

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VALERIE MARIE PARKS,

Defendant-Appellant.

UNPUBLISHED

September 21, 2010

No. 292547

Wayne Circuit Court

LC No. 08-014892-FC

Before: MURPHY, C.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. She was sentenced to 20 to 40 years' imprisonment on the second-degree murder conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in connection with the shooting death of DeAngelo Caldwell in July 2008. Immediately before the shooting, Caldwell and his brother Christopher were involved in a physical altercation with defendant's son, Raymond Parks, and her nephew, Donald Lindsley. Defendant testified that she saw a woman give a gun to a man involved in the altercation at one point, heard multiple gun shots, believed that her son had been shot, and was returning fire in defense of her son. However, the jury found more credible the testimony of several witness to the effect that none of the men involved in the fist fight were armed with any sort of weapons and that Raymond did not appear to be injured in any way. The jury further appeared to accept the testimony of several witnesses that one shot rang out, Caldwell fell to the ground, the crowd began to scatter, and then multiple shots rang out from an unidentified source. Two witnesses also testified that, after the initial one shot rang out, defendant was holding a gun in her hand with her arm outstretched.

For her first claim of error, defendant contends that she was denied the effective assistance of counsel because her trial counsel failed to present the preliminary examination testimony of Donald Lindsley after Lindsley failed to appear at the trial despite being under subpoena. Defendant contends that Lindsley's preliminary examination testimony corroborated

her version of the events and the outcome of the trial would have been different had the jury heard this testimony. We disagree.

Because defendant did not move for a new trial or a *Ginther*¹ hearing before the trial court, this Court's review of her ineffective assistance claim is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2005). To establish ineffective assistance of counsel, defendant must show that her trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, that but for her counsel's error there is a reasonable probability that the results of her trial would have been different, and that the proceedings were fundamentally unfair or unreliable. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). In this case, defendant's claim of ineffective assistance of counsel must fail because defendant was not prejudiced by counsel's failure to offer the preliminary examination testimony of Donald Lindsley. Contrary to defendant's assertions, Lindsley's testimony did not corroborate defendant's version of the events.

As stated above, in support of her defense, defendant testified that she heard four or five shots before she fired, that she thought her son Raymond had been shot, and that she then fired in defense of her son. Lindsley's preliminary examination testimony, rather than substantiating defendant's claim, actually contradicted defendant's version of the events. Lindsley specifically testified that he heard one shot ring out. He then saw DeAngelo hit the ground.

Indeed, it is likely that defense counsel's failure to present Lindsley's examination testimony was a matter of trial strategy. Rather than hear the testimony from the preliminary examination, the jury was instructed that it could infer that Lindsley's testimony would have been unfavorable to the prosecution. Under the circumstances, this instruction would have been more beneficial to defendant than Lindsley's contradictory preliminary examination testimony. Defense counsel has wide discretion as to matters of trial strategy. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Next, defendant argues that she is entitled to a new trial because the police failed to make an audio or visual recording of her statement. Defendant recognizes that this Court rejected such an argument in *People v Fike*, 228 Mich App 178; 577 NW2d 903 (1998). However, she still seeks reversal, arguing that the reasoning in *Stephan v State*, 711 P2d 1156 (Alaska, 1985), is more persuasive and compelling. In *Stephan*, the Alaska Supreme Court held that in order to be admissible under the Due Process Clause of the Alaska Constitution, all custodial confessions must be electronically recorded when the interrogation takes place in a place of detention and where recording is feasible. *Id.* at 1159-1160.

The United States Supreme Court has rejected the proposition that due process requires the police to record custodial interrogations. *People v Geno*, 261 Mich App 624, 627; 683 NW2d 687 (2004), citing *California v Trombetta*, 467 US 479; 104 S Ct 2528; 81 L Ed 2d 413 (1984). This Court has also rejected any claim that the Michigan Constitution requires a

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

custodial interrogation to be recorded. *Fike*, 228 Mich App at 183-186. Although defendant urges this Court to reject its opinion in *Fike*, this Court is required to follow established precedent pursuant to MCR 7.215(J)(1). Consequently, defendant has failed to demonstrate any error which would entitle her to a new trial.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Christopher M. Murray