

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERLANDA WAMDRIA JEFFERSON,

Defendant-Appellant.

UNPUBLISHED

March 24, 2009

No. 283609

Wayne Circuit Court

LC No. 07-012820-FH

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to two years' probation for the felonious assault conviction and to two years' imprisonment for the felony-firearm conviction. She appeals as of right. We affirm.

Defendant's convictions arise out of an altercation involving Lateaya Knight. Defendant and Knight lived in the same apartment complex in the city of Detroit. Knight was taking out her garbage at approximately 8:45 p.m. on July 19, 2007, when defendant confronted her and accused her brother of denting defendant's car. Defendant and Knight engaged in a physical altercation, following which Knight went to her apartment to retrieve her cell phone and call 911. Thereafter, Knight went back outside to get her eight-year-old daughter, and defendant waived a gun in the air and threatened her. At trial, defendant denied threatening Knight with the gun and testified that Knight was the aggressor during the physical altercation.

Defendant argues that she was denied the effective assistance of counsel when counsel failed to object to the court's jury instruction provided pursuant to the jury's request for a transcript of Officer Eshad Ali's testimony. We disagree. Because defendant failed to raise this issue in a motion for a new trial or evidentiary hearing in the trial court, our review is limited to errors apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

"Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *Id.*, quoting *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish a claim of ineffective assistance of counsel, defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced her that it deprived her of a fair trial. *People v Pickens*, 446 Mich

298, 302-303; 521 NW2d 797 (1994); *People v Moorers*, 262 Mich App 64, 75-76; 683 NW2d 736 (2004). With respect to the prejudice requirement, defendant must demonstrate a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *Moorers*, *supra* at 75-76. Defendant must also overcome the strong presumption that counsel's actions constituted sound trial strategy. *Toma*, *supra* at 302.

Officer Ali testified during trial that defendant admitted at the scene that she retrieved a gun from her apartment, waived it in the air, and threatened Knight. Defense counsel then questioned Ali as follows:

Q. Okay. Now it seems a little odd in a case like this being an experienced police officer for me a person assaulting someone to tell the responding officer I did it and I acted like a crazy person, grabbed my gun, wa[i]ved it in the air and I said I am gonna kill you, bitch.

Didn't that seem a little odd? Didn't that seem like quite an interesting admission from her?

A. No, it doesn't.

Q. Oh, it doesn't. People just admit those things to you all [the] time, right?

A. Whenever things like that happen on a daily basis.

Q. Okay. All right. Doesn't it sound more logical that that information came from the victim? Doesn't that make more sense and the A-1 [arrestee] and vic one [victim] might be transposed in your report?

A. It could be. I mean it's possible.

During its deliberations, the jury requested a transcript of Ali's testimony, "specifically the portion regarding the gun and whether he had possibly mixed up the victim versus the arrestee." In response to the jury's request, the trial court instructed the jury:

Ladies and gentlemen, you've asked for the testimony of Officer Ali. The court reporter takes down the testimony in a system of symbols, these symbols are then translated into words. This can be done, but it takes many hours to prepare such a transcript. It is never permissible to provide parts of a witness's testimony. You should rely on your collective memories regarding the testimony.

Defense counsel expressed agreement with the trial court's instruction.

Defendant argues that the instruction erroneously indicates that certain portions of a witness' testimony, as opposed to the witness' entire testimony, cannot be provided. Generally, when a jury requests that testimony be reread, the extent of rereading is a matter within the sound discretion of the trial court. *People v Howe*, 392 Mich 670, 675; 221 NW2d 350 (1974). In *Klein v Wagenheim*, 379 Mich 558, 561; 153 NW2d 663 (1967), our Supreme Court "considered and rejected the argument that it is not proper to read any testimony, unless all the

testimony is read[.]’” *People v Turner*, 37 Mich App 162, 165; 194 NW2d 496 (1971). Accordingly, the trial court’s statement that it is impermissible to provide portions of a witness’ testimony was erroneous.

Nevertheless, the trial court’s instruction as a whole conformed to MCR 6.414(J) and did not preclude the possibility that Officer Ali’s entire testimony could be provided at a later time. MCR 6.414(J) provides:

If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

The trial court instructed the jury that a transcript of Officer Ali’s testimony would take many hours to prepare and that the jurors should continue to deliberate, relying on their collective memories. This instruction did not foreclose the possibility of reviewing Ali’s testimony in the future. Therefore, the instruction as a whole comported with MCR 6.414(J).

Defendant cannot establish prejudice resulting from the trial court’s instruction. Although the court erroneously advised the jurors that it was impermissible to provide only parts of Officer Ali’s testimony, the instruction also made clear that none of Ali’s testimony had yet been transcribed and, accordingly, was not yet available for review. Moreover, the court’s instruction did not foreclose the possibility that Ali’s testimony could be reviewed at a later time. Therefore, counsel’s failure to object to the instruction did not prejudice defendant. See *Toma, supra* at 302-303; *Moorer, supra* at 75-76.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis