

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY BRANHAM,

Defendant-Appellant.

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UNPUBLISHED

May 20, 2003

No. 239041

St. Clair Circuit Court

LC No. 00-002075-FH

Before: Cooper, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right following his jury trial convictions of first-degree home invasion, MCL 750.110a(2),<sup>1</sup> and felonious assault, MCL 750.82. Defendant was sentenced as a third-habitual offender, 769.11, to twenty to forty years' imprisonment on the home invasion conviction and three years, seven months to eight years' imprisonment on the felonious assault conviction. We affirm.

**I. BASIC FACTS**

This case arises out of an assault against defendant's estranged wife in the wife's home. Defendant and the victim were married in 1998, but they actually lived together for only about five months in 1999 in Flint. Later in 1999, the victim separated from defendant and moved to Port Huron. In March 2000, the victim, along with her adult daughter, executed a lease for a home in Port Huron, and they moved into the home in April 2000. Defendant did not sign the lease.<sup>2</sup> Additionally, the victim and her daughter were the only named tenants in the lease agreement. The victim testified that she and her daughter were the only ones who lived in the home, that they alone paid the rent,<sup>3</sup> and that defendant never stayed, resided, or lived in the home. Occasionally, defendant would stop by the home; however, he and the victim would only talk outside. The victim testified that because of the nature of her housing assistance, defendant

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<sup>1</sup> The first-degree home invasion conviction was predicated on the claim that defendant, while entering, present in, or exiting the victim's home, did commit an assault. MCL 750.110a(2).

<sup>2</sup> The lease was admitted into evidence.

<sup>3</sup> The victim and her daughter received governmental housing assistance, which allowed them to pay only a portion of the actual rent charged by the landlord.

could not stay in the home. The victim asserted that after she and defendant separated, they hardly ever saw each other because defendant was out doing “his own thing.”

On June 30, 2000, at 11:30 p.m., defendant came to the front door of the victim’s home while the victim was in her bedroom. The victim testified that defendant, in an intoxicated state, pounded on the front door, yelling and demanding that the victim get up and give him something to eat because he was hungry. The victim refused to let defendant inside, and defendant then went around to the victim’s bedroom window, which was open except for a screen, and began yelling at the victim and demanding that she feed him. The victim testified that she attempted to close the window, but in order to do so the screen first had to be removed. As she fumbled removing the screen and attempting to quickly close the window, defendant reached through the window and pushed the victim back on her bed; he then crawled through the window into the home. The victim tried to push defendant back outside as he climbed through the window but to no avail. Before and at the time defendant entered the home, the victim told defendant to leave. There was no evidence that defendant had permission to enter the house or had a legal right to be in the home.

Once inside, defendant screamed obscenities at the victim and continued demanding that she feed him. Defendant had a dull knife that he was stabbing into the bedroom walls, and he threatened to kill the victim if she did not get him some food. After being pushed multiple times by defendant, the victim went to the kitchen with defendant following her. The victim tried to find some food for defendant in an effort to settle him down. After first rejecting a peanut butter and jelly sandwich and cereal, defendant told the victim he wanted some cereal; however, he kept changing his mind on how much sugar he wanted on the cereal. The victim, exasperated, then poured a whole bag of sugar on the cereal. Defendant then threw the cereal at the victim.

The victim next grabbed a kitchen knife in an attempt to protect herself, hoping that defendant would back away and leave. However, defendant spun the victim around and tried to wrestle the knife away from her. The victim squeezed the knife and then noticed blood on her hands, at which point she dropped the knife. Defendant picked up the knife and proceeded to “cut” the victim in the neck, asking her “how do you like that?” Defendant then stabbed her in the arm all the while threatening to kill her. A struggle then ensued between defendant and the victim, and the knife fell to the ground. The victim picked up the knife and told defendant to stay away and not come any closer. The victim swung the knife, as a warning, in the direction of defendant’s leg, and she cut across his pant leg but not into his skin. The victim then threw the knife down, and defendant started pushing the victim until she fell down. The victim attempted to use the phone to call for help, but defendant ripped it away from her.

The victim then ran to the bathroom and locked herself inside. She was bleeding from her hand, arm, and neck. She remained in the bathroom for about half an hour. It appears that the situation then calmed down a little as there was no testimony that defendant tried to enter the bathroom. In fact, the victim testified that defendant wanted her to go into the bathroom to clean herself up; however, the victim stated that she was in too much shock to do so. The victim subsequently exited the bathroom and went to the kitchen to smoke a cigarette. Defendant told her that if she would only listen, she would not have to go through all of this.<sup>4</sup> On cross-

<sup>4</sup> We note that the victim’s adult daughter was not home at the time of the incident.

examination, the victim indicated that defendant tried to help clean up the blood and attempted to console her without success.

Once in the kitchen, the victim noticed that the backdoor was unlocked, and she snuck outside and ran to her ex-husband's house which was nearby. Defendant chased her on a bike. Outside of the ex-husband's house, defendant grabbed the victim, but she was able to wriggle free and entered the house after pounding on the door. The victim and her ex-husband proceeded to walk down to the police station to report the incident, and they were followed part of the way by defendant, who was calling the victim a "rat" for going to the police. Defendant then rode away.

After reporting the incident to police, the victim was taken to a hospital where she received five stitches in her hand. The police investigation included taking several photographs of the victim's home along with pictures of the victim. The photographs showed cuts to the victim's hand (pinky finger), arm, and neck, and they showed cereal and food strewn through the kitchen of the home. The photographs also revealed blood stains in the kitchen and disconnected telephone cords that the victim testified had been connected before defendant arrived at the house. Police were able to obtain the kitchen knife used in the assault that caused the victim's injuries; however, they were unable to find the dull knife that defendant first used after entering the bedroom window.<sup>5</sup>

The victim's ex-husband took the stand, and his testimony was consistent with that of the victim. He also testified that his home was about six blocks from the victim's home. The ex-husband further testified that when the victim arrived at his home, she was "really upset" and bleeding.

Officer John Pickett testified that when he spoke with the victim on the night of the crime, she was shaken, scared, and nervous. Pickett further testified that the victim had lacerations to her neck, arm, and hand and was in need of medical treatment. Pickett stated that the kitchen knife was recovered and it had blood stains on it, as well as blood being found on the kitchen floor. The officer further testified that telephone cords had been ripped out of the phone jacks. This evidence was all memorialized by pictures taken by police. Pickett and his partner accompanied the victim to the hospital to see that she received medical treatment for her wounds.

Pickett's partner, officer Marcy Kuehn, testified that the victim was upset, scared, and nervous after the assault. Kuehn testified that the victim had lacerations to her neck, arm, and hand. She additionally testified that the police did not test the blood found at the scene, nor was the kitchen knife tested for fingerprints. Kuehn further testified in a manner consistent with the testimony of officer Pickett.

Finally, detective Duane Loxton testified very briefly about the lack of testing for fingerprints on the recovered kitchen knife. He stated that in cases such as this where the parties know each other, it is common not to do any testing for fingerprints.

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<sup>5</sup> All of the facts stated thus far were established through the victim's testimony and the introduction of photographs during her testimony.

Defendant chose not to testify, nor were any witnesses called by defendant. In closing argument, defendant asserted that the case simply involved a domestic dispute of mutual confrontation that got out of hand. Defendant argued that he entered the home with the intent to obtain some food not to commit an assault. He further maintained that the victim was the one who picked up the kitchen knife first, that any wounds were caused by a mutual struggle, that the victim's cuts were minor, and that had defendant actually intended to seriously harm the victim, he could have done so, yet he failed to do so. Defendant requested the jury to find him not guilty, and if there was a guilty verdict, only simple assault and battery would be appropriate.

## II. ANALYSIS

### A. Preliminary Examination on First-Degree Home Invasion

Defendant argues that his first-degree home invasion conviction was based on an invalid information; therefore, the conviction must be reversed. Defendant maintains that thirteen months after he was bound over to the circuit court on felonious assault, an unrecorded conference in judicial chambers took place on the prosecutor's motion for remand to the district court seeking to add a home invasion count. Defendant further asserts that an order remanding the case was entered, and a hearing was held in the district court, in which the court ordered defendant to be bound over to the circuit court on the home invasion charge. The district court's decision was predicated solely on the review of the transcript of the earlier preliminary examination regarding the charge of felonious assault. Defendant argues that he never waived his right to a full preliminary examination on the home invasion charge, that he would have presented evidence that showed that he had a key to the home and paid rent on the home, and that the denial of his right to a proper preliminary examination requires reversal and was not harmless.

Defendant was initially charged solely on a count of felonious assault. On July 13, 2000, a preliminary examination was held on that charge, and the district court found sufficient evidence to bind defendant over to the circuit court on felonious assault. From November 2000 through July 2001, various motions and psychiatric evaluations occurred with respect to defendant's competency to stand trial and his ability to be criminally responsible.<sup>6</sup> On July 16, 2001, the trial court entered an order finding defendant competent to stand trial. The lower court docket sheets indicate that on August 21, 2001, a miscellaneous hearing or conference took place in judicial chambers concerning a motion to remand the case to the district court to add the home invasion charge. There is no transcript of this hearing in record, nor could the motion itself be found. In defendant's Standard 11 brief, Mr. Branham admits that he and counsel were present at the in-chambers hearing. The record contains a circuit court order, dated August 24, 2001, remanding the case back to the district court for consideration of the crime of home invasion, and the order reflects that the preliminary examination on home invasion shall be made by review of the original preliminary examination transcript. On September 13, 2001, a hearing was conducted in the district court, in which the court noted that it had reviewed the July 13, 2000, preliminary exam transcript and found sufficient evidence to bind defendant over on the charge

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<sup>6</sup> Defendant was initially found incompetent to stand trial, but he was subsequently found competent after further testing.

of home invasion. The transcript of the hearing on September 13, 2001, does not indicate any objection to the proceedings by defendant's counsel, nor did defense counsel demand a new and full preliminary examination. Defendant himself, however, interjected at the hearing, asking why the victim herself could not testify and claiming that he had a key to the rental home and that he paid rent.

The right to a preliminary examination in Michigan is a statutory right that may be waived. MCL 766.4; MCL 767.42; MCR 6.110(A); MCR 6.112(B); *People v Hall*, 435 Mich 599, 603; 460 NW2d 520 (1990). An information shall not be filed against a person for a felony before the person has had a preliminary examination unless that person waived the examination. MCL 767.42(1); MCR 6.112(B). We are unable to determine whether defendant properly waived his right to a full preliminary examination, whether he consented to a preliminary exam on the transcript, or whether he objected to a preliminary exam on the transcript; we have no record of the in-chambers hearing/conference held on August 21, 2001. However, assuming that defendant did not properly waive his right to a preliminary exam on the charge of first-degree home invasion and that he was entitled to a full evidentiary hearing, any error was harmless because defendant was convicted of home invasion at trial and there was sufficient evidence to support the conviction.

Our Supreme Court in *Hall* held that the harmless error statute, MCL 769.26, applies to the preliminary examination procedure. *Hall, supra* at 613. An erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict. *Id.* at 602-603; *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002). Likewise, we see no reason not to apply harmless error analysis where defendant's claim is that a full preliminary examination should have been held as opposed to one based solely on the prior transcript; the ultimate argument being the same, which is that defendant should not have been bound over to the circuit court. Here, there was evidence presented at trial that defendant had no legal right to enter the victim's home, that he forced his way into the home through a window without the victim's permission, and that he assaulted her with a dangerous weapon. MCL 750.110a(2). We note that defendant did not attempt to quash the information or file an application for leave with this Court to challenge any proceedings below, nor did defendant present at trial any evidence that he paid rent on the home or had a key, which evidence he asserts would have been presented at a full preliminary examination.

Defendant also submits a pro se argument pursuant to his Standard 11 brief that asserts the denial of his rights to an open hearing on the motion to remand to the district court. Defendant further presents a pro se argument that mimics appellate counsel's argument regarding the preliminary examination issue, which we have rejected. For the reasons stated above, any error was harmless in light of the evidence presented at trial.

## B. Self-Representation

Defendant next argues that his state and federal constitutional rights were denied, where the trial court ignored or denied defendant's multiple requests to represent himself as opposed to appointed counsel. Defendant maintains that he repeatedly informed the trial court that he had fired his counsel, yet the court forced defendant to be represented by attorney Terrence P. Houlahan. Attorney Houlahan was the third attorney appointed by the court to represent defendant.

A criminal defendant's right to represent himself is guaranteed by the United States Constitution, US Const, Am VI, the Michigan Constitution, Const 1963, art 1, § 13, and statute, MCL 763.1. *People v Kevorkian*, 248 Mich App 373, 417; 639 NW2d 291 (2001). However, the right is not absolute. *People v Ahumada*, 222 Mich App 612, 616; 564 NW2d 188 (1997). A defendant's request to represent himself must be unequivocal. *People v Anderson*, 398 Mich 361, 367; 247 NW2d 857 (1976). "This requirement will abort frivolous appeals by defendants who wish to upset adverse verdicts after trials at which they had been represented by counsel." *Id.* Neither a request to proceed pro se with standby counsel nor simply a request to discharge appointed counsel is an unequivocal request by a defendant to represent himself. *People v Dennany*, 445 Mich 412, 446; 519 NW2d 128 (1994) (Griffin, J.), p 458 (Boyle, J.); *People v Pruitt*, 28 Mich App 270, 272; 184 NW2d 292 (1970).

Here, there was no clear consistent unequivocal request by defendant to represent himself. There are two letters contained in the lower court file addressed to the trial court several months before trial, which provided that defendant planned on representing himself. Subsequently, however, at the abbreviated preliminary examination conducted on September 13, 2001, defendant stated that Houlahan was not his attorney, and that "I need an attorney to represent me." At that time, there was no request for self-representation. At trial, Mr. Branham made assertions that trial counsel was ineffective, did not prepare, and was working in collusion with the prosecutor.<sup>7</sup> However, there was no request for self-representation. The *Pruitt* panel stated that "the defendant's expression of dissatisfaction with his attorney does not amount to . . . an unequivocal request" for self-representation. *Pruitt, supra* at 272. The trial judge, addressing Mr. Branham's concerns, stated that attorney Houlahan had previously argued cases before the judge, and the judge believed him to be competent and that he would present a vigorous defense for defendant. Houlahan also indicated that he would present a vigorous defense, and the trial court ordered the case to proceed, at which point defendant told the judge, "it's up to you." We do not find that defendant unequivocally invoked his right to self-representation, and thus he was not denied his right to represent himself.

### C. Lesser Included Offense of Breaking and Entering without Permission

Defendant next argues that the trial court erred in refusing to instruct the jury on the necessarily included lesser offense of breaking and entering without permission, a misdemeanor, after it was requested. Defendant asserts that the trial court was required to so instruct on request. Further, defendant maintains that the evidence presented at trial supported the instruction and no confusion by the jury would have been created had the jury been instructed on the misdemeanor.

The misdemeanor of breaking and entering without permission, MCL 750.115, is a necessarily included lesser offense of first-degree home invasion. See *People v Cornell*, 466 Mich 335, 360-361; 646 NW2d 127 (2002). "Breaking and entering without permission requires (1) breaking and entering or (2) entering the building (3) without the owner's permission." *Id.* at 361. The elements of first-degree home invasion are: (1) that the defendant broke and entered

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<sup>7</sup> Defendant made similar comments about the previous two attorneys who had been appointed to represent him, and the court allowed those attorneys to be released.

into a dwelling or entered a dwelling without permission; (2) that when the defendant did so, he either intended to commit a felony, larceny, or assault, or he actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and (3) that defendant was armed with a dangerous weapon or another person was lawfully in the dwelling. MCL 750.110a(2). It is impossible to commit the greater offense without first committing the lesser offense.

Under MCL 768.32(1), a requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the trier of fact to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support the instruction. *Cornell, supra* at 357. Referencing harmless error analysis, the *Cornell* Court stated that “it is only when there is substantial evidence to support the requested instruction that an appellate court should reverse the conviction.” *Id.* at 365. For a defendant to prevail, he or she must demonstrate that it is more probable than not that the failure to give the requested lesser included misdemeanor instruction undermined reliability in the verdict. *Id.* at 364.

In *Cornell*, the Supreme Court found that the trial court’s failure to instruct on breaking and entering without permission was harmless error, where there was strong evidence that defendant broke into a house with intent to steal, and where, conversely, there was little evidence to support the defendant’s assertion that he just went into the house to look around. *Id.* at 366.

Here, the disputed factual element with respect to first-degree home invasion was an “assault with a dangerous weapon,” which element is not included in the necessarily lesser included misdemeanor, and there was evidence establishing the elements of breaking and entering without permission. However, like in *Cornell*, any error in failing to instruct the jury on the misdemeanor was harmless where there was strong evidence of defendant’s guilt regarding first-degree home invasion. Defendant asserts that he had no intent to assault the victim upon entering the home; he only wanted something to eat. MCL 750.110a(2), however, provides for a conviction when a defendant enters a dwelling without permission, and at any time while he or she is entering, present in, or exiting the dwelling, commits an assault, and the defendant is armed with a dangerous weapon. Regardless of defendant’s intent upon entering the victim’s home, there was overwhelming evidence that he assaulted the victim, lawfully in her home, with a dangerous weapon while he was “present in” the home. It can also be said that defendant developed an intent to commit an assault following the victim’s failure to comply with his demands.

Further supporting application of harmless error, the jury was instructed on the option of convicting defendant of simple assault and battery, yet it chose not to select that option and went with the greater offense of felonious assault. *People v Beach*, 429 Mich 450, 490-494; 418 NW2d 861 (1988). There is no basis for reversal.

#### D. Ineffective Assistance of Trial and Appellate Counsel

Defendant argues that trial counsel was ineffective after counsel apparently stipulated to a preliminary examination solely on the transcript with respect to the home invasion charge and waived a full evidentiary preliminary examination on the charge, where there was evidence, had it been presented, that would have favored dismissal of the home invasion charge.

Assuming counsel was ineffective in failing to preserve defendant's asserted right to a full preliminary examination, there was not a reasonable probability that, but for counsel's error, defendant would have been acquitted. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Defendant was not prejudiced. Assuming that evidence had been presented at a full preliminary examination showing that defendant had a key and paid rent, there still would have been contradictory evidence and evidence supporting a bind-over on the home invasion charge. Additionally, as noted above, defendant did not present any evidence of a key and rent at trial. Moreover, there was overwhelming evidence presented at trial supporting defendant's home invasion conviction. *Hall, supra* at 602-603. Reversal is not required.

Defendant, arguing pro se, presents a myriad of claims with respect to his appellate counsel being ineffective and working in collusion with the prosecutor. The standards applicable to a claim of ineffective assistance of trial counsel also apply to a claim of ineffective assistance of appellate counsel. See *People v Reed*, 449 Mich 375, 382; 535 NW2d 496 (1995). Appellate counsel's failure to raise every claim of arguable merit does not constitute ineffective assistance. *Id.*

Mr. Branham's list of alleged improprieties by appellate counsel concern: failing to procure timely appellate transcripts; collusion with the trial judge as to the record; no proper request for oral argument; failure to conduct a timely *Ginther* hearing; failing to file a timely appellate brief; no settled statement of facts prepared; failure to raise arguments regarding the right to a speedy trial and prosecutorial misconduct; failure to obtain financial documents and records showing that defendant paid rent and utilities and thus indicating perjury by the victim; and acquiescence in photographic falsification.

Counsel's appellate brief raised arguably meritorious claims, and any issues concerning speedy trial and prosecutorial misconduct raised by defendant pro se are devoid of any merit. See *infra*. As to the alleged records showing that defendant paid rent and utilities, the supporting attachments to the Standard 11 brief do not in fact support that conclusion.<sup>8</sup> With regard to the remaining issues, they are either insufficiently briefed in a manner that would allow us to properly address them, irrelevant, or do not support a different outcome of this appeal. *Carbin, supra* at 600.

#### E. Challenge to Scoring and Presentence Investigation Report (PSIR)

Defendant argues that he, though not trial counsel, objected to the trial court's scoring of the sentencing guideline variables, which were not scored properly, yet the trial court refused to listen to his objection. Defendant maintains that the scoring was incorrect, and if scored properly, the variables would have placed defendant in a different guidelines range.

Defendant fails to identify what the objection was that defendant attempted to raise in the trial court below, and more importantly, defendant provides absolutely no explanation in his appellate brief as to what constituted the alleged scoring error. No error is identified. "It is not

<sup>8</sup> Included in the attachments is also a copy of a federal district court judgment dismissing a claim brought by defendant under 42 USC 1985(3) against the trial judge, two of defendant's attorneys, and the prosecutor.

enough for an appellant in his brief simply to announce a position or assert error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments[.]” *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). We have no basis to address defendant’s argument; therefore, defendant’s sentence stands.

Defendant presents a pro se argument that the trial court violated his rights when it failed to permit him to review the PSIR the day before sentencing. Defendant maintains that there are, at minimum, thirty errors in the PSIR. However, defendant fails to identify a single error in his brief. Once again, defendant cannot announce a position and leave it up to us to decipher what errors were contained in the PSIR. *Mudge, supra* at 105.

#### F. Right to Speedy Trial

Defendant argues, pro se, that he was denied his right to a speedy trial. We disagree. The right to a speedy trial is guaranteed to criminal defendants by the federal and state constitutions as well as by statute. US Const, Am VI; Const 1963, art 1, § 20; MCL 768.1; *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). In determining whether a defendant has been denied a speedy trial, four factors must be balanced: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to the defendant from the delay. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). A speedy trial claim involves a constitutional issue that is reviewed de novo; however, underlying factual findings are reviewed for clear error. *Id.*; *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

The defendant must prove prejudice when the delay is under eighteen months. *Cain, supra* at 112. In assessing the reasons for delays, each period of delay is examined and attributed to the prosecutor or the defendant. *People v Ross*, 145 Mich App 483, 491; 378 NW2d 517 (1985). Delays caused by the adjudication of defense motions are attributable to the defendant. *Gilmore, supra* at 461.

Here, we initially note that the length of time between the crime and trial was less than eighteen months (June 30, 2000 to November 20, 2001), and we find no prejudice to defendant because of the delay, where there was strong evidence of guilt untainted by any delay, and where the delay did not hinder any defense. Additionally, any delay can be attributed almost entirely to defendant in light of his request to discharge previously appointed attorneys, and his motion for referral to the Center for Forensic Psychiatry, which initially was made in November 2000 and not resolved with a finding of competency until July 2001. There simply is no basis for defendant’s claim that he was denied his right to a speedy trial.

#### G. Prosecutorial Misconduct

Defendant argues, pro se, that the prosecutor committed misconduct where he told the jury that the victim was a slow learner, and where the prosecutor questioned a prospective juror during voir dire, who was formally a campaign manager for the prosecutor. Defendant also argues that the prosecutor did not make a good faith effort to produce witnesses.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial when examining the prosecutor's statements in context. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). With respect to the statement concerning the victim, we fail to see any prejudice to defendant, nor was defendant denied a fair trial when examining the statement in context. Moreover, defendant fails to assert that the statement was not reasonably adduced from the evidence. With regard to the prospective juror who was formally the prosecutor's campaign manager, the individual was only asked a few general questions and after she identified the relationship with the prosecutor, defendant exercised a peremptory challenge and the prospective juror was released. There was no prejudice to defendant; he was not denied a fair and impartial trial because of the questioning. Finally, with respect to producing witnesses, defendant fails to cite any request to produce a particular witness, and fails on appeal to identify any prospective witnesses that should have been produced. This argument is effectively waived. *Mudge, supra* at 104-105.

#### H. Effective Appellate Review

Defendant maintains, pro se, that he was denied effective appellate review where there was no oral argument, and where the brief by appellate counsel was defective. Oral argument was waived by defendant pursuant to MCR 7.214(A), and we have reviewed all of the appellate arguments, none of which require reversal. Oral argument would not have aided us in rendering a decision. We have already rejected defendant's argument that the brief by appellate counsel was defective.

### III. CONCLUSION

All of defendant's appellate arguments, submitted by counsel and pro se, are rejected. Therefore, we affirm defendant's convictions and sentences in their entirety.

Affirmed.

/s/ Jessica R. Cooper  
/s/ David H. Sawyer  
/s/ William B. Murphy