

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARNDOLA CHARLES LEWIS,

Defendant-Appellant.

UNPUBLISHED
December 3, 2019

No. 342461
Wayne Circuit Court
LC No. 17-001662-01-FC

Before: CAMERON, P.J., and CAVANAGH and SHAPIRO, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I dissent from the majority only as to the issue of ineffective assistance of counsel. The autopsy report and the testimony of Dr. Schmidt provided the primary proof rebutting the claim of self-defense. These were inadmissible pursuant to the Confrontation Clause absent testimony from the medical examiner who conducted the autopsy. See *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed2d 177 (2004); *People v Lewis*, 490 Mich 921 (2011). Despite their inadmissibility, defense counsel failed to object. My colleagues suggest a strategic basis for the lack of objection but we have no way of knowing at this point whether counsel’s decision actually rested on such strategy. Moreover, the suggested strategic basis carries little weight in comparison to the possibility of excluding the autopsy and testimony altogether. I would therefore remand to the trial court for a *Ginther*¹ hearing in order to determine what, if any, strategy actually lay behind the decision not to object and whether the prosecution had means to introduce this evidence without violating the Confrontation Clause. In all other respects, I concur.

/s/ Douglas B. Shapiro

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).