STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2009
v	No. 286836 Muskegon Circuit Court
KEITH JOHNSAIL GRISHAM, Defendant-Appellant.	LC No. 07-055258-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of larceny in a building, MCL 750.360, and assaulting, battering, wounding, resisting, obstructing, opposing or endangering an officer causing injury (resisting causing injury), MCL 750.81d(2). The trial court sentenced defendant as a habitual offender, MCL 769.12, to serve 46 months to fifteen years in prison for his conviction of larceny in a building and to 58 months to 15 years in prison for resisting causing injury. The trial court ordered defendant to serve his sentence for larceny in a building consecutive to his sentence for resisting causing injury. On appeal, defendant argues that his attorney, the prosecution, and the trial court committed a host of errors that deprived him of a fair trial and sentence. We conclude that there were no errors warranting relief. For that reason, we affirm.

I. Basic Facts

Defendant's convictions arise from the theft of rings and cash from the Muskegon Art Museum in July 2007.

Detective Timothy Denger testified that he was an officer assigned to road patrol on the night at issue. Denger said he was dressed in his full uniform and drove a fully marked police car. Denger had just started his shift when he was dispatched along with officer Chad Hoop to the museum to investigate an alarm. Denger parked on the north side and he and Hoop proceeded to check the windows and doors.

Denger testified that they did not discover any problems with the windows and doors on the north side and so they began to circle around the west side of the building to get to the south side. Hoop testified that there was a fence on the west side of the building and that Denger got over the fence more easily and moved on ahead. Denger stated that, after he came around the

corner, he saw defendant on the sidewalk near the museum. Denger testified that defendant was dressed in black.

Denger then approached defendant because he wanted to ask him if he had seen anything unusual, but defendant began to cross the street. Denger stated that defendant crossed the street and began to walk along the building on the other side. Denger stated that he thought defendant was "hugging" the side of the building and that defendant's actions overall seemed unusual. After he got to the end of the same building, Denger called out to defendant and asked him: "will you stop for a second?" Denger testified that defendant turned to look over his shoulder and then "jetted." At this, Denger yelled, "Stop. Police."

Hoop testified that he continued to check the exterior of the museum as Denger crossed the street. He stated that he turned toward Denger when he heard him yell: "Stop. Police." Hoop said he saw Denger running after defendant.

Denger testified that he chased defendant for some distance when officer Thomas Parker pulled up in his car and cut defendant off. At this point, Denger pushed defendant from behind and they both fell. Defendant began to get up, but was arrested by Parker. Parker testified that Denger seemed a bit odd: "like he didn't really know what was going on." Denger had a cut on his hand and also began to complain of a pulled groin. Later testimony established that Denger went to the hospital for treatment and that his treating physician recommended that he be scanned for a possible concussion.

After arresting defendant, Parker searched his front pockets and found $18 in cash and a bundle of rings. The rings had price tags and strings tied to them. The officers then went back to the museum. Denger stated that they proceeded to the door near the sidewalk where he first observed defendant. Denger stated that they observed a ballpeen hammer in the bushes about ten to thirteen feet from the fire door, which was slightly ajar. After entering the museum, Denger said he discovered a donation box near the north entrance to the museum that had been broken. Denger said that the box did not have any cash—only change. Denger also testified that the cash drawer in the gift shop had been damaged, but was not open. Denger stated that the cash drawer had little circle-shaped indentations on the front and near the lock. Denger also stated that there was a ring box in the shop with rings that had tags and strings similar to those found on defendant.

Testimony established that the rings found on defendant came from the museum's gift shop. In addition, a museum staff person testified that the ballpeen hammer was from the shop and was used to hang pictures. Further testimony established that two fingerprints found on the cash drawer in the gift shop were from defendant.

Defendant testified that he had never been in the museum and that he found the rings near the museum while walking. He further testified that he did not know that Denger was an officer and that he only ran because he was startled when Denger called out to him.

After hearing the evidence, the jury returned verdicts of guilty on both counts. This appeal followed.

II. Errors at Preliminary Examination

Defendant first argues that the district court erred when it bound him over on the charge of larceny in a building. Specifically, he argues that there was insufficient evidence to establish that he was ever in the museum. He also argues that his trial counsel was ineffective for failing to move to quash the bindover on the larceny charge.

It is well settled that, in order to warrant reversal of a conviction based on errors during a preliminary examination, a defendant must show that the error during the preliminary examination prejudiced his subsequent trial. *People v Hall*, 435 Mich 599, 602-603; 460 NW2d 520 (1990). As our Supreme Court has explained, "[i]f a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover." *People v Wilson*, 469 Mich 1018, 1018; 677 NW2d 29 (2004).

In this case, defendant has not indicated that any error during the preliminary examination stage prejudiced his jury trial. Therefore, even if we were to conclude that the district court erred, defendant would not be entitled to relief. *Id.* For the same reason, defendant's claim that his trial counsel was ineffective for failing to move to quash the bindover must fail. *People v Yost*, 278 Mich App 341, 387; 749 NW2d 753 (2008) (stating that, in order to warrant relief for ineffective assistance of counsel, the defendant must show that, but for counsel's error, the result of the trial would have been different).

III. Admission of Criminal Record

Defendant next contends that the trial court abused its discretion when it permitted the admission of a portion of his criminal record. Specifically, defendant contends that MRE 608(b) barred admission of these records. This Court reviews a trial court's evidentiary decisions for an abuse of discretion. *Yost*, 278 Mich App at 353. A trial court necessarily abuses its discretion when it admits evidence that is inadmissible as a matter of law. *Id.*

Defendant correctly notes that MRE 608(b) generally prohibits the admission of extrinsic evidence concerning specific instances of a witness' conduct for the purpose of attacking or supporting the witness' credibility. However, that rule also specifically provides that MRE 609 is an exception. And MRE 609(a) permits the admission of evidence that a defendant has been convicted of a crime if the crime contained an element of dishonesty and "the evidence has been elicited from the witness or established by public record during cross-examination."

In this case, defendant does not dispute that he had previously been convicted of two crimes involving theft or dishonesty. Thus, on cross-examination, the prosecutor could properly question defendant about these convictions as probative of defendant's veracity and could seek the admission of public records in support. MRE 609(a); *People v Allen*, 429 Mich 558, 593-595; 420 NW2d 499 (1988). And, contrary to defendant's contention, a defendant's admission that he committed the crimes does not render the criminal record inadmissible under MRE 609(a). The trial court properly admitted the records and defendant's trial counsel was not ineffective for failing to make a meritless objection to their admission. See *People v Unger*, 278 Mich App 210, 255; 749 NW2d 272 (2008).

IV. Sentencing Issues

A. Mitigating Factors

For his first sentencing issue, defendant claims that the trial court erred when it improperly failed to consider mitigating factors when sentencing him and that his attorney was ineffective for failing to introduce mitigating evidence. Defendant utterly failed to support this argument with any meaningful discussion. In the six pages dedicated to this issue, defendant lists general authorities—some of which were related to sentencing—but completely fails to identify a single mitigating factor that was or should have been presented to the trial court for consideration in sentencing. Therefore, defendant has abandoned this issue on appeal. *People v Martin*, 271 Mich App 280, 315; 721 NW2d 815 (2006).

B. Proportionate Sentences

Defendant next argues that the trial court erred when it imposed sentences that were disproportionately long given his background and rehabilitative potential. This Court reviews unpreserved claims of sentencing errors for plain error affecting defendant's substantial rights. *People v McLaughlin*, 258 Mich App 635, 670; 672 NW2d 860 (2003).

It is undisputed that defendant's minimum sentences were within the applicable sentencing guidelines range. A sentence that is within the guidelines range is presumed proportionate, *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995), and a proportionate sentence does not violate the constitutional prohibition against cruel and unusual punishments, *People v Colon*, 250 Mich App 59, 66; 644 NW2d 790 (2002). Indeed, where a trial court's sentence falls within the appropriate guidelines range, this Court must affirm unless the trial court erred in scoring the guidelines or relied on inaccurate information. *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003), citing MCL 769.34(10). Further, a presentence report is presumed to be accurate and the trial court may rely on it unless effectively challenged by the defendant. *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003).

In the present case, there is no evidence that the trial court relied on inaccurate information when sentencing defendant. Defendant fully participated in the sentencing hearing, which included changes that defendant requested. After the trial court made defendant's requested changes, it asked defendant if he wanted to make any further additions or corrections and defendant himself indicated that everything else was correct. Notwithstanding this, defendant now contends that the trial court erred when it failed to take into consideration his strong family support and the fact that he "may" be hiding a drug problem. The trial court properly relied on the sentencing report, which defendant conceded was correct. *Callon*, 256 Mich App at 334. Because there is no evidence that the trial court relied on inaccurate information, defendant's failure to bring these issues up at sentencing or in a proper motion precludes appellate review. See MCL 769.34(10); *Babcock*, 469 Mich at 261. And, even reviewing defendant's claim for plain error, we conclude that defendant has not established a basis for relief.

Although defendant argues that the trial court could have inferred a "diagnosis" from the facts stated in the sentencing report, the only statement within the sentencing report that remotely supports an inference that defendant has a drug problem is a statement by the investigator who

prepared the report. In that statement, the investigator noted that defendant did not commit his first offense until age 33 and opined that "given the fact that he entered into criminal behavior, it appears [defendant] may possibly be hiding a substance abuse problem." However, the investigator also noted that defendant denied having any history of substance abuse. Given the speculative nature of the investigator's opinion—whatever its merits—the trial court cannot be faulted for failing to find that defendant had a substance abuse problem. See *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008) (noting that that the facts used to support the scoring of sentencing variables must be found by a preponderance of the evidence). Likewise, because there was no substantive evidence that defendant had been abusing drugs, the trial court also cannot be faulted for failing to order tests or an evaluation to determine defendant's rehabilitative potential with intensive drug therapy.[1] For the same reason, such a finding cannot support a departure from the guidelines. See *Babcock*, 469 Mich at 257-258 (noting that a reason for departing must be objective and verifiable). The sentencing report also does not mention defendant's family support and defendant did not raise it to the trial court. Therefore, the trial court did not err in failing to consider these factors. *Callon*, 256 Mich App at 334. There was no plain sentencing error. *McLaughlin*, 258 Mich App at 670.

We also reject defendant's contention that his maximum sentences were unconstitutionally disproportionate to his crimes or that the trial court improperly failed to articulate a reason for the selected maximum sentence. The principle of proportionality requires that a sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Based on defendant's criminal history, the trial court could properly sentenced defendant to fifteen years in prison for each of his convictions. See MCL 769.12. Defendant's sentencing report indicated defendant had committed several felonies within a relatively short span. Further, defendant committed the present felonies while on probation. The escalating nature of defendant's criminal actions supported the maximum term selected by the trial court. See *People v Gonzalez*, 256 Mich App 212, 230; 663 NW2d 499 (2003). Further, the trial court met its articulation requirement when it relied on the sentencing report. *People v Conley*, 270 Mich App 301, 312-313; 715 NW2d 377 (2006).

C. *Blakely*

Within his issue concerning whether the trial court's sentence was proportionate, defendant also argues that the record "discloses that (1) the plea or verdict did not encompass all the findings made by the trial court" in scoring the guidelines and "(2) the defendant did not acknowledge the truth of the facts used in the scoring of the guidelines . . . ." Thus, defendant further argues, his sentence must be set aside under the principles explained in *Blakely v*

[1] We also reject defendant's argument that the trial court should have made a downward departure based on the United States Sentencing Guidelines § 5K2.13. Michigan courts are required to apply the Michigan Sentencing Guidelines, not the federal guidelines. MCL 769.34(2). Further, to the extent that the federal guidelines might be persuasive, we note that there is no objective evidence that defendant has used drugs or that he suffers from diminished capacity as a result and, even if there were such evidence, § 5K2.13 does not apply to reduced mental capacity caused by the voluntary use of drugs.

Washington, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, defendant again failed to offer any meaningful discussion of this issue. Defendant did not examine the elements of the crime, the proofs offered at trial, the actual offense variables (OV) scored by the trial court or the findings underlying the scores. Therefore, defendant has abandoned this claim of error on appeal. *Martin*, 271 Mich App at 315. Even if defendant had not abandoned this issue, our Supreme Court has held that the Michigan Sentencing Guidelines do not violate the principles stated in *Blakely*. *People v McCuller*, 479 Mich 672, 689-690; 739 NW2d 563 (2007).

D. Consecutive Sentences

Defendant next argues that the trial court improperly ordered his sentences to be served consecutively without articulating a reason for doing so and without recognizing that the decision was discretionary rather than mandatory. Defendant also argues that the imposition of consecutive sentencing is not reasonable because the circumstances underlying the crimes did not involve "heinous" conduct. In analyzing this issue, defendant cites a host of irrelevant or marginally relevant authorities, but fails to cite a single authority that stands for the proposition that a trial court must specifically acknowledge that it has the discretion to impose a consecutive sentence and articulate a reason for imposing a consecutive sentence before it may exercise that discretion. Likewise, defendant does not offer any authorities for the proposition that a trial court may only impose consecutive sentences where there is evidence of "heinous" conduct. Therefore, we conclude that defendant has abandoned this issue on appeal. *Martin*, 271 Mich App at 315. Even if we were to conclude that defendant had not abandoned these claims of error, we would conclude that there was no error warranting relief.

The trial court could properly impose a consecutive sentence in this case. See MCL 750.81d(5). There is no record evidence that the trial court erroneously believed that it had to sentence defendant to a consecutive term. And, in the absence of "clear evidence that the sentencing court believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999). Accordingly, defendant would not be entitled to relief on the sole basis that the trial court failed to specifically recognize that it had the discretion to impose a consecutive sentence. Likewise, it is clear from the trial court's remarks that he relied on the sentencing guidelines when fashioning defendant's sentences. Thus, the trial court met the articulation requirements. *Conley*, 270 Mich App at 313. Finally, the trial court was not limited to imposing consecutive sentences only where the conduct underlying the crimes was "heinous." Rather, the trial court's decision to impose a consecutive sentence need only be within the range of reasonable and principled outcomes. *Yost*, 278 Mich App at 379. Under the facts of this case, we cannot conclude that the trial court's decision was not within that range.

E. Scoring OV 13

Defendant next argues that the trial court erred when it scored OV 13 at 10 points. Specifically, defendant contends that, because the trial court scored OV 12, it could not score OV 13 for the same conduct underlying the scoring of OV 12 absent proof that defendant was part of a criminal group. This Court reviews de novo the proper interpretation of statutes such as the sentencing guidelines. *Martin*, 271 Mich App at 286-287.

OV 13 addresses whether a defendant has engaged in a continuing pattern of criminal behavior. MCL 777.43. If the offense being scored was part of a pattern of felonious criminal activity involving a combination of three or more crimes against a person or property, the trial court should score OV 13 at 10 points. MCL 777.43(1)(c).[2] When scoring this OV, the trial court must consider all crimes within a five-year period, regardless of whether the offense resulted in a conviction. MCL 777.43(2)(a). However, the trial court must not consider conduct scored under OV 11 or 12 when scoring OV 13 unless the offenses related to membership in a criminal organization. MCL 777.43(2)(c).

In the present case, the trial court scored OV 12 at 5 points based on defendant's present conviction for resisting and obstructing an officer. For that reason, the same conduct could not also serve as the basis for scoring OV 13. MCL 777.43(2)(c). However, defendant had been convicted of resisting and obstructing an officer and breaking and entering within the previous five years. When combined with the current conviction for larceny in a building, these crimes establish a pattern of felonious criminal activity involving a combination of three of more crimes against a person or property. MCL 777.43(1)(c). Therefore, the trial court properly scored OV 13 at 10 points.

V. Defendant's Claims Submitted Under Standard 4

Defendant also raises several claims of error in a pro se supplemental brief filed under Supreme Court Administrative Order No. 2004-6, Standard 4. See 471 Mich at cii.

A. Unlawful Arrest and Bindover

Defendant first argues that he was improperly arrested without a warrant and that there was no warrant or complaint on record before he was bound over to the Circuit Court. These defects, he contends amount to a jurisdictional defect warranting a directed verdict of acquittal. We conclude that there were no deficiencies with regard to defendant's arrest, arraignment and eventual bindover.

The court clerk stamped the complaint of record as having been entered on August 16, 2007, which was the day after defendant's preliminary examination. Nevertheless, the complaint was subscribed and sworn on August 1, 2007, which was the day after defendant's arrest. In addition, the complaint indicates that the warrant was authorized on August 1, 2007. Indeed, defendant attached a copy of a warrant, which was signed on August 1, 2007, to his brief on appeal. Although the warrant and complaint were not stamped until August 16, 2007, the date of entry for orders is the date the order was signed by the lower court. MCR 2.602(A)(2). Accordingly, to the extent that defendant was entitled to have a warrant and complaint before his preliminary examination, see MCR 6.104(D); MCR 6.110(B), the record does not support defendant's claim that he did not receive them. Likewise, the officers in this case could properly arrest defendant after they had probable cause to believe that he committed a crime—such as resisting and obstructing—even without first obtaining a warrant. *People v Champion*, 452 Mich

[2] This section is now codified at MCL 777.43(1)(d). See 2008 PA 562.

92, 115; 549 NW2d 849 (1996). And once the officers properly arrested defendant, they could properly search him. *Id.* Therefore, these claims of error are without merit.

B. Insufficient Evidence to Warrant Bindover

Defendant also argues that there was insufficient evidence at the preliminary examination to bind him over on the charge of resisting and obstructing causing injury. Specifically, defendant argues that there was no evidence that he knew that Denger was an officer. For the same reasons stated above under Issue II, we reject this claim of error.

C. Illegal Stop and Excessive Force

Defendant next argues that Denger had a constitutional obligation to identify himself as a police officer before trying to stop defendant and that Denger used excessive force when stopping defendant. These claims are without merit.

The testimony in this case established that Denger observed defendant next to the museum where an alarm had been set off only minutes earlier. Defendant was dressed in black and was behaving in a way that Denger thought suspicious, including "hugging" the side of a building as he walked away from the museum. Further, once Denger tried to initiate communication with defendant, defendant turned to look and then "jetted." Under these facts, Denger could properly stop defendant. See *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001) (noting that a police officer may briefly detain a person as part of an investigatory stop if the officer has a reasonably articulable suspicion that the person is engaging in criminal activity). Further, to the extent that there was a dispute about whether Denger identified himself or that defendant otherwise knew that Denger was an officer, that dispute was properly left to the jury. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Finally, there is no record evidence that the police officers in this case used objectively unreasonable force to seize defendant. *People v Hanna*, 223 Mich App 466, 471-472; 567 NW2d 12 (1997). The stop was neither illegal nor performed with excessive force.

D. Discovery Violations and Misconduct

At various points in his Standard 4 brief, defendant argues that the police and prosecution conspired to withhold exculpatory evidence, fabricated evidence and elicited false testimony. Specifically, defendant argues that he was deprived of the video from the police officers' cars, deprived of the audio recordings of the officers' communications while pursuing defendant, that the fingerprint evidence was fabricated, that it was not disclosed that another person was arrested in the museum during the night in question and that he was deprived of the "original" forensic report concerning the analysis of his clothing. Defendant further argues that the prosecutor committed misconduct by participating in these acts and the trial court erred when it failed to prevent the admission of the false testimony and evidence. We have examined these issues in detail and conclude that defendant has abandoned these claims through failure to properly support them on appeal. *Martin*, 271 Mich App at 315. In any event, we shall briefly address each claim.

There is no evidence that the purported audio or video recordings actually exist. Indeed, testimony established that the video recordings in the departments' cars were being reconfigured

and, as a result, were not operational. There is also no evidence that, if the video cameras were functional, that there would be evidence favorable to defendant. Likewise, there is no evidence that there were recordings from the officers' personal radios.

With regard to the forensic report, there is no objectively reasonable evidence that suggests the existence of a different version of the report. Indeed, defendant's trial counsel stated on the record that the prosecutor "provided me everything that I'm aware of that was available to us."

Defendant also presented no objectively reasonable evidence that the report on the latent fingerprints discovered on the register was manufactured or otherwise altered. On appeal, defendant merely submitted a copy of the report with a notation: "notice the different ink: alteration." Defendant's notation and belief that the report uses different colored inks does not establish that the police or prosecution falsified the report.

Finally, defendant's only evidence that there was another person arrested at the museum is a one-page police report attached to his brief on appeal. But that report does not support his claim. The report merely lists the contact information and descriptions for various persons with some association with the events at issue. The report lists two men in addition to defendant, the museum, and the alarm company. Under each person or entity's contact information is a notation. Under the museum's information is the notation "victim," under the information for the alarm company is the notation "report by," under the information for the men other than defendant is the notation "other," and under defendant is multiple notations for "arrest." This report actually establishes that defendant was the only person associated with the events at issue who was arrested. Further, testimony at trial established that no other persons were found in the museum on the night in question.

Defendant's claim that the prosecution or police committed misconduct by concealing or failing to disclose various items of discovery is entirely without merit.

E. Insufficient Evidence

Defendant next challenges the sufficiency of the evidence that he committed a larceny. Specifically, defendant argues that he could not be convicted of larceny in a building because he did not take the rings at issue from the museum's store; he found them outside the museum. Defendant's claim is without merit. There was sufficient evidence from which a jury could conclude that defendant took the rings from the museum's store, notwithstanding defendant's testimony to the contrary. And whether defendant found the rings or took them from the museum's store was a question of fact for the jury, *Lemmon*, 456 Mich at 637,—and the jury clearly resolved that fact-question in favor of the prosecution.

F. Ineffective Assistance of Counsel

Defendant next argues that he was deprived of the effective assistance of counsel. In order to establish that his trial counsel was ineffective, defendant must show: "(1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *Yost*, 278 Mich App at 387.

Defendant initially argues that his trial counsel failed to consult with him and obtain the names of favorable witnesses and failed to get a police report before defendant's preliminary examination. Had his trial counsel done these things, defendant's trial counsel could have challenged the "false statements" made at the preliminary examination. Defendant also argues that his trial counsel was ineffective for failing to: consult with defendant, file the "necessary" pretrial motions, perform proper discovery, obtain a forensic expert to offer an opinion about the "original exculpatory" lab report, impeach officer Denger's trial testimony with his preliminary examination testimony, object to misconduct, secure a key witness, and for generally assisting the prosecution.

Defendant's claims of ineffective assistance are unsupported by the record or relevant analysis. Defendant does not state how his trial counsel's errors before the preliminary examination prejudiced his jury trial. *Hall*, 435 Mich at 602-603 (noting that, in order to warrant relief, an error at the preliminary examination stage must result in prejudice at trial). He also does not identify the motions that were allegedly necessary or state how the failure to file those motions prejudiced his defense. *In re Ayres*, 239 Mich App 8, 22; 608 NW2d 132 (1999) (explaining that, where "there is a claim that counsel was ineffective for failing to raise a defense, the defendant must show that he made a good-faith effort to avail himself of the right to present a particular defense and that the defense of which he was deprived was substantial."). Similarly, he offers no evidence that there was an "original exculpatory" lab report that needed to be analyzed by a forensic expert and does not discuss the testimony that would have been offered by this expert witness or any other witness. See *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003) (stating that the defendant has the burden of showing that the witness would have testified favorably); *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990) (noting that the failure to interview a witness does not by itself establish inadequate preparation for trial; the defendant must show that the failure to interview resulted in counsel's ignorance of valuable evidence that would have substantially benefited the accused). Defendant has not established any of these claims of ineffective assistance of counsel.

Finally, defendant's claim that his counsel should have impeached Denger with Denger's preliminary examination testimony is also without merit. The preliminary examination record shows that Denger testified that he did not identify himself as a police officer at the time he initially tried to speak to defendant. And defendant correctly notes that Denger did not testify at the preliminary examination that he stated, "Stop. Police." However, on redirect examination, Denger testified that he did in fact order defendant to stop. This testimony was entirely consistent with his trial testimony. For that reason, the preliminary examination had no real impeachment value. Therefore, defendant failed to establish that his attorney's decision not to impeach Denger in this way fell below an objective standard of reasonableness. *Yost*, 278 Mich App at 387.

After examining the record in detail, we conclude that there is no record evidence to support defendant's claims of ineffective assistance of counsel. *People v Dixon*, 217 Mich App 400, 408; 552 NW2d 663 (1996) (explaining that, where the claim of ineffective assistance of counsel is unpreserved, this Court will not grant relief unless the record contains sufficient detail to support the defendant's claim).

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly