

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN DARNELL DANIELS,

Defendant-Appellant.

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UNPUBLISHED

February 18, 2010

No. 287769

Wayne Circuit Court

LC No. 07-024398-FC

Before: Sawyer, P.J., and Saad and Shapiro, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the murder conviction and a concurrent term of 240 to 480 months' imprisonment for the assault conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the November 4, 2007, shooting death of Deshaun Williams and the nonfatal shooting of Jeanell Land, who was shot in the legs. Land, who had known defendant for approximately three months before the shooting, testified that defendant and Williams were involved in an argument after defendant discovered that his van was missing. During the argument, defendant told Williams, "If you got my van, motherf-----, I'ma shoot you in your face." Defendant then walked away and started frisking people who were outside to find a gun, and asked if they had a gun. Defendant said he was going to "shoot this motherf-----in the face. I'ma kill this motherf-----. He got my van." Defendant then called someone and asked for a gun. Williams and Land left the house in Land's car, but returned between 15 and 30 minutes later. Land heard defendant walk up to their car and ask, "You got my van, motherf-----?" Defendant then shot Williams and Land. Williams was shot three times, including once in the middle of the forehead, and Land was shot twice in the legs.

Defendant first argues that he was denied the effective assistance of counsel at trial. Because defendant did not move for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), this Court's review is limited 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). He must also demonstrate “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).

Defendant first argues that defense counsel was ineffective because he objected to the admission of autopsy photographs in the presence of the jury, rather than in a pretrial motion in limine. The court admitted the exhibits, with some redactions. Defendant contends that by arguing the issue in front of the jury, defense counsel created the impression that he was trying to keep relevant evidence from the jury. Defendant also asserts that had the issue been raised sooner, defense counsel would have known what would be admitted and could have conducted his defense accordingly.

Defendant has failed to overcome the presumption that counsel’s action was sound trial strategy. In conjunction with his objection, defense counsel explained that the photographs showing the “face of death” were unnecessary because “a very intelligent jury” understands what bullet holes are. Defense counsel followed up on this point during his closing argument when he suggested that the photographs did not serve any legitimate purpose and were offered for an improper purpose. His decision to object in front of the jury and convey the message that an “intelligent jury” would not find the photographs useful, appears to have been a deliberate strategy to communicate to the jury the importance of not being swayed by emotions and to cast defendant as a victim of an overzealous prosecutor.

Defendant’s second assertion of ineffective assistance of counsel concerns trial counsel’s conduct that resulted in repeated reprimands by the trial judge for failing to examine witnesses properly and for arguing with the judge. A review of the testimony discloses that trial counsel was aggressive and thorough in his examination of the witnesses. His style was calculated. During closing argument, he explained that his role was similar to that of a manager of a baseball team, and he explained, “Now I’m not Sparky Anderson. That’s not my style. I’m Billy Martin.” Thus, the record discloses that defense counsel’s aggressive style was strategic. Defendant has not shown that counsel’s conduct fell below an objective standard of reasonableness, and defendant has not overcome the strong presumption of sound trial strategy under the circumstances.

Defendant also argues that defense counsel was ineffective for failing to present an opening statement and for discontinuing his closing argument without informing the jury of defendant’s theory of the case. The waiver of opening statement is a matter of trial strategy. *People v Hempton*, 43 Mich App 618, 624; 204 NW2d 684 (1972). Further, the waiver of closing argument may also be a matter of trial strategy. *People v Burns*, 118 Mich App 242, 247-248; 324 NW2d 589 (1991). Thus, defense counsel’s decision to discontinue his closing argument likewise may be deemed a matter of trial strategy. Given that there was strong eyewitness testimony against defendant, which defense counsel was unable to shake despite good efforts, defendant had no witnesses, and trial had been difficult, it is possible that defense counsel was relying on jury sympathy and the potential perception that defendant was not

receiving a fair trial in order to obtain an acquittal because he had nothing else to argue in the way of evidence.<sup>1</sup> Defendant has not demonstrated that counsel's strategy was unsound. In addition, defendant has not established prejudice. Defendant has not suggested what additional arguments could have been made by defense counsel that would have resulted in a reasonable probability of a different result. *Toma*, 462 Mich at 302-303.

Defendant lastly argues that the evidence was insufficient to establish his identity as the person who shot Williams and Land. When reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant does not dispute that Land identified him as the shooter. He argues, however, that her testimony was not credible because it was inconsistent with a prior statement that she gave to the police, and because she had been drinking alcohol and smoking marijuana before the shooting. The credibility of Land's testimony was for the jury to resolve. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). As a reviewing court, this Court must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). A positive identification by a witness may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Although Land was the only witness to the shooting who testified, her account was sufficient to establish defendant's identity beyond a reasonable doubt.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Douglas B. Shapiro

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<sup>1</sup> Based on our review of the record, we note that the trial court made it extremely difficult for both sides to try their cases and repeatedly made sua sponte rulings, some of which were inconsistent and confusing, if not in error. We believe that when defense counsel refused to continue with his closing, the proper course of action for the trial court would have been to adjourn briefly and inform counsel on the record, out of the presence of the jury, that he was required to make the best argument that counsel could on behalf of his client. However, as noted above, defense counsel's decision not to continue with closing arguments could well have been a calculated trial tactic and, therefore, is not a decision we will second-guess with the benefit of hindsight.