

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEODORE P. ADAMS,

Defendant-Appellant.

UNPUBLISHED

April 9, 1999

No. 205938

Oakland Circuit Court

LC No. 97-151126 FC

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), and of domestic violence, MCL 750.81(2); MSA 28.276(2). He was sentenced to two to twenty years' imprisonment for the criminal sexual conduct conviction and to thirty-three days' imprisonment for the domestic violence conviction. He appeals as of right, and we affirm.

The sole issue to be resolved on appeal is the admissibility of expert testimony regarding the behavior patterns of victims of domestic violence¹. This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Christel*, 449 Mich 578, 587; 537 NW2d 194 (1995); *People v Daoust*, 228 Mich App 1, 10; 577 NW2d 179 (1998). Before admitting expert testimony, a trial court must determine that the evidence is from a recognized discipline, is relevant and helpful to the trier of fact, and is presented by a witness qualified by knowledge, skill, experience, training, or education. MRE 702; *People v Beckley*, 434 Mich 691, 711; 456 NW2d 391 (1990). Defendant in this case does not challenge that the expert evidence was from a recognized discipline or that the expert witness was qualified. Defendant contends, however, that the evidence was not relevant or helpful under the facts of the case, and was improperly admitted where there was no evidence to support the testimony. We agree with defendant that the expert testimony was not relevant and was not properly admitted.

In *Christel*, *supra* at 579-580, the Michigan Supreme Court ruled that expert testimony regarding the battered woman syndrome may be admissible to assist the jury in evaluating a complainant's credibility, but only when it is relevant and helpful and the expert witness is properly

qualified. The expert may explain the generalities or characteristics of the syndrome to the extent necessary to describe the "uniqueness of a specific behavior brought out at trial." *Id.* at 591. The expert may not render an opinion that the victim is a battered woman, that the defendant is a batterer, that the defendant is guilty, or that the victim is truthful. *Id.* The expert testimony regarding the syndrome is helpful and relevant when the victim's "actions or responses are incomprehensible to average people", such as where the victim tries to hide or minimize the effect of abuse, delays reporting abuse, or denies *or recants* abuse, *id.* at 592 (emphasis added), and where there is a factual premise allowing a reasonable jury to infer that the complainant could be a battered woman as defined by Dr. Lenore Walker. *Id.* at 592-593, n 27².

Walker defines a battered woman as follows:

a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abuse relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman. [*Id.* at 588, citing *The Battered Woman* (New York: Harper & Row, 1979), p XV.]

In *Christel*, evidence was presented that would have allowed a reasonable jury to conclude that the victim was a battered woman pursuant to Dr. Walker's definition. However, the Court held that the evidence was improperly admitted because other necessary premises were missing. *Id.* at 597-598. Specifically, the victim was no longer in the relationship at the time of the complained of conduct, she did not deny abuse, she did not attempt to hide or deny the complained of conduct, she did not delay in reporting, and she did not recant that the assault occurred. *Id.* at 597. It was therefore questionable whether the victim's actions were incomprehensible to the jury so as to warrant admission of expert testimony. *Id.* Accordingly, where the necessary factual basis for admission of the testimony was lacking, the Court found that the trial court had abused its discretion in admitting the testimony. *Id.* at 598.

In this case, the victim recanted her accusations of abuse. Thus, one of the necessary premises was present. There was behavior, the recanting of the alleged assault, which may have been incomprehensible to the jury. However, there was no evidence that would allow a reasonable jury to infer that the victim could be a battered woman. The evidence demonstrated that the complained of assault was the only abuse between the victim and defendant; there was no history or pattern of violence. Thus, the evidence could not support an inference that the victim was a battered woman as defined by Dr. Walker. Because this necessary factual basis for the admission of the testimony was missing, we believe that the trial court abused its discretion in admitting the evidence. Expert testimony could not have helped the jury understand that the victim may have recanted her accusations consistent with the behavior of a battered woman because there was no evidence that she was, in fact, a battered woman. In other words, while the testimony was interesting and instructive with regard to patterns of

domestic violence, it had no applicability or relevance to this case where there was no indication that there was a pattern of violence.

Although we find that the trial court abused its discretion in admitting the expert testimony, we find that the error was harmless and does not warrant reversal of defendant's convictions. MCR 2.613(A); MCL 769.26; MSA 28.1096. An error is harmless if it is highly probable that, in light of the strength and weight of the untainted evidence, the tainted evidence did not contribute to the verdict. *People v Gearn*s, 457 Mich 170, 203-204 (Brickley, J.), 218-220 (Cavanagh, J.); 577 NW2d 422 (1998); *People v Bone*, 230 Mich App 699, 703; 584 NW2d 760 (1998). Like the Court in *Christel*, *supra* at 598-600, we find the error harmless in this case because of the strong physical evidence that a sexual assault took place and because of the limited nature of the expert's testimony.

The expert testified generally about cycles of violence and common threads between victims of domestic violence. She explained typical responses, reactions, and methods of coping with domestic violence. Although she testified that victims commonly recant allegations of abuse, she never opined that the victim's behavior in this case was consistent with the behavior of victims in general, and she did not testify that plaintiff was a victim of a pattern of abuse. In fact, she admitted that she never interviewed or treated the victim, or studied the case. She did not testify as to the victim's credibility.

The physical evidence of abuse was substantial. The nurse who treated the victim at the hospital testified that the victim was tearful and crying, and was embarrassed and in pain. The nurse observed a cigarette burn on the victim's lip; fresh bruises and scratches on her breasts; new vaginal abrasions, which were very red and sore; a fresh rectal fissure, which was still bleeding, and scratch marks under her pubic hair. In addition, the victim's jeans were saturated with blood. The treating physician testified in a similar fashion with regard to the injuries. He also testified that all of the victim's injuries would not normally be caused by a nonviolent or nonforceful confrontation. Both the nurse and the physician testified that the victim reported that she had been sexually assaulted by her husband. The medical documentation was consistent with the testimony of the nurse and physician. Police officers involved in the case testified that the victim was extremely upset, and was nervous and crying at the scene. One officer testified that ,when questioned, the victim reported that her husband had raped her.

It is highly probable that the conviction was based on the strong testimony of the nurse, physician and officers, which supported that defendant had engaged in nonconsensual and forceful sexual conduct, rather than on the limited expert testimony. Indeed, we are not persuaded that the expert's general testimony was sufficient to tip the scale in favor of conviction. Because we do not conclude that the error in the admission of the expert testimony affected the judgment, we find the error was harmless.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Kelly
/s/ Harold Hood

¹ Plaintiff emphasizes in its brief on appeal that the expert was qualified as an expert in the behavior patterns of victims of domestic violence, and not as an expert in the battered woman syndrome. The distinction is without difference in this case, and does not affect our ultimate analysis. This is not a case where an adult child is accused of battering an elderly parent or a parent is accused of battering a child. Under those circumstances, use of the term "battered woman syndrome" would not be entirely accurate. This, however, is a case where a man, the husband is accused of battering a woman, his wife. A pattern of abuse between husband and wife is considered the battered woman syndrome. *Christel, supra* at 587-588.

² In footnote 27, the Court, when citing examples of victim responses or actions that may be incomprehensible to average people and may require expert testimony to explain, stated:

Implicit in all these situations is the factual premise allowing a reasonable jury to infer that the complainant could be a battered woman within the meaning of Dr. Walker's definition.