

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ATTRICE EUGENE SINGLETON,

Defendant-Appellant.

UNPUBLISHED

July 21, 2009

No. 285477

Wayne Circuit Court

LC No. 07-020686-FC

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and armed robbery, MCL 750.529. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent prison terms of 16 to 24 years for each conviction. Defendant appeals as of right. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

The victim, defendant's stepfather, resided on Ohio Street in Detroit with his wife and defendant. As the victim approached his car in the driveway in the early afternoon of September 24, 2007, he saw defendant approaching him from some bushes. Defendant held something behind his back, and the victim thought defendant was getting ready to enter the car. When defendant got closer, he swung the object at the victim, striking him on the right shoulder. The victim did not recall the remainder of the attack, but he suffered a skull fracture, injuries to his arm, and stab wounds that left the blade of a knife in his body, near his lung and heart. Police recovered the knife handle from the backyard of the Ohio Street residence.

Although the victim testified at the preliminary examination that he felt 85 percent certain that defendant had assaulted him, the victim testified at defendant's trial that he had 100 percent certainty that defendant had committed the assault. The police also linked defendant to the assault when they found in defendant's possession a substantial number of coins and a portion of a carton of cigarettes that the victim had been carrying when assaulted. Additionally, the police detected drops of the victim's blood on the top of defendant's shoe.

Defendant testified that he was not in the area at the time of the attack, that the victim previously had given him the pack of cigarettes, and that his mother gave him two rolls of coins. Defendant believed that if the victim's blood had gotten on his shoe, it must have happened when he returned home as the police were processing the bloody scene. However, the police

officer who observed defendant return home shortly after the assault offered his absolutely certain view that defendant did not walk in or near the bloodstained area.

Defendant contends that the trial court erred by allowing the prosecutor to endorse on the day of trial two witnesses to testify about laboratory findings that the blood on defendant's shoe matched the victim's. "The trial court's decision to permit the prosecutor to add or delete witnesses to be called at trial is reviewed for an abuse of discretion." *People v Callon*, 256 Mich App 312, 325-326; 662 NW2d 501 (2003). "[T]o establish that the trial court abused its discretion, [a] defendant must demonstrate that the court's ruling resulted in [unfair] prejudice." *Id.* at 328.

Pursuant to MCL 767.40a(4), a prosecuting attorney "may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." Here, when the prosecutor requested that the court permit her to call the two witnesses, defense counsel responded that he had no objection, and then further offered "to stipulate that the blood that was on [defendant's] shoe was in fact that of" the victim. The court accepted defendant's proposed stipulation. Although defendant now criticizes the trial court for not requiring the prosecutor to show good cause, defense counsel's reply at trial that he had no objection to an amended witness list effectively stipulated to the addition of the witnesses, and removed any need for the court to examine whether good cause existed. Moreover, the witnesses that the prosecution sought to add did not ultimately testify, and defendant cannot demonstrate that he endured prejudice arising from the trial court's ruling to proceed in the manner suggested by defense counsel. See *People v Murry*, 106 Mich App 257, 262; 307 NW2d 464 (1981) (explaining that a defendant cannot request a certain action in the trial court and then, after the court grants the request, argue on appeal that the action amounted to error).

Defendant also submits that he was denied the effective assistance of counsel when trial counsel stipulated to the introduction of the report documenting that the blood on defendant's shoe matched the victim's. He does not suggest that the report qualified as inadmissible, but rather claims that "[t]he crucial nature of this evidence virtually compelled a vigorous cross-examination. It is well known how many surprising facts are elicited on cross."

Because defendant did not move for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), this Court limits its review of the issue to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). To establish ineffective assistance of counsel, defendant must show that counsel's representation "fell below an objective standard of reasonableness" and "overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate prejudice, specifically the existence of "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" *Id.* at 302-303 (citation and internal quotations omitted).

Although defendant's argument hints that the forensic report's conclusion was vulnerable to attack, he does not supply any factual foundation for that suggestion. Defendant has the burden of establishing the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). In the absence of any evidence that the report's conclusion could have been

successfully challenged, we find no basis for concluding that counsel's performance was constitutionally deficient or that, but for his stipulation, the result of the proceeding would have differed.

Defendant also urges this Court to remand the case for a *Ginther* hearing. He did not file a proper motion to remand in this Court, and has not accompanied his request with an affidavit or offer of proof demonstrating factual support for his claims, as required by MCR 7.211(C)(1)(a). Accordingly, a remand is not warranted.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher