

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON DOUGLAS LAMBERT,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 266330

Macomb Circuit Court

LC No. 05-002636-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of felonious assault, MCL 750.82, entered after a bench trial. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Thomas McCracken, defendant's neighbor, testified that he and defendant engaged in an argument, and that during the argument, defendant pulled a knife from the waistband of his pants and pointed it at him. McCracken denied that at the time the incident occurred, his house had been condemned and did not have electricity or running water. McCracken also denied that defendant had ever expressed concern about the condition of McCracken's home.

Carla Speciale, defendant's girlfriend, initially told the reporting officer that she did not witness the incident. However, during trial, Speciale testified that she saw defendant and McCracken talking, and that they were standing ten to 12 feet apart at the time. Speciale denied that she told a police officer that she did not see the incident, but did tell police that defendant always carried the knife in his waistband. Speciale gave defendant's knife to a police officer when asked to do so.

Defendant raises two issues on appeal. First he alleges that he should have been able to introduce evidence about the condition of the victim's home and the fact that defendant had made numerous complaints to local officials concerning the condition of the home. Defendant also contends that he was denied effective assistance of counsel.

As a general rule, all relevant evidence is admissible, and irrelevant evidence is inadmissible. MRE 402. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401. The credibility of a witness is always a material issue, and

evidence that shows the bias or prejudice of a witness is always relevant. *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005). We review a trial court's decision on an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.* at 600. We do not substitute our judgment for that of trial counsel on matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Defendant did not seek an evidentiary hearing in the trial court, and this Court denied his motion to remand; therefore, our review is limited to mistakes apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

Defendant's theory on why he wanted to introduce evidence concerning the condition of the victim's home was predicated on defendant's assertion that McCracken had the motivation to fabricate the allegation that defendant displayed a knife during the argument because defendant had made complaints about the condition of McCracken's house to the authorities. The trial court allowed Speciale to testify that on several occasions defendant had complained to the authorities about the condition of McCracken's house. Thus, contrary to defendant's assertion, the trial court did not preclude admission of evidence that supported the defense theory. The fact that the trial court did not permit Speciale to testify regarding the specifics of defendant's complaints, i.e., that the house lacked electricity or running water, did not constitute an abuse of discretion given that the trial court did allow testimony regarding defendant's actions in complaining to the authorities. The trial court admitted relevant evidence of McCracken's possible prejudice against defendant. MRE 401; *McGhee, supra*.

Nothing indicates that trial counsel attempted to introduce copies of the service requests generated from defendant's complaints, or evidence that McCracken poisoned defendant's dogs and lawn. Nevertheless, we conclude that even if counsel erred by failing to attempt to introduce such evidence, the error did not result in prejudice to defendant. The failure to present evidence constitutes ineffective assistance of counsel only when it deprives the defendant of a substantial defense. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). The service requests indicate that the complaints were made by "anonymous," and a letter to McCracken from the Macomb County Health Department does not identify the person who made a complaint regarding the condition of the McCracken home. The admission of these documents would not have added significantly to defendant's defense, and counsel's failure to seek admission of the documents did not deprive defendant of his defense. *Id.* Similarly, counsel's decision to not introduce evidence that McCracken poisoned defendant's dogs and lawn could well have been based on the conclusion that such evidence could support a finding that defendant's anger would have lead him to display a knife during the argument with McCracken. Additionally, introduction of such evidence may have in fact weighed against defendant providing him with

motive for the attack. This Court will not second guess trial counsel's decision on these evidentiary matters. *Rice, supra.*

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper