

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT T. HINDS,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 243040
Wayne Circuit Court
LC No. 01-009370

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

PER CURIAM.

Defendant was convicted by a jury of first-degree (premeditated) murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment on the murder charge and two years' imprisonment on the felony-firearm charge. He now appeals as of right and we affirm.

On appeal, defendant claims that his trial counsel was ineffective¹ in two particulars: (1) failing to move to exclude inadmissible evidence, and (2) failing to move to suppress statements of two witnesses. We find neither ground to warrant relief.

The victim was gunned down in his own home. No one witnessed the shooting and the prosecutor's case against defendant was a carefully constructed circumstantial one. Spent casings and bullets recovered from the murder scene matched those recovered from the site of another shooting which occurred earlier the same night as the murder. Defendant had bragged about both shootings, had attempted to purchase more ammunition after the earlier shooting and stole the car of the man who drove him to K-Mart to attempt to purchase the ammunition. The car was found parked in front of the victim's home after the murder; DNA samples recovered from items found in the car were linked to defendant and gloves in the car tested positive for gunpowder residue. There was also circumstantial evidence of motive.

¹ This issue was not raised before the trial court thus review is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994)

The right to effective assistance of counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Pubrat*, 451 Mich 589, 594; 548 NW2d 595 (1996). We review questions of constitutional law de novo. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

Generally, to establish ineffective assistance of counsel, a defendant must show: (1) that counsel's performance was below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) that the resultant proceedings were fundamentally unfair or unreliable, *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant first complains about the failure of defense trial counsel to object on the grounds of a break in the chain of custody to the introduction of shell casings and a bullet from the shooting which took place earlier in the evening of the murder in the same neighborhood. We find no error.

Shortly after midnight on May 16, 2001, a young Chaldean man was returning home. As he got out of his car he heard gunshots and ran to the door of the house he shared with another young Chaldean man. The police were called and responded to the scene, but nothing was found in the dark. Defendant appeared at a nearby drug house shortly after this shooting, claiming that he "just got done . . . shooting at some Chaldeans . . . down the street . . ." The next day the two Chaldeans² found bullet holes in their house and in one of their cars that had been parked in front of the house; nine shell casings were found across the street from their house and one of the men placed them in a bag. Five days later a police officer investigating the murder, interviewed the two men. The officer recovered a bullet from the door of the car and took the shell casings. Trial testimony was that the casings and the bullet from the first shooting on May 16 matched those recovered from the scene of the murder that occurred later on the same night.

The bullets and casings from both shootings were admitted into evidence without objection from defense trial counsel. On appeal, defendant claims that counsel should have objected to the chain of custody of the evidence from the first shooting because five days had elapsed between the shootings and the recovery of the evidence from the scene of the first shooting, resulting in a break in the chain of custody of the evidence. We disagree.

Gaps in the chain of custody of the evidence go to the weight of the evidence, not its admissibility, and the admission of evidence does not require a perfect chain of custody. *People v White*, 208 Mich App 126, 130-132; 527 NW2d 34 (1994). In this case, the foundation for the admission of the evidence was adequate; a police officer dug the bullet out of the car at the scene of the first shooting, albeit five days after the fact. However, there is no indication in the record

² One of the men testified that he had seen defendant in the neighborhood before the shooting and that defendant carried a handgun on those occasions.

that anyone other than the officer had possession of the bullet in the five days between the shooting and his recovery of it, and we see no basis on which to hold that there was any break in the chain of custody of this evidence. Likewise, although the Chaldean man who was one of the victims of the shooting recovered the casings the day after the shooting and turned them over to the officer five days later, there is nothing to suggest that either the bullet or the casings were in any way tampered with or that they did not come from the scene of the first shooting of May 16. In addition, the testimony of the occupant of the drug house down the street that defendant appeared there shortly after the first shooting bragging about just having shot at “the Chaldeans” is further foundational basis for finding that the same gun was used in both shootings. Defendant has failed to meet the test for a finding of ineffective assistance of counsel. *Rodgers, supra; Rocky, supra.*

Defendant next argues that defense trial counsel was ineffective for failing to move to suppress prior statements of two witnesses who he alleges were intimidated by the police to give the statements. Again we disagree.

Our review of the testimony of the two witnesses in question convinces us that (1) any suggestion of intimidation or coercion is not supported by the record and is highly speculative, at best, and (2) the testimony of the witnesses was not actually harmful to defendant. Under these circumstances, we find no error in the failure to move to suppress their prior statements; defendant was not deprived of a substantial defense or in any way prejudiced. Defendant cannot show that representation of trial counsel was in any way ineffective.

Affirmed.

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