STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAFAEL GARCIA SANTAMARIA,

Defendant-Appellant.

UNPUBLISHED
September 11, 1998

No. 182389
Mason Circuit Court
LC No. 94-001276 FC

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction for first-degree criminal sexual conduct (CSC I), MCL 750.520b; MSA 28.788(2). The court sentenced defendant to eight to twenty-five years' imprisonment. He now claims that his trial counsel failed to provide effective assistance. We affirm.

Defendant says that his trial counsel committed numerous errors that denied him his right to a fair trial. Defendant failed to object to his trial counsel's performance prior to taking this appeal. Where there has been no motion for a new trial or evidentiary hearing in the trial court, this Court will still consider a claim of ineffective assistance of counsel; however, review on appeal is limited to facts apparent on the record. *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998). The issue of ineffective assistance of counsel is a legal issue and is therefore reviewed de novo on appeal. A defendant must show that his counsel's performance was deficient and that the deficiency resulted in prejudice sufficient to deny the defendant a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Defendant first argues that trial counsel was deficient because he failed to object to hearsay responses, or to irrelevant and leading questions. Defendant fails to identify how any of his nine examples is improper, or to cite any authority in support of his argument. He also fails to provide any analysis demonstrating the impropriety of the cited text or explaining how its admission without objection caused him prejudice. This Court will not address claims that are unsupported by authority. *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994). Also, because defendant does not argue the

merits of this issue (other than making a bare assertion of error), we will consider it abandoned. *People v Canter*, 197 Mich App 550, 565; 496 NW2d 336 (1992).

Defendant also contends that it was ineffective assistance for his counsel to fail to move to suppress statements he made to the police. Defendant asserts that his English language skills were so deficient that his waiver of his *Miranda*[1] rights was ineffectual and his subsequent statements were not voluntarily made. Defendant further asserts that trial counsel's failure to move to suppress the statements prior to trial resulted in the jury, in effect, conducting a *Walker*[2] hearing. The record does not support this argument.

The evidence presented at trial satisfactorily established that the police had read defendant the required warnings and secured a written waiver from him before asking him questions. There was also testimony that defendant was informed that an interpreter was available, but that he said he did not need one. Additionally, there was testimony that the officers carefully clarified any questions when defendant indicated a lack of comprehension. Defendant was further given the opportunity to read over the written statement and verify it before he signed it. Defendant admitted that the police read him the rights and the waiver, that he read it over, and that he signed it. Defendant now simply asserts that he did not understand what it meant. Defendant's English language comprehension skill was one factor among many that would have been evaluated as part of the "totality of the circumstances" in determining whether defendant's confession was voluntary. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). Had this issue been presented to the trial court, there can be little doubt that the statements would have been admitted. A motion to suppress the statements would have been futile. *Fike*, *supra* at 182-183. Defense counsel could well have concluded that he stood a better chance of convincing the jury that the statements were coerced by the police from an uncomprehending immigrant than he would have stood trying to convince the court. Such a choice of trial strategy will not be second-guessed. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987)..

Defendant further claims that his counsel was ineffective for failing to object to a brief reference to a polygraph examination. Defendant testified during his own direct examination that he submitted to a polygraph. In *People v Rocha*, 110 Mich App 1, 8-9; 312 NW2d 657 (1981), this Court stated:

> . . . [R]eference to polygraph examinations need not always constitute reversible error. A reference may be a matter of defense strategy, the result of a nonresponse answer, or otherwise brief, inadvertent and isolated. . . . Thus, in prior cases, this Court has analyzed a number of factors to determine whether reversal is mandated . . . . This Court should consider: (1) whether defendant objected and/or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster a witness's credibility; and (5) whether the results of the test were admitted rather than merely the fact that a test had been conducted. [Citations omitted.]

Here, the defense did not object or request a curative instruction. The reference by the police officer was inadvertent. The only "repeated" reference occurred because of defendant's testimony. The reference was not an attempt to bolster a witness' credibility. Rather, it was part of an explanation

concerning why the police had given defendant a ride to Grand Rapids. Finally, the results of the test were not admitted. Considering these factors, there was no error requiring reversal. Therefore, it was proper trial strategy to refrain from objecting to the brief reference to a polygraph examination, a course of action that would only have served to draw the jury's attention to it. This Court will not find ineffective assistance of counsel based on trial strategy. *Pickens*, *supra* at 330.

Defendant also alleges that his trial counsel was ineffective for failing to object to the improper admission of prior acts evidence. However, defendant fails to discuss this claim or to cite any relevant case law. "[B]ecause defendant does not argue the merits of this issue in his brief, we consider this issue abandoned." *Canter*, *supra*.

Defendant argues that his counsel was ineffective for stipulating to the admission of irrelevant medical reports. These stipulations concerned summaries of the proposed testimony that would have been offered by medical witnesses had they been presented at trial. Since the testimony detailed physical evidence that supported the complainant's claim that she had been sexually abused by defendant, it was clearly relevant. MRE 401. It was a rational trial strategy to stipulate to a truncated version of the doctors' testimony in lieu of having the prosecution call the two doctors and have them testify at length and in detail as to their findings. Additionally, some of the stipulated testimony supported the theory of the defense and counsel was able to secure the prosecutor's stipulation to medical testimony that assisted the defense. Defendant has therefore failed to demonstrate that his counsel's decision did not constitute a valid trial strategy. *Pickens*, *supra* at 330.

Defendant finally claims that his counsel failed to "zealously argue opening and closing statements." The presentation of opening statements and closing arguments is a matter of trial strategy. *People v Roberson*, 90 Mich App 196, 204; 282 NW2d 280 (1979). Trial counsel appropriately presented an opening statement that outlined the anticipated defense case and asked the jury to "listen to the evidence." In his closing argument, defense counsel challenged the validity of defendant's confession and attacked the credibility of the complainant. Finally, counsel reminded the jury that there was testimony supporting defendant's good character. Trial counsel adequately presented the theory of the defense. Defendant has therefore failed to demonstrate deficient performance or prejudice. *Perkins*, *supra* at 302-303.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[2] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).