

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CAROL ETCHIE,

Defendant-Appellant.

UNPUBLISHED
February 21, 2012

No. 301497
Wayne Circuit Court
LC No. 10-001736-FC

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right her jury-trial convictions of assault with intent to commit murder (AWIM), MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. She was sentenced to 85 to 300 months in prison for the AWIM conviction and two years in prison for the felony-firearm conviction. We affirm.

Defendant argues only that she was deprived of her constitutional right to the effective assistance of counsel. See *People v Pubrat*, 451 Mich 589, 594; 548 NW2d 595 (1996). This right is violated when trial counsel's performance fell below an objective level of reasonableness, *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000), and the defendant was so prejudiced that she was denied a fair trial, *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Defendant argues that her attorney erred by failing to present evidence of her posttraumatic stress disorder, diagnosed during an independent evaluation of her mental state and competency to stand trial. Defendant relied on self-defense at trial and argues on appeal that evidence of her posttraumatic stress disorder and past experiences would have supported her claim that she reacted reasonably when she shot at the victim. The right to counsel includes the right to have all substantial defenses investigated, prepared, and presented. *People v Chapo*, 283 Mich App 360, 371; 770 NW2d 68 (2009).

Self-defense, as a legal defense to a charge of murder or assault with intent to murder, requires evidence that the defendant honestly and reasonably believed that her life was in imminent danger or that there was a threat of great bodily harm. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). This belief must be based on the circumstances as they appeared to the defendant at the time. See *People v Riddle*, 467 Mich 116, 126-127; 649 NW2d 30 (2002).

Michigan courts have not decided directly whether a defendant's unique psychological characteristics are relevant to a claim of self-defense. It is true that evidence of battered-woman syndrome is relevant to a defendant's argument that she acted in self-defense. *People v Wilson*, 194 Mich App 599, 602-603; 487 NW2d 822 (1992). But this is because evidence of battered-woman syndrome helps to explain the specific circumstances under which the defendant acted, including her prior relationship with the victim, rather than her psychological condition in general. In *People v Orlewicz*, ___ Mich App ___; ___ NW2d ___ (2011) (issued June 14, 2011; Docket No. 285672), slip op at 3, we suggested that "psychological idiosyncrasies may, at least in theory, be relevant to the reasonableness of a defendant's belief that he was in danger." However, the defendant's belief must still be reasonable under the circumstances and not the product of a mental disorder. See *Riddle*, 467 Mich at 126-127; *Heflin*, 434 Mich at 503 n 16. Similarly, diminished capacity less than legal insanity is not a defense, *People v Carpenter*, 464 Mich 223, 237, 239; 627 NW2d 276 (2001), and "special traits of the individual defendant" such as "mental disturbance[s]" are not relevant in determining whether there was sufficient provocation to reduce murder to voluntary manslaughter, *People v Sullivan*, 231 Mich App 510, 519-520; 586 NW2d 578 (1998).

In the present case, it is unlikely that the court or jury would have found the evidence of defendant's posttraumatic stress disorder relevant to her self-defense claim. Further, such evidence was more likely to hurt defendant's credibility if admitted because it would have tended to explain why defendant might have perceived danger where there was none. Indeed, if evidence of defendant's posttraumatic stress disorder had been admitted, the jury may have been less likely to believe defendant's testimony that the victim charged at her, attempted to punch her, and would have hurt her had she not shot first.

On the facts before us, we cannot conclude that defense counsel's decision not to present evidence of defendant's past trauma and posttraumatic stress disorder was anything other than sound trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Counsel's performance in this regard did not fall below an objective level of reasonableness. *Toma*, 462 Mich at 302. Nor would the evidence have changed the outcome of defendant's trial. See *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). Defendant was not denied the effective assistance of counsel.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Jane E. Markey