

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEVEN SHAYA,

Defendant-Appellee.

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UNPUBLISHED

May 18, 2004

No. 245877

Wayne Circuit Court

LC No. 01-245877

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

TALBOT, J., Dissenting.

This Court's peremptory reversal in this case was vacated by order of our Supreme Court on the apparent basis that the trial court withheld a supplemental ruling from the parties and this Court. For some inexplicable reason, the Supreme Court concluded that it would best serve "administrative efficiency" to have this Court evaluate the lower court's previously secret ruling. I would again reverse because neither the trial court nor defendant have provided any worthwhile reason for continued proceedings in this case and an evidentiary hearing would be a further waste of judicial resources.

The letter at issue here included discussion of a "Certificate of Acceptance." The prosecutor argued at trial that the only copy of the purported certificate was "a faxed copy," and that there was no original certificate or supporting documentation in the City's files. The prosecutor told the jury that there was no proof that defendant forged the certificate but that it was the People's theory that the certificate was "bogus" because of the anomaly in the official records. The prosecutor alternatively argued to the jury that any question regarding the certificate was irrelevant to this case because "the bottom line" was that defendant claimed to have completed a job, and there was evidence that he had not. As the prosecutor later noted at the hearing on defendant's motion for new trial, "any contractor in his right mind, so to speak, would know that the job was not done." Indeed, the majority acknowledges that the letter, which was written to defendant by the building inspector, was also irrelevant to defendant's theory at trial that he was not responsible for the fraud.

The trial court's ex parte inference that the prosecutor withheld the letter, which was addressed to defendant himself, is entirely unsupported by the record. Defense counsel was present when the prosecutor informed the court that both counsel had copies of the letter in their possession. Further, the basis for defendant's motion for new trial because of ineffective assistance was that his attorney had the letter and did not use it to his advantage. While

defendant argues that the letter was evidence that he did not obtain a Certificate of Acceptance by false pretenses, the letter also contains language suggesting that defendant was not in compliance and was in danger of having his license suspended. Counsel's decision not to introduce the letter at trial was clearly a matter of trial strategy that should not be second-guessed by this Court. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). The fact that counsel's strategy may not have worked does not constitute ineffective assistance. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Remand for additional proceedings on either the question of ineffective assistance of counsel or prosecutorial misconduct would be a further waste of time, and I would reverse.

/s/ Michael J. Talbot