

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 13, 2012

v

BRYANT EUGENE BENTLEY, JR.,

Defendant-Appellant.

No. 308069
Saginaw Circuit Court
LC No. 11-035855-FC

Before: O'CONNELL, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of one count each of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.529; MCL 750.529c, possession of 50 grams or more but less than 450 grams of a controlled substance (cocaine), MCL 333.74032a(3), resisting, obstructing, opposing, or endangering a police officer, MCL 750.81d(1), third-degree fleeing, MCL 750.479a(3), felon in possession of a firearm, MCL 750.224f, and five counts of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

On the day that Corey Nash was shot to death, defendant and Travis Farrow drove a van to Riverview Plaza in Saginaw to meet Nash to engage in a drug transaction. A disagreement erupted and Nash threw the drugs outside of the van. Farrow got out of the van to retrieve the drugs while defendant and Nash struggled over a gun. Because the door handle in the back of the van was broken, Nash tried to exit the vehicle through the driver's side window and was shot. Evidence was adduced that defendant told Farrow to shoot Nash.

Defendant first argues that the trial court erred when it qualified a police detective as an expert in cellular-data analysis. We disagree. We review a trial court's decision on whether to qualify a witness as an expert for an abuse of discretion. *People v Potter*, 115 Mich App 125, 132; 320 NW2d 313 (1982). An abuse of discretion occurs when a trial court chooses an outcome that falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Expert testimony is governed by MRE 702, which states:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a

fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The decision as to whether a witness will be qualified as an expert is left to the trial court. *People v Whitfield*, 425 Mich 116, 122; 388 NW2d 206 (1986). “A proposed expert should not be scrutinized by an overly narrow test of qualifications.” *Id.* If the trial court determines that a witness is an expert, the jury must decide the weight given to the expert’s testimony. *Id.* at 123-124.

The detective testified to his education and training, explaining that he took the only course on forensic analysis of cellular data available at the time. He further testified that he had used this knowledge on hundreds of cases, working for other detectives and units. This established not only that he had extensive experience in the area of cellular-data analysis, but also that other police officers relied on his specialized knowledge and experience. The detective also described the methods used in cellular-data analysis, which went beyond the knowledge of an ordinary individual. Then, after a review of the cellular data relevant to the case at hand, the officer was able to provide the trial court with specific times and duration of calls made between the phones of Farrow, defendant, and Nash. There was sufficient testimony for the trial court to conclude that the officer had the education and experience to provide the jury with useful, scientific, or specialized knowledge. See *Whitfield*, 425 Mich at 123-124. Therefore, the trial court did not abuse its discretion in qualifying the officer as an expert.

Defendant also argues that reversal is required by plaintiff’s failure to provide the detective’s curriculum vitae pursuant to MCR 6.201(A)(3), which provides that a party must provide the curriculum vitae of an expert who may testify at trial if the opposing party requests it. See MCR 6.201(A)(3). Upon a violation of the rule, the court has discretion to order the party to provide the document or enter an order that the court finds just. MCR 6.201(J). Willful violations of the rule may result in sanctions. *Id.* It is apparent from the lower court record that the prosecution did not provide the curriculum vitae for the detective despite defendant’s discovery request. However, because the detective was properly qualified as an expert witness, the prosecution’s violation of the rule was harmless, negating the need for a judicially fashioned remedy. See *People v Elston*, 462 Mich 751, 766; 614 NW2d 595 (2000).

Defendant next argues that he received ineffective assistance of counsel because his trial counsel failed to object to statements made by the assistant prosecutor during his rebuttal argument. We disagree. Because a motion for new trial was not filed and an evidentiary hearing was not conducted, our review of defendant’s claim of ineffective assistance of counsel is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). A claim of ineffective assistance of counsel is ultimately constitutional; therefore, this Court reviews the issue de novo. *People v Swain*, 288 Mich App 609, 643; 794 NW2d 92 (2010).

Effective assistance of trial counsel is presumed. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). For a claim of ineffective assistance of counsel, defendant must show “that counsel’s performance fell below objective standards of reasonableness, and that it is

reasonably probable that the results of the proceeding would have been different had it not been for counsel's error." *Id.* We give deference to counsel's decisions regarding trial strategy. *People v Unger*, 278 Mich App 210, 242-243; 749 NW2d 272 (2008).

Defendant objects to multiple statements made by the assistant prosecutor, arguing that the assistant prosecutor attempted to shift the burden of proof, tried to bolster the credibility of one of the witnesses, and used an impermissible civic-duty argument. However, all of the statements that he objects to were properly made in response to arguments made by defense counsel during closing argument. See *People v Watson*, 245 Mich App 572, 592; 629 NW2d 411 (2001). Trial counsel is not required to assert meritless objections. *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004).

Finally, defendant argues that the trial court improperly scored offense variable (OV) 14 at 10 points after it found him to be a leader of the criminal transaction. We disagree.

We review issues involving the application of sentencing guidelines de novo. *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006). The trial court has discretion in assigning the number of points for each guideline so long as there is evidence in the record to support its findings. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). "Scoring decisions for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

OV 14 is scored at ten points if defendant was "a leader in a multiple offender situation." MCL 777.44(1)(a). When considering whether defendant was a leader, the trial court should consider "the entire criminal transaction." MCL 777.44(2)(a). In this case, there is evidence to support the assertion that defendant was the leader of this criminal transaction. The detective testifying as an expert witness discussed all of the phone calls made prior to the shooting, which indicated that there was contact from defendant's phone to Nash's phone prior to defendant even contacting Farrow. This suggests defendant started the entire transaction. Further, the majority of the phone calls went from defendant's phone to Nash's phone. In addition, there was no contact from Farrow's phone to Nash's phone. There was also testimony by an individual incarcerated with Farrow that he overheard Farrow say that defendant was telling him to shoot Nash as he was trying to leave the vehicle. This evidence supports a finding that defendant was the leader in this criminal transaction and the trial court correctly scored OV 14 at 10 points.

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio