

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DWAYNE MOORE,

Defendant-Appellant.

---

UNPUBLISHED

July 15, 2010

No. 291249

Wayne Circuit Court

LC No. 08-007149-FC

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a fourth habitual offender, MCL 769.12, to life imprisonment for the murder conviction and a concurrent term of 6 to 20 years' imprisonment for the felon-in-possession conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the death of Nia Clark, whose body was discovered in an alley at approximately 3:00 a.m. on August 1, 2007. The principal witness against defendant was Antwone Jasper, who testified that he, defendant, and a man known as "Cheeto" were members of a drug organization run by a man known as "Shoes." Jasper testified that sometime after midnight, he was sitting on the porch with Clark when defendant and Cheeto came by. Defendant asked Clark to go for a walk with him and they left together. About half an hour later, Jasper heard gunshots. Five minutes after that, defendant came through the backyard and was breathing heavily. He gave what appeared to be a semi-automatic handgun to Cheeto, who then left. Defendant asked Jasper "did they fingerprint bodies in Michigan." According to Jasper, defendant later admitted to having killed Clark because "she was snitching."

Defendant's sole claim on appeal is that trial counsel was ineffective for failing to make a stronger closing argument to the jury. Because defendant did not raise this issue in a motion for a new trial or request for an evidentiary hearing, our review is limited to errors apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987).

To establish a claim of ineffective assistance of counsel, a defendant must “show that (1) his trial counsel’s performance fell below an objective standard of reasonableness under the prevailing professional norms; and (2) there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different. Counsel is presumed to have provided effective assistance, and the defendant must overcome a strong presumption that counsel’s assistance was sound trial strategy.” *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citations omitted).

The decision concerning what evidence to highlight during closing argument is a matter of trial strategy. *In re Rogers*, 160 Mich App 500, 505-506; 409 NW2d 486 (1987). “A sound trial strategy is one that is developed in concert with an investigation that is adequately supported by reasonable professional judgments.” *People v Grant*, 470 Mich 477, 486; 684 NW2d 686 (2004). “This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Rocky*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

We cannot conclude that defense counsel’s decision to argue that Jasper’s testimony was not worthy of belief was unsound strategy. Jasper’s testimony was the only evidence linking defendant to the crime. Counsel elicited evidence that Jasper was not a credible witness, in part because (1) Jasper had motives for falsely accusing defendant (to take his place in Shoes’s organization and to obtain leniency in his own criminal case), (2) Jasper’s claim that he was on the porch with Clark was contradicted by another witness, who stated that Clark was alone, and (3) there were various inconsistencies between Jasper’s trial testimony and his prior statements or the testimony of other witnesses. Counsel mentioned most of these points in his closing argument and plainly stated that Jasper, who is “a liar” and “has lied all over the place,” would “do whatever is necessary” to save himself. Although counsel did not specifically argue that Jasper was motivated to falsely accuse defendant so that he could move up in Shoes’s drug organization, it cannot be said that this omission, in the context of an entire argument primarily dedicated to Jasper’s lack of credibility, was so serious that the jury was unable to understand the thrust of the defense theory of the case without it. Further, the decision to focus on Jasper’s lack of credibility rather than argue that Jasper killed Clark himself was not unreasonable because that theory is purely speculative, whereas counsel had solid evidence to support his argument that Jasper was lying. Counsel is not ineffective for failing to raise a baseless defense. *People v Green*, 96 Mich App 104, 109-110; 292 NW2d 142 (1980).

Affirmed.

/s/ Peter D. O’Connell  
/s/ Patrick M. Meter  
/s/ Donald S. Owens