

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 24, 2004

No. 244063

Wayne Circuit Court

LC No. 01-007844-01

Before: Neff, P.J. and Wilder and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of manslaughter, MCL 750.321, in connection with the beating death of his wife.¹ The trial court sentenced him to eight to fifteen years' imprisonment. He appeals as of right. We affirm.

I. Facts

On June 21, 2001, at approximately 5:00 a.m., defendant entered a police precinct in Detroit and announced that his wife needed either a doctor or Emergency Medical Services. When asked about his wife's problem, defendant stated that he "killed her." Defendant was placed in custody, and gave a statement that after he and his wife had a dispute, he struck her with his fists and his foot. After trying to wake her, he left the house and went to the police station. Officers went to defendant's residence and found the deceased victim on her bed. Two relatives who lived in the same building told the responding officers that they had heard the victim and defendant arguing for most of the night.

Defendant later gave a more detailed statement to a homicide officer, indicating that, while returning home from a day of fishing, he and the victim argued. The victim, who had a broken leg, either fell or was shoved by defendant as they walked into the two-flat house. When the victim fell, defendant was hit in the head with her crutch. Defendant became so enraged that he "started to knock the sh[--] out of" her. He then told her to get up and go upstairs. The victim expressed that she was unable because she was hurt. In response, defendant "popped her on the

¹ Defendant was charged with second-degree murder, MCL 750.317.

leg a couple of more times.” Defendant indicated that he struck her side and legs with his fist five or six times and he kicked her legs and hip with his foot two or three times.

Dr. Carl Schmidt, the medical examiner who performed the autopsy, testified that the victim died from multiple, blunt force trauma. The injuries were extensive and severe, including extensive hemorrhaging in several places, a fractured pelvis, a dislocated sacroiliac joint, two fractured ribs, and brain injuries similar to shaken baby syndrome brain injuries. The extensive swelling of the victim’s brain was caused by either a violent back and forth motion of the head or by repeated blows to the head with a soft object that left few or no marks. A great deal of force and numerous blows caused the injuries. While the victim’s blood alcohol level was .27 grams per deciliter at the time of her death, her alcohol level did not cause her injuries or her death. It contributed to the injuries only to the extent that it weakened her ability to defend the attack. Dr. Schmidt could not determine the time of the victim’s death.

At trial, defendant testified that he “lost it” after he was hit by the victim’s crutch. He had no control over himself, and he hit and kicked the victim. He later helped the victim to bed and then passed out next to her. The following morning, the victim was cold. Because defendant believed she was dead, he went to the police station. Defendant insisted that he did not cause the extensive damage about which the medical examiner testified. He denied that he hit or kicked the victim anywhere above her hip. He believed the additional injuries may have occurred after she died and was removed from the flat.

II. Analysis

A. Prosecutorial Misconduct

Defendant first argues that he should have been provided with copies of all photographs that the prosecutor intended to introduce at trial, and that timely disclosure of the photographs would have enabled him to prepare a more adequate defense. He concludes that the prosecutor’s failure to provide full discovery violated his due process rights. We disagree.

Claims of intentional misconduct on the part of the prosecution present mixed questions of fact and law. *People v Tracey*, 221 Mich App 321, 323; 561 NW2d 133 (1997). Factual findings are reviewed under the clearly erroneous standard while questions of law are reviewed de novo. *Id.* at 323-324.

At trial, several photographs of the victim at the crime scene were introduced through the evidence technician, who took the photographs. At defendant’s urging, defense counsel objected to the admission of the photographs, arguing that he believed they were enhanced to make the bruising on the victim’s body appear worse than it was. Defense counsel acknowledged that she inspected the photographs at the prosecutor’s office before trial. She informed the trial court, however, that defendant was insisting that he personally should have received a copy of them along with all of the other discovery. Defendant directly addressed the judge in this regard, questioning whether he had a right to the photographs before trial. The prosecutor argued that there was no discovery violation because defense counsel was permitted to inspect the photographs. The trial court admitted the photographs and expressed no opinion with respect to defendant’s claims that the prosecution violated his right to discovery.

The lower court record reveals neither a discovery request made by defendant nor a discovery order entered by the trial court. MCR 6.201(A)(5) requires the prosecutor to provide, *upon request*, copies of photographs that it intends to introduce at trial. Because there was no request for the photographs, the prosecutor did not violate MCR 6.201(A)(5) as a matter of law. But a defendant who fails to make a discovery request or makes only a general discovery request is still entitled to discovery of material exculpatory evidence. *Id.* at 324-325. The suppression of material, exculpatory evidence constitutes a due process violation if the omitted evidence creates a reasonable doubt that did not otherwise exist. *Id.*

In this case, defense counsel was allowed to, and did, inspect the photographs before trial. Thus, the photographs were not suppressed or omitted by the prosecutor during discovery. More importantly, contrary to defendant's claim on appeal, there is no indication that the photographs were exculpatory evidence. On the contrary, the record discloses that they portrayed the victim as she was found and depicted extensive bruising. Under the circumstances, defendant's due process rights were not violated by the prosecutor's failure to provide physical copies of the photographs before trial. Further, we find no merit in defendant's unsupported argument that, if he had the photographs in advance, he would have been better able to prepare his defense. His counsel viewed the photographs before trial, and nothing in the record supports defendant's speculative argument that, if he possessed the photographs earlier, he could have discredited them or used them to discredit Dr. Schmidt's testimony.

B. Ineffective Assistance of Counsel

In a related argument, defendant contends that his counsel was ineffective for failing to provide him with reasonable access to the photographs before trial and for allowing him only a brief review of the photographs during trial. Our review of defendant's ineffective assistance of counsel claim is limited to errors apparent on the record because no *Ginther*² hearing was held below. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that defense counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). It is presumed that counsel was effective and defendant bears a heavy burden to prove otherwise. *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant has not met his burden of proving that counsel was ineffective. He was entitled to have his counsel prepare, investigate, and present all substantial defenses. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). While counsel did not arrange for defendant to personally inspect the crime-scene photographs before trial, she inspected them when preparing the case. We note that there is no allegation that counsel failed to prepare, investigate or present any substantial defenses. Moreover, defendant was permitted to inspect

² *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

the photographs at trial and to testify that he believed they were enhanced. He has not demonstrated that counsel's performance fell below an objective standard of reasonableness with respect to the photographs. Furthermore, even if counsel should have arranged for defendant to view or obtain the photographs before trial, defendant has not demonstrated that, but for counsel's failure, there is a reasonable probability of acquittal. He has not articulated or shown how he could have discredited the photographs or used them to assist in his defense if he had viewed them earlier. Because defendant has not met his burden of proving that the outcome of trial was affected by his counsel's conduct, his claim of ineffective assistance of counsel fails.

C. Sentencing

Finally, defendant argues that the trial court erred when it scored offense variable (OV) 7 of the sentencing guidelines at fifty points. Defendant's challenge to the scoring of OV 7 was raised below and, therefore, is properly preserved. MCL 769.43(10). A sentencing court has discretion with respect to the scoring of the offense variables, provided that the evidence of record supports a particular score. *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." *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). Fifty points are scored for OV 7 if the victim "was treated with terrorism, sadism, torture, or excessive brutality." MCL 777.37(1). Defendant objected to the scoring of fifty points because he claimed that he did not inflict the injuries that the medical examiner found. The trial court, noting Dr. Schmidt's testimony in detail, found that there was excessive brutality involved in the crime. Given that there is evidentiary support in the record for the trial court's finding, we affirm the trial court's scoring decision.

Affirmed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly