STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2016
v	No. 324539 Wayne Circuit Court
ANTONIO ALFONZIA TAYLOR, Defendant-Appellant.	LC No. 14-004996-FC

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84, first-degree home invasion, MCL 750.110a(2), two counts of felonious assault, MCL 750.82, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. Following a bench trial, the court convicted him of assault with intent to do great bodily harm less than murder, first-degree home invasion, one count of felonious assault, felony-firearm, and felon in possession of a firearm. Defendant appeals as of right, and we affirm.

According to the record, on May 10, 2014, defendant, Emmanuel Percy, Carlita Lockridge, and Nyasha Pool broke into the complainant's home.[1] The complainant testified that he heard a noise around 2:00 a.m. He stated that he looked downstairs and saw that the glass in the front door was broken, the door was forced open, and Percy was walking up the stairs. After a brief verbal exchange with Percy, the complainant closed the upstairs door. He stated that Percy started kicking the upstairs door and telling him to come out. The complainant held the door closed and yelled for Percy to leave. Apparently Percy gave up, leaving Lockridge and Pool to bang on the door and try to break it down. The complainant testified that Percy then called for the others to join him outside. When they left, the complainant called 911.

[1] Percy pleaded guilty to first-degree home invasion. Lockridge and Pool pleaded guilty to first-degree home invasion and felonious assault.

The complainant testified that he then heard Percy say that he wanted to come back in. Believing that Percy and the others were going to return, the complainant grabbed his handgun from a back room. When he came out of the back room, he saw defendant coming into the living room. The complainant testified that he pointed the gun at defendant and told him to leave. Defendant did not leave. Percy entered the room and the complainant backed up, pointing the gun at Percy. He said that he told them to get out, but that Percy charged him. The complainant testified that he fired his gun. Although Percy was struck, he grabbed the complainant and wrestled him to the floor in the bedroom.

The complainant testified that while in the bedroom, defendant, Lockridge, and Pool attacked him from behind, hitting him with stuff and stabbing him. He testified that he heard defendant urging the others to hit him in the head and kill him. The complainant added that defendant grabbed his gun from his hand and told Lockridge and Pool to hold his head down. He testified that defendant indicated he was going to shoot him and then pulled the trigger. Nothing happened because the complainant had already fired all the rounds at Percy. The complainant testified that defendant tried to figure out why the gun was not firing, tried to shoot him again, and then tried to pistol-whip him. During the confrontation, the police arrived and everyone scattered. The police apprehended the complainant, Lockridge, Pool, and Percy, but defendant initially fled the scene. Defendant was apprehended later when he returned to the complainant's yard, but the gun was never recovered.

On appeal, defendant argues that his conviction for felonious assault should be set aside because the trial court failed to make sufficient findings to support the guilty verdict. We disagree.

"A judge who sits without a jury in a criminal trial must make specific findings of fact and state conclusions of law." *People v Shields,* 200 Mich App 554, 558; 504 NW2d 711 (1993). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). The purpose of this requirement "is to facilitate appellate review." *People v Johnson (On Rehearing),* 208 Mich App 137, 141; 526 NW2d 617 (1994). The trial court's factual findings are sufficient as long as it appears that the court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). A court's failure to make factual findings does not require remand for additional articulation where it is clear that the court was aware of the factual issues and resolved them and further explanation would not facilitate appellate review. *People v Legg,* 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

Here, the trial court did not expressly address the charge of felonious assault when it made its findings. However, during closing argument defense counsel asserted that if the court believed that defendant had attempted to shoot the complainant with an empty gun, the most defendant could be convicted of would be felonious assault. The trial court agreed with defense counsel. Moreover, when the court made its findings, it found that defendant took possession of the gun, pointed it at the complainant's head, and threatened to kill him, but the gun was empty. Based on this record, the trial court was aware of the issues, concluded that defendant was guilty of felonious assault, and made factual findings in support of that conclusion. Accordingly, the court findings were sufficient and remand for further proceedings is not necessary.

Defendant next argues that defense counsel was ineffective for failing to interview two police officers. He suggests that if the officers were interviewed before trial, defense counsel could have developed a self-defense or defense of others theory that would have altered the outcome of the proceedings.[2] We disagree.

To establish a claim of ineffective assistance of counsel, defendant must "show both that counsel's performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of the proceeding would have been different had it not been for counsel's error." *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). "Counsel is presumed to have provided effective assistance, and the defendant must overcome a strong presumption that counsel's assistance was sound trial strategy." *People v Horn,* 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citations omitted). The failure to conduct a reasonable investigation can constitute ineffective assistance of counsel. *People v McGhee,* 268 Mich App 600, 626; 709 NW2d 595 (2005). However, the failure to interview witnesses does not alone establish inadequate preparation. *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990). Instead, "[i]t must be shown that the failure resulted in counsel's ignorance of valuable evidence which would have substantially benefited the accused." *Id.*

Defendant asserts that because the officers did not prepare police reports, defense counsel was not aware of what the officers would say. The record shows that one of the officers actually did prepare a police report, which defense counsel used for impeachment purposes. It does appear that the other officer did not prepare a written report in conjunction with the incident. However, assuming *arguendo* that defense counsel's failure to interview the officers before trial fell below an objective standard of reasonableness, defendant had not established that but for that alleged failure the outcome of the trial would have been different.

Defendant argues that if the officers had been questioned before trial, defense counsel could have supported a theory of self-defense. Defendant pointed out that, based on the record, the complainant pointed the gun at him before firing multiple shots at Percy. He asserts that an argument could be made that he reacted violently toward the complainant in an effort to protect himself and Percy. However, while self-defense and defense of others are recognized defenses which, if substantiated, could have made a difference in the outcome of the trial, there is nothing in the record suggesting that the officers had any information that could have supported such a defense. The record reflects that the officers arrived after the incident occurred, so they did not witness the earlier events. Further, defendant has not explained whether the claimed defenses were viable, much less shown that any evidence possessed by the officers could have supported those defenses. The Self-Defense Act permits a person to use deadly or nondeadly force to defend himself or another if he "has not or is not engaged in the commission of a crime[.]" MCL 780.972. Further, the common law does not permit a defendant to claim self-defense when he is engaged in the commission of a crime, *People v Minor*, 213 Mich App 682, 686 n 1; 541 NW2d

[2] Because defendant failed to raise an ineffective assistance of counsel issue in the trial court, review of this issue is limited to errors apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

576 (1995), and does not permit a defendant to claim that he was acting in defense of others to defend a codefendant against an attack by their victim. See 2 Wharton's Criminal Law (15th ed), § 130, p 218. In this case, defendant was found guilty of first-degree home invasion for entering the complainant's home. There is nothing to suggest that the complainant shot at or otherwise threatened defendant or anyone else with harm until after they forcibly entered his home. Accordingly, on this record defendant cannot establish that but for defense counsel's alleged error the outcome of the trial would have been different.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Cavanagh
/s/ Douglas B. Shapiro