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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 45

T.P.,

Appellant.

20 Eagle Street
Albany, New York
April 8, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

COREY M. MEYER
DAVIS POLK & WARDWELL, LLP
Attorney for Appellant
450 Lexington Avenue
New York, NY 10017

DANIEL J. MATTLE
ERIE COUNTY DISTRICT ATTORNEY
Attorney for Respondent
25 Delaware Avenue
Buffalo, NY 14202

Brandon Deshawn
Official Court Transcriber



1 CHIEF JUDGE WILSON: Last case on today's
2 calendar is People v. T.P.

3 (Pause)

4 MR. MEYER: May it please the court. Corey Meyer
5 of Davis Polk & Wardwell, on behalf of defendant-appellant,
6 Ms. Taylor Partlow. May I please reserve three minutes for
7 rebuttal?

8 CHIEF JUDGE WILSON: Yes.

9 MR. MEYER: In justification cases like this one
10 involving a survivor of domestic abuse, it is paramount
11 that the jury charge include the explanations on
12 justification that this court mandated in Goetz and Wesley.
13 The failure of trial counsel to request such a charge in
14 this case constitutes ineffective assistance. At trial,
15 the jury heard evidence from prosecution and defense
16 witnesses of multiple violent attacks by the decedent upon
17 Ms. Partlow. Those attacks included kicking, punching,
18 hitting, hair-pulling, and even strangulation. Mind you,
19 strangulation is highly correlated with lethality in this
20 context of intimate partner fights.

21 JUDGE TROUTMAN: And so if counsel makes a single
22 error, does that always mandate a reversal?

23 MR. MEYER: In certain circumstances, this court
24 has held that in the case of a single error, you can find
25 ineffective assistance, and the circumstances necessary for

1 such a finding exist in this case because - - -

2 JUDGE HALLIGAN: So - - - so - - -

3 MR. MEYER: - - - of the gravity of the error
4 that the trial counsel made.

5 JUDGE HALLIGAN: Can I ask, why is it so clear -
6 - - excuse me - - - why is it so clear from Goetz and
7 Wesley that the addendum was required here? And why isn't
8 the instruction that was given sufficient?

9 MR. MEYER: Okay. Taking the first question as
10 to Goetz and Wesley. In Goetz, this court held that the
11 jury should be instructed to consider relevant knowledge
12 that the defendant has about the assailant - - -

13 JUDGE HALLIGAN: But didn't the charge instruct
14 that the jury must consider whether a reasonable person in
15 defendant's position, knowing what the defendant knew and
16 being in the same circumstances, would have had those same
17 beliefs? So I'm trying to understand why that doesn't - -
18 - I realize it's not the precise same formulation as Goetz,
19 but why doesn't it accomplish the same?

20 MR. MEYER: Yeah. In Goetz, the court clarified
21 that the circumstances is a bit vague because it- - - just
22 saying circumstances doesn't indicate that you could
23 consider more than just the movement of the potential
24 assailant on the occasion of deciding to use deadly force
25 in self-defense. And without further explanation of the

1 facts outlined - - - the factors, my apologies, outlined in
2 Goetz, the jury doesn't know that they should consider more
3 than just what happened on that night because of the - - -

4 JUDGE HALLIGAN: So the charge - - -

5 JUDGE SINGAS: But we never said - - -

6 MR. MEYER: - - - past history.

7 JUDGE HALLIGAN: The charge references
8 circumstances, right?

9 MR. MEYER: Correct.

10 JUDGE HALLIGAN: And so what does it not
11 reference? Relevant knowledge?

12 MR. MEYER: Relevant knowledge that the defendant
13 had about the victim, which could have a bearing on the
14 reasonableness of the use of deadly force.

15 JUDGE HALLIGAN: So the phrase, knowing what the
16 defendant knew, is not the same as any relevant knowledge?

17 MR. MEYER: Because it doesn't indicate
18 specifically what was enumerated in Goetz, that you must
19 consider more than what they knew in the moment that they
20 decided to use deadly force. The - - -

21 CHIEF JUDGE WILSON: So I take it your position
22 is, although tell me if I'm wrong, that no defense counsel
23 could have a strategic reason for failing to ask or
24 choosing to not ask for the expanded instruction?

25 MR. MEYER: Absolutely. There could be no

1 strategic - - -

2 CHIEF JUDGE WILSON: Not just in this case, that
3 no one ever could have a strategic reason not to ask for
4 it.

5 MR. MEYER: Where there is evidence of the
6 defendant's - - -

7 CHIEF JUDGE WILSON: Right.

8 MR. MEYER: - - - knowledge, correct. There is
9 no strategic - - -

10 CHIEF JUDGE WILSON: Correct. Or you - - - or
11 you could get it.

12 MR. MEYER: Correct. And especially under
13 Wesley, which directed that the court - - - the trial court
14 must direct the jury's attention to the factors outlined in
15 Goetz.

16 JUDGE RIVERA: The - - -

17 CHIEF JUDGE WILSON: So what about the fact that
18 the expanded instruction also has a piece that I don't
19 think the parties mentioned in the brief that says a person
20 cannot be considered the initial aggressor simply because
21 he/she has a reputation for violence or has previously
22 engaged in violent acts. Might defense counsel think, I
23 don't want the expanded instruction because I'm going to
24 get that piece of it too?

25 MR. MEYER: Even if defense counsel had that



1 thought, defense counsel still could have asked for the
2 Goetz factors to be included in the instruction as charged.

3 CHIEF JUDGE WILSON: I think I was asking
4 something a little different.

5 MR. MEYER: So - - -

6 CHIEF JUDGE WILSON: That is, because the
7 expanded instruction has not just the piece you focused on
8 but an additional piece at well - - - as well, is it
9 possible that a competent defense counsel could choose in a
10 case where there is a history of violence on the part of
11 the victim - - - severe history of violence, not to ask for
12 the expanded instruction because of that last tag piece?
13 Because of the worry that it might focus on the fact that
14 in the particular circumstances of the case, the defendant
15 was not the initial aggressor.

16 MR. MEYER: Not in this case where defense
17 counsel took the strategy of eliciting so much evidence as
18 to - - -

19 CHIEF JUDGE WILSON: Well, I thought you started
20 out by asking for a per se rule.

21 MR. MEYER: Here, I think where there is evidence
22 of the prior violent acts - - -

23 CHIEF JUDGE WILSON: Right.

24 MR. MEYER: - - - by the decedent and many prior
25 experiences, a defense counsel should, at a minimum, ask

1 for the instruction mandated by Wesley, whether it's in the
2 form of the omitted model instruction or in some other form
3 specifically tailored to the circumstances of the case.
4 Because this court held in Wesley that the jury's attention
5 must be directed to the Goetz factors, at a minimum,
6 defense counsel should ask that the trial court do just
7 that, which is mandated by Wesley and Goetz.

8 JUDGE RIVERA: Well, in this case, didn't the
9 court charge on the initial aggressor? That last piece did
10 not - - - did I misread the charge?

11 MR. MEYER: No. The - - -

12 JUDGE RIVERA: Did the court actually charge on
13 that last piece?

14 MR. MEYER: The court did actually charge on that
15 last piece.

16 JUDGE RIVERA: So it seems a bit odd for counsel
17 to - - - along the lines of what Chief Judge is asking you,
18 to let that get charged to the jury but not request perhaps
19 the rest of the charges that might be very beneficial to
20 the defense - - - defendant.

21 MR. MEYER: That's exactly right. There could be
22 no strategic advantage to not asking that, where that
23 instruction was essentially already given in the full
24 charge in this case. And the prejudice here is really
25 underscored by the fact that the jury, during

1 deliberations, sent a note to the court asking, and I
2 quote, "What constitutes self-defense?" This means that,
3 not only did trial counsel fail to request a proper charge
4 when initially delivered, but again, when given in response
5 to a specific question by the jury. And this court held in
6 Ciaccio that supplemental instructions coming after a jury
7 has retired and began deliberations, may well be
8 determinative of the outcome of the case. That's
9 absolutely the case here, where the jury retired for
10 deliberations, discussed justification, and was confused
11 about it because they heard all of this evidence about
12 prior violent acts by the decedent. They didn't know, one,
13 whether they should consider it, and importantly, how.

14 JUDGE SINGAS: But how can you really say that
15 when the charge said that a real person in defendant's
16 position, knowing what they know? How does that not take
17 into account the violence that was perpetrated?

18 MR. MEYER: Even if we assume that the jury
19 understands that they can consider the violence, the jury
20 still wouldn't understand how it's relevant. And what the
21 omitted model instruction does is it indicates that that
22 evidence is relevant to whether the defendant had a
23 reasonable belief and the necessity of using violent force.
24 So even if the - - - in this case, the jury knew it could
25 or did consider the evidence, it may have only considered

1 it as to the subjective element. Without this omitted
2 instruction, the jury would not know that they needed to
3 consider that evidence as part of the objective - - -

4 JUDGE HALLIGAN: Are you essentially - - -

5 MR. MEYER: - - - reasonable belief element.

6 JUDGE HALLIGAN: Are you essentially arguing that
7 in any case where there's a justification defense, that
8 it's ineffective assistance not to ask for the addendum?
9 It seems to me that's the implication of your position.

10 MR. MEYER: That's not what I'm arguing because -
11 - -

12 JUDGE HALLIGAN: And so what - - - but why isn't
13 that not the consequence of your position?

14 MR. MEYER: Because the fact, in this case, that
15 the defense counsel took the strategy of eliciting so much
16 testimony on prior instances of violence - - -

17 JUDGE HALLIGAN: So it's ineffective assistance
18 if there is a lot of testimony - - - I'm trying to think
19 about what a, you know, workable rule is, right? So
20 there's a lot of testimony, but if there is some testimony,
21 but not a lot, then it's not ineffective assistance?

22 MR. MEYER: Because the testimony is such a
23 significant part of the defense in this case, and the jury
24 went to the deliberations without being equipped with the
25 law, the correct understanding of the law, and how to use

1 that evidence - - -

2 JUDGE HALLIGAN: Okay. But - - -

3 MR. MEYER: - - - in weighing justification.

4 JUDGE HALLIGAN: To go back to a prior exchange,
5 I took you to be arguing for a blanket rule as well. And
6 I'm trying to understand what the parameters of that rule
7 would be, whether it would apply - - - it sounds like
8 you're saying not in all justification cases, but in any
9 case where there is some significant quantum of evidence,
10 that it's ineffective assistance to not ask for the
11 addendum?

12 MR. MEYER: So I think in terms of the blanket
13 rule, we must separate whether there was an error, and
14 secondly, whether there was ineffective assistance.

15 JUDGE HALLIGAN: I agree with that.

16 MR. MEYER: And I'm thinking - - -

17 JUDGE HALLIGAN: And - - - but you're asking a -
18 - -

19 MR. MEYER: - - - the blanket rule as the error
20 is absolutely correct. There should be a blanket rule that
21 there was an error in - - - in these types of
22 circumstances, but just in - - -

23 JUDGE HALLIGAN: But what is the - - -

24 MR. MEYER: - - - but in terms of ineffective - -
25 - sorry. Go ahead.

1 JUDGE HALLIGAN: What is the these types of
2 circumstances? That's what I'm grappling with.

3 MR. MEYER: Sorry. As the error, these types of
4 circumstances is where the defense has taken the strategy
5 of eliciting testimony on these prior acts of violence.

6 JUDGE HALLIGAN: I thought - - -

7 MR. MEYER: In terms of the ineffective
8 assistance - - -

9 JUDGE HALLIGAN: I just want to make sure I
10 follow you. So in - - - if we start in the first instance
11 and we're not where we are here where there was not the
12 added instruction requested - - - I mean, not an
13 ineffective assistance paradigm, but just at trial, so your
14 view is that defense - - - if defense counsel requests the
15 instruction in a justification case, and there is what?
16 Some evidence, a lot of evidence of these violent acts,
17 that it's error not to provide the instruction?

18 MR. MEYER: As to question of error, absolutely.
19 Under Wesley and Goetz, it would be an error for a court
20 not to provide the instruction where there - - -

21 JUDGE HALLIGAN: Okay.

22 MR. MEYER: - - - is some evidence.

23 JUDGE HALLIGAN: And then going forward, your
24 view is that it's ineffective to not ask for the
25 instruction in what set of circumstances?

1 MR. MEYER: Whereas, here, the defense was
2 premised on that evidence, the evidence, the - - -

3 JUDGE HALLIGAN: So any justification defense
4 case, it's ineffective assistance not to request - - -

5 MR. MEYER: Request the instruction of Goetz and
6 Wesley when the justification defense is premised in large
7 part, as it was here, on evidence of prior acts of violence
8 by the decedent.

9 JUDGE GARCIA: Were all these prior acts of
10 violence the victim against the defendant?

11 MR. MEYER: Almost all of them. There is an
12 instance from the day before the decedent's passing that
13 involved the decedent choking a friend of the defendant and
14 only stopping when another friend stepped into intervene.

15 JUDGE GARCIA: Because it seems to me that this
16 instruction goes to reputation evidence, right? So it's
17 more of that last example you gave where there's a third
18 party involved and I know about it, so I have reason to
19 believe this person may be violent, and I may have a
20 justification defense. Whereas, if all the action - - - if
21 all the harmful conduct is against me, that's not really
22 reputation. That's my experience, right?

23 MR. MEYER: The omitted instruction does not just
24 go to reputation evidence because it says, in its plain
25 terms, you may consider whether the defendant knew that the

1 decedent had a reputation for violence or had engaged in
2 violent acts, and therefore, the - - - or had engaged on -
3 - -

4 JUDGE GARCIA: I think the reputation is what
5 tweaks it a little bit more towards not covered by your
6 ordinary instruction, right? Because it seems to me then,
7 what I'm giving the jury with this is, even though that
8 violence was committed against others, you can still assess
9 that in terms of state of mind of the defendant when they
10 committed this act.

11 MR. MEYER: Well, even beyond the model
12 instruction is that, in Goetz and Wesley, there was no
13 question or no issue of reputation. It was all evidence of
14 either prior experiences that the defendant had or prior
15 acts of violence by the assailants or third parties acting
16 in concert with the assailants. And because those cases
17 didn't involve reputation and they mandate the supplemental
18 instruction, the instruction on the Goetz factors, then it
19 should be of no moment whether or not there was reputation
20 evinced.

21 JUDGE GARCIA: And was the same charge that was
22 given here given in those cases?

23 MR. MEYER: We tried to track down the charge
24 given in Goetz, and unfortunately, it's under seal.

25 JUDGE GARCIA: Thank you.

1 MR. MEYER: I see my time is up.

2 CHIEF JUDGE WILSON: Thank you.

3 MR. MATTLE: Good afternoon, Your Honors. May it
4 please the court. My name is Daniel Mattle, and I'm here
5 representing the People of the State of New York in this
6 matter. The People's position is simple. There was no
7 error to constitute ineffective assistance of counsel in
8 either regard.

9 JUDGE HALLIGAN: Can I ask you to address why
10 there's not a cumulative error here?

11 MR. MATTLE: Well, Your Honor, I don't believe
12 that there was error in either instance. Therefore, there
13 would be no cumulative effect.

14 JUDGE HALLIGAN: Well, at least with the
15 instruction - - - I mean, sorry, with the summation, I
16 believe that you've acknowledged that there was at least
17 one misstatement, right?

18 MR. MATTLE: There was one misstatement, but
19 whether or not it was error for defense counsel to not
20 object to that misstatement is a different thing - - -
21 different question than whether or not there was a
22 misstatement during summation.

23 JUDGE TROUTMAN: What about characterizing
24 defendant as a liar repeatedly?

25 MR. MATTLE: Again, I think that while the - - -



1 it's important that it's not preserved. So we're not
2 looking at it as to whether or not the prosecutor's
3 statements during summation are erroneous in and of
4 themselves. It's whether or not trial defense counsels - -
5 -

6 JUDGE TROUTMAN: Ergo the question about the
7 cumulative effect of all of these things that we're
8 discussing. Why isn't - - - even if one thing may not be a
9 problem - - - so a problem that would require a reversal,
10 but the cumulative effect could have such a negative impact
11 upon the defendant that deprived her of what she was
12 entitled to, that reversal is appropriate. Why isn't that
13 appropriate?

14 MR. MATTLE: I don't think that would be
15 appropriate here considering the context of each of the
16 purported errors. So in regard to - - -

17 CHIEF JUDGE WILSON: Let me ask about the
18 summation for a second. So suppose we were here on direct
19 appeal instead of ineffective assistance. Would your
20 position be that the summation doesn't - - - wouldn't
21 require a reversal?

22 MR. MATTLE: That would be my position, Your
23 Honor. Specifically, because if you consider the summation
24 as a whole, where trial defense counsel did object twice to
25 statements made by the prosecutor during summation - - -

1 CHIEF JUDGE WILSON: No. Now you're talking
2 about ineffective assistance, I think.

3 MR. MATTLE: But in each of those instances, the
4 jury was instructed - - - it was issued a curative
5 instruction by the court that statements made by the
6 attorneys are not matters of law, and they're to make their
7 own credibility determinations. So my position is that
8 wouldn't require reversal regardless of whether it was
9 preserved at the lower court or into the ineffective
10 assistance of counsel realm because of those curative
11 instructions which cured any potential prejudice. Also,
12 considering the fact that trial defense counsel, the main
13 thrust of his message and the - - - the first main
14 substantive point during - - - during trial defense counsel
15 summation was to vouch for the credibility of the defendant
16 and to ask the jury - - - submit to the jury to believe her
17 this time.

18 CHIEF JUDGE WILSON: So it's sort of everybody's
19 gone off the rails here and violated what we've set out as
20 the standards for conduct of attorneys in summation, and
21 we'll let it go?

22 MR. MATTLE: Not that it let it go. It's just
23 when we're now - - - I believe that it needs to be taken
24 into consideration when analyzing the prejudicial impact of
25 the statements, which, as I've submitted in my papers, were

1 less than ideal.

2 JUDGE RIVERA: What about mischaracterizing her
3 statement about fearing for her life?

4 MR. MATTLE: Yes. In regard to that specific - -
5 - that's the one where I would concede was a misstatement.

6 JUDGE HALLIGAN: And don't we have to consider
7 that in the context of the defense here, which was
8 justification in terms of assessing its impact?

9 MR. MATTLE: Consider it in what regard, Your
10 Honor?

11 JUDGE HALLIGAN: Well, consider the effect that
12 it would have had given that the defense was justification.

13 MR. MATTLE: Certainly. And I - - - while there
14 was contradictory testimony to what the prosecutor's
15 summation statement, there were other indications - - -

16 JUDGE HALLIGAN: Sorry. There's contradictory
17 testimony about the prosecutor's statement?

18 MR. MATTLE: Yeah. So the - - - the - - -

19 JUDGE HALLIGAN: I don't think that's in the
20 record.

21 MR. MATTLE: The prosecutor stated that there was
22 no - - - you heard no testimony or you saw no - - - heard
23 no evidence of - - - that the defendant was in reasonable
24 fear of death. But there were other indications throughout
25 the trial which would support the - - - so aside from the

1 defendant's testimony - - -

2 JUDGE HALLIGAN: I thought you conceded that that
3 was a misstatement.

4 MR. MATTLE: I did concede.

5 JUDGE HALLIGAN: Okay.

6 MR. MATTLE: But there were other indications
7 throughout the trial that would support the overall
8 proposition, which is where I assume the prosecutor was
9 getting at, such as the defendant did not have a knife or -
10 - - or any deadly weapon during the altercation.

11 JUDGE RIVERA: That's not - - - that's not what
12 the prosecutor argued to the jury.

13 MR. MATTLE: I understand.

14 JUDGE RIVERA: That's just not - - - stick with
15 your concession. You might be better served. But if we
16 can get back to the point raised at the beginning about the
17 cumulative errors, if you're conceding that, why is there
18 not - - - from your perspective, not an error on the
19 justification charge?

20 MR. MATTLE: I believe that the justification
21 charge that was given to the jury accurately reflect - - -
22 reflects the law as it stands today. My understanding of
23 the addendum regarding reputation evidence of the victim
24 is, if you - - - if the citation in the CJI addendum refers
25 to the - - - this court's decision in People v. Miller.

1 And in that decision, the - - - my understanding of the
2 actual holding is that the - - - this court did decide that
3 - - - that that type of evidence is admissible at the
4 discretion of the trial court. And then there is - - -
5 there is part - - - there is language in that decision - -
6 -

7 JUDGE TROUTMAN: What about here when the jury
8 appeared to be confused, simply rereading the original
9 charge arguably was not sufficient? Counsel should have
10 asked at that point perhaps for the addendum?

11 MR. MATTLE: Perhaps they could have. But again,
12 I think that it - - - the - - - I don't think that the
13 addendum was appropriate here.

14 JUDGE TROUTMAN: But it's her whole defense. And
15 the testimony, and there were witnesses, they didn't just
16 talk about what happened on the day of. They recounted
17 numerous instances of assaultive violent behavior in the
18 presence of other people, and the jury seemed confused
19 about how they were to consider that. So how does that not
20 go to her main defense? And then when you add everything
21 else in, why is this not ineffective assistance?

22 MR. MATTLE: It certainly is relative to the
23 issue of this defendant's justification defense. My
24 understanding of the addendum itself, as it comports to the
25 law of this court, is the - - - is the language in the

1 Miller decision, which actually states that such testimony
2 must be given a limiting or curative instruction to the
3 jury regarding its limited scope or importance.

4 JUDGE SINGAS: Wasn't Miller a reputational
5 evidence case, not a direct evidence, right? Was it a
6 reputation?

7 MR. MATTLE: My understanding is that Miller was
8 regarding specific prior bad acts. So prior to Miller,
9 there was - - - only admissible was reputation evidence at
10 Miller.

11 JUDGE TROUTMAN: And do you claim that the
12 cumulative effect of the other actions of the prosecutor
13 have no bearing here?

14 MR. MATTLE: Have no bearing on the justification
15 issue, Judge?

16 JUDGE TROUTMAN: With respect to the
17 effectiveness of counsel - - - counsel's response to - - -
18 or not objecting when she's repeatedly called a liar. None
19 of it taken all together - - - we don't look at it all
20 together?

21 MR. MATTLE: I think you could certainly look at
22 all together. I don't think that - - - even all together,
23 if Your Honors were to decide that trial counsel - - -
24 there was an error in not requesting the addendum as well
25 as trial counsel was - - - there was an error for not

1 objecting more during the summation - - -

2 JUDGE TROUTMAN: So what do you see it as, a
3 single error by counsel, if anything?

4 MR. MATTLE: If anything. I don't believe that
5 either one would constitute error.

6 JUDGE RIVERA: What about the fact that, at
7 least, on the charge, it's - - - as Judge Troutman has
8 pointed out, the jury comes back and asks a question, so
9 there are several opportunities. Why isn't that multiple
10 errors?

11 MR. MATTLE: Your Honor, I'm not sure of the
12 ability of the trial court to modify the instruction
13 provided on justification at that point in the proceeding.

14 JUDGE TROUTMAN: You can.

15 MR. MATTLE: You can?

16 JUDGE TROUTMAN: Yes.

17 MR. MATTLE: So - - -

18 JUDGE TROUTMAN: You can.

19 MR. MATTLE: But again, if my understanding of
20 the - - - of the addendum as it relates to - - - as it
21 comports with the court of - - - with the law of this court
22 is that it's actually a limiting instruction. So a trial -
23 - - it could certainly be considered legitimate trial
24 strategy for a defense attorney to not request the addendum
25 because it limits the scope of such testimony.

1 CHIEF JUDGE WILSON: Well, to counsel's point, he
2 could have asked for something different than the addendum,
3 right? Seeing the jury's confusion, he could have asked
4 for something else.

5 MR. MATTLE: That's correct.

6 CHIEF JUDGE WILSON: And he didn't ask for
7 anything.

8 MR. MATTLE: That's correct, Your Honor. And I
9 also want to point out that, at this level before this
10 court, counsel is requesting that the jury be instructed,
11 as a rule per se, that they must consider such evidence.
12 And I think that to modify the justification defense
13 instruction generally to go that far would be too far.
14 Certainly, the jury needs to remain able to make its own
15 credibility determinations about such testimony and may
16 choose to disregard such testimony. But according to
17 counsel, the jury must be instructed that they must
18 consider such testimony when considering whether
19 defendant's reasonable belief - - -

20 JUDGE TROUTMAN: But you agree that jury charges,
21 even pattern charges, they are properly adjusted based on
22 the case before the court?

23 MR. MATTLE: Absolutely.

24 JUDGE TROUTMAN: And that counsel has a role to
25 play in making sure that the jury is properly instructed,

1 of course?

2 MR. MATTLE: Absolutely. And - - - and I would
3 just submit that there was a - - - there was a legitimate
4 interpretation of the - - - of trial strategy, where they -
5 - - where trial defense counsel would not want the addendum
6 read and allow the jury to make its own determination as to
7 the - - -

8 JUDGE HALLIGAN: I'm not - - -

9 MR. MATTLE: - - - the scope that it should be
10 interpreted.

11 JUDGE HALLIGAN: I'm not sure I understand your
12 position that the instruction would not be appropriate, to
13 the extent that - - - I understand your view perhaps that
14 you think it might not have been necessary, but the
15 instruction says you may consider whether the defendant and
16 one, is reputation, but then the second is, had engaged in
17 violent acts. Why would that not properly have been given
18 if requested here?

19 MR. MATTLE: Well, it - - - again, my reason why
20 I don't believe it would be properly given here is mainly
21 driving on the prompt at the beginning of the addendum,
22 which says, if there's evidence of - - - that the victim
23 had a reputation for violence. I do not believe that - - -

24 JUDGE RIVERA: But of course, if that's contrary
25 to the law, we need not concern ourselves with that, right?

1 JUDGE HALLIGAN: And - - - and - - -

2 MR. MATTLE: I'm sorry?

3 JUDGE RIVERA: If the case law is as your
4 adversary suggests, that if we were to agree with him, that
5 the case law recognizes that it need not be reputational
6 evidence, it simply is about the defendant's knowledge of
7 prior violent conduct, which is what's otherwise written in
8 the addendum, it doesn't matter what that lead in the
9 sentence says, correct?

10 MR. MATTLE: I think maybe generally if the issue
11 were preserved, but in the ineffective assistance of trial
12 context, it would be - - - it would be deeming trial
13 counsel have not been providing meaningful representation
14 or had - - - committing such an egregious and prejudicial
15 error by doing something that the prompt agrees with.

16 JUDGE HALLIGAN: But as to the prompt, my
17 recollection of the testimony was that a number of
18 witnesses testified to violent acts committed by the victim
19 against the defendant that they witnessed, right?

20 MR. MATTLE: Absolutely.

21 JUDGE HALLIGAN: So why is that not both prior
22 violent acts and also a reputation for violence? It's a
23 reputation that they - - - based on conduct that they
24 witnessed themselves.

25 MR. MATTLE: I think it's the distinction between

1 the two types of evidence generally. And I think that the
2 - - - this court's early decisions when they first - - -
3 when this court first determined that reputation was
4 allowed - - - reputation evidence of the victim was allowed
5 in justification cases, and then when - - - during Miller,
6 when it made that transition towards allowing specific
7 prior bad acts testimony, they're - - - they're very
8 different in the context of a course of a trial. And
9 specifically, this court was cautioned about even allowing
10 specific prior bad acts at the risk of possibly turning
11 into many issues as to whether or not these acts actually
12 occurred.

13 JUDGE GARCIA: Counsel, I'm sorry. Those actions
14 that you just talked about with Judge Halligan where others
15 witnessed this conduct, were those only witnessed by those
16 third parties, or were they also witnessed by the
17 defendant?

18 MR. MATTLE: Those were also witnessed by the
19 defendant herself as the party.

20 JUDGE GARCIA: And it seems to me this
21 instruction goes to state of mind of the defendant, right?
22 So if there's an attack by a third party, again, that's
23 witnessed by the defendant, that's not reputation, it's
24 experience, to me, it seems.

25 MR. MATTLE: Correct. Yeah. I agree with you,

1 Judge. And I think that the difference between reputation
2 evidence and specific prior bad act evidence in this
3 context in - - - as it relates to the instruction, is
4 significant in the - - - the way that it comes in.

5 JUDGE TROUTMAN: But could counsel offer to craft
6 the charge to apply to the circumstances of this case and
7 it's - - - when the question came about as to explaining
8 her view and why she acted the way that she acted? So
9 whether it's reputation, her experience with the defendant,
10 you don't have to read the charges exactly the way that
11 they're written. Certainly, it's not freelance that they
12 are to engage in, but a capable attorney does at least try
13 to craft a instruction that takes into account the defense
14 he's presented, correct? Or she.

15 MR. MATTLE: Certainly, but I think the trial
16 counsel here did assure that the jury was properly
17 instructed under the justification defense generally. And
18 I think that in regard to this court's decision in Goetz
19 and in Wesley and Fallows, the general instruction that was
20 provided does properly instruct the jury to consider the
21 defendant's subjective reasonable belief.

22 CHIEF JUDGE WILSON: Would the expanded charge
23 have been better for the defendant?

24 MR. MATTLE: I am not sure if it would be better
25 or worse. Like I said, to the extent I believe that the

1 addendum does comport with the law of this court, it must
2 be read as a limiting instruction. If the - - - if it's
3 charged that counsel is now requesting that the jury must
4 consider such testimony in its determination of whether the
5 defendant was reasonably justified in their belief, I think
6 that would be beneficial. But of course, that is not the
7 language used in the addendum. And if there are no further
8 questions, I would thank the court and just ask that the -
9 - - that part of the Appellate Division order which
10 affirmed the judgment of conviction and held that the
11 defendant received effective assistance of counsel be
12 affirmed.

13 CHIEF JUDGE WILSON: Thank you.

14 MR. MATTLE: Thank you.

15 JUDGE TROUTMAN: Counsel, what is your
16 understanding of the role of defense counsel with respect
17 to ensuring that the jury is properly instructed, even if
18 it requires or doesn't require adjusting the verbiage in an
19 instruction to fit the case before it?

20 MR. MEYER: Defense counsel has a duty at trial
21 to ensure that the judge is properly instructing the jury
22 on the law and has an obligation to advocate on behalf of
23 their client to ensure that the charge properly reflects
24 all aspects of the law.

25 JUDGE SINGAS: And how did that not happen here?

1 MR. MEYER: The - - -

2 JUDGE SINGAS: Given our - - - we've never said
3 that you have to iterate certain factors under Goetz.
4 We've basically said there's a two-part test that says
5 there's a subjective and an objective consideration that
6 the jury should take into account. That happened here. I
7 mean, it seems to me that that count - - - that
8 justification charge about, in real life, what this
9 defendant needs to know and what her experiences are, are
10 better than this generic reputation evidence. I don't see
11 where it's lacking.

12 MR. MEYER: It's lacking because of the holding
13 of this court in People v. Wesley, where it specifically
14 said, evidence of a defendant's circumstances includes
15 relevant knowledge that the defendant may have had about
16 the victim and any prior experiences the defendant had
17 which may have - - -

18 JUDGE HALLIGAN: What - - -

19 MR. MEYER: - - - which - - -

20 JUDGE HALLIGAN: What's your response to your
21 adversary's view that the instruction is not apposite
22 because of the prompt?

23 MR. MEYER: First of all, it's totally illogical
24 to say that the jury should only be instructed to
25 reputation, but not to consider prior bad acts of violence

1 because of this - - -

2 JUDGE HALLIGAN: Well, I took it the argument
3 was, you know, not - - - not evidence with respect to prior
4 violent acts committed against me, the defendant, but the
5 victim's reputation and prior violent acts as committed
6 against others.

7 MR. MEYER: The prompt is agnostic as to whether
8 the prior violent acts were against the defendant or
9 others, but it just - - - under People v. Miller, this
10 court recognized that prior violent acts are more probative
11 than reputation evidence.

12 JUDGE HALLIGAN: Do you think that there is any
13 reputation evidence at stake the - - - that was before the
14 jury here, or is this all prior violent acts?

15 MR. MEYER: Absolutely, there was reputation
16 evidence. What's important is the reputation of violence
17 known to the defendant under People v. Miller. And given
18 the many public instances of violence, it's undeniable that
19 Ms. Partlow - - -

20 JUDGE HALLIGAN: Are they all violent acts as
21 committed against the defendant, or is there - - - I - - -

22 MR. MEYER: There - - -

23 JUDGE HALLIGAN: I don't recall if there were any
24 violent acts involving anybody else.

25 MR. MEYER: There is a prior violent act

1 involving a friend of the defendant the night before the
2 stabbing. The decedent was wrestling with that friend and
3 choked her to the extent that - - -

4 JUDGE GARCIA: And the - - - and the - - -

5 MR. MEYER: - - - someone else had to intervene.

6 JUDGE GARCIA: - - - defendant wasn't present?

7 MR. MEYER: Defendant was present in - - - in
8 that instance.

9 JUDGE GARCIA: I have a question on cumulative
10 error. I think there's kind of two ways you could look at
11 cumulative error, right? There are these number of errors,
12 and all together, while each individual one might not have
13 gotten you over the top, that when you take them all
14 together, it's ineffective, or one of those errors
15 aggravates the other. Do you have an argument here that
16 the summation errors are not - - - you're not bound by your
17 adversary's which ones were errors or not, but on your view
18 of those errors, do any of those aggravate the failure to
19 ask for the charge?

20 MR. MEYER: Absolutely, and in two ways. First,
21 we recognize that justification has a subjective and
22 objective element. The subjective element was - - - the
23 jury wasn't properly instructed on the subjective element
24 because of the jury charge issue. On the objective
25 element, whether Ms. Partlow was actually in fear for her

1 life was weakened because the defense counsel did not
2 object when the prosecution incorrectly told the jury they
3 never heard Ms. Partlow say that she was afraid for her
4 life. That is compounding example number one. Number two
5 is when you think about the role of a jury, it's applying
6 the law to the facts. The jury charge issue meant that the
7 jury deliberated with an incomplete view of the law. They
8 did not have the benefit of this court's very clear hearing
9 upholding in Wesley. And as to the facts, they did not
10 have a deliberation free from improper and false remarks by
11 the prosecution.

12 JUDGE GARCIA: I guess I'm asking also something
13 a little more specific. Is there anything in this - - -
14 what you view as the prosecutor's misconduct or
15 misstatements that specifically aggravated the jury's
16 ability to consider prior acts of violence?

17 MR. MEYER: The attack of Ms. Partlow by saying
18 that she lied on the stand multiple times in spite of there
19 being no evidence or no assertion in any of the briefs that
20 there was a lie on the stand certainly undermines the
21 evidence that she offered regarding the prior violent acts.

22 JUDGE GARCIA: Thank you.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. MEYER: Thank you.

25 (Court is adjourned)

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C E R T I F I C A T I O N

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. T.P., No. 45 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Brandon Deshawn

Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: April 17, 2025

