STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JANNISS L. VARNER,

Defendant-Appellant.

UNPUBLISHED
April 23, 2002

No. 224865
Wayne Circuit Court
Criminal Division
LC No. 98-011265

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from a jury trial conviction of assault with intent to commit murder, MCL 750.83, for arranging the shooting of her boyfriend, Alvin Knight. The trial court sentenced defendant to a term of thirteen to twenty years' imprisonment. We affirm.

Although Alvin Knight survived the charged shooting, he was subsequently shot to death in the parking lot of his apartment building. The police discovered defendant's responsibility for this crime through her journals, which the police seized from a closet shelf in Knight's apartment when the police searched the apartment, without a warrant, following Knight's death. Defendant argues on appeal that the trial court erred in denying her motion to suppress this evidence.

Although defendant, at one time, lived with Knight, the evidence showed that she had moved to her adopted mother's house and had not lived at the apartment for at least three weeks before the killing. Defendant has the burden of proving that she had an expectation of privacy in the object of the search and seizure and that her expectation is one that society recognizes as reasonable. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). Defendant no longer had valid keys to the apartment and none of her clothing or personal belongings were at the apartment with the exception of the disputed documents and journals. She had not lived in the apartment for several weeks prior to Knight's death, and she never returned to the apartment after he was killed. Therefore, the trial court properly denied defendant's motion to suppress.

We also agree with the trial court that, in light of all relevant facts, the journals would have inevitably been discovered. The inevitable discovery exception permits admission of tainted evidence when the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been revealed in the absence of police misconduct. *People v Stevens, (After Remand)*, 460 Mich 626, 637; 597 NW2d 53 (1999). Here, prior to his murder, Knight told his attorney, who went with Knight's family to clean out the

apartment, that he was afraid for his life and afraid of the Varners. Knight told his attorney that, if anything happened to him, he wanted his sister to have custody of his son. Defendant acknowledged that she never returned to the apartment to retrieve any belongings. The apartment was cleaned out by Knight's attorney and Knight's sister. As the trial court noted, had the police not searched Knight's apartment immediately after his murder, defendant's journals "absolutely without question" would have been discovered and turned over to the police.[1] Accordingly, for the reasons stated, the trial court did not err in denying defendant's motion to suppress defendant's journals.

Defendant also argues that the trial court erred in denying her motion to present expert testimony on battered woman syndrome, and in refusing to instruct on self-defense and mitigating circumstances. 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. *People v Christel*, 449 Mich 578, 579-580; 537 NW2d 194 (1995). Self-defense in Michigan requires a finding that the defendant's actions were justified because she honestly and reasonably believed that her life was in imminent danger or that there is a threat of serious bodily harm. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990). A person may use deadly force in self-defense to repel a criminal sexual assault when confronted with force that the person reasonably believes could result in imminent death or serious bodily harm, but self-defense is not available to repel a potential force. *Id*. We agree that the rationale behind self-defense or mitigating circumstances does not apply to a gun-for-hire situation such as occurred here. The trial court did not err in finding that a self-defense instruction was not available in a hired-gun situation, even if defendant presented credible evidence that she was a victim of the battered woman syndrome. See *People v Yaklich*, 833 P2d 758 (Col App, 1992).

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad

[1] We also reject defendant's suggestion that the body of law regarding prayer and penitential privilege, or the statutes regarding privileged communications with clergy, MCL 600.2156 and MCL 767.5a, apply to private writings.