

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
September 30, 2014

v

RICHARD CARL KARPINSKI,  
Defendant-Appellant.

No. 316502  
Macomb Circuit Court  
LC No. 2012-004409-FH

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Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of third-degree criminal sexual conduct (force or coercion), MCL 750.520d(1)(b). Defendant was sentenced to 72 to 180 months' imprisonment. We affirm.

Defendant first argues that Secret Service Agent Mark O'Riordan possessed no special qualifications and the trial court abused its discretion by declaring him an expert witness. We disagree. The qualification of a witness as an expert, and the admissibility of expert testimony, are in the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *People v Steele*, 283 Mich App 472, 480; 769 NW2d 256 (2009). If the trial court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert may testify to the knowledge by opinion or otherwise, if the testimony is based on sufficient facts and is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. MRE 702. "Generally, the [expert] testimony must assist the jury in understanding the evidence or the factual issues, and the witness must have sufficient qualifications 'as to make it appear that his opinion or inference will probably aid the trier in the search for the truth.'" *People v Smith*, 425 Mich 98, 105; 387 NW2d 814 (1986) (citation omitted).

First, we conclude that the trial court did not abuse its discretion by qualifying O'Riordan as an expert witness. A witness may be qualified as an expert by knowledge, skill, experience, training, or education. MRE 702; *People v Yost*, 278 Mich App 341, 393; 749 NW2d 753 (2008). The record shows that O'Riordan had been qualified as an expert in interrogation twice previously, and testified 10 other times. See *People v Lewis*, 160 Mich App 20, 28; 408 NW2d 94 (1987) (noting that a court may consider a witness's prior trial experience in determining

qualification). In addition to his general federal law enforcement training and certifications, he had special training in interrogation, including a 16-week course at the Defense Academy for Credibility Assessment and courses on a specific interviewing and interrogation method known as the Reid Technique. These courses included training specific to sex-offender interrogation. Therefore, O’Riordan was qualified by both training and education for purposes of MRE 702 to testify as an expert in matters relating to interrogation. See *Yost*, 278 Mich App at 395.

We also conclude that the trial court did not abuse its discretion in admitting O’Riordan’s testimony. The subject matter on which O’Riordan was called upon to testify was his postarrest interview of defendant regarding the allegations that led to the charged offense. The primary reason for O’Riordan’s testimony at trial was to introduce the oral and written admissions—if not a full confession—made by defendant to the crime charged during the interview. This portion of O’Riordan’s testimony was admissible under MRE 801(d)(2), without the benefit of expert testimony, because it was defendant’s own statement and was not hearsay.

With regard to the balance of O’Riordan’s testimony, it concerned defendant’s initial story of denial that changed to one of admission, which in O’Riordan’s expert opinion, can be indicative of someone being deceptive at first. O’Riordan further opined that there could be other reasons for an initial denial, such as shame, embarrassment, a misunderstanding of what happened, or perhaps one’s subjective perception of consent. This subject matter was directly related to and within the immediate scope of O’Riordan’s expertise. *Yost*, 278 Mich App at 394. He answered general hypothetical questions based on the facts. Contrary to defendant’s argument, O’Riordan was not required to offer data to support the scientific methodology behind his opinion regarding defendant’s initial denial. His opinion was based on facts admitted into evidence and was supported by his training, education, and experience. *Id.* at 395, citing MRE 702 and MRE 703.

Defendant next argues that trial counsel was ineffective for offering voluntary intoxication as a defense because it was not authorized by law and for not providing another possible defense. Again, we disagree.

We review this unpreserved claim for errors apparent on the record.” *People v Lockett*, 295 Mich App 165, 186; 814 NW2d 295 (2012). Whether a defendant received ineffective assistance of counsel presents a mixed question of constitution law reviewed de novo and fact reviewed for clear error. *Id.*

Criminal defendants have a right to the effective assistance of counsel under the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. However, effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Vaughn*, 491 Mich 642, 670; 821 NW2d 288 (2012). To establish that a defendant’s trial counsel was ineffective, a defendant must show: (1) that counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); see also *Vaughn*, 491 Mich at 669.

Defendant correctly argues that the defense of voluntary intoxication was not available as an affirmative defense to criminal sexual conduct. See MCL 768.37; *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). However, the record shows that trial counsel did not offer intoxication as an affirmative defense, but rather, in light of the unequivocal testimony by three prosecution witnesses and defendant himself, trial counsel necessarily responded to the evidence of defendant's intoxication and addressed it during his closing argument. Trial counsel suggested, for example, that defendant was "falling over" due to his drinking a fifth of liquor and was therefore "extremely drunk" and "perceived [the interaction with complainant] as some sort of consent," presumably due to the effect of the alcohol on his perception. The record shows that trial counsel tried to defend the allegations against defendant by explaining that defendant's clearly acknowledged consumption of a large quantity of alcohol resulted in his touching of complainant by accident or mistake, and not for the sexual purpose required to convict defendant of the charged offense. This is a presumptively sound trial strategy, for which we will not substitute our judgment or assess counsel's competence with the benefit of hindsight. *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011); *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009).

Defendant also argues that by relying on the intoxication defense, trial counsel deprived him of the more relevant defense of "improper expert testimony." However, this is not a recognized affirmative defense to any crime. Additionally, trial counsel objected to O'Riordan's qualifications as an expert, effectively arguing that his testimony was improper expert testimony. We determined that the trial court did not abuse its discretion in allowing O'Riordan to testify as an expert. Thus, to the extent defendant appears to assert that trial counsel was ineffective for not challenging the admission of improper expert testimony, this argument is without merit, as counsel did raise an objection to O'Riordan's qualifications and any further objection to the testimony would have been futile. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) ("Trial counsel is not required to advocate a meritless position."). Accordingly, on this record, we conclude that defendant received effective assistance of counsel.

Affirmed.

/s/ Donald S. Owens  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell