

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

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
March 27, 2014

v

SHELDON MARCK PERKINS, JR.,  
  
Defendant-Appellant.

No. 313368  
Kent Circuit Court  
LC No. 12-000036-FC

---

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury-based convictions of assault with intent to commit murder, MCL 750.83, and carrying a concealed weapon, MCL 750.227. We affirm.

Defendant's convictions arose from his assault on the complainant while he was a passenger in the complainant's car. Defendant stabbed the complainant's throat, face, and body, and then left the complainant outside of the car. Defendant drove the complainant's car to the home of Bobby Springer, who was acquainted with both defendant and the complainant. Defendant told Springer that he had stabbed the complainant and asked Springer to help him dispose of the car. Springer drove the car to a deserted location and left it there while defendant disposed of his blood-stained clothing. The two returned to Springer's home, where Springer gave defendant fresh clothes to wear.

At trial, defendant maintained that he acted in self-defense to protect himself from a sexual attack by the complainant. The prosecution called Springer as a witness and asked Springer whether he had ever seen the complainant make sexual advances toward defendant. Springer responded "no." The prosecution also asked whether defendant told Springer about the alleged sexual assault on the night of the attack; Springer again responded "no." On cross-examination, however, Springer admitted that on a prior occasion he had witnessed the complainant ask defendant for a sexual favor. Springer also acknowledged that defendant indicated that he (defendant) had told a third, unidentified person that the complainant had tried to rape him on the night of the stabbing.

On appeal, defendant argues that his trial counsel was ineffective for failing to request a cautionary instruction on accomplice testimony with regard to Springer. We note first that defendant did not move for a new trial or request a *Ginther*<sup>1</sup> evidentiary hearing in the trial court. Accordingly, defendant's claim of ineffective assistance of counsel is unpreserved, and we review the claim for mistakes apparent in the trial court record. *People v Sabin (On Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000).

A defendant who claims he has been denied the effective assistance of counsel must establish that (1) his counsel's performance was deficient; and (2) the deficient performance prejudiced his defense. *Strickland v Washington*, 466 US 668, 688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). The failure to pursue a meritless argument does not constitute ineffective assistance of counsel. See *People v Erickson*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

In this case, a request for a jury instruction on accomplice testimony would have been meritless. A cautionary jury instruction concerning accomplice testimony is warranted only if the trial evidence supports the instruction. *People v Ho*, 231 Mich App 178, 188-189; 585 NW2d 357 (1998). The evidence at trial did not support an accomplice instruction regarding Springer. There was no evidence that Springer participated in the assault, or that he cooperated with defendant in committing the assault. Absent some indication that Springer helped or cooperated with defendant in committing the assault, Springer cannot be deemed an accomplice. See *People v Allen*, 201 Mich App 98, 105; 505 NW2d 869 (1993), quoting CJI2d 5.5.

Defendant maintains that Springer was an accessory after the fact and that under the circumstances of this case the jury should have been instructed to consider Springer's culpability status and his credibility. We disagree. The trial court properly instructed the jury concerning witness credibility generally, and the evidence did not support any further instruction regarding Springer's credibility. Consequently, defendant's trial counsel was not ineffective for failing to request an accomplice instruction. See *People v Gonzalez*, 468 Mich 636, 645; 664 NW2d 159 (2003) (failure to request instruction on accomplice testimony is not ineffective assistance if instruction is not warranted by the facts).

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

---

<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).