

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER DONALD ALDRIDGE,

Defendant-Appellant.

UNPUBLISHED

December 15, 2009

No. 285566

Saginaw Circuit Court

LC No. 07-028722-FC

Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

Defendant was found guilty by a jury of first-degree murder (premeditated), MCL 750.316, armed robbery, MCL 750.529, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of life for the first-degree murder and armed robbery convictions, a preceding and consecutive term of one year and 79 days to five years for the concealed weapon conviction, and a term of two years for the felony-firearm conviction, to be served concurrently with the concealed weapons conviction. He appeals as of right. We affirm.

On December 29, 2006, Courtney Davis was shot. He died the following day. Matthew Brooks testified that on the evening of December 29th, defendant, Davis, and Brooks were at a house party when defendant suggested the three leave to purchase some alcohol. According to Brooks, while they were walking to the store, defendant pulled out a gun and shot Davis in the back of the head at point blank range. Brooks ran back to the house party. While he was running, Brooks looked back and saw defendant reach into Davis's pockets. He also heard more shots.

Eyewitness Djonquavis Baker, who was 14 years old at the time of the incident, testified that he saw three men walking in front of his house. Baker saw one of the men pull out a gun and shoot one of the other men, who Baker knew. The third man ran away when the first shot was fired. The shooter shot twice more. Baker also saw the shooter go through the victim's pockets and pull out what appeared to be a wallet. Baker could not identify the shooter, but testified that he was skinny-skinnier than Baker himself. Baker was 5' 10" tall and weighed approximately 138 pounds at the time of trial in February 2008.

On appeal, defendant first argues he was denied the effective assistance of counsel. Defendant preserved this issue in a motion for a new trial, which the trial court denied. See

People v Rodriguez, 251 Mich App 10, 38; 650 NW2d 96 (2002). To show ineffective assistance of counsel a “defendant must show that counsel’s performance was deficient.” *People v Dendel (Amended Opinion)*, 481 Mich 114, 125; 748 NW2d 859 (2008) (citation omitted). The performance must have fallen “below an objective standard of reasonableness” and failed to provide the “modicum of representation that is [a defendant’s] constitutional right in a criminal prosecution.” *People v Grant*, 470 Mich 477, 485; 684 NW2d 686 (2004). “The defendant must overcome the presumption that the challenged action could have been sound trial strategy.” *Id.* If the defendant overcomes this presumption and shows that the performance was deficient, he must also show that the deficient performance “prejudiced the defense.” *Dendel, supra* at 125 (quotations and citations omitted). He must show there is “a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different.” *Id.* (citation omitted). “A reasonable probability need not rise to the level of making it more likely than not that the outcome would have been different.” *Grant, supra* at 486.

Defendant asserts his trial attorney was ineffective for failing to present a January 12, 2007, “Jail Inmate Record,” which indicated that defendant was 5’ 9” tall and weighed 250 pounds, to contradict Baker’s description of the shooter as being skinny. We disagree. Defense counsel elicited testimony from Brooks that defendant was the same size at trial as he was at the time of the shooting, which did not match Baker’s description. Counsel may have legitimately determined that Brooks’ testimony sufficed.¹ Defendant argues that Brooks’ credibility was questionable and, therefore, that his testimony was not the strongest available evidence. However, although defense counsel tried to impeach Brooks on several other aspects of his testimony, counsel may have determined that Brooks appeared credible on this point; it was the only aspect of Brooks’ testimony that was favorable to defendant. Moreover, there is no reason to presume Brooks would misrepresent this point. The jurors could see that defendant was not skinny. Additionally, during closing argument, defense counsel addressed the discrepancy between Baker’s description of the shooter and defendant’s size. We conclude that the decision to forgo presenting other evidence was a matter of trial strategy that did not fall below an objective standard of reasonableness.

Defendant also argues that counsel provided ineffective assistance for failing to preclude Sharon Staves, defendant’s “godmother,” from giving opinion testimony. We disagree. Staves testified that defendant called her a couple of days after the shooting occurred. During the course of the conversation, Staves asked defendant if he knew about Davis getting shot, and he said no. She told defendant she had heard a rumor, that she did not want him coming around her home anymore, and that she was praying for him. She told him she did not believe that he would kill somebody and asked him how he could do something like that, to which defendant did not respond. During a second telephone conversation the following day, Staves asked defendant how he felt about taking someone’s life, and defendant said he did not take anything from anyone else. Although Staves testified on direct examination that defendant never said he did

¹ As pointed out by the trial court in denying defendant’s motion for a new trial, defendant’s booking photo information, also dated January 12, 2007, listed his height as 5’ 8” and his weight as 172 pounds. This information could have been used by the prosecution to contradict the weight listed on the jail inmate record.

not take anyone's life, on cross-examination she admitted that she could not hear defendant's comments because she was crying. When asked if defendant told her he did not commit the crime, Staves responded, "[w]ell, I remember hearing something like that, but I know I can't recall." The claimed purpose of Staves' testimony was to show that defendant did not deny the accusation of his involvement, manifesting consciousness of guilt, which is admissible evidence. Defense counsel is not ineffective for failing to raise a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). Defendant argues that the clear import of Staves' testimony was to show her belief in his guilt despite her close and loving relationship with him. Staves never actually gave her opinion, however, regarding defendant's culpability. Furthermore, defendant concedes in his brief that Staves' testimony was fairly equivocal as to whether defendant actually failed to deny his involvement, and that the testimony was "not logically damaging." Even if Staves' testimony was improperly admitted as defendant contends, he has failed to show "a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Dendel, supra* at 125.

Defendant also argues he was denied a fair trial as a result of prosecutorial misconduct, which he claims occurred when the prosecutor questioned Brooks on re-direct examination. We disagree. The disputed exchange went as follows:

Q. You ever been convicted of anything?

A. No.

Defense Counsel: I'll object.

The Court: I'll sustain that.

Q. You ever been arrested?

A. No.

The Court: Disregard the answer.

Defendant concedes that he did not object to these questions as constituting prosecutorial misconduct, so the issue has not been preserved for appeal. See *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), overruled on other grounds by *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). We review an unpreserved claim of prosecutorial misconduct for plain error. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). "In order to avoid forfeiture of an unpreserved claim, . . . defendant must demonstrate plain error that was outcome determinative." *Id.* We find that the prosecution's line of questioning constituted plain error. MRE 608 requires that character evidence admitted to show a witness's credibility be admitted via opinion or reputation testimony and refer only to the witness's truthfulness. It was plain error to attempt to elicit character evidence from Brooks regarding his criminal history. It was not in the proper form, nor was it relevant to show truthfulness. However, the error was not outcome determinative. The trial court immediately and explicitly directed the jury to disregard Brooks' answers. The jury is presumed to follow the trial court's instructions, and there are no sufficiently persuasive indicia of jury compromise present. *People v Graves*, 458 Mich 476, 486-487; 581 NW2d 229 (1998). Therefore, reversal

is not warranted. See *Watson, supra* at 586 (stating that there is no error requiring reversal “if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction.”).

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly