

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN MARK LANTTO,

Defendant-Appellant.

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UNPUBLISHED

July 23, 2009

No. 282600

Marquette Circuit Court

LC No. 07-044731-FH

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of leaving the scene of an accident, MCL 257.617. On November 13, 2007, defendant was sentenced to serve two years probation with the first 360 days in jail. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his trial counsel was ineffective for failing to investigate and present exculpatory evidence that was critical to defendant's duress defense. Specifically, defendant argues that counsel failed to present evidence that defendant suffered from posttraumatic stress disorder (PTSD) and that the complainant had a history of anger management problems. Additionally, defendant questions whether counsel attempted to obtain a videotape that would have discredited some of plaintiff's witnesses.

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving trial counsel was ineffective. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). Ineffective assistance of counsel is proven if a defendant can show that "(1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Defendant argued the affirmative defense of duress, and the jury was instructed on its elements. Thus, defendant was not deprived of this substantial defense by counsel's failure to pursue the cited matters at trial. See *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996).

Further, alleged evidence about defendant's PTSD and the complainant's anger management problems goes more to a possible self-defense, a position not taken below. MCL 780.972. The defense of duress is based on the principle that although the defendant acted in violation of the criminal law by harming an innocent party, he did so at the direction of a threatening party and in order to avoid a greater harm to the defendant or another. LaFave & Scott, *Criminal Law* (Hornbook Series, 2d ed), § 5.3(a), p 433. "It is similar to self defense, except that with self defense the defendant's response is an attack upon the threatening party . . . ." *Id.* at n 6.

In any event, the cited evidence does not tend to establish that defendant acted under duress. *People v Luther*, 394 Mich 619, 623; 232 NW2d 184 (1975) held that the elements of the duress defense are:

- A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;
- B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;
- C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and
- D) The defendant committed the act to avoid the threatened harm.

Arguably, defendant's PTSD and the complainant's alleged anger problems are relevant to the last three prongs of the *Luther* test. However, the fear examined in these prongs is the fear established in the first prong of the test, i.e., whether the threatening conduct at issue would instill in a person the fear of death or serious bodily harm. *Id.* This first prong is evaluated under an objective reasonable person standard. LaFave, 2 *Substantive Criminal Law* (2d ed), § 9.7(b), p 78 n 30. Thus, evidence that defendant has a particular vulnerability to fear is irrelevant to the first prong of the test. See *Luther, supra* at 623. Accordingly, if defendant's fear was objectively unreasonable, it does not matter that he may have been acting under its influence at the time. Moreover, it was reasonable strategy for counsel to present evidence of defendant's PTSD at sentencing in an effort to mitigate his punishment. LaFave, 2 *Substantive Criminal Law*, § 9.7(d), p 84. See *Rockey, supra* at 76-77.

Finally, defendant argues that counsel failed to pursue a videotape that would have undermined the credibility of certain witnesses. However, he fails to identify the videotape in any way. He does not indicate when it was recorded, what it recorded, or where it can be found. Defendant also failed to move beyond mere speculation with regard to this alleged videotape in his motion for new trial. "A party may not merely announce a position and leave it to this Court

to discover and rationalize the basis for the claim.” *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Affirmed.

/s/ Donald S. Owens  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher