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STATE OF WASHINGTON
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NO. 90553-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

DARLENE GREEN,

Respondent.

FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Jay B. Roof, Judge

ANSWER TO STATE'S PETITION FOR REVIEW

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 ORIGINAL

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A. STATEMENT OF THE CASE¹

William Green, Darlene Green's husband of 57 years, died of a gunshot to his forehead on June 18, 2010.² Mr. Green suffered from dementia. Mrs. Green was his sole caregiver in their home. RP 687-91.

The Greens had a traditional marriage. Mr. Green became volatile and violent as he aged and sank into dementia. It had been "real bad for two or three years." Mrs. Green described he had been hitting and biting her. He dragged her around by her hair.³ She said his behavior had gotten noticeably worse over the previous six months. CP 364 [Subno. 110 at 0009]; RP 701-02.

The Greens had argued the night before the shooting. Mrs. Green went to bed to stop the arguing. In the morning, Mr. Green bothered Mrs. Green to get up. When she finally got up, Mr.

¹ The following is a synopsis of the facts. Please see Brief of Appellant at 3-21 for a more complete version with all citations to the record.

² Not 2004, as the State reports. Petition for Review at 3.

³ Mrs. Green weighed 110 pounds and was less than 5' tall. Mr. Green was 5'6-1/2" tall; he weighed 136 pounds. RP 350-51.

Green was still fixated on the topic of the previous night's argument: that he had sex with his sister when they were young. Mrs. Green didn't want to argue. She lay back in her recliner to watch television. RP 457-67; CP 367 [Subno. 110 at 00015]. Mr. Green said he was going into his bedroom to get the gun. RP 447-49, 474-77.

On the day of the shooting, Mrs. Green told her sons and the police Mr. Green came out of his bedroom with the gun, manually cocked it and pulled the trigger back.⁴ He held it to his head and leaned over her and told her to shoot him. She reached up and pulled the trigger. RP 447-49, 474-77.

After being booked into the jail, Mrs. Green was taken to the hospital for blood pressure problems. RP 729-30. After being returned to the jail, Mrs. Green did not recall telling her sons or the police that she shot her husband. RP 709-25.

At trial, Mrs. Green testified she did not shoot her husband. When he came out with the gun and asked her to shoot him, she said, "No,

⁴ Mrs. Green's hands were very arthritic. CP 249-50 (Ex. 90).

absolutely not. Go put the gun away." She thought he was putting it away. When he came back, she was reclined in the chair with the footrest up. He said, "I only had sex with [his sister] once." He said, "Look up here now." When she looked, she saw a big ball of white stars, then he fell onto her legs. When she lowered the footrest, he rolled off her onto the floor. She never put her hands on the gun. RP 701-09, 720-24.

The forensic evidence confirmed Mrs. Green's description that she was lying in her recliner in their living room when the gun discharged. Her husband was standing next to the recliner, leaning over her. All experts agreed he held his right hand on the gun, around the revolver. The gunshot was a contact wound; the muzzle was pressed against his forehead between his eyes.

Two forensic pathologists agreed the contact gunshot would cause initial "blowback," a fine mist of blood spatter, then almost immediately a heavy flow from the entry wound. Both Mr. Green's hands bore both kinds of blood spatter from having been very close to the wound. RP 340-43, 354-55, 535-36, 628-31. The fine mist of blood backspatter

does not travel far; it dries easily and is affected by gravity. RP 537. These experts agreed the gunshot could have been self-inflicted or inflicted by someone else. RP 362-63, 633-34, 648.

Mrs. Green's long-sleeved robe had blood on the front from the lap down, where Mr. Green fell onto her. There was no blood on her torso, face, or sleeves. RP 287-88; CP 157-60. Microscopic examination showed no blood spatter on the torso or cuffs, indicating her cuffs were not close to the gun when it fired. RP 584-89; CP 155-62.

Dr. Roland Maiuro diagnosed Mrs. Green with battered woman syndrome/PTSD.⁵ Dr. Maiuro would have testified that PTSD, battering and its effects contribute to (1) a person experiencing a dissociative state, and (2) self-blame that becomes a mindset within the context of the battering relationship. He concluded Mrs. Green's history of abuse led to a mindset of accepting blame and guilt when she was not in fact blameworthy or guilty; and her evaluation was consistent with experiencing a dissociative state when her husband shot himself

⁵ His complete report, CP 77-85, is attached as Appendix B to this Answer.

and fell dead onto her lap. She could observe the situation as if from outside of her own body, contributing to her tendency to blame herself for anything bad that her husband did to her.

The trial court excluded this expert testimony. The Court of Appeals reversed.

B. LEGAL AUTHORITY AND ARGUMENT

1. THE COURT OF APPEALS OPINION PROPERLY APPLIES THIS COURT'S PRECEDENTS.

The Court of Appeals applied this Court's recent controlling opinion on the admissibility of expert testimony under ER 702 and *Frye*.⁶ *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 600, 260 P.3d 857 (2011); Slip Op. at 11-16.

The State offers no argument why this authority does not control this case. Petition for Review at 9 (citing *Anderson* only as quoted within the dissenting opinion, which also relied on *Anderson*; not otherwise citing or distinguishing it). Yet *Anderson* is at the core of the State's disagreement with the Court of Appeals opinion.

In *Anderson*, this Court held that *Frye* only applies to novel scientific theories, not to

⁶ *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923).

deductions derived from or based on generally accepted scientific theory; and not to a novel legal application based on generally accepted science.

In *Anderson*, a plaintiff offered expert testimony that in utero exposure to toxic solvents could have caused the plaintiff's birth defects. The defense moved to exclude the expert, claiming the scientific community had not generally accepted the causal link between the specific solvent to which the plaintiff was exposed and the specific birth defect he suffered.

This Court reversed.

The *Frye* test is implicated only where the opinion offered is based upon novel science. . . . It applies where either the theory and technique or the method of arriving at the data relied upon is so novel that it is not generally accepted by the relevant scientific community. There is nothing novel about the theory that organic solvent exposure may cause brain damage and encephalopathy. . . . Nor does it appear that there is anything novel about the methods of the study about which Dr. Khattak wrote. . . . *Frye* does not require that the specific conclusions drawn from the scientific data upon which Dr. Khattak relied be generally accepted in the scientific community. *Frye* does not require every deduction drawn from generally accepted theories to be generally accepted. . . . Because Dr. Khattak's testimony was not based upon

novel science, *Frye* was not implicated in this case.

Anderson, 172 Wn.2d at 611 (emphasis added).

Thus this Court did not find a *Frye* analysis necessary in *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988), although the battered person syndrome was being used not for self-defense as previously approved in *State v. Allery*, 101 Wn.2d 591, 682 P.2d 312 (1984), but to support the credibility of the State's witness.

This court has already determined in *Allery* that Klingbeil's methodology in the diagnosis and treatment of battered women has received general acceptance in the community of mental health experts. Researchers studying battered women agree that they share the personality traits characteristic of women suffering from post-traumatic stress disorder described by Klingbeil in her testimony.

Ciskie, 110 Wn.2d at 271 (citations to literature omitted).

The Court of Appeals here properly applied *Anderson*. There is nothing novel about psychological evaluations. There is nothing novel about diagnoses of post-traumatic stress disorder and battered person syndrome.

Contrary to the state's argument and the trial court's finding that PTSD does not include

dissociative states, the Court of Appeals relied on case precedent and supporting literature to find it does. *State v. Bottrell*, 103 Wn. App. 706, 14 P.3d 164 (2000); Slip Op. at 14-15. The State offers no response to that authority.

2. THE COURT OF APPEALS OPINION IS CONSISTENT WITH OTHER CASES.

The State acknowledges testimony such as Dr. Maiuro's is admissible in a variety of legal applications.

It apparently approves of the application in *Ciskie, supra*, 110 Wn.2d at 278-79, where the State presented the evidence in a rape prosecution to explain why the jury could believe the complaining witness's testimony when her behavior seemed inconsistent with multiple violent rapes.

The State does not cite *State v. Williamson*, 100 Wn. App. 248, 252, 996 P.2d 1097 (2000). The complaining witness recanted her accusations of kidnapping and attempted murder at trial. The State presented expert testimony of battered woman syndrome and "the propensity for battered women to recant." Although the defendant challenged the admission of this testimony on appeal, the Court of Appeals affirmed. *Id.* at 250.

The State accepts battered person syndrome evidence in cases of self-defense. *State v. Janes*, 121 Wn.2d 220, 236, 850 P.2d 495 (1993); *State v. Allery, supra*, 101 Wn.2d at 597.

And it cites *Bottrell, supra*, in which the expert testimony supported a theory of diminished capacity.

The State then claims it is aware of no case "where expert testimony has been admitted to show that a battered victim or defendant would falsely admit to killing their abuser or otherwise make a false confession." Petition for Review at 12. This claim disregards the authority cited in the Brief of Appellant at 33-43; and specifically *State v. Beagle*, 813 P.2d 699 (Alaska, 1991), a case virtually indistinguishable from Mrs. Green's.

The State claims this Court should review this case, not because scientific evidence supported the trial court's decision -- indeed, the State did not offer a contradicting expert or cite any literature rejecting his analysis and opinion⁷ -- but because trial counsel did not provide more scientific

⁷ See Petition at 13 n.6, citing no authority or literature.

literature to the trial judge to support the psychological evidence. Petition for Review at 12-13. Yet this Court conducts its "own survey of available literature and other cases" to examine acceptance of scientific theories. *State v. Riker*, 123 Wn.2d 351, 362, 869 P.2d 43 (1994).

The Court of Appeals properly did not base its opinion on trial counsel's unfamiliarity with the scientific literature -- especially when the case law itself relies on the literature. Slip Op. at 14-15 (citing *Bottrell* and supporting literature). See also App. Br. at 48-50 & nn. 17, 18.

The State claims the Court of Appeals opinion conflicts with *State v. Riker*, *supra*. Petition at 13-16. In *Riker*, the defendant presented a defense of duress to charges of selling cocaine. She claimed her past history of abusive relationships with other people made her reasonably fear Mr. Burke, to whom she sold cocaine over a one-month period, would cause "immediate death or immediate grievous bodily injury"⁸ to her or her sister.

The trial court excluded expert testimony that Ms. Riker was a battered woman, although it

⁸ As duress requires, RCW 9A.16.060(1).

permitted her to testify to her own history of abuse. But Ms. Riker had no intimate relationship with the man she testified she feared. The court excluded the expert because the expert

admitted that the use of the battered woman syndrome in a case where there was not an intimate relationship between the batterer and the victim was novel, and that she could not cite any studies applicable to this situation.

Riker, 123 Wn.2d at 357.

[T]here was an inadequate foundation for establishing the probative value of the battered person syndrome outside of a battering relationship. *Riker* and *Burke* were passing acquaintances whose limited contacts occurred mainly by telephone and over only a brief period of time.

Riker, 123 Wn.2d at 365. Thus what was "novel" was applying this scientific assessment to a factual scenario that did not fit the science.

The admissibility of expert testimony on the battered person syndrome to explain the defendant's actions outside of a battering relationship is a matter of first impression in this jurisdiction. Given the current state of scientific acceptance, we hold that the testimony was properly rejected.

Riker, 123 Wn.2d at 159. The case did not reject application of the science to the legal theory of duress. The Court limited its holding to "the facts of this case." *Id.* at 366.

Unlike the one-month mostly telephone relationship in *Riker*, this case involved 57 years of marriage. The defense laid the factual foundation for the science. There was nothing "novel" about this scientific theory.

We have previously admitted expert testimony on the battered person syndrome to show how severe abuse within the context of a battering relationship affects the battered person's perceptions and reactions in ways not immediately understandable to the average juror.

Riker, 123 Wn.2d at 359. The Court of Appeals opinion is entirely consistent with this rule.

3. THE COURT OF APPEALS OPINION TURNS ON THE STANDARD OF REVIEW THE STATE SUPPORTS. IT DID NOT ADDRESS THE CONSTITUTIONAL ISSUES.

The Court of Appeals applied the abuse of discretion standard of review, for which the State argued. Brief of Respondent at 30. Thus it did not reach the appellant's constitutional issue of being denied the right to present a defense and its more rigorous *de novo* standard of review. *State v. Jones*, 168 Wn.2d 713, 719, 230 P.3d 576 (2010); *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986); United States Constitution, amends. 6, 14; Constitution, art. 1,

§§ 3, 22. See Brief of Appellant at 1 (AOE 2), 25-28; Reply Brief at 12-13.

A court abuses its discretion when an "order is manifestly unreasonable or based on untenable grounds." ... A discretionary decision "is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." ... Indeed, a court "would necessarily abuse its discretion if it based its ruling on an erroneous view of the law."

State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008), quoting *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993), and *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

The Court of Appeals held the trial court here abused its discretion on both bases by excluding the defendant's expert testimony.

- a. *The Expert Would Not Testify to Whether Mrs. Green's Statements Were Credible.*

The trial court's conclusion that the expert would testify to whether Mrs. Green's statements were credible was not supported by the record. Defense counsel submitted Dr. Maiuro's report as an offer of proof. But, as the majority clearly states, he modified that offer by stating multiple

times that he would not ask Dr. Maiuro to testify whether either version of Mrs. Green's statements was credible. Slip Op. at 13 & n.2; CP 385-86.

b. *Defense Counsel Offered a Frye Hearing.*

Similarly, the trial court's statement that "neither party has requested a Frye hearing" was contrary to the record. Defense counsel offered a Frye hearing if the court thought it was needed.⁹

c. *The Expert Testimony Would Be Helpful to the Jury.*

The trial court concluded the expert testimony would not be helpful to the jury. This conclusion was based in part on the unsupported conclusion that Dr. Maiuro would testify whether Mrs. Green's statements were credible. But the proffer was to why she might perceive and say she had shot her husband when she had not done so.

On this record, the jurors repeatedly said during voir dire that they believed a confession was the most reliable kind of evidence possible. RP 135, 207-09; App. Br. at 19. Dr. Maiuro would testify to the psychological reasons why a person

⁹ RP (1/30/2012) 22-23; quoted in Brief of Respondent at 11.

might inaccurately perceive and confess to a crime they did not commit -- expertise that the jury demonstrated was not within their common experience.¹⁰ Thus the court's conclusion was unsupported on this record.

This conclusion also applied the wrong legal standard. Courts consistently have held psychological evidence, in particular battered person syndrome, is beyond the common knowledge of jurors. Slip Op. at 12, citing *Janes*, 121 Wn.2d at 236; *Ciskie*, 110 Wn.2d at 273-74; *Allery*, 101 Wn.2d at 597; and *Bottrell*, supra, 103 Wn. App. at 717.

The State offers no authority that holds otherwise.

4. BEARING ON CREDIBILITY IS NOT THE SAME AS INVADING THE JURY'S FACT-FINDING PROVINCE.

- a. *The Constitution Guarantees the Right to Present Evidence Bearing on Credibility, Especially to Challenge a Confession.*

A criminal defendant is entitled to present to a jury "competent, reliable evidence bearing on the

¹⁰ See *State v. McCreven*, 170 Wn. App. 444, 460, 284 P.3d 793 (2012), review denied, 176 Wn.2d 1015 (2013) (jurors' acknowledgment during voir dire that they were familiar with reputation of Bandidos or motorcycle clubs or gangs indicated prejudice of admitting such evidence).

credibility of [her] confession," particularly when such evidence is central to her claim of innocence. *Crane v. Kentucky*, 476 U.S. at 690. A defendant is denied her right to present a defense if prohibited from presenting evidence about the "physical and psychological environment" in which the confession was obtained. *Id.*, 476 U.S. at 689.

Confessions, even those that have been found to be voluntary, are not conclusive of guilt. And, as with any other part of the prosecutor's case, a confession may be shown to be ... "unworthy of belief." Indeed, stripped of the power to describe to the jury the circumstances that prompted [her] confession, the defendant is effectively disabled from answering the one question every rational juror needs answered: If the defendant is innocent, why did [s]he previously admit [her] guilt?

Id. See App. Br. at 33-48 and authorities cited.

Trial counsel below acknowledged that Dr. Maiuro would not testify to his personal or expert opinion as to which of Mrs. Green's statements was credible. However, this Court recommends an expert witness may state a factual scenario "is consistent with" a conclusion according to that witness's expertise and experience without invading the jury's province. *State v. Montgomery*, 163 Wn.2d 577, 591-93, 183 P.3d 267 (2008) (officers

erroneously permitted to testify to their opinion that the defendants bought pseudoephedrine intending to produce methamphetamine; Court discusses acceptable methods of presenting similar testimony without invading the jury's province).

Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

ER 704.

However, this rule has a limitation in a criminal trial when expert testimony is introduced in a trial where the batterer is the defendant. Under no circumstances may an expert opine that, in the opinion of the expert, the defendant committed the act for which he or she is charged.

Domestic Violence Manual for Judges at 6-35 (Wash. AOC 2006). Such evidence carries a greater risk of unfair prejudice under ER 403 when used by the State against a defendant as to an ultimate issue of fact, than when used by the defense.

There is nothing inappropriate or impermissible for an expert to offer testimony the jury can use to determine for itself what to believe. Indeed, the State has offered expert testimony of battered person syndrome precisely for

this purpose. See *Ciskie, supra; Williamson, supra.*

b. *The Court of Appeals Opinion Does Not Conflict with State v. Ciskie.*

The State claims this Court was concerned in *Ciskie* that the

diagnosis as to whether an alleged victim was in fact raped is troublesome because of a danger of invading the function of the trier of fact. Such testimony often amounts to a comment on the credibility of a witness.

Ciskie, 110 Wn.2d at 280 (emphasis added); Petition at 19. That concern only applied in a prosecution for rape. Accord: *State v. Fitzgerald*, 39 Wn. App. 652, 694 P.2d 1117 (1985) (rape of a child).

In *Ciskie, supra*, the State offered expert testimony on battered woman syndrome to explain why the complaining witness's testimony that she had been brutally raped multiple times did not contradict her behavior of not reporting the rapes and not leaving the relationship. This Court approved the trial court's careful distinction between the specific diagnosis of post-traumatic stress disorder, which it permitted, and "rape trauma syndrome," which carried the connotation that the witness had been raped -- the ultimate

issue of guilt for the jury. See also *State v. Black*, 109 Wn.2d 336, 745 P.2d 12 (1987). *Ciskie*, 110 Wn.2d at 279-80.

While the Court considered it preferable not to have admitted the testimony of the PTSD diagnosis, it was not because the testimony was not reliable or scientifically based; it was because the State offered the testimony, and the ultimate issue the State had to prove was whether a rape, a common stressor, occurred.

With the benefit of hindsight, it would perhaps have been preferable to bar the diagnosis portion of testimony altogether, to avoid the danger of the jury's inferring a diagnosis of rape.

Ciskie, 110 Wn.2d at 280 (emphasis added).

Indeed, courts regularly have accepted specific diagnoses of battered person syndrome or PTSD on behalf of the defense when the name of the diagnosis did not go to an ultimate issue before the jury. *Allery, supra*; *Janes, supra*.

In this case, the ultimate issue is whether Mrs. Green killed her husband. Dr. Maiuro's diagnosis of her as a battered woman suffering from PTSD does not approach a professional opinion of

whether she killed him, as would a "diagnosis" of being a rape victim in a rape prosecution.

C. CONCLUSION

Courts must interpret evidence rules mindful of their purpose: "that the truth may be ascertained and proceedings justly determined." ER 102.

Anderson, 172 Wn.2d at 600.

The Court of Appeals opinion is completely consistent with this Court's previous opinions and others by the Court of Appeals. There is no basis for this Court to review it. RAP 13.4(b).¹¹

Should this Court grant review and reverse the Court of Appeals based on an abuse of discretion standard, it also must then address the constitutional issues raised by appellant and not addressed by the Court of Appeals. App. Br. at 25-52.

Dated this 18 day of August, 2014.

Respectfully submitted,



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¹¹ The State offered no argument or authority for claiming the issue is one of substantial public interest. Petition at 2.

APPENDIX A

Excerpt from
Defense Counsel's Offer of Proof
CP 385-86

... Dr. Maiuro is a licensed Psychologist who did a full evaluation of Mrs. Darlene Green. In that report he indicated that she was a battered woman, based on his testing as well as medical records from the time of her arrest and other information. ...

...
It is expected that he will testify as to the nature of "battered women's syndrome" its similarity to PTSD, Post Traumatic Stress Disorder. And how those effects may effect the perceptions of an individual. This is something that is beyond the knowledge of a lay person and will assist the jury in making the determination as to believe Mrs. Green or not. He will not be asked if she is now telling the truth. As noted by Dr. Maiuro in his report which is attached to the State's Motion, at page 8, In the study of serious trauma events, it is commonly observed that individuals sometimes "step outside themselves" or partially dissociate when they are in a state of recoil and shock" Consequently, they may attempt to piece together what has happened much as an outsider would.

...
Dr. Maiuro also states that the tendency to subjectively self blame, even in the absence of objective data to suggest otherwise, is a classically documented symptom of intimate partner abuse and domestic violence victimization.

CP 385-86 (emphases added).

APPENDIX B

Report of Dr. Roland Maiuro
CP 77-85

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February 16, 2011

Roger Hunko, Attorney at Law
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RE: Psychological and Forensic Evaluation – Darlene Marie Green
DOB: 11-08-1930

Dear Mr. Hunko:

I am writing to summarize my evaluation findings regarding Darlene Green for purposes of consulting with the Court.

Background Information and Purpose of Referral

Darlene Green is an 80 year old retired and widowed Caucasian woman with a high school education and college certificate in business accounting and bookkeeping. She was married to William Green for approximately 57 years (beginning in 1953) and has four adult male children now 40 to 50 years of age. She continued to live with William Green at their waterfront home in Kitsap County, WA until June of 2010, when William was found shot to death in the living room with an apparent gunshot wound to his forehead.

On June 18, 2010, at approximately 4:46 PM, Kitsap County Police were dispatched to Home of Darlene and William Green after a 911 call was made by their second to oldest son, Kirt Green. Darlene reportedly attempted to contact both Kirt and his older brother Brad, and both reported the incident and went to the scene. Although Darlene Green later declined to make a formal statement regarding how the shooting occurred, Kirt and Brad both indicated that they may have heard Darlene say that "she shot our father or that our father was shot." In the context of the past history of abuse between the parties, and in a probable emotionally distraught state at the scene, one of the investigating police officers reported in the investigative documentation that he thought he overheard conversation between the sons that the act may have also been "premeditated" on Darlene's part.

The incident was initially considered as one of possible first degree murder but is now officially charged at the second degree. Darlene was held in custody in the Kitsap County Jail and then released briefly to her home while she awaited trial. She was reportedly returned to custody after a technical violation of an order restricting her movements, and then released again more recently on bail.

The record indicates that Darlene Green was previously processed by the court for suspected domestic violence toward her husband in 2006. She was also mandated to complete alcohol treatment and did so and a condition of her plea agreement. Both Darlene and her son Kirt recall considerable ambivalence and discomfort about agreeing to the domestic violence charge at the time. The disposition was accepted, however, out of a desire to resolve the matter, limit public exposure and court costs, and at the reported urging of her attorney at the time. Darlene appears to have no prior criminal history or alcohol related offenses outside of the concerns raised regarding domestic violence.

Evaluation Questions, Sources, and Data Base

The following evaluation questions were addressed: 1) What is Darlene Green's psychological and behavioral-emotional profile in reference to the present allegations of having shot her husband?; 2) Does Darlene's prior history of arrest for domestic violence and associated alcohol abuse suggest that she was a domestic violence perpetrator and had elevated risk to commit the present act of violence against her husband? 3) Given her prior alleged comments that she shot or may have shot her husband's, is Darlene present claim that she did not shoot her husband still credible? If so, why would she say such a thing if she had not done it?

My conclusions and opinions regarding these questions is based upon multiple sources and methods of assessment including: a) review of recorded 911 calls, investigative and charging records surrounding the shooting incident and death of William Green; b) photographs of the parties and the crime scene taken immediately after the shooting; c) medical records documenting Darlene's condition dated; d) pertinent history, court documentation, and police reports documenting two prior episodes of domestic violence between Darlene and William Green in which Darlene was identified as the perpetrator; e) a series of diagnostic interviews and assessments conducted with Mrs. Green conducted over a period of two separate days, while incarcerated and then again after her conditional release in her home; f) formal psychological testing of Darlene Green including use of a brief mental status exam, the Minnesota Multiphasic Personality Inventory (MMPI), a measure of caregiver burden, measures of anger, hostility, depression, as well as specific measures of domestic abuse including a "primary aggressor assessment" and the Victim Index (VI); g) a collateral interview conducted with Darlene and William Green's son, Kirt Green, to supplement the initial interview previously conducted and recorded with him by the prosecuting attorney; and h) review of a subsequent laboratory report detailing a forensic examination of crime scene and gun related evidence, including powder burn and blood splatter pattern assessment, conducted by Kay M. Sweeney, Forensic Scientist, of KMS Forensics, Inc. dated November 22, 2010.

General Evaluation and Test Findings

Measures of General Psychological Functioning:

During the course of the evaluation, Darlene Green was fully cooperative, and provided what appeared to be frank, direct, and responsive replies to all questions with no sign of hesitation or mental maneuvering. Despite her advanced age, Darlene appeared to be fully intact mentally and cognitively, with normal scores on a mental status exam, and no signs of dementia, impaired comprehension, or reasoning.

MMPI results yielded no major elevations on the primary clinical scales. When taken together with the diagnostic interview results obtained, this result would support the absence of any major mental illness or personality disorder on Darlene's part. The only elevations observed reflected a somewhat minimizing, suppressive, and stoic attitude toward acknowledging personal problems and difficulties, accompanied by high moral standards. Such scores, however, are not unusual in forensic settings in which individuals are cautious in responding as a result of having been suspected and/or charged with serious wrongdoing, and did not compromise the reliability of the evaluation.

However, further examination of Darlene's test battery results, yields evidence of masked depression and post-traumatic stress symptoms, as Darlene's responses to structured questionnaires assessing such problems and features resulted in higher scores than might be apparent in face-to face presentation and during spontaneously volunteered aspects of the examination. Although there has been both a reported and documented history of alcohol abuse problems, such problems were not evident during the course of the evaluation, possibly due to the enforced abstinence required in the jail setting. However, when evaluated for a second day in her home setting, Darlene still appeared free of ongoing alcohol abuse.

Pattern of Domestic Violence and Abuse: Reported History and Indices

Although there are two formally documented episodes of domestic violence reported by the police for the Green household, dating back to 2008, Darlene reports a longer and more frequent history of such events. According to Darlene, and contrary to the impression held by authorities, she had been the primary victim of a variety of forms of domestic violence and abuse perpetrated by William for nearly 10 years. Although she acknowledges that most of her marriage was "satisfactory, happy, and free violence and abuse," Darlene reports that things began to change during their later years as William began to experience a variety of health problems, most notably the onset of memory difficulties and dementia. Although William reportedly sought medical help for these difficulties, the problem appeared to be progressive, resulting in episodes of getting lost and disoriented, diminished control and bowel and bladder functions, emotional

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outbursts and insecurity, and recommended loss of driving privileges. Although William's medical records were not accessible to fully document these problems, they were corroborated in my interview with the youngest son, Kirt Green and supported by Caregiver Burden Scores in the moderate range during the course of Darlene's testing.

In keeping with official records identifying Darlene as a prior participant in physically abusive behavior toward William, Darlene acknowledged that both she and William engaged in such conduct but that William had initiated it and progressively escalated his violence to the point of recurrent physical injury to Darlene and life threatening gestures with a handgun. As the elderly couple became more and more emotionally estranged, William would reportedly become frustrated and upset when Darlene would reject his attempts at physical intimacy and would punitively lash out at her physically by grabbing her, pushing and slapping her, biting her, and dragging her around the house. A times, Darlene reported that William would make self-disparaging and self-loathing remarks, retrieve his hand gun, and beg and taunt Darlene to shoot him the head to put him out of his misery.

In keeping with her psychological profile, Darlene was reluctant to talk about and report these events. She would, on occasion, confide in her son Kirt, that she was afraid, and ask him to intervene. At one point, and in concert with official documentation of domestic violence by the police, the sons took action to remove William's guns from the house, and at the time of the shooting, had believed that they had removed them all. But the problem continued, and reportedly became compounded by growing alcohol use and abuse on the part of both parties. According to Kirt, there would be periodic calls made by both parties, reporting that the other had been violent and abusive, leading to a sense of frustration, embarrassment, and avoidance among the adult sons. ("I guess we felt that we had families of our own to worry about and became tired of dealing with the repeated drama of our parents acting like children.") As all of Darlene and William's children were male, with Darlene often reluctant to talk about things, the son's were reportedly inclined to believe and align themselves with the plight of their father more than Darlene. According to Kirt, "we had a traditional home life and tended to value the bread winner more than the bread maker." "I think my brothers want to believe that Mom did this thing, and maybe I did too, at first. But the more I have reflected on the history of things and what I heard and saw, the more I think she is actually innocent. It has been a terrible thing for the whole family to deal with...I guess I am still trying to make sense of it and understand exactly how and why it happened."

According to Darlene, She and William had an extended argument during which she attempted to avoid him by sitting down in her chair and watching television. She reported that William became increasingly agitated over her attempts to ignore him and bit her in the forehead. She further reported that he went and got his gun and began standing over her while she was seated in the chair, taunting and goading her, by trying to put the handgun in her hand. She recalls resisting his efforts but that he repeatedly placed the barrel of the gun to his forehead and shouted "go ahead and shoot me." She then remembers only hearing and seeing the blast at close range and that William dropped down on her and onto the floor in front of her.

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When asked why she may have told her sons that she shot and killed her husband, Darlene replied: "I guess I thought I did or may have... I guess I was in shock... I didn't know what to think... He was lying on the floor dead and I was the only one there. When pressed further about her memory and feelings at the time, Darlene added: "I am sure now that I didn't do it... but I felt to blame... that's the way it was when he was violent and abusive... he would go on and on about things, until I finally admitted it was my fault and that I was to blame."

**VICTIM INDEX REPORT:
SUMMARY PARAGRAPHS EXPLAINING CLIENT'S ATTAINED SCALE SCORES**

The Victim Index is a psychometrically validated measure specifically designed to assess an individual's presentation who is identified as, or who claims to be, a victim in clinical, forensic, and domestic violence court-related settings. It provides information on both the individual's general psychological profile as well as insight into aspects of physical, emotional, and mental abuse. As many forensic applications require the development of opinions with regard to the credibility, reliability, and validity of allegations, the Victim Index also includes a Truthfulness Scale designed to weigh the pattern of presentation and possible contributions of inadequate personal candor and/or psychologically based defenses that might bias or distort reporting in an "atypical", "good" or "bad" direction. This index correlates well with frequently used MMPI validity assessment indices that assist in the same task for psychological examiners.

TRUTHFULNESS SCALE: This individual's Truthfulness Scale score is in the medium risk (40 to 69th percentile) range. This score means that the client tends to be reluctant to acknowledge distress, preferring a more private and self-protective stance regarding self-disclosure. It also suggests that there is a tendency to minimize problems and trauma rather than falsely claim, exaggerate, or overstate victimization related issues. However, they are not so skewed as to prevent a "truth corrected" estimate to ensure that other VI scale scores are accurate. Therefore, it is likely that the client's presentation in such areas is both valid and reliable.

RESISTANCE SCALE: This client's score on the Resistance Scale is in the problem risk (70 to 89th percentile) range. Individuals with such scores have a tendency to be independent; may resist intrusion into their lives, appear angry as part of their plight, and possibly react with passive-aggressive strategies. Attitudinal and skill deficits in conflict resolution are often present as part of their problem history.

MORALE SCALE: This Morale Scale score is in the problem risk (70 to 89th percentile) range. Despite a seemingly stoic or calm presentation, individuals with such scores may have been more impacted than they acknowledge, struggling to deal with their circumstances, have difficulty dealing with loss, and being optimistic regarding

the future. There are morale issues and blows to self-esteem present. Consideration should be given to supportive counseling.

DISTRESS SCALE: This client's Distress Scale score is in the problem risk (70 to 89th percentile) range. Problem risk scores reflect considerable mental anguish, emotional pain, worry, apprehension and unhappiness. Major life stressors are likely such as interpersonal loss, and lack of clarity with regard to future identity and direction.

STRESS COPING SCALE: This client's Stress Coping Abilities Scale score is in the medium risk (40 to 69th percentile) range. There is likely a prolonged circumstance that may have overtaxed this person's otherwise good intelligence and resources making them feel vulnerable.

SELF-ESTEEM SCALE: This person's general self-image is in the medium risk (40 to 69th percentile) range. This score suggests, despite events, that the individual remains self-confident, capable, and realistic, with good self-esteem

SUBSTANCE ABUSE SCREEN: ALCOHOL SCALE. This is a low risk (zero to 39th percentile) score. Low risk scorers manifest few, if any, indications of current and ongoing alcohol abuse. If previously present, it is likely to have been embedded in historical circumstance and in remission.

DRUGS SCALE: This is a low risk (zero to 39th percentile) score. Few, if any, significant indicators are present for either illicit drug use or abuse of prescribed medications.

SUICIDE IDEATION SCALE: This individual is in need of support (90 to 100th percentile). They have likely experienced considerable distress, some level of recent depression, a loss of emotional and social support due to serious relationship problems. Monitoring by a certified/licensed mental health professional is indicated.

SIGNIFICANT ITEMS: These answers are the respondent's self-reported responses and may help understand the individual's situation.

53. At times feels can't go on; 3. Not enjoying her life; 13. Does not feel good about self;
62. Does not have an adequate support group

Opinions Regarding Referral Questions and Recommendations

1) What is Darlene Green's psychological and behavioral-emotional profile in reference to the present allegations of having shot her husband?

Although there is a reported and/or documented history of abuse between the parties in which Darlene was identified as "the perpetrator" and a more extended history of reciprocal abuse, it is my opinion that Darlene was a victim of domestic violence during the episode in question and her husband, William the perpetrator.

During the course of my evaluation of the case, I found multiple bases to support this opinion:

- a) Darlene Green's current rendition of events and claim that she did not shoot her husband, and that he must have died by his own hand, appears to be credible.
- b) The Victim Inventory profile generated by the client is valid and coherent in the manner that one would expect for a woman who was primarily a victim of domestic abuse and responding to the type of trauma that occurred in this case; Moreover, the present testing indicates that Darlene's self-report of victimization is likely to be "under-reported" rather than over-reported. This reporting style and test taking attitude makes it very unlikely that her claim of being a victim is some type of over-stated case making, false reporting, or an effort to "excuse" her behavior by playing upon the sympathies of the evaluator.
- c) Darlene's pattern of responding on the Index of Spouse Abuse appears consistent with the history of reciprocal domestic abuse documented in the case.
- d) In an independent interview, Darlene Green's son, Kirt, corroborated the history of abuse reported by Darlene, the fact that William was likely the primary aggressor with regard to the domestic violence, Darlene's fear that things had escalated to the point of lethality. He also corroborated the presence of dementia symptoms for his father, William as well a number of retrospective "red flags" supporting the idea that William was at heightened risk for taking his own life.
- e) Medical examination of Darlene shortly after the shooting revealed numerous signs of physical injury consistent with both recent and prior episodes of physical abuse and victimization.
- f) The present assessment resulted in an independent reconstruction of probable events surrounding the death scene that is consistent with that offered by Kay M. Sweeney in her forensic Laboratory Report of her investigation of crime scene, gun powder burns, and blood splatter results.

2) Would Darlene's prior history of reported domestic violence and arrest for domestic violence, as well as associated alcohol abuse, suggest that she was a domestic violence perpetrator and had elevated risk to commit the present act of violence against her husband?

When taken as an isolated act and out of context, the history as reported and documented would suggest that this would be the case. However, expert evaluation of domestic violence and abuse requires that it be examined and investigated as a pattern of behavior in the context of the overall history of the relationship between perpetrator and victim. It appears that such an investigation and examination was not performed previously, leading to erroneous and improper identification of Darlene Green as the primary aggressor. During the current evaluation, a proper and thorough examination was conducted utilizing multiple sources and methods of analysis. In this analysis, despite the fact that reciprocal violence was observed and documented to have occurred, William Green is identified as the primary aggressor and Darlene Green as the victim.

Alcohol abuse appears to have been a problem for both parties. It appears to have both potentiated the risk for assault by the perpetrator and increased the vulnerability of the victim. A compounding problem of excessive drinking to the point of alcohol abuse is commonly identified in both perpetrators and victims, and does not necessarily change their proper designation as primarily one or the other for clinical and forensic purposes.

3) Given her prior alleged comments that she shot or may have shot her husband, is Darlene's present claim that she did not shoot her husband still credible? If so, why would she say such a thing if she had not done it?

As previously reported, when asked why she may have told her sons that she shot and killed her husband, Darlene replied: "I guess I thought I did or may have... I guess I was in shock... I didn't know what to think... He was lying on the floor dead and I was the only one there."

In the study of serious trauma events, it is commonly observed that individuals sometimes "step outside of themselves" or partially dissociate when they are in a state of recoil and shock. Consequently, they may attempt to piece together what has happened much as an outside observer would. As Darlene observed, and apparently many others may have observed in this case, at first glance it looks like Darlene may have committed the act. This conclusion, however, would appear to be more a matter of circumstance and perception rather than reality. The present evaluation data clearly supports the presence of post-traumatic symptoms for Darlene Green associated with the shooting, supporting such an interpretation in this case. The fact that she said, or may have initially thought, she was responsible for the shooting, does not necessarily mean that her current, more considered, assertion that she did not is not credible.

When pressed further about her memory and feelings at the time, Darlene added: "I am sure now that I didn't do it... but I fell to blame... that's the way it was when he was violent and abusive... he would go on and on about things, until I finally admitted it was

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my fault and that I was to blame."

Such a tendency to subjectively self-blame, even in the absence of objective data to suggest otherwise, is a classically documented symptom of intimate partner abuse and domestic violence victimization. The fact that Darlene Green was repeatedly and severely abused and developed a mindset of inappropriately accepting blame and guilt is clearly supported in this case. This point is well illustrated and inadvertently compounded by the fact that both the legal system and some of her own family, in the throes of their misunderstanding, anger and grief, have historically reinforced this view by identifying and treating her as a perpetrator rather than a "victim defendant" of domestic violence.

I hope this information is helpful in facilitating an appropriate disposition in this case. I remain available to you, and the court should there be a desire for additional consultation.



Roland D. Maluro, Ph.D.
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State Certified Domestic Violence Treatment Provider, Supervisory Level
Editor-in-Chief, *Violence and Victims*

DECLARATION OF SERVICE

On this date, I served a copy of the Answer to State's Petition for Review on the following parties:

VIA EMAIL

Jeremy A. Morris
Kitsap County Prosecutor's Office
EMAIL FOR SERVICE: kcpa@co.kitsap.wa.us

and by depositing in the United States Mail, postage prepaid, addressed as follows:

Mrs. Darlene Green
5950 Illahee Rd. N.E.
Bremerton, WA 98311

I declare under penalty of perjury under the laws of the state of Washington that the above statement is true.

Aug 18, 2014 - SEATTLE, WA
Date and Place

Alex Fast
ALEXANDRA FAST

OFFICE RECEPTIONIST, CLERK

To: Alexandra Fast; kcpa@co.kitsap.wa.us
Subject: RE: Green, Darlene 90553-3

Received 8-18-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Alexandra Fast [<mailto:ahfast2@gmail.com>]
Sent: Monday, August 18, 2014 12:22 PM
To: OFFICE RECEPTIONIST, CLERK; kcpa@co.kitsap.wa.us
Subject: Green, Darlene 90553-3

Please accept for filing the attached "Answer to State's Petition for Review" in regards to Ms. Darlene Green Case No. 90553-3. A certificate of service is attached to the pleading.

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