

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY BERNARD PYNE,

Defendant-Appellant.

**Court of Appeals
No. 308706**

**Circuit Court
No. 2011-238692-FC**

MOTION FOR REMAND

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NOW COMES Defendant-Appellant, Jeffrey Pyne, by and through his attorney, Neil J. Leithauser, and moves this Honorable Court for an order remanding the case to the trial court to allow for the filing of a motion for new trial and *Ginther*-hearing [*People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973)] on the issue of ineffective assistance of counsel, saying in support thereof:

1. This is an appeal of right by Jeffrey Pyne from a jury-tried conviction of one count of second-degree murder, MCL 750.317 [requested by the prosecution, objected to by the defense], as a lesser-offense of the charged count of first-degree premeditated murder, MCL 750.316(1)(a) (Trial transcript ("TT"), 12/18/2012, verdict, 6). Mr. Pyne was sentenced by Oakland County Circuit Judge Leo Bowman to a prison terms of twenty to sixty years, with sentence credit of 476 days (Sentence transcript, 1/29/2013, 22).
2. The trial was long, and numerous prosecution witnesses were called, including multiple experts in a variety of areas including blood-spatter evidence, DNA, mitochondrial DNA, and

two experts in forensic pathology a Deputy Medical Examiner and the Chief Medical Examiner).

3. There was no direct evidence of guilt. The evidence of guilt largely involved opinions and inferences of the experts, as well as opinions and inferences from non-experts, ranging from the type of instrument used in the fatal assault, as well as the possible origin of injuries later seen on Defendant-Appellant's hands. Dr. Dragovic, Medical Examiner for Oakland County, testified that the murder weapon likely was a rectangular object, possibly a 2 X 4 or a 1 X 4 piece of wood, and that the murder-instrument could also have been the cause of the injuries found on Mr. Pyne's hands.

4. Potential defense witnesses included the Chief Medical Examiner of Macomb County, Dr. Daniel Spitz, and Defendant-Appellant's father, Bernard Pyne.

5. No witnesses testified for the defense.

Offer of Proof

At a hearing, it is expected that:

-- Dr. Spitz would testify that, among other things, and contrary to the opinions the Oakland County Medical Examiners, the injuries on Appellant's hands were likely not caused by a 2 X 4 or similar object in the manner described by the Oakland County pathologists.

-- Bernard Pyne would that, among other things, about his wife's medication compliance; her behaviors in the days, weeks and months prior to her death; Appellant's complete lack of violent behavior and character for violence; that he observed at the scene of the murder a blue mark on a cabinet near the body, that was not present before the assault [suggesting a blue object made the impact; that there were no such objects at his household, and no items that could have

caused the fatal injuries were missing from the house, etc. as evidenced in his attached affidavit (Appendix A).

It is also expected that trial counsel would explain why no defense witnesses were presented, and also explain his failure to object to multiple instances of hearsay and other potentially objectionable testimony during trial. It is alleged that trial counsel rendered constitutionally deficient performance (a copy of the argument from Defendant-Appellant's Brief on Appeals, also filed today, is attached as Appendix B, for reference).

RELIEF REQUESTED

WHEREFORE, Mr. Pyne respectfully requests this Honorable Court remand for a hearing to expand the record on the issue of trial counsel's performance and allow a motion for new trial on that issue to be heard.

Respectfully submitted,

/S/ NEIL J. LEITHAUSER

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