

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN DUANNE HODGES,

Defendant-Appellant.

UNPUBLISHED

June 14, 2012

No. 300969

Oakland Circuit Court

LC No. 2009-228615-FC

Before: JANSEN, P.J., and CAVANAGH and HOEKSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for voluntary manslaughter, MCL 750.321. We affirm.

Defendant slashed and stabbed Rommel McDougal multiple times during a fight at a nightclub causing McDougal's death. At trial, defendant claimed that he acted in self-defense because he was afraid that McDougal was going to kill him. Defendant alleged that McDougal was a violent drug dealer who thought that defendant was a "rat" or a "snitch" and had attempted to harm defendant in the past.

On appeal, defendant argues that recorded telephone calls and a statement by a confidential informant, which were obtained during a federal drug investigation of McDougal, were admissible under MRE 404(a)(2) to demonstrate McDougal's character for violence; thus, the trial court abused its discretion when it denied the admission of this evidence. After review of this evidentiary decision for an abuse of discretion, we disagree. See *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010).

MRE 404(a)(2) permits a criminal defendant who has been charged with a homicide to present evidence of the victim's character for violence when the defendant claims self-defense. Evidence of the victim's violent character is admissible to show that the victim was the likely aggressor and that the defendant acted out of a reasonable fear of the victim. *People v Harris*, 458 Mich 310, 316-317; 583 NW2d 680 (1998). A defendant may introduce evidence of the victim's violent character via reputation or opinion evidence only, and may not introduce specific violent acts unless those acts are independently admissible. *Id.* at 320; *People v Orlewicz*, 293 Mich App 96, 104; 809 NW2d 194 (2011); see, also, MRE 405(a).

Here, the trial court did not abuse its discretion when it denied the admission of the materials obtained during the federal drug investigation involving McDougal because nothing in those materials pertained to McDougal's character for violence. Defendant fails to identify portions of the materials that were relevant to prove McDougal's character for violence. Moreover, we were unable to locate evidence of McDougal's character for violence in the materials. Thus, the evidence was not admissible under MRE 404(a)(2). See *Harris*, 458 Mich at 320.

Furthermore, even if the evidence pertained to McDougal's character for violence, it was not admissible because it was not offered in a proper form under MRE 405(a). Pursuant to MRE 405(a), evidence of the victim's character for violence in a homicide case may only be established "by testimony as to reputation or by testimony in the form of an opinion." Here, neither the recorded telephone conversations nor the confidential informant's statement contained evidence describing any opinions as to McDougal's reputation for violence. Accordingly, the trial court did not abuse its discretion in excluding the evidence. See MRE 405(a); *Orlewicz*, 293 Mich App at 104.

And we reject defendant's claim that he was denied his constitutional right to present a defense as a consequence of the exclusion of this evidence. See *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). The right to present a defense must "bow to accommodate other legitimate interests in the criminal trial process." *People v Unger (On Remand)*, 278 Mich App 210, 250; 749 NW2d 272 (2008) (quotation omitted). A state has a legitimate interest in implementing its own evidentiary rules, and "[s]uch rules do not abridge an accused's right to present a defense so long as they are not arbitrary or disproportionate to the purposes they are designed to serve." *Id.* (quotation omitted). Because the proffered evidence was not admissible under MRE 404(a)(2), the trial court did not deny defendant his right to present a defense when it excluded the evidence. *Id.*

Next, defendant argues that he was denied due process because his conviction was obtained through the perjured testimony of Detective Jeff Buchmann, the officer in charge of the investigation. "It is well settled that a conviction obtained through the knowing use of perjured testimony offends a defendant's due process protections guaranteed under the Fourteenth Amendment." *People v Aceval*, 282 Mich App 379, 389; 764 NW2d 285 (2009). Due process requires that "the prosecutor may not knowingly use false testimony to obtain a conviction, and that a prosecutor has a duty to correct false evidence." *People v Herndon*, 246 Mich App 371, 417; 633 NW2d 376 (2001) (quotation omitted).

Defendant claims that Buchmann committed perjury by denying that he knew that McDougal regarded defendant as a "rat" and by denying that he was aware that McDougal wanted to harm defendant. However, defendant's argument is without merit because he fails to provide any proof that Buchmann committed perjury. Indeed, defendant provides nothing more than bald assertions that Buchmann testified falsely; these mere assertions do not entitle defendant to relief. See *id.* at 417-418 (where the defendant fails to offer proof of knowing perjury, his mere allegations will not suffice). Further, defendant's claim that his counsel was ineffective for failing to object to Buchmann's testimony at trial is likewise without merit. Because there was no proof of perjury, any objection would have been futile. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Moreover, in addition to his failure

to provide evidence that Buchmann committed perjury, defendant failed to offer proof that the prosecutor knew that Buchmann perjured himself. Absent proof that the prosecutor knew that Buchmann lied, the prosecutor did not knowingly use false testimony to obtain a conviction and defendant is not entitled to relief. See *id.* at 417.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra