

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
July 24, 2012

v

MICHAEL DAVID MARVIN,  
  
Defendant-Appellant.

No. 302002  
Grand Traverse Circuit Court  
LC No. 10-011051-FC

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Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

A jury convicted defendant of second-degree murder, MCL 750.317, and the trial court sentenced him to a prison term of 15 to 25 years. Defendant appeals as of right. We affirm.

This case arises from the murder of Shari Marvin sometime between the hours of midnight and 2:00 a.m. on February 25, 2010. April Grose testified that her children were staying the night at the Marvins' apartment the night of February 24, 2010. At approximately 11:00 p.m., she called Shari to check on the children. Shari's speech was slightly slurred. Grose assumed that Shari had been using Xanax and alcohol, but Grose was not concerned. At approximately 7:00 a.m. on February 25, defendant, Shari's husband, called 911. When police arrived at the apartment building they observed defendant waiving them into his apartment. Emergency responders found Shari's body lying on a bed in the master bedroom. Her body had cut marks, but there was very little blood outside the immediate area of Shari's body. No blood drops were found during an examination of the bedroom's ceiling, walls, window, blinds, or curtains. A bloody knife was found on the bathroom counter in the bathroom where defendant was apprehended after attempting to slit his own throat. Blood samples taken from the tip of the knife were matched to defendant. Blood samples taken from the lower blade of the knife were matched to Shari. Blood samples taken from defendant's hand and pajama pants were matched to Shari. Defendant made inculpatory statements to the police and to medical personnel. On the way to the hospital, defendant told paramedics that he had stabbed his wife. Defendant confessed during two separate videotaped interviews that he stabbed his wife in drunken anger because of her infidelity.

The forensic pathologist who performed the autopsy on Shari's body identified six stab wounds to the chest and abdomen and one to the left forearm. The wounds to the forearm appeared to be defensive wounds. The pathologist saw no indication that the body had been

moved after death. He testified that the knife found on the bathroom counter was consistent with the stab wounds, and that he was “not surprised most of the blood stayed internal, given the location of the wounds.”

Defendant’s theory of the case was that he drank to excess that evening and passed out, and that his wife had been stabbed at a different location by an unknown assailant and was brought back and placed on the bed where she was found. Defendant was charged with first-degree murder, but was convicted of second-degree murder.

Defendant first argues that the trial court abused its discretion by refusing to appoint various expert witnesses. A trial court’s decision whether to grant an indigent defendant’s motion for the appointment of an expert is reviewed for an abuse of discretion. *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003), citing MCL 775.15. “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *People v Carnicom*, 272 Mich App 614, 617; 727 NW2d 399 (2006) (internal quotation marks and citation omitted).

MCL 775.15 provides for a trial court’s appointment of, and payment for, expert witnesses for indigent defendants who can show “that there is a material witness in his favor . . . without whose testimony he cannot safely proceed to trial.” A defendant “must demonstrate a nexus between the facts of the case and the need for an expert.” *Carnicom*, 272 Mich App at 617. There must be an “indication that expert testimony would likely benefit the defense.” *Id.* The mere “possibility of assistance from the requested expert” is insufficient. *Id.* “A trial court is not compelled to provide funds for the appointment of an expert on demand.” *Id.*

Defendant asserts that the trial court should have appointed a DNA expert witness because DNA analysis is a complicated science and neither defendant nor his standby counsel<sup>1</sup> had any experience in the field. Defendant cites no authority in support of his proposition that such generalized concerns trigger the court’s duty to provide an expert. To the contrary, the mere “possibility of assistance from the requested expert” is insufficient. *Carnicom*, 272 Mich App at 617. Further, defendant has failed to show that an appointed DNA expert would have been a “material witness in his favor” or otherwise benefited defendant. *Id.*

Defendant also asserts that a toxicologist should have been appointed to testify regarding defendant’s advanced state of intoxication and its effect on the truthfulness of defendant’s statements to police, but defendant offers no concrete explanation of how such an expert would have benefited his defense. Defendant’s blood alcohol level at all relevant times was in evidence. The statements defendant made while intoxicated were videotaped and played in their entirety for the jurors, thereby allowing them to assess defendant’s credibility. Defendant also introduced several witnesses who described his behavior when intoxicated. In the absence of any indication how an appointed toxicologist would have benefited the defense, we cannot conclude that the trial court abused its discretion by refusing to appoint such an expert witness.

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<sup>1</sup> The trial court granted defendant’s request to represent himself, but appointed counsel continued as standby counsel.

Defendant further asserts that a blood spatter analyst could have offered an explanation for the lack of blood spatter found in the apartment beyond the explanation offered by prosecution witnesses. Again, defendant fails to explain how such expert testimony would have benefited his defense. An experienced forensic pathologist testified with specificity as to the type of bleeding that resulted from Shari's injuries and the reason why there was relatively little blood at the scene. Even if an expert had testified that Shari's body might have been moved, such testimony would not have eliminated defendant himself as the responsible person. The trial court did not abuse its discretion by refusing to appoint an expert in blood spatter analysis.

Defendant also argues that his right to present a defense was undercut when the trial court failed to adjourn the trial to give him more time to prepare his case. He contends that he was not given sufficient time to prepare his case after he took over his defense in pro per with his second court-appointed attorney as standby counsel.

Under MCL 768.2, "No adjournments, continuances or delays of criminal cases shall be granted by any court except for good cause shown . . ." To the extent that defendant implicitly requested an adjournment, the trial court's denial of an adjournment rests within the discretion of the trial court. *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003). The denial of an adjournment by the trial court does not constitute "grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion." *Coy*, 258 Mich App at 18-19.

Defendant was arrested on February 25, 2010, and an attorney was appointed for him on February 26, 2010. During a motion hearing on August 3, 2010, defendant expressed dissatisfaction with his appointed counsel and the trial court advised defense counsel to file a motion to withdraw. Defense counsel indicated that he had provided defendant with copies of everything that he had received, with the exception of the tapes of defendant's interviews with the police. The court instructed the bailiff to take whatever steps were necessary to allow defendant to review the tapes. A hearing was held on the motion to withdraw on August 13, 2010. The trial court granted the motion to withdraw, appointed substitute counsel, and adjourned the original August trial date. Substitute counsel filed an appearance on August 18, 2010. On September 14, 2010, the trial court set a trial date of October 20, 2010.

On September 22, 2010, defendant filed a motion to proceed in pro per. Following a hearing, the trial court granted the request, but provided that appointed counsel would serve as standby counsel.

At an October 8, 2010, hearing on plaintiff's motion to amend the witness list and defendant's renewed motion for appointment of a toxicology expert, the prosecution noted as an aside that it was still awaiting DNA test results with regard to evidence retrieved from beneath Shari's fingernails. In response, defendant stated that "If it would help the prosecutor I was hoping for more time myself." At most, defendant implicitly requested an adjournment. Defendant stated that he had recently received tapes of his recorded statements and could review the video tape but not the audio tapes because of a technical problem. In response, the court stated that it would "make sure the jail is aware of the problem with the audio" and advised defendant to be prepared for trial on the scheduled trial date. At the final conference on October 14, 2010, the court stated that the parties needed to discuss the plea offer and that

[W]e also need to discuss, and we'll do this part on the record, discuss what needs to be done, where we are in the case and how happy and ready everybody is and ready to go to trial.

Defendant responded, "I have no need for it, and it would be a clear waste of the Court's time." Nonetheless, the court instructed the parties to discuss the plea offer off the record. When the parties returned, the court noted on the record that it had a final conference memorandum and asked the parties whether there was "anything else we should discuss." Defendant never indicated that he was not prepared to go trial or that he had not reviewed the audio tapes, nor did he request additional time to prepare for trial. On this record, there is no merit to defendant's claim that good cause for an adjournment existed, or that defendant was actually prejudiced by proceeding to trial as scheduled.<sup>2</sup>

Affirmed.

/s/ Jane M. Beckering  
/s/ E. Thomas Fitzgerald

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<sup>2</sup> Additionally, defendant has failed to show prejudice as a result of proceeding to trial as scheduled. Defendant does not adequately explain what outcome-determinative action he could have taken had he had more time to prepare. Defendant has not explained on appeal how further preparation would have aided his case or how he was actually prejudiced by proceeding to trial. The closest assertion of prejudice in defendant's brief on appeal is that a certain witness would have been properly endorsed and permitted to testify if trial had been adjourned. However, neither at trial nor on appeal did defendant indicate the subject matter of the testimony that would have resulted had that witness been called.