

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROGER THOMPSON,

Defendant-Appellant.

UNPUBLISHED

July 26, 2007

No. 269035

Wayne Circuit Court

LC No. 04-008648-01

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals on delayed leave granted his jury trial convictions of five counts of first-degree premeditated murder, MCL 750.316a. Defendant was sentenced to mandatory life imprisonment for each conviction. We affirm.

I. Facts

In March 2004, defendant lived with his girlfriend, Lisa Shelton, and her children in a two-bedroom house in Detroit. Shelton's three oldest children, William Parker, Jr., aged 16, Wrandell Parker, aged 14, and Wane Parker, aged 12, were fathered by a former boyfriend. Defendant was the father of Shelton's youngest daughter, Aushanai Thompson, aged nine. Shelton's 13-year-old sister, Christina Knott, lived with defendant, Shelton, and their children at this time.

Late in the evening of March 31, 2004, or early in the morning of April 1, 2004, William, Wrandell, Wane, Aushanai, and Christina were sleeping in the front bedroom of the house. Defendant and Shelton were lying in bed in the back bedroom. Apparently, defendant had his jacket under his pillow. Shelton asked defendant why he had the jacket under his pillow, and an argument ensued. During the argument, defendant grabbed Shelton by her neck and choked her. Shelton died of manual strangulation.

Defendant then went to the basement to retrieve a metal pipe. He went to the front bedroom where the children were sleeping and struck Wane. The commotion awoke the other children. Defendant forced William to bind the hands and feet of the other children with strips of red cloth and, apparently, then bound William's hands and feet. Defendant struck William, Wrandell, Wane, and Aushanai repeatedly with the pipe, killing them. Defendant then pulled

Shelton's body into the front room and laid it on the bed, next to the bodies of two of her children.

Apparently during these events, Christina had been bound and, at some point, defendant ordered Christina to remove her clothing. Defendant decided not to kill Christina. Somehow, Christina managed to escape the house the following morning. She ran to a neighboring house, wearing nothing but a bra, and banged on the door. When Carlin Stephens, who resided at the home, opened the door, Christina told her that someone had killed her sister and her sister's children. Stephens, noticing that Christina looked "terrified," called the police and provided Christina with clothing.

Officers quickly responded to the scene. When Officer Sophia Devone questioned Christina about the recent events, Christina exclaimed that her family was dead next door. Soon thereafter, Christina saw defendant outside his home. Christina pointed to defendant and repeatedly exclaimed to Devone, "That's him!" Devone instructed other officers at the scene to apprehend defendant. Defendant saw the officers approaching him and fled. A two-block chase ensued before defendant was detained, handcuffed, and placed in the backseat of a patrol car.

Defendant was taken to police headquarters, where Investigator Dale Collins took his statement. Collins read defendant his constitutional rights from the Certificate of Notification Form. Although defendant declined to sign his name, he agreed to speak with Collins. Defendant admitted that he had killed Shelton and her children.

Investigators at the crime scene found blood throughout the house and a bloodstained metal pipe near the front door. The blood on the pipe contained deoxyribonucleic acid (DNA) of the five victims and was determined to be the murder weapon. Investigators also found a latex dishwashing glove with blood on the fingers on the floor of the hallway leading to the bedrooms. A mixture of the five victims' DNA and defendant's DNA was found on the fingertips of the glove.

II. Arguments in Defendant's Brief on Appeal

A. Discovery Violations

Defendant argues that he was denied his right to due process and a fair trial by the prosecution's late disclosure of the report on the DNA evidence recovered from the latex glove. We disagree. We review de novo the trial court's ruling on a discovery issue. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998).

A criminal defendant's due process right of discovery is implicated only with regard to evidence that is favorable to the defendant, exculpatory, or known by the prosecution to be false. *People v Tracey*, 221 Mich App 321, 324-325; 561 NW2d 133 (1997). A defendant has no general constitutional right of discovery in a criminal case. *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000).

Contrary to defendant's argument on appeal, the DNA evidence recovered from the latex glove is not exculpatory evidence as envisioned by the United States Supreme Court in *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

In order to establish a *Brady* violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence nor could the defendant have obtained it with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*People v Cox*, 268 Mich App 440, 448; 709 NW2d 152 (2005).]

The forensic biologist's report indicated that defendant's DNA was found on the bloody latex gloves found at the scene, thereby implicating him in the charged offenses. Accordingly, the DNA evidence recovered from the latex glove is not exculpatory or otherwise favorable to defendant. Defendant's argument that he was denied due process and a fair trial because the prosecution disclosed the DNA evidence recovered from the latex glove on the Friday before trial lacks merit.

Further, although defendant argues otherwise, the prosecutor's failure to disclose the DNA report until the Friday before trial did not constitute prosecutorial misconduct. MCR 6.201 governs matters related to criminal discovery. *People v Gilmore*, 222 Mich App 442, 448; 564 NW2d 158 (1997). Under MCR 6.201(B), the prosecution must, on request, provide a criminal defendant with certain information, including any police reports concerning the case. See also *Gilmore*, *supra* at 448. MCR 6.201(A)(6) requires mandatory disclosure, on request, of "a description of and an opportunity to inspect any tangible evidence that the party may introduce at trial, including any document, photograph, or other paper" The prosecutor has a continuing duty to promptly notify the other party if at any time he discovers additional information. MCR 6.201(H). If the prosecutor fails to comply, the trial court, in its discretion, may order that testimony or evidence be excluded or implement another remedy. MCR 6.201(J).

In this case, the prosecution complied with its continuing duty to notify defendant of additional information pursuant to MCR 6.201(H). It is undisputed that the prosecutor was not aware of the results of the DNA analysis until the Friday before trial and that he provided this material to defendant on the day he received it. Accordingly, defendant has failed to establish that he was denied a fair and impartial trial on this ground.

B. Motion for Adjournment

Defendant argues that the trial court abused its discretion when it denied his motion for adjournment so he could attempt to obtain the assistance of an expert witness at public expense. We disagree. We review for an abuse of discretion the trial court's rulings concerning the denial of an adjournment, *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000), and a request to appoint an expert witness, *People v Herndon*, 246 Mich App 371, 398; 633 NW2d 376 (2001).

A trial court may, in its discretion, grant an adjournment to promote the cause of justice. MCR 2.503(D)(1); *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). When determining if the trial court properly denied a motion to adjourn, we may consider the following factors: (1) whether defendant asserted a constitutional right, (2) whether defendant had a legitimate reason for asserting the right, (3) whether defendant had been negligent, and (4) whether defendant had requested previous adjournments. *People v Lawton*, 196 Mich App

341, 348; 492 NW2d 810 (1992). We will not reverse a trial court's refusal to order additional time for DNA testing in cases in which other significant identification evidence is presented against the defendant or in which the exculpatory theory about the evidence is highly speculative. See *People v Sawyer*, 215 Mich App 183, 192; 545 NW2d 6 (1996).

A defendant is entitled to the appointment of an expert at public expense only if he cannot otherwise proceed safely to trial without the expert. MCL 775.15. "[A] defendant must show a nexus between the facts of the case and the need for an expert." *People v Leonard*, 224 Mich App 569, 582; 569 NW2d 663 (1997), citing *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995). Moreover, assuming that a defendant should have had a DNA expert at trial but was erroneously deprived of one, "it was incumbent on the trial court to determine if defendant was prejudiced and received a fundamentally unfair trial as the result of not having expert assistance." *Leonard, supra* at 582-583.

In this case, defendant failed to show that the trial court erred in denying his motion to adjourn. Nothing in the record shows that the result of the proceedings would have been different had the trial been adjourned to give defendant additional time to independently test the DNA evidence. Accordingly, defendant presents a highly speculative claim that additional testing on the DNA evidence presented at trial would have exonerated him of the instant offenses. See *Sawyer, supra* at 192. Further, even if the independent expert had reached conclusions that were contrary to those of the prosecution's expert, it would simply have presented a credibility question for the jury. However, the prosecution presented significant independent identification evidence at trial, including defendant's inculpatory statements to the police. Because the prosecution presented additional significant identification evidence against defendant, the trial court's decision not to adjourn the trial to provide additional time for DNA testing does not require reversal. Therefore, because defendant failed to establish that he had a legitimate reason to request adjournment of the trial, the trial court did not err when it denied his motion to adjourn.

C. Ineffective Assistance of Counsel

Defendant next argues that he was denied the effective assistance of counsel because his counsel failed to investigate and pursue an insanity defense. We disagree. Because defendant failed to move for a new trial or for a *Ginther*¹ hearing, our review is limited to mistakes apparent on the record. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 312-313; 521 NW2d 797 (1994). Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. *Id.* at 314; *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). [*People v Solmonson*, 261 Mich App 657, 663-664; 683 NW2d 761 (2004).]

In reviewing a claim of ineffective assistance of counsel, “[t]his Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Insanity at the time of committing a criminal act is an affirmative defense to a crime in Michigan. MCL 768.21a(1). An individual is legally insane if, as a result of mental illness or mental retardation, “that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his . . . conduct or to conform his . . . conduct to the requirements of the law.” *Id.*

A defendant in a felony case who wishes to interpose an insanity defense, must serve written notice on the court and the prosecutor not less than thirty days before trial and submit to a court-ordered examination, relating to the claim of insanity, by personnel for the center for forensic psychiatry or other qualified personnel. MCL 768.20a(1) and (2); MSA 28.1043(1)(1) and (2). A defendant or the prosecutor may also obtain independent psychiatric examinations. MCL 768.20a(3); MSA 28.1043(1)(3). The failure by the defendant to fully cooperate in either the court-directed or independent examinations, bars the defendant from presenting testimony relating to insanity at trial. MCL 768.20a(4); MSA 28.1043(1)(4). [*Toma, supra* at 292 n 6.]

Although defendant argues that his counsel failed to pursue an insanity defense, the trial court record indicates otherwise. Specifically, defense counsel noted on the record at the September 2, 2004, arraignment that she planned to file a notice of insanity and, on the same day, the trial court issued an order for evaluation regarding criminal responsibility in light of this insanity claim. Although a copy of the report issued by the Center for Forensic Psychiatry regarding defendant’s criminal responsibility for the murders is not included in the trial court file, defendant does not argue that the report supported an insanity defense. Again, effective assistance of counsel is presumed, *LeBlanc, supra* at 578, and we will not substitute our judgment for that of counsel regarding matters of trial strategy, *Rockey, supra* at 76-77. The record indicates that defense counsel pursued an insanity defense and, absent indications in the record to the contrary, we presume that defense counsel determined that an insanity defense would not be effective. Accordingly, defendant’s claim of ineffective assistance of counsel lacks merit.

D. Right of Confrontation

Defendant argues that he was denied his constitutional right of confrontation when the trial court admitted Christina’s out-of-court statements to police. Because defendant failed to

challenge the admission of Christina’s out-of-court statements on this constitutional ground, he has failed to preserve this issue for our review. See *People v Geno*, 261 Mich App 624, 630; 683 NW2d 687 (2004). Therefore, our review is limited to plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A defendant has the right to be confronted with the witnesses against him. US Const, Am VI; Const 1963, art 1, § 20; *Crawford v Washington*, 541 US 36, 42; 124 S Ct 1354; 158 L Ed 2d 177 (2004). “Only testimonial statements ‘cause the declarant to be a “witness” within the meaning of the Confrontation Clause.” *People v Walker (On Remand)*, 273 Mich App 56, 60; 728 NW2d 902 (2006), quoting *Davis v Washington*, __ US __; 126 S Ct 2266, 2273; 165 L Ed 2d 224 (2006). Therefore, to determine whether defendant’s right of confrontation has been violated, we must determine whether Christina’s out-of-court statements are testimonial in nature.

Under the Confrontation Clause, a defendant is “guaranteed a reasonable opportunity to test the truth of a witness’ testimony.” *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). “Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.” *Crawford, supra* at 59. See also *People v Shepherd*, 472 Mich 343, 347; 697 NW2d 144 (2005).

In *Crawford*, the United States Supreme Court did not set forth a precise articulation of what is considered “testimonial” evidence.² *Crawford, supra* at 68. The United States Supreme Court elaborated on the difference between a testimonial and a nontestimonial statement:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. [*Davis, supra* at 2273-2274.]

Defendant argues that statements that Christina made to the officers at the scene were testimonial in nature and, therefore, should not have been admitted in evidence. We do not agree. Instead, we conclude that Christina made these statements in response to police questioning under circumstances objectively indicating that the primary purpose of the interrogation was to enable police assistance to meet an ongoing emergency.

Christina’s first statement to the officers, in which she indicated that “[her] family was dead next door,” was made in response to Devone’s questions regarding the recent events. When Christina made this statement, she was outside a neighbor’s home, away from the scene of the

² The United States Supreme Court also noted: “Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Crawford, supra* at 68.

crime and in the presence of police officers. However, the circumstances surrounding Christina's questioning indicated that an ongoing emergency existed. Christina was in a state of shock during the questioning and had been almost completely naked when she ran to a neighboring house for assistance. Further, Christina was the only eyewitness to a quintuple homicide that had occurred only hours before on the block where the officers were questioning her, and in which the perpetrator was still unknown and at large. These circumstances objectively indicate that Christina might have been injured or assaulted and that questioning would be necessary to determine if, and to what extent, Christina needed medical treatment. Police interrogation of Christina was also necessary because she was likely to have information that would help police catch an individual who had killed five people without having a clear motive only hours earlier, before he could kill again. Christina stated that her family was dead immediately after Devone began questioning her, when Devone's interrogation of Christina was occurring under circumstances objectively indicating that the primary purpose of the interrogation was to enable police assistance to help Christina and locate the homicidal defendant. Accordingly, this statement was not testimonial in nature.

Christina's repeated exclamations to the officers, in which she pointed out defendant to the officers immediately after she saw defendant outside his house, are also not testimonial in nature. Christina did not make these exclamations in response to police questioning. Instead, she independently made the challenged exclamations to police in order to assist the police in an ongoing emergency, namely, apprehending defendant, who had just killed five people, was at large, and was likely dangerous.

Because both challenged statements were nontestimonial in nature, the trial court was not prevented from admitting this testimony because defendant was not given the opportunity to confront and question Christina under oath. Defendant's constitutional right of confrontation was not violated when the trial court admitted Christina's out-of-court statements to police. Accordingly, the trial court's admission of Christina's statements did not constitute plain error affecting defendant's substantial rights.

III. Defendant's Arguments in his Standard Four Brief

Defendant filed a Standard Four brief on appeal on March 6, 2007. His appeal is not as of right. Instead, this Court granted defendant delayed leave to appeal, limited to the issues raised in his application and supplemental brief. However, defendant did not raise the issues discussed in his Standard Four brief in either his application or his supplemental brief. "Unless otherwise ordered by the Court, appeals shall be limited to the issues raised in the application for leave to appeal." MCR 7.302(G)(4)(a). Accordingly, the issues presented by defendant in his Standard Four brief are not properly before this Court. Nonetheless, although we are not obligated to consider them, we choose to discuss the following assertions of error made by defendant in his Standard Four brief.

A. Admission of Defendant's Confession

Defendant argues that the trial court erred when it admitted the confession that he made to police. We disagree. We review de novo the trial court's ultimate decision on a motion to suppress evidence. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). However,

we “will not disturb a trial court’s factual findings with respect to a *Walker*³ hearing unless those findings are clearly erroneous.” *Id.* at 563.

“A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights.” *Akins, supra* at 564, citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). “Whether a waiver of *Miranda* rights is voluntary and whether an otherwise voluntary waiver is knowing and intelligent are separate questions.” *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). “The ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made.” *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). The trial court may consider the following non-exclusive list of factors when determining if a statement is voluntary:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.*]

“[T]he prosecution has the burden of establishing a valid waiver by a preponderance of the evidence.” *People v Daoud*, 462 Mich 621, 634; 614 NW2d 152 (2000), citing *Colorado v Connelly*, 479 US 157, 168; 107 S Ct 515; 93 L Ed 2d 473 (1986). When considering whether a statement was voluntarily made, a court should focus on the conduct of the police. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005).

The trial court did not err when it denied defendant’s motion to suppress the introduction of the confession into evidence. Detective Dale Collins brought defendant, aged 35, into the interrogation room at the Detroit Police Department headquarters at approximately 2:15 p.m. on April 1, 2004. Collins initially determined that defendant was neither injured nor under the influence of narcotics or alcohol. Defendant told Collins that he had completed high school and could read and write. Collins advised defendant of his constitutional rights using the Constitutional Rights Certificate of Notification form, and defendant indicated to Collins that he understood these rights.

Defendant refused to initial the form by the description of each right or sign the bottom of the form, but he agreed to make an oral statement. Collins questioned defendant regarding the circumstances of the killings. During the interview, Collins recorded in writing each question

³ *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

and defendant's answers. Defendant did not sign his name at the end of this two-and-a-half page statement. Collins testified that defendant neither requested an attorney nor asked to return to his cell during the hour-long interview. Collins also claimed that defendant rocked back and forth on his chair and cried during parts of the interview.⁴ After considering the evidence presented to the trial court regarding the circumstances surrounding the interview, we conclude that the trial court properly determined that defendant's statements to Collins were voluntarily and knowingly made. Accordingly, the trial court did not err when it admitted defendant's statements at trial.

Nonetheless, defendant maintained at the suppression hearing, and argues on appeal, that he was not advised of his constitutional rights, that he repeatedly told Collins that he did not wish to speak to him, and that he requested an attorney during the interview. Again, a review of the evidence indicates that the trial court could properly conclude that defendant's statements were voluntarily made. We defer "to the trial court's superior ability to view the evidence and witnesses and will not disturb its factual findings unless they are clearly erroneous." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997). Because defendant and Collins were the only individuals present during the interview in question, we defer to the trial court's credibility determination and acceptance of Collins's version of events.

Defendant also claims that the trial court should have suppressed his confession to the police because the department failed to audiorecord or videotape the proceedings. However, this Court has consistently held that there is no requirement, constitutional or otherwise, to videotape or audiorecord a defendant's custodial statement and has rejected the argument that a confession must be suppressed if it is not videotaped or audiorecorded. See *Geno, supra* at 627-628; *People v Fike*, 228 Mich App 178, 186; 577 NW2d 903 (1998). Defendant's claim of error lacks merit.

Further, defendant argues that the trial court was not impartial and was biased against defendant, thereby denying him a fair trial. In support, defendant cites several comments made by the trial court. However, during each instance that defendant alleges that the trial court was partial, the jury was not present. Thus, the trial court's comments did not unduly influence the jury or otherwise deprive defendant of his right to a fair and impartial trial. See *People v Conley*, 270 Mich App 301, 310; 715 NW2d 377 (2006).

B. Prosecutorial Misconduct

1. Failure to Introduce Copy of Surviving Victim's Statement

Defendant argues that the prosecutor committed misconduct because he failed to introduce a copy of Christina's statement to police into evidence during the trial. We disagree. Because defendant failed to challenge this asserted error at trial, we review for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764.

The surviving victim's statement is not included in the trial court record. Generally, a defendant may not attempt to enlarge the record on appeal by appending additional records to his brief. See *People v Canter*, 197 Mich App 550, 557; 496 NW2d 336 (1992). Further, we are

⁴ Defendant displayed the same behavior during the *Walker* hearing.

limited on appeal to reviewing only the trial court record. MCR 7.210(A). Accordingly, we decline to consider the substance of Christina's statement when determining if the prosecutor's failure to introduce her statement constituted plain error. Regardless, the record shows that at trial, defendant was aware of Christina's statement and the prosecutor did not withhold it from him. Moreover, the prosecutor was not required to introduce the statement at trial. Defendant could have introduced the statement had he chosen to do so. Accordingly, defendant's claim of error lacks merit.

2. Closing Argument

Defendant argues that the prosecutor committed misconduct during his closing argument when he indicated that defendant had informed Collins that the crimes occurred on March 31, 2004, and stated that defendant wore gloves during the commission of the crime. Again, we disagree. Because defendant failed to challenge the prosecutor's closing argument at trial, we review for plain error affecting defendant's substantial rights. *Carines, supra* at 763-764. "Generally, '[p]rosecutors are accorded great latitude regarding their arguments and conduct.' They are 'free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case.'" *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citations omitted).

The record shows that the prosecutor's arguments were not improper. The evidence introduced at trial showed that defendant indicated during his confession that the killings occurred on March 31, 2004. In his closing argument, the prosecutor noted to the jury that, at the time of Collins's interview with defendant, Collins did not know when the murders occurred. Furthermore, the evidence technician recovered two latex gloves at the scene, and subsequent testing of human tissue found on one of the gloves revealed the presence of mixture of defendant's DNA and the victims' DNA. During his closing argument, the prosecutor discussed the significance of this item and argued that defendant could have worn the gloves during the killings. We conclude that this argument was proper based on the evidence. Accordingly, defendant failed to establish that the prosecutor's comments during his closing argument constitute plain error.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Donald S. Owens