

No. SC98295

In the
Supreme Court of Missouri

STATE OF MISSOURI,
Respondent/Cross-Appellant,

v.

RASHIDI LOPER,
Appellant/Cross-Respondent.

Appeal from the City of St. Louis Circuit Court

Twenty-Second Judicial Circuit

The Honorable Thomas C. Clark, Judge of Division Seven

APPELLANT'S SUBSTITUTE REPLY BRIEF

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JURISDICTIONAL STATEMENT

Appellant Rashidi Loper adopts the jurisdictional statement set out in Appellant's Substitute, Brief, Statement and Argument, filed March 26, 2020.

STATEMENT OF FACTS

Appellant Rashidi Loper adopts the statement of facts set out in Appellant's Substitute Brief, Statement and Argument, filed on March 26, 2020.

REPLY TO POINT I

A. This claim of error was preserved for review on appeal.

The State asserts that Mr. Loper failed to make a sufficiently specific objection at trial and in the motion for new trial to preserve this issue for review. (Resp. Br. 25-26). The State's argument misstates the nature of Mr. Loper's objection during the trial and omits the full claim of error in the motion for new trial.

Detective Lindhorst was endorsed only as a lay witness. As the lead detective on this case for DART, the majority of Detective Lindhorst's testimony at trial concerned her observations of the crime scene and the course of her involvement in and investigation of the case. It was only at the end of her testimony that the State asked whether she had "become familiar with the concept of power and control." (Tr. 312). The social science theory of "power and control" in domestic abuse relationships is not a concept or opinion that would be based on a police officer's routine observations, but rather is psychological analysis that is not within a lay witness' purview. Detective Lindhorst was not endorsed under §490.065, nor did the State lay a foundation under that statute. The State, however, asked the witness about the theory of "power and control" and its application to the facts of this case. Defense Counsel made the following objection:

DEFENSE COUNSEL: "Objection. Personal opinion, your Honor."

THE COURT: "Why don't we approach, please?"...

THE COURT: "I didn't want to have this discussion in front of the jury. I think she's laid the foundation that she has sufficient training and experience to discuss this. Do you want to add on to your opinion?"

DEFENSE COUNSEL: “No. That’s fine. Just note the objection. I’ll put it in the motion for new trial if we go that far.”

(Tr. 312-313).

Defense counsel, in asking the Court to “note the objection”, made it a continuing objection. In the motion for new trial, Mr. Loper again raised the objection and error to the “opinion” testimony about power and control in this case and its violation of Mr. Loper’s Due Process and 5th and 6th Amendment rights. (D40 p. 2).

The point of the requirements concerning preserving error is not to enable the appellate court to avoid reviewing claims, nor is it to make preserving error overly difficult. *State v. Cochran*, 365 S.W.3d 628, 635 (Mo. App. W.D. 2012). The point of the rule is to make sure the trial court and the reviewing court is able to identify the precise claim made. *Id.* As illustrated above, defense counsel objected to Lindhorst’s testimony giving her personal opinion. (Tr. 312-13). This claim was included in Mr. Loper’s motion for new trial. (D40, p. 2).

A “personal opinion” objection states not only that a lay witness’ opinion testimony goes beyond the witness’ personal observations but also that the witness’ improper opinion on disputed facts invades the province of the jury. “A lay person may not give an opinion on the facts when it has the effect of answering an ultimate issue the jury is to determine.” *State v. Cason*, 596 S.W. 2d 436, 440 (Mo. banc 1980). Mr. Loper has not expanded the claims of error in Point I from the objection at trial. The objection and the motion for new trial plainly informed the trial court of Mr. Loper’s position that the opinion testimony elicited from Detective Lindhorst, a lay witness, commented on the disputed facts and

invaded the province of the jury. The allegation of error was sufficiently definite to point the court to the particular allegation of error. *State v. Rogers*, 529 S.W. 3d 906, 910 (Mo. App. E.D. 2017); *State v. Amick*, 462 S.W. 3d 413, 415 (Mo. banc 2015). To the extent this Court determines this issue is not preserved, Mr. Loper requests plain error review.

b. The cases cited by the State are distinguishable in that they involve medical opinions about the causes of injuries as opposed to testimony concerning a witness' credibility.

The cases cited in Respondent's brief pertain to expert witnesses who testify about injuries sustained to victims, as opposed to a witness testifying about witnesses' credibility as it pertains to a specific situation. (Resp. Br. pp. 28-29). Both *State v. Beck*, 557 S.W.3d 408, 422-23 (Mo. App. W.D. 2018) and *State v. Haslett*, 283 S.W.3d 769, 779–80 (Mo. App. S.D. 2009) involved expert testimony from medical doctors.

In *Beck*, the Western District held that it was not plain error for the trial court to allow testimony from a medical doctor that the victim in the case had been sexually abused, based on her review of the medical evidence and history of the victim. *Id.* at 422-23. The Court held that the opinion was based on the doctor's expertise and did not comment on the veracity of the victim or whether the defendant was guilty. *Id.* at 422. The Court noted that Beck had invited the testimony and defense counsel had mentioned the doctor's diagnoses in closing arguments. *Id.* at 423.

In *Haslett*, the defendant was charged with felony murder for the death of an 18-month-old child. 283 S.W.3d at 773. At the trial, the medical examiner testified the child died as a result of "child abuse." *Id.* at 779. The Southern District held that the medical examiner's testimony was based on his expertise in death pathology of children and his

observation of bruises he determined were consistent with abuse. *Id.* at 779. The Court of Appeals held that such testimony would aid the jury in its evaluation and assessment of the evidence and did not comment on the guilt or innocence of the defendant. *Id.* The Court held it was not plain error to admit such evidence as it was admissible expert testimony. *Id.* Similar evidence was allowed in *State v. Gray*, 347 S.W.3d 490, 504 (Mo. App. S.D. 2011).

Unlike the witness testimony in *Beck*, *Haslett*, and *Gray*, Lindhorst's testimony was neither that of a qualified expert, nor was it helpful to the jury when considering the evidence. After explaining the Detective's understanding of domestic violence and the theory of "power and control", the State asked Detective Lindhorst "did you have evidence of power and control in this case?" (Tr. 312). Detective Lindhorst responded that she "absolutely" saw signs of power and control in this case. (Tr. 312). After defense counsel's objection to this evidence was overruled, the State then continued its questioning asking Detective Lindhorst, "what evidence of the concept of power and control did she *witness* in this case." (Tr. 313). Detective Lindhorst cited the amount of time that had passed between when the relationship had ended and the assault had occurred was, "not uncommon... the offender had thought maybe his power and authority over her had started to slip which means he needs to come back and dominate." (TR 314).

This testimony was simply Lindhorst verifying, or "vouching" for E.S.'s version of what happened, which is inadmissible testimony. When read as a whole, the State was asking Detective Lindhorst to comment on the victim's story, her statements, her testimony, and her description of the relationship with Mr. Loper, which was asking her to comment on the victim's credibility. *State v. McWilliams*, 564 S.W.3d 618, 629 (Mo. App.

E.D. 2018). The testimony was designed to buttress and lend credibility to E.S.’s testimony after she testified that she did not remember what happened or why she woke up in the bathtub with her wrist cut. *Id.* It was designed to counter E.S.’s initial statements that she had cut her own wrist in an attempt at suicide. (Tr. 188, 234, 260). There was no need for the jury to hear opinion testimony based on evidence they heard for themselves. This was not just identification of injuries and behavior, but an opinion on the cause of such injuries and what witness “behavior” to believe. Such testimony was inadmissible. Mr. Loper is entitled to a new trial due to the trial court’s error in admitting Lindhorst’s testimony.

REPLY TO POINT II.

A. Mr. Loper’s claim that Ms. Schiller-Baker’s testimony invaded the province of the jury is preserved for appellate review.

The State argues that Mr. Loper’s Point II is not preserved for review “to the extent that it claims Ms. Schiller-Baker’s testimony invaded the province of the jury by vouching for the Victim’s credibility.” (Rsp. Brf. p. 43). Mr. Loper objected to the State’s endorsement of expert witness Michelle Schiller-Baker prior to trial and during the §490.065 RSMo hearing. (Tr.133-134). In support of the endorsement, the State filed a memorandum of law. (D6, p. 2). Citing *Brown v. State*, 450 S.W. 3d 847, 853 (Mo. App. S.D. 2014), the State argued to the trial court that “general behaviors” testimony in the field of domestic violence assists the trier of fact with specialized knowledge and does not invade the province of the jury. (D6, p. 2). The Defense’s whole objection to expert testimony in domestic abuse or child abuse cases is the risk that the expert will particularize the

testimony which lends credibility to the victim and suggests guilt of the defendant. This argument was made to the trial court in this case.

Nevertheless, the trial court, “over Defendant’s objection”, granted the State’s motion to endorse the expert as to general profile evidence on the behaviors of domestic violence. (Tr. 151). Mr. Loper then renewed his objection to the expert’s testimony “as a whole”. (Tr. 326). In the Motion for New Trial, Mr. Loper raised error in the admission of the expert’s testimony “as a whole” based on lack of scientific foundation, the Confrontation Clause and the Due Process Clause. (D40, p. 2).

The objection prior to trial, during trial, and the Motion for New Trial sufficiently raised the issue of the admissibility of Michelle Schiller-Baker’s testimony and whether it invaded the province of the jury and improperly bolstered the credibility of the victim. *State v. Rogers*, 529 S.W. 3d 906, 909-910 (Mo. App. E.D. 2017). The record shows the trial court was apprised of the grounds for Mr. Loper’s objection. (TR 151-152). *State v. Amick*, 462 S.W. 3d 413, 415 (Mo. banc 2015). The standard of review is abuse of discretion.

B. Ms. Schiller-Baker’s testimony was inadmissible because its sole purpose was to give an opinion about whether this was a case involving domestic violence, which necessarily commented on the credibility of E.S.’s allegations as well as Mr. Loper’s credibility.

The State argues that Ms. Schiller-Baker was called as an expert to help explain to the jury “potential behavior dynamics” in domestic violence cases. (Resp. Br. p. 42). The State argues that the trial court did not abuse its discretion in admitting Ms. Schiller-Baker’s

testimony because it was relevant “to the jury’s determination of the credibility of Victim and Defendant and to the issues in this case.” (Resp. Br. 43). However, it is precisely this reason Ms. Schiller-Baker’s testimony as it pertains to the witnesses’ credibility is inadmissible.

The State’s main argument for allowing expert testimony on the behaviors of domestic abuse victims and their abusers is that the proposed testimony is not “specific” to E.S. or Mr. Loper in this case but only provides general profile information for the jury and does not vouch for the E.S.’s credibility. In fact, the State elicited testimony from Ms. Schiller-Baker that she did not know E.S. or Mr. Loper and had not reviewed any facts of the case. (Tr. 329, 337). But, Ms. Schiller-Baker was allowed to allude to and testify about the facts of this case. She testified that a victim returns to the abuser because of fear. (Tr. 335). A victim returns to her abuser because the police will not do anything. (Tr. 335). She put in the jury’s mind that if this Mr. Loper was not convicted, E.S. would be hurt worse. (Tr. 335). She testified:

“it proves to her he has power over her. Go ahead. Call the police. They’re not going to do anything. I’m not going to be in jail. Or if it goes, for example, what’s today, a trial, go ahead. If I’m not found guilty, I’m free on the streets. If you think what I did to you before you called the police was bad, wait until you see what I do afterwards.” (Tr. 335).

This testimony encouraged the jury to convict not because Mr. Loper was guilty but to protect E.S. It bolstered the credibility of E.S. and attempted to explain her marriage to Mr. Loper after the alleged crime. This testimony essentially commented not only on the

conduct of the E.S. as consistent with credibility, but suggested a verdict of guilt to “save” E.S.

An expert may not comment on the credibility of a witness or express an opinion as to the guilt of the defendant. *State v. Rogers*, 529 S.W.3d 906, 911 (Mo. App. E.D. 2012). To do so usurps the decision-making function of the jury and violated Defendant’s constitutional rights. *Id.* The expert witness’s personalization of the E.S.’s fear and decision to return to Defendant and likelihood of being hurt worse without a conviction was improper testimony. *State v. Ferguson*, 568 S.W. 3d 533, 545 (Mo. App. E.D. 2019), *State v. Churchill*, 98 S.W.3d 536, 538-39 (Mo. banc 2003); *Gabaree v. State*, 290 S.W.3d 175 (Mo. App. W.D. 2009). The trial court abused its discretion in allowing the testimony of Ms. Schiller-Baker and the error was further compounded by the improper opinion testimony of Detective Lindhorst and the error prejudiced Mr. Loper, requiring a new trial.

REPLY TO POINT III.

The State argues that the hearsay statement that Police Officer Wesley Pierce testified about fell under the subsequent police conduct exception, and even if not admissible, was not prejudicial because a separate witness, Dr. Quattromani, testified to the same medical opinion. (Rsp. Brf. p. 49). However, Officer Pierce admitted the statement was not required to explain “the resulting investigation”, and was a hearsay opinion on an ultimate fact issue. (TR 274-275). Furthermore, Dr. Quattromani’s surprise medical testimony to the same effect was a violation of Rule 25.03 and could not cure the prejudice resulting from the admission of the hearsay statement. (See Point IV).

Officer Pierce’s testimony that an unknown doctor told him the injury was not self-inflicted is an out-of-court statement offered in court and for the truth of the matter asserted and is hearsay. *State v. Shigemura*, 680 S.W. 2d 256, 258 (Mo. App. E.D. 1984). Courts have repeatedly cautioned against the State using the “subsequent police conduct” exception as a back door to get in otherwise inadmissible out-of-court statements. *State v. Nabors*, 267 S.W. 3d 789, 795 (Mo. App. E.D. 2008). The Eastern District recognized that this exception is susceptible to abuse. *State v. Boykins*, 477 S.W. 3d 109, 112 (Mo. App. E.D. 2015).

Officer Pierce admitted he did not rely solely upon this statement but called DART because of the totality of the circumstances surrounding the incident. (TR 274-275). E.S. had implicated her ex-boyfriend to Officer Pierce at the hospital. (TR 275). There was no reason to provide the jury with an explanation of why the investigation was handed over to DART. The only reason to mention the hearsay was to get the medical opinion in front of the jury to counter the defense claim of self-harm.

The cases cited by the State finding hearsay fall under the “subsequent police conduct” exception, *State v. Brooks*, 618 S.W.2d 22, 25 (Mo. banc 1981) and *State v. Simmons*, 233 S.W.3d 235, 238 (Mo. App. E.D. 2007) are distinguishable. In both *Brooks* and *Simmons*, hearsay was admitted to help explain why the officer seized specific evidence pertaining to the case. In this case, the only reason allegedly given by the State to admit the medical opinion of an anonymous doctor was to show why the officer contacted the DART unit. (Tr. 275). The jury had no need to hear what unit the case was ultimately

assigned to and this exception was being used in order to get in an otherwise inadmissible medical opinion.

By the State's own admission it did not know of Dr. Quattromani's concurring opinion until after Officer Pierce testified. (TR 347-342). Officer Pierce was unable to identify "the doctor" who made the statement. (TR 275). He was unable to say if it was a man or a woman. (TR 275). The opinion is not in the medical records. This is not a situation where the declarant testified at trial because Officer Pierce never identified the declarant. In both *State v. Cook*, 386 S.W.3d 843, 847-48 (Mo. App. S.D. 2012) and *State v. Howell*, 226 S.W.3d 892, 896 (Mo. App. S.D. 2007), which the State cites to support the proposition that there is no Confrontation violation if the declarant testifies, the declarant was identified. (Resp. Br. 52). Therefore, these cases are distinguishable.

While Dr. Quattromani initially testified that she did not believe the wound to be self-inflicted, upon cross-examination, she was unable to say definitively that E.S.'s injury was not self-inflicted. (TR 363). Dr. Quattromani did not testify or affirm that she made the out-of-court statement to Officer Pierce. That statement could not be cross-examined.

The State argues that because the jury asked for Dr. Quattromani's records, it cannot be said that the jury reasonably relied on Officer Pierce's hearsay statement. (Resp. Br. 53). During defense counsel's cross-examination of Dr. Quattromani, there was a note in the medical records indicating that E.S. was "intoxicated on arrival" to the hospital. (Tr. 356). Dr. Quattromani testified she did not recall E.S. being intoxicated. (Tr. 356). There was extensive cross, redirect, and then recross on this issue. (Tr. 356-61, 366-68, 372-73). The jury likely requested the medical records due to this subject matter. Because Officer

Pierce never identified Dr. Quattromani as being the person making the statement that the wound was likely self-inflicted, the jury would have no reason to assume the statement would be contained in Dr. Quattromani's medical records.

Regardless of what the jury considered of Dr. Quattromani's testimony, error in admitting the hearsay statement is a Confrontation Clause violation and is presumed prejudicial unless the appellate court determines the error was harmless "beyond a reasonable doubt." *State v. Boykins* 477 S.W. 3d. at 113. This statement is not harmless. It is a medical conclusion to an ultimate fact central to the case. It was made by a doctor who is not identified either in medical records or in court. This Court cannot say that the jury did not rely on the unknown doctor's statement that the wound was not self-inflicted. This prejudice is not cured by Dr. Quattromani's opinion which was never disclosed to Mr. Loper and should have been excluded. Mr. Loper should be granted a new trial.

RELPLY TO POINT IV.

The State argues in its brief that there was no genuine surprise in the medical opinion given by Dr. Erin Quattromani because the police report attributes a similar statement to "the doctor," the State disclosed the medical records of E.S. which indicated Dr. Quattromani was the treating physician, and therefore, Mr. Loper was on notice that Dr. Quattromani had this opinion. (Rsp. Br. P. 60). But this argument is circuitous and not supported by the facts.

The State violated Rule 25.03(b)(6) by failing to disclose the expert opinion of Dr. Erin Quattromani that E.S.'s wound was not self-inflicted prior to the third day of trial. Mr.

Loper had requested discovery of all expert statements, reports or notes. (D5 p. 1). In response, the State provided voluminous medical records which did not contain this opinion and the police report which did not attribute this opinion to Dr. Quattromani. (Tr. 265). No witness identifies Dr. Quattromani as “the doctor” referred to in the police report.

Respondent first argues that the State was not required under Rule 25.03(b)(6)¹ to identify the experts the State intends to call, noting that Rule 25.03(b)(1) specifies that the State is required to disclose witness identity and information while 25.03(b)(6) does not. (Resp. Br. p. 61). When Rule 25.03 is read as a whole, it is clear the State is required to identify the experts they wish to call as well as to disclose their statements and to whom the statements is attributed. To construe Rule 25.03 in a manner Respondent urges is contrary to the purpose of the rules of discovery to prevent surprises at trial. *State v. Enke*, 891 S.W.2d 134, 137 (Mo. App. S.D. 1994).

Respondent, however, argues that because there is a similar statement attributed to “the doctor” in the police report and because the medical records provided to Mr. Loper identify Dr. Quattromani as the treating physician, the Mr. Loper should have been able to connect the dots. (Resp. Br. p. 61). Respondent suggests that Mr. Loper should have taken

¹ Respondent cites “Rule 25.03(A)(5).” (Resp. Br. 61). However, the referenced rule pertaining of disclosure of experts’ statements by the State is Rule 25.03(b)(6). Counsel assumes that is the rule Respondent intended to cite.

Dr. Quattromani's deposition. (Resp. Br. 62). This, however, shifts the burden of discovery to Mr. Loper and ignores the fact this is an *expert* opinion.

Rule 25.03 (b)(6) states that "the State shall...disclose to defendant's counsel...any reports or statements of experts made in connection with the particular case." Rule 25.03(b)(6) RSMo. The rules of criminal discovery exist to eliminate surprise by allowing both sides to know the witnesses and evidence to be introduced at trial. *State v. Zuroweste* 570 S.W. 3d 51, 56 (Mo. banc 2019). The State must disclose expert reports or opinions within its control. *Id.* Even though the State claimed it had no written report or statement by Dr. Quattromani as to this opinion prior to trial, the State had better access to and control over the witness who had moved out of state. (TR 342).

Respondent also argues that defense counsel somehow conceded that he was aware of Dr. Quattromani's opinion that E.S.'s wrist wound was likely not self-inflicted. (Resp. Br. 61-62). In the transcript pages cited, defense counsel told the trial court "this doctor is going to testify." (Tr. 264). Defense counsel made that statement when he was objecting to Officer Pierce testifying about a hearsay statement made by an unidentified doctor (See Point III). (Tr. 264). Defense counsel was explaining to the trial court that any opinion about the wound not being self-inflicted was not in Dr. Quattromani's medical records and that defense counsel had no notice that would be her opinion. (Tr. 264). Therefore, rather than concede anything, defense counsel was complaining about this very issue. In addition, this discussion happened during the trial. The rules of discovery require disclosure *before* trial. *See e.g.*, Rule 25.03. Defense counsel's complaints to the trial court about the lack of disclosure supports the position that this was information was not disclosed prior to trial.

This case is distinguishable from *State v. Renner*, 675 S.W.2d 463, 465 (Mo. App. E.D. 1984). In *Renner*, the State disclosed their ballistics expert's report prior to trial. *Id.* at 464. At trial, the State endorsed and called a different ballistics expert who rendered the same opinion. *Id.* at 465. The Eastern District held that the identity of the witness was the only surprise, not the substance of the testimony, and did not result in prejudice to the defendant. *Id.* In this case, no one was ever identified the State intended to call to give such an opinion, that the wrist wound was likely not self-inflicted, so there was no reason for defense counsel to believe that statement would ever come in at trial. Unlike the ballistics expert, there was no report from any expert disclosed, nor even a statement by any identifiable expert, so there was no reason to think those opinions would be presented in the State's case. (Tr. 341-42).

This case is distinguishable from *State v. Enke*, 891 S.W. 2d, 134 137-138 (Mo. App. S.D. 1994), which is cited in Respondent's brief. (Resp. Br. 63-64). Here, the doctor was not readily available for deposition and Mr. Loper had no reason to suspect she would testify that the wound was not self-inflicted. In fact, the State acknowledges they did not know that Dr. Quattromani would make that statement until the third day of trial, when they finally talked to her. (Tr. 342). Mr. Loper had every reason to believe no witness would testify at trial that the wound was not self-inflicted.

Prejudice exists when the appellant demonstrates that in the absence of such error, a reasonable probability exists that the verdict would have been different. *State v. Edwards*, 31 S.W. 3d 73 (Mo. Ct. App W.D. 2000). Here, the failure to disclose the expert opinion put the Mr. Loper in a position where he could not rebut the doctor's opinion. While the

doctor admits it is not impossible the wound was self-inflicted, this admission on cross-examination did not eliminate the prejudice of the surprise medical opinion. There was no reason for Mr. Loper to investigate and call an expert to rebut an opinion he had no reason to believe would be presented at trial.

The admission of the surprise medical opinion was error and Mr. Loper should be granted a new trial.

REPLY TO POINT V.

The State argues that the trial court did not plainly err in excluding evidence of the victim's post-marriage and post-dropped charges attack on Mr. Loper because the attack was too remote and not part of the sequence of events. (Rsp. Br. pp. 69, 71). The State argues that prejudice to E.S. outweighs the probative value. (Rsp. Br. p. 73).

Mr. Loper was re-charged in 2017 after being attacked by the E.S., not only with the 2015 alleged assault but also with victim tampering due to his marriage to E.S. in August of 2016. (D2). E.S. reconciled with Mr. Loper when he was released on bond in September of 2015. (Tr. 223). They cohabitated until December 2016 and were married in August of 2016. (Tr. 223-225). They were still married in May of 2017. (Tr, 239). The whole relationship between the E.S. and Mr. Loper is at issue in the State's charges. This makes relevant the post-marriage crowbar attack on Mr. Loper by E.S. at Hooters in May of 2017. (Tr. 239-240).

E.S.'s admission of her public attack on Mr. Loper goes directly to her state of mind and motive to fabricate the allegations against Mr. Loper both before and after the original charges were dropped. Witness credibility is always logically relevant. *State v. Contreras-*

Cornejo, 526 S.W. 3d 146, 155 (Mo. App. W.D. 2017). This evidence was not to imply the witness had a violent character, but to show her motive to fabricate her testimony.

Her actions were not “too remote in time” from the post-marriage break up which she admitted made her very angry and hurt by Mr. Loper. (Tr. 229, 239-240). The incident shows a complete picture of their relationship which the State has put directly at issue in its case. *State v. Pitchford*, 514 S.W. 3d 693, 701 (Mo. App. E.D. 2017).

E.S. had a motive to lie. Her mere admission on cross-examination that she was angry with Mr. Loper for cheating on her did not mitigate the trial court’s exclusion of the evidence of her attack on Mr. Loper. This evidence directly contradicts the lay witness and expert testimony that E.S. was in fear of Mr. Loper and could not leave because of her fear. Mr. Loper was prejudiced by the exclusion of this evidence to counter the improper opinion testimony. Its exclusion was manifestly unjust and constituted plain error. Mr. Loper should be granted a new trial.

CONCLUSION

WHEREFORE, based on his arguments made in this brief, as well as the arguments made in Points I, II, III, IV and V of Appellant’s brief, Appellant, Rashidi Loper, respectfully requests that this Court vacate his convictions and sentences, reverse and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06, I hereby certify that on this 20th day of May, 2020, a true and correct copy of the foregoing brief was served via the e-filing system to Assistant Attorney General Garrick Aplin at garrick.aplin@ago.mo.gov. In addition, pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03. This reply brief was prepared with Microsoft Word for Windows, uses Baskerville Old Face 13-point font, and does not exceed 31,000 words. The word-processing software identified that this brief contains 5,251 words, including the cover page, signature block, and certificates of service and of compliance.

/s/ Susan DeGeorge
Susan DeGeorge