, 162; 10/6/2011 p. 85, 86, 87, 98, 100-101, 102.*

¹ Ms. Sanford’s preliminary examination took place on June 21, 2011, before the Honorable Nancy M. Blount. The transcript from that hearing is herein cited as “PE”. The trial took place October 3-7 and 11-14, 2011. Transcripts from the trial are hereinafter cited by the respective date and followed by the appropriate page number.

Ms. Sanford and Mr. Hairston dated for over 10 years, and at the time of Mr. Hairston's death, the two lived together at a home on House Street in Detroit, Michigan with Ms. Sanford's 14-year-old daughter, Tyresha. *10/4/11 p. 155; 10/6/11 p. 77, 79.* Ms. Sanford continued her relationship with Mr. Hairston despite his physical abuse against her. *10/6/11 p. 135.* However, after Mr. Hairston physically assaulted one of Ms. Sanford's adult daughters when the daughter attempted to protect Ms. Sanford from abuse, Ms. Sanford told him to move out. *Id.*

When Ms. Sanford returned home on the day of the shooting, Tyresha prepared some food for Ms. Sanford and then went outside. *Id. at 94, 108.* Mr. Hairston attempted to talk to Ms. Sanford, but when she refused to talk, the two began to argue. *Id. at 78, 79, 95.* Ms. Sanford began removing Mr. Hairston's clothing from the closet and went to the kitchen to get a bag to place them in. *Id. at 97, 98.* Ms. Sanford claimed that Mr. Hairston then became physically violent. *Id. at 98.* Mr. Hairston went into their bedroom, retrieved one of the guns that Ms. Sanford knew he kept there, and a shot was fired in Ms. Sanford's direction. *Id. at 98, 129-130.* Mr. Hairston then either dropped or tossed the gun into the bedroom and began to attack Ms. Sanford with his hands. *10/6/11 at 100-101.* He began pulling her hair and strangling her. *Id. at 101.* He threw her and called her names. *Id. at 102.* Mr. Hairston then began to look for his gun again and said, "oh, fuck you, bitch; where the fuck is my gun." *Id.* But Ms. Sanford found the gun first, and when Mr. Hairston charged at her, Ms. Sanford shot him once in the abdomen, killing him. *Id.*

At trial, law enforcement testified that Ms. Sanford previously stated that the gun was accidentally discharged twice, first when it was dropped by Mr. Hairston and again

when it was picked up by Ms. Sanford. *10/4/2011 p. 46-47*. Additional testimony from the police seemed to downplay the severity of the moment. According to Ms. Sanford's statement to police, when Mr. Hairston "came out with a gun [] she said, quit playing with the gun." *Id. at 78-79*. But Ms. Sanford denied the accuracy of this statement, and both Ms. Sanford and officers agreed that Ms. Sanford was extremely distraught when making her statement. *10/4/2011 p. 45, 48, 83, 108; 10/6/2011 p. 108*.

Mr. Hairston had a history of violence. Although she never told her mother or filed a report with police, Ms. Sanford stated that she had previously been physically assaulted by Mr. Hairston. *10/4/2011 p. 160-161, 162; 10/6/11 p. 85, 87*. Ms. Sanford testified that Mr. Hairston had also pushed her older daughter, Dartesha.. *10/6/11 p. 83*. Further, Mr. Hairston had also assaulted his ex girlfriend, Viki Pullen. *10/6/11 p. 66*.

At the request of appellate defense counsel, on April 24, 2012, Holly Rosen, an expert in domestic violence, interviewed Ms. Sanford. (Appendix A, Rosen Report). It is Ms. Rosen's opinion that "Ms. Sanford is a victim of domestic violence, suffering years of severe abuse at the hands of Mr. Hairston." *Id.* It was also Ms. Rosen's opinion, "that *any reasonable person* exposed to the same threats and violence would have responded in the same manner" as Ms. Sanford. *Id.*

I. DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN SHE FAILED TO ENGAGE IN REASONABLE INVESTIGATION AND CONSULT WITH AN EXPERT ON THE EFFECTS OF BATTERING (COMMONLY REFERRED TO AS BATTERED WOMAN'S SYNDROME) WHEN THE CRUX OF THE DEFENSE WAS PREMISED ON THE REASONABLENESS OF MS SANFORD'S REACTIONS IN THE CONTEXT OF BEING A VICTIM OF DOMESTIC ABUSE.

Issue Preservation

At trial, defense counsel failed to call an expert on domestic violence despite ample evidence that Ms. Sanford was a longtime victim of domestic abuse and the long recognized validity of expert testimony on that topic. An evidentiary hearing is necessary to determine whether defense counsel was ineffective such that had defense counsel consulted with and called an expert on the effects of battering there is a reasonable probability of a different result. *People v Ginther*, 390 Mich 436, 442-43; 212 NW2d 922, 924 (1973).

Legal Discussion

The “assistance of counsel” clause in the United States and Michigan Constitutions requires that counsel be adequate and effective. US Const, Ams VI, XIV; Const 1963, art 1, §20; *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). In *Strickland v Washington*, the United States Supreme Court delineated a two-part test—counsel’s deficient performance and the resulting prejudice to the defense—to evaluate claims of ineffective assistance of counsel. 466 US at 687; *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994) (adopting the *Strickland* test for ineffective assistance under

the Michigan Constitution). The first prong of the Strickland test requires a court to evaluate the reasonableness of counsel's performance. *Strickland*, 466 US at 690. The second prong demands that the defendant "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

To demonstrate ineffective assistance of counsel, a defendant must show that his attorney's performance fell below an objective standard of reasonableness under prevailing professional norms and this performance prejudiced him. *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011).

Trial counsel's performance fell below that of prevailing professional norms. Those norms place on counsel "a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 US at 691; see *People v Grant*, 470 Mich 477, 485 (2004); see also ABA Standards for Criminal Justice, Defense Function, Part IV, Investigation and Preparation, 4-4.1(a). "This duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence." *Towns v Smith*, 395 F3d 251, 258 (CA 6, 2005). Though counsel's strategic decisions are entitled to deference, counsel's strategy must be based on reasonable investigative decisions. *Strickland*, 466 US at 691; *Grant*, 470 Mich at 486.

One way in which counsel can fail to meet his investigative duty is by failing to consult an expert when an expert's assistance would be critical to the defense. *Harrington v Richter*, ___ US ___; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011) ("Criminal cases will arise where the only reasonable and available defense strategy requires

consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both”); *see, e.g., Dando v Yukins*, 461 F3d 791, 798-99 (CA 6, 2006) (counsel performed deficiently by not exploring battered-women’s-syndrome defense to robbery charges).

Thus, it has been held that counsel has performed deficiently by failing to consult a pathologist to determine how best to rebut prosecution expert testimony that the defendant’s actions caused death. *Couch v Booker*, 632 F3d 241, 246-47 (CA 6, 2011); *Conwell v Woodford*, 312 Fed Appx 58, 59-60 (CA 9, 2009); *Weddell v Weber*, 290 F Supp 2d 1011, 1021-24 (SD, 2003).

Under MRE 702, if specialized knowledge will assist a trier of fact to understand evidence, a witness qualified as an expert may testify in the form of an opinion or otherwise if the testimony is based on sufficient data, is the product of reliable principles and the expert has applied the principles reliably to the facts of the case:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

MRE 702 is patterned after FRE 702 and incorporates the requirement of *Daubert, et al v Merrell Dow Pharmaceuticals, Inc*, 509 US 579, 592 (1993), that the proffered evidence “will assist the trier of fact to understand or determine a fact in issue.”

Battered Woman Syndrome is well recognized not only in the field of psychology, but also in our state’s jurisprudence. *People v Wilson*, 194 Mich App 599 (1992); *People v Christel*, 449 Mich 578 (1995).

In *Wilson*, the defendant was charged with open murder and wanted to present a claim of self-defense at trial based on battered spouse syndrome. *Wilson, supra* at 602. The Court noted that self-defense is relevant when one “honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *Id.* citing *People v Heflin*, 434 Mich 482 (1990). The defendant in *Wilson* necessarily implied that her actions (shooting her husband while he slept after enduring 48 hours of abuse) were intentional, but that because of BWS the question at trial was whether she reasonably believed that her life was in danger. *Id.* The defense also argued that BWS evidence was necessary to rebut the prosecution’s claim that Wilson could have left her husband. *Id.* at 602-603.

The *Wilson* Court included a description of the syndrome from another Court:

“The “battered woman syndrome” generally refers to common characteristics appearing in women who are physically and psychologically abused by their mates. The typical pattern of violence consists of three recurrent phases of abuse: a tension-building stage, characterized by minor abuse; an acute battering stage, characterized by uncontrollable explosions of brutal violence; and a loving respite stage, characterized by calm and loving behavior of the batterer, coupled with pleas for forgiveness. The continued cycle of violence and contrition results in the battered woman living in a state of learned helplessness. Because she is financially dependent on the batterer, she may feel partly responsible for the batterer’s violence, she may believe that her children need a father, or fear reprisal if she leaves. The battered woman lives with constant fear, coupled with a perceived inability to escape. Eventually, she comes to believe that her only options are enduring the abuse, striking back, or committing suicide. [*Tourlakis v Morris*, 738 F Supp 1128, 1134 (SD Ohio, 1990), citing *Fennell v Goolsby*, 630 F Supp 451, 456 (ED Pa, 1985).] *Id.* at 603.

This Court in *Wilson* observed that “the average juror” is not “familiar with the complex behavior of a victim” of BWS. *Id.* Further, the Court observed that “the majority of jurisdictions favor the admissibility of expert testimony” as to BWS. *Id.*

(internal citations omitted). Expert testimony can be helpful to educate jurors about the syndrome:

“Testimony regarding the BSS has been used in other jurisdictions to explain how a battered spouse reacts to the batterer, to explain the reasonableness of the battered spouse's perception that danger or great bodily harm is imminent, and also to rebut the prosecution's inference that the defendant could have left rather than kill the spouse.” *Id.* at 604 (Internal citations omitted).

The *Wilson* Court concluded that expert testimony about BWS in cases similar to *Wilson* would provide the trier of fact “a better understanding of the evidence or assist in determining a fact in issue.” *Id.* at 604 quoting *People v Beckley*, 434 Mich 691, 711 (1990).

In *Christel*, the issue concerned the admissibility of the evidence relating to evaluating the credibility of a witness in a criminal sexual conduct case (not to exculpate the accused). *Christel, supra* at 589. In that context, the Michigan Supreme Court held that “expert 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.” *Id.* at 579. Without specifically endorsing the defense, the Michigan Supreme Court limited the admissibility of testimony to specific behavior without reference to an opinion about whether an accused is actually suffering from that syndrome. *Id.* at 591. The Supreme Court did recognize that battered woman syndrome is a recognized discipline. *Id.* at 592.

As set forth in *Wilson*, the testimony in this case was necessary to explain Ms. Sanford’s reaction to Mr. Hairston striking her, the reasonableness of her perception that danger or great bodily harm was imminent, and to rebut the prosecutor’s assertion that

Ms. Sanford could have just walked away – rather than picking up the gun and shooting it. *Wilson, supra* at 604. Battered woman's syndrome is not understood by the average juror. *Id.* at 603. Expert testimony is necessary "when a witness' actions or responses are incomprehensible to average people." *Dobek, supra* at 98 citing *Christel, supra* at 592. Here, Ms. Sanford's actions may not have been understood by the average juror, and the absence of a thorough explanation of battered woman's syndrome at trial deprived Ms. Sanford of her claim of self-defense.

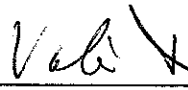
Finally, the error is not harmless where the jury *did* apparently believe that there was some provocation by Mr. Hairston during the argument by virtue of the conviction of the lesser included offense of voluntary manslaughter (to the original charge of second-degree murder). Had the jury been informed about the cycle of violence and the reactions thereto, it is more probable than not that they would have fully acquitted Ms. Sanford. The trial attorney's failure to present the full scope of evidence and testimony to explain the claim of self-defense was more probably than not outcome determinative on these facts. *People v Lukity*, 460 Mich 484 (1999).

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant Celita Sanford asks that this Honorable Court either grant her a new trial or conduct an evidentiary hearing.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY: 

VALERIE NEWMAN P 47291
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Detroit, Michigan 48226
(313) 256-9833
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Dated: May 11, 2012