

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY SCOTT CAMPBELL,

Defendant-Appellant.

UNPUBLISHED

January 27, 2005

No. 245263

Branch Circuit Court

LC No. 01-017197-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY SCOTT CAMPBELL,

Defendant-Appellee.

No. 254807

Branch Circuit Court

LC No. 01-017197-FC

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

SCHUETTE, J. (*concurring*):

I join in the opinion authored by my distinguished colleague, Chief Judge Whitbeck.

I write to comment upon the arguments made by and the evidence introduced by the prosecuting attorney in Branch County which seemingly point to defendant as the perpetrator of the brutal murder of Paige Anderson, a ten-month-old infant. However, two instances of glaring, ineffective assistance of counsel constrain us in reversing the trial court's order granting Campbell a new trial. Instead, we are required to affirm the trial court's order granting a new trial which I hope is convened in order to provide a measure of justice to the infant Paige Anderson.

Our standard of review of a trial court's decision to grant a new trial is abuse of discretion. Here, the trial court, when faced with two severe, gaping instances of ineffective assistance of counsel, properly granted a new trial. This decision was in the proper exercise of the trial court's discretion. As mentioned in the majority opinion, the failure of defendant's trial counsel to produce police records from Iowa concerning an allegation of physical abuse of

another of Teri Anderson's children, with whom defendant purportedly had no contact, falls short of the standard of performance for a defense attorney. Conceivably, the introduction of these records could have injected a scintilla of doubt concerning the involvement of Campbell and his guilt in the death of Terri Anderson's child, Paige, in Michigan. Defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). Here, there is no indication that the failure to present this testimony constituted sound trial strategy. Credible police records indicating that Anderson may have had a history of physical abuse involving one of her other children would only have helped defendant's case.

The prosecution worked diligently with nine different experts to introduce scientific and opinion evidence as to the circumstances how this ten-month infant met her death at the hands of Campbell. Defendant chose not to refute the prosecution's experts, challenge their credentials or otherwise counter the prosecution's massive display of expert firepower. The evidentiary hearing revealed the outright absence of meaningful representation to challenge the prosecution's experts. Moreover, the evidentiary hearing revealed that defendant and his family were willing to pay for expert witness testimony, but defense counsel declined even to discuss with defense expert witnesses about testifying in this case. Furthermore, the evidentiary hearing identified expert witnesses who would have offered, if called upon to testify, a contrary opinion about the cause of death of Paige Anderson. This potential expert testimony would have substantiated defendant's story of the child slipping out of the defendant's hand and accidentally tumbling down a flight of stairs. Finally, as a legal and judicial coup de grace, the trial judge, the finder of fact closest to this case stated that had defendant introduced contrary expert evidence at trial, "there is a strong likelihood I would have found the defendant not guilty." These conspicuous instances of ineffective counsel, coupled with the trial judge's unequivocal comments preclude this panel of judges from ruling any way except in accord with the trial court's order for a new trial.

I encourage the plaintiff-appellant to convene a new trial. I presume that effective assistance of counsel will be provided to defendant. I hope that justice is provided to Paige Anderson.

/s/ Bill Schuette