

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOVAN DAMAR LAROCK,

Defendant-Appellant.

UNPUBLISHED

March 5, 2009

No. 281381

Wayne Circuit Court

LC No. 07-009031

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316(1)(b), armed robbery, MCL 750.529, and two counts of assault with intent to commit murder, MCL 750.83. The trial court vacated the armed robbery conviction and sentenced defendant to life imprisonment for the murder conviction and to concurrent prison terms of 30 to 50 years each for the assault convictions. Defendant appeals as of right. We affirm.

I

Defendant's convictions arose from a robbery in which Steven Johnson shot and killed Terron Bush and wounded Gerald Bush. Defendant was convicted under an aiding or abetting theory. Steven Johnson and his brother, William Johnson, both pleaded guilty to a reduced charge of second-degree murder and assault with intent to commit murder in exchange for their testimony against defendant. At trial, they testified that defendant directed Steven to rob Terron Bush at gunpoint after he cashed a check. The proceeds of the robbery were intended to pay back a "debt" that the Johnson brothers owed to defendant following a police raid of a house where Steven and William sold drugs for defendant.

II

Defendant argues that he was denied the effective assistance of counsel because substitute counsel was appointed only six weeks before trial began and was unprepared to try the case. We find no merit to this issue.

Defendant did not raise the issue of ineffective assistance of counsel in a motion for a new trial or request for a *Ginther*¹ hearing. Therefore, this Court's review is limited to errors apparent from the record. *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005). To establish ineffective assistance of counsel, defendant must show that (1) his attorney's performance was objectively unreasonable in light of prevailing professional norms and (2) but for counsel's alleged errors, a different outcome reasonably would have resulted. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001); *People v Werner*, 254 Mich App 528, 534; 659 NW2d 688 (2002). Defendant must also show that the proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

The record does not support defendant's claim that defense counsel was unprepared. On the contrary, the record discloses that defense counsel was familiar with the preliminary examination testimony, all police statements, and other evidence, which he used repeatedly in an attempt to impeach the prosecution's witnesses. He was able to use this evidence to support the defense theory that Steven and William Johnson planned and committed the robbery on their own and then testified against defendant to avoid life sentences for first-degree murder. Although defendant contends that defense counsel evinced indecision with respect to the presentation of alibi witnesses, the record discloses that this was attributable to a disagreement with defendant regarding the benefit of the alibi testimony rather than indecision because of a lack of preparation.² Additionally, defendant fails to explain how additional time to prepare could have enabled counsel to better defend against the charges.

For these reasons, defendant has not established that counsel's performance fell below an objectively reasonable standard, that it is reasonably probable that the outcome would have been different if defense counsel had more time to prepare, or that the proceedings were fundamentally unfair or unreliable.

III

Defendant also argues that the trial court abused its discretion by admitting evidence of cellular telephone records that were not produced before the discovery deadline. Evidentiary issues, including decisions related to discovery, are reviewed for an abuse of discretion. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998).

The prosecutor could not have produced the records earlier because they were received only the night before they were presented at trial. Further, as the trial court observed, the records should not have been a surprise to defendant because the cellular telephone itself had been available to defendant, and the records involved defendant's own telephone usage. Thus, the same information regarding calls placed from defendant's cellular telephone to William's

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

² Two alibi witnesses ultimately were presented.

telephone was available to defendant at all relevant times.³ Under these circumstances, the trial court did not abuse its discretion in admitting the records.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

³ Defendant makes no showing on appeal that the records were falsified.