STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN EDWARD LAWRENCE,

Defendant-Appellant.

UNPUBLISHED
April 19, 1996

No. 158845
LC No. 92-000092-FC

Before: Hood, P.J., and Young and T.L. Brown,* JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of first-degree felony murder, MCL 750.316; MSA 28.548, and arson of a dwelling house, MCL 750.72; MSA 28.267. We affirm.

I

Defendant's conviction stemmed from a fire that killed his father, Willard Lawrence, on the morning of February 20, 1992. The fire was deliberately set to the senior Lawrence's residence on Gun Lake. Defendant and his wife lived next door to Willard Lawrence. The trial focused on the relationship between defendant and his wealthy father.[1] Willard Lawrence left an estate of approximately $6.5 million.

On the evening of February 19, 1992, Willard Lawrence returned to Michigan from a four-week stay at his Florida home. He was picked up at the airport and taken to dinner by another son, Donald. During dinner, Willard Lawrence discussed his desire to confront defendant about his credit card bills and the fact that he was getting into financial difficulty again.

Sometime before 2:00 a.m. on February 20, 1992, an arsonist entered Willard Lawrence's residence, poured gasoline in all of the entrances and other areas of the home and ignited the accelerants. The ensuing fire virtually consumed the residence. Defendant claimed that an explosion at his father's house broke his bedroom window and blew him out of bed. He also claimed that he attempted to rescue his father by entering the burning home wearing a gas mask.

---

* Circuit Judge, sitting on the Court of Appeals by Assignment

The Estate of Willard Lawrence hired Matrix, a private investigation firm, to discover who had killed Willard Lawrence.[2] During the course of its investigation, Matrix investigators questioned defendant and his wife, among others, about their knowledge of the fire. Matrix retrieved the contents of defendant's vacuum cleaner (which defendant indicated contained the debris blown into his bedroom by the explosion at his father's home), a gas mask that defendant claimed he wore during his attempt to rescue his father, and defendant's bedroom window (which defendant claimed had been broken by the explosion). These items were eventually turned over to the police.

Defendant gave conflicting accounts to the estate's investigators of his role in discovering the fire at his father's house, his activities in trying to rescue his father and his other actions during the investigation. In conversations with relatives, family friends and private investigators, defendant revealed detailed knowledge about the fire and the circumstances of two other small fires set elsewhere in the community. Fire investigators believed those fires were set as diversions around the time the fire at the Lawrence home was started. Fire investigators testified that they had not disclosed any of these details to defendant.

Defendant made a number of other incriminating statements and openly speculated that his wife and a friend may have been involved in the arson. The estate's investigators found in defendant's garage several five-gallon gas cans which had previously contained both gasoline and a kerosene-type fuel like the accelerants used to set the Lawrence fire.

II

Prior to trial, defendant unsuccessfully sought to suppress on the ground of privilege and coercion certain statements he made to the estate's private investigators. Defendant also sought to suppress the physical evidence the private investigators turned over to the police, arguing that these items were unconstitutionally seized from him. We review a denial of a motion to suppress evidence under the "clearly erroneous" standard. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

Defendant bases his claim of privilege on the Private Detective License Act (the "Act"), MCL 338.821 *et seq*; MSA 18.184(1) *et seq*. The Act provides that communications between a client and a private detective are to be accorded privileged status akin to that accorded attorney-client communications.[3] *Ravary v Reed*, 163 Mich App 447, 451-452; 415 NW2d 240 (1987). At the suppression hearing, defendant acknowledged that the investigators were hired by his father's estate to find out who killed his father and claimed that he was repeatedly told that what he told the investigators would be "confidential." Consequently, defendant asserted, he was entitled as a beneficiary of the estate to the protection of the Act for any statements he made to the investigators.

The trial court found that the defendant and his siblings had engaged the investigators with the express purpose of discovering who had killed their father. The court likened this joint engagement to a "consortium" and found that the individual members, having joined the consortium, had waived their privilege under the Act.

As stated, the Act created a communication privilege between the licensed private detective and the client. It is undisputed that the client of Matrix was the Estate of Willard Lawrence. As such, only the estate owned the privilege and was in a position to assert it through the personal representative. Had an attorney been retained by the estate to investigate the arson death, there would be little question that the attorney's duty to maintain privileged confidences would run only to his client, the estate, and not to the individual beneficiaries of the estate. See *Ethics Committee for the State of Michigan*, Opinion R-10 (lawyer represents fiduciary, not beneficiaries); *Steinway v Bolden*, 185 Mich App 234, 238; 460 NW2d 306 (1990) (estate is client). We hold that defendant has no standing to assert the privilege created by the Act.

Further, plaintiff contends and we agree that, even if defendant's communication with the investigators were protected under the Act, he waived this protection by failing to object to the investigator's testimony at the preliminary examination. *In re Arnson Estate*, 2 Mich App 478, 485; 140 NW2d 546 (1966).

We find that the trial court's ruling on defendant's motion to suppress his statements to the estate investigators was not clearly erroneous.

III

With respect to defendant's additional argument that the trial court erred by denying his suppression motion based on alleged unconstitutional coercion and illegal seizure by the estate's investigators, it is well settled that the fifth and fourth amendments of the federal constitution and their counterparts in our state constitution protect only against violations involving state action. *Grand Rapids v Impens*, 414 Mich 667; 327 NW2d 278 (1982). Defendant has failed to establish that the estate's investigators acted at the behest of government law enforcement officers and thus became an agent of the government. The trial court, therefore, properly admitted the evidence.

IV

Defendant also contests the admission of testimony concerning certain statements which Willard had made about his concern for the defendant's profligate spending habits. Defendant's sisters testified that Willard had said that decedent was very concerned about defendant's spending habits. While defendant objected to some of these statements, he failed to object to similar ones made by the same witnesses. Defendant also claims evidentiary error involving the admission of testimony of his sister that their father had told her that he could not "stand to spend another summer beside [defendant and his wife]."

No error resulted because the statements were not admitted for a hearsay purpose. See MRE 801(c). They were instead admitted to show motive. Even if the admission of these statements was erroneous, we find the error harmless beyond a reasonable doubt in light of the admission of similar evidence to which defendant raised no objection.

V

Defendant next contends that the court erred in admitting the testimony of one of his sisters that their father intended to change his will to provide defendant with a spendthrift allocation rather than the lump sum bequest that he had created for his other children. Defendant's objection at trial was sustained, and the jury was instructed to disregard the testimony. Consequently, the evidence was not admitted and defendant's claim of error is baseless.

VI

Defendant asserts that the trial court erred in failing to grant his motions for directed verdict and new trial based upon the great weight of the evidence. Although defendant moved for a new trial, it was not based upon the argument that the verdict was against the great weight of the evidence. Therefore, this latter issue has not been preserved for appeal. *People v Patterson*, 428 Mich 502, 514-515; 410 NW2d 733 (1987).

Defendant also argues that the evidence was not sufficient to sustain his convictions. We must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found all the essential elements of the crime proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). Circumstantial evidence, including all reasonable inferences which can be drawn from the evidence, can provide satisfactory proof of the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Defendant's account of his activities regarding the fire at his father's home is riddled with inconsistencies and inculpatory statements. A few examples will suffice to illustrate the broad pattern of evidence introduced to support defendant's conviction. Defendant said he and his wife were blown out of their bed and that their bedroom window was blown in by the force of the explosion. An explosives expert testified that, if defendant's story had been true, there would have been damage to the outside of his home. Instead, there was no damage to the exterior of defendant's home and there was no explosive debris found between the two houses.

Defendant also said that he put on a gas mask and entered his father's house through the rear door and got ten to twenty feet into the house, but was unable to rescue his father because of the smoke and flames. The expert testimony established that the fire started at the rear door of the house and that it would have been unlikely for defendant to enter the back door, much less go ten to twenty feet inside. When defendant's gas mask was found and tested, its filters contained none of the soot particles one would expect to find if defendant's rescue story were true.

Incriminating physical evidence was found on defendant's property, such as gasoline cans with residue of accelerants of the kind believed to have started the fire. Defendant also made several inculpatory statements to investigators which, if believed by the factfinder, support the conclusion that defendant set the fire at his father's home.

The circumstantial evidence and reasonable inferences therefrom were sufficient to sustain defendant's conviction.

VII

Following his conviction, defendant moved for a new trial on the basis that he was incompetent to stand trial or, alternatively, for a competency hearing. The motion was denied after an extensive evidentiary hearing. Defendant also challenges the trial court's refusal to consider post-conviction polygraph test results.

In a motion for a new trial, defendant must show that (1) the evidence itself, not its materiality, was newly discovered; (2) that the evidence is not cumulative; (3) the evidence is such that its admission would made a probable difference in the result on a retrial; and (4) that defendant could not with reasonable diligence have discovered and produced it at trial. *People v Barbara*, 400 Mich 352, 362; 255 NW2d 171 (1977). A trial court's ruling on a motion for a new trial is reviewed for an abuse of discretion. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

At the hearing, defendant testified that, from the date of the fire until approximately one month prior to trial, he took Xanax, a medication prescribed for managing anxiety. Although the dosage was increased during this period, defendant testified that the Xanax failed to help him. In August, a month before trial, defendant began taking Ativan, another anxiety management drug. He continued to take this medication throughout the trial.

Defendant testified that both medications left him confused, fatigued, and unable to concentrate or remember certain things. These symptoms, defendant argued, rendered him unable to intelligently assist his counsel. Significantly, however, defendant admitted that he: understood the charges against him; consulted extensively with his counsel before and during the trial; and believed that he rationally communicated with his lawyer.

Defendant failed to establish that the evidence of his use of psychotropic drugs during trial was not discoverable with reasonable diligence at the time of trial. *Barbara*, 400 Mich at 362.

The circuit court also did not abuse its discretion in declining to consider the polygraph evidence. The deficiencies of polygraph tests are well documented; they are heightened in a case like this where a defendant also argues that he cannot recall the events in question. See *Barbara*, 400 Mich at 390-403.

VII

Eighteen months after this conviction, defendant filed a motion to interview jurors. He argues that the court erred by denying his motion. The issue is waived because defendant has failed to supply this Court with a copy of the motion hearing transcript. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995).

VIII

The prosecution offered the rebuttal testimony of Jon Simpson and Lyle Gillespie over defendant's objection. Defendant contends that the admission of their testimony was reversible error. The admission of rebuttal evidence is within the discretion of the trial court. *People v Winchell*, 171 Mich App 662, 665; 430 NW2d 812 (1988).

During its case-in-chief, the prosecution presented the testimony of Kay Simpson, who testified that she and defendant got a ladder in an attempt to rescue Willard Lawrence through a second story bedroom window. Kay Simpson testified that, while she was breaking out the window, defendant came up behind her on the ladder and got on the roof. The defense then offered the testimony of Paul Hopkins who testified that *he* was the one on the roof with Kay Simpson. On rebuttal, Jon Simpson corroborated his wife's testimony, indicating that he did not see Hopkins, but saw defendant, on the roof. The testimony of Jon Simpson was a proper rebuttal of Hopkins' testimony.

The trial involved considerable testimony by multiple witnesses about the three fires which occurred on the night that Willard Lawrence was killed as well as other unsolved fires in area homes. Defendant testified that he had not participated in any of the fires and had no reason to be involved. Defendant specifically mentioned the Gillespie fire in his testimony and the defense focused on the similarity of the Gillespie and Lawrence fires. Gillespie was called in rebuttal to testify that his house had been consumed by fire a year prior to the one which killed Willard Lawrence. He also testified that he had a dispute with defendant regarding a cottage he had rented to defendant almost twenty years earlier. Defendant threatened to sue Gillespie at the time, but did not do so.

In arguments before the court regarding the Gillespie testimony, the prosecutor urged that defendant's trial strategy was to suggest that defendant had been singled out for arrest despite the fact that there had been a history of unsolved fires in the area — fires with which defendant claimed he had no possible connection. On cross-examination of defendant, the prosecution sought, without objection, to elicit a possible motivation on defendant's part to set the Gillespie fire.[4]

The trial court found that the admission of the Gillespie testimony was a close question under MRE 403 but allowed the testimony to stand given the importance of the area fires in this trial. Under the circumstances, we do not find a clear abuse of discretion.

IX

Defendant contends that the trial court erred by instructing the jury on an aiding and abetting theory over defendant's objection.

Aiding and abetting describes all forms of assistance rendered to the perpetrator of a crime and includes all words and deeds which might support or incite the commission of a crime. *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). To sustain an aiding and abetting charge, the guilt of the principal must be shown. However, the identity of the principal is not necessary, provided the existence of a guilty principal is shown. *People v Wilson*, 196 Mich App 604, 611; 493 NW2d 471 (1992). To place the issues of aiding and abetting before the trier of fact, the evidence need only tend to establish that more than one person committed the crime, and that the role of the

defendant charged as an aider and abettor amounts to something less than the direct commission of the offense. *Id*.

The evidence suggested that two or more persons acted in concert to create diversions. Thus, there was sufficient evidence to support the instruction.

X

Defendant challenges under the double jeopardy clause of the Michigan constitution his conviction and sentence for both felony murder and the underlying felony of arson. See *People v Harding*, 443 Mich 693, 714; 506 NW2d 482 (1993); *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992). While the court did not vacate the conviction for the underlying felony of arson, it imposed sentence only on the murder conviction. Because the double jeopardy clause protects against multiple punishments, *North Carolina v Pearce*, 395 US 711, 717; 89 S Ct 2072; 23 L Ed 2d 656 (1969), defendant has already received the necessary relief.

Affirmed.

/s/ Harold Hood
/s/ Robert P. Young, Jr.
/s/ Thomas L. Brown

---

[1] Willard Lawrence's will provided that his estate was to be divided equally among his five children. However, presciently, the will also provided that if any beneficiary killed him, that beneficiary's share would pass to that beneficiary's children.

Willard Lawrence was generous with gifts to his children before his death, but kept meticulous records of his gifts to ensure that they were spread equally among his children. However, defendant was the only child who was given money on the basis of need. Following the death of defendant's mother in April of 1991, these gifts became less generous. Defendant apparently enjoyed an excellent relationship with his mother, but a "stormy" one with his father. On his mother's death, defendant told a neighbor that he "wish[ed] it had been my dad" who had died. The record established that Willard Lawrence disapproved of defendant's work habits and believed that defendant's family lived beyond its means, buying expensive non-essentials while neglecting basic necessities.

[2] Defendant was out of town when his siblings interviewed and hired Matrix on behalf of the estate.

[3] MCL 338.840(2); MSA 18.184(20) provides:

> Any principal, manager or employee of a licensee who willfully furnishes false information to clients, or who willfully sells, divulges or otherwise discloses to other than clients, except as he may be required by law, any information acquired by him or them during employment by the client is guilty of a misdemeanor, and shall be subjected to

immediate suspension of license by the secretary of state and revocation of license upon satisfactory proof of the offense to the secretary of state. *Any communications, oral or written, furnished by a professional man or client to a licensee, or any information secured in connection with an assignment for a client, shall be deemed privileged with the same authority and dignity as are other privileged communications recognized by the courts of this state.* [Emphasis added.]

[4] Defendant and his wife took pictures of the Gillespie fire in progress.