STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 19, 2016
v	No. 326172 Wayne Circuit Court
DARIUS LEIGH GILKEY, Defendant-Appellant.	LC No. 14-000532-FC

Before: MURRAY, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Following a bench trial, the court convicted defendant of first-degree murder, MCL 750.316(1)(a), felony murder, MCL 750.316(1)(b), and first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(e) (actor is armed with a weapon). Defendant was sentenced to life imprisonment for the first-degree murder conviction and 37 to 50 years' imprisonment for the CSC I conviction, the sentences to be served concurrently.[1] Defendant appeals as of right. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

Defendant claims that the evidence was insufficient to establish that a sexual assault occurred or that he was the perpetrator of the murder. We disagree.

We review de novo a defendant's challenge to the sufficiency of the evidence supporting his convictions. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010).

> When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.'

[1] Defendant's sentence for felony murder was merged into his sentence of life imprisonment for first-degree murder.

[*People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).]

"Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Nowack*, 462 Mich at 400, quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation marks omitted).

Evidence in this case indicates that, during the early morning hours of June 18, 2012, the victim, an 18-year-old African-American woman, QR, left her friend's house, located in the area of Woodward Avenue and Six Mile, alone and upset, and started walking toward Woodward. She was wearing a short pink dress and carrying a purse. Around 6:30 a.m., during a police officer's routine patrol in the area, an individual known to the officer approached and said that earlier that night he saw a tall man following a brown or dark skinned woman walking along Woodward who looked upset. The individual described the woman as "kinda short" and wearing pink and white. The individual, who was emotional and upset, told the officer that the situation did not "seem right," so he stayed. He then observed the man "force" the woman into an abandoned apartment building with a vacant lot next to it located on Woodward at Nevada. At the individual's insistence, the officer investigated inside the abandoned building and did not find anything, but did not check the grassy area outside of the building. The next day the victim's body was discovered in the vacant lot adjacent to the abandoned building, which was very overgrown with vegetation. The victim, QR, was found partially clothed and wearing a pink and white "tube dress" that was pulled up above her waist and her panties were pulled up over to the side. She had "some sort of puncture or trauma" to the left side of her neck and there was a large pool of clotted blood underneath her head, indicating that she bled out and died in the vacant lot. The medical examiner determined that the victim died of a stab wound to her neck, which proceeded into her jugular vein and left carotid artery, and that the manner of death was homicide. Semen was found on samples taken from the victim's vagina and the panties retrieved from her body. DNA analysis by a forensic scientist revealed that defendant's DNA profile matched the semen to a very high degree of probability.

We find this evidence sufficient to support defendant's conviction of CSC I. To convict defendant of CSC I, MCL 750.520b(1)(e), the prosecution must establish, beyond a reasonable doubt, that he engaged in sexual penetration with another person and was "armed with a weapon or any article used or fashioned in a manner to lead to the victim to reasonably believe it to be a weapon." " 'Sexual penetration' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, or any part of a person's body or of any object into the genital or anal openings of another person's body. . . ." MCL 750.520a(r).

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably infer that the sexual intercourse was not consensual, but that defendant took the victim against her will into a concealed area, forced her to engage in sexual intercourse at knife point, stabbed her in the neck, and left her to bleed out and die. We disagree with defendant's assertions that DNA evidence linking him to the victim was merely evidence that he and the victim had sexual contact and that there was no evidence that such contact was nonconsensual or

even occurred before her death. There is no dispute that strong DNA evidence linked defendant to the semen found inside the victim's vagina and on the panties retrieved from her body, which sufficiently established that defendant engaged in sexual intercourse with the victim.[2] Contrary to defendant's argument, there is also strong circumstantial evidence from which a rational trier of fact could reasonably infer that the sexual intercourse was not consensual and defendant was armed with a knife when he committed the assault, including the testimony indicating that the victim was "forced" into the abandoned building, the manner in which the victim was found, and that the victim died from a fatal stab wound to her neck. See *People v Ramsey*, 89 Mich App 260, 266; 280 NW2d 840 (1979) (finding evidence of rape from evidence of sexual intercourse and the victim's location, position, removed clothing). We find this evidence sufficient to support defendant's conviction of CSC I, MCL 750.520b(1)(e).

We likewise conclude that sufficient evidence supports defendant's murder convictions. "The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation." *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). "The elements of felony murder are: (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316," including first-degree criminal sexual conduct. *People v Turner*, 213 Mich App 558, 566; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001). "[I]dentity is an element of every offense," *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008), and thus, the prosecution must prove beyond a reasonable doubt defendant's identity as the perpetrator of the charged offenses, *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967).

Defendant claims that the evidence was insufficient to establish his identity as the perpetrator of QR's killing. Although there were no eyewitnesses to the murder and the knife used in the killing was apparently not recovered, the circumstantial evidence surrounding the homicide sufficiently established defendant's identity as the perpetrator of the murder. *Kern*, 6 Mich App at 409-410 ("Identity may be shown by either direct testimony or circumstantial evidence. . . ."). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably infer that the victim was targeted, forced into a concealed area, raped at knife point, stabbed in the neck, and left to die. From these inferences, coupled with the strong DNA evidence linking defendant to the semen found inside the victim's vagina and on the panties retrieved from her body, it could be reasonably inferred that defendant was the individual who perpetrated the sexual assault and murder of the victim beyond a reasonable doubt. *Nowack*, 462 Mich at 399-400. Additionally, evidence related to a similar homicide of another young woman in the same area, properly admitted pursuant to MRE 404(b)(1) as discussed in the next section, shows defendant's common scheme or plan in abducting young women walking alone on or near Woodward, taking them to a concealed location, and sexually assaulting and

[2] During the trial, defendant denied having any sexual contact with or killing the victim and claimed that he was set up by corrupt police.

killing them by stabbing them in the neck with a knife, and further connects defendant to the murder and sexual assault of QR. We conclude that sufficient evidence established that defendant perpetrated the sexual assault and murder of the victim in this case.

II. OTHER ACTS EVIDENCE

Defendant next claims that the trial court abused its discretion in admitting other acts evidence under MRE 404(b) related to a similar homicide of another young African-American woman, SM, which occurred in the same area, 11 days prior on the evening of June 7, 2012, or early the following morning.[3] We disagree.

"A trial court's decision to admit evidence is reviewed for an abuse of discretion." *People v Buie*, 298 Mich App 50, 71; 825 NW2d 361 (2012), citing *People v Pattison*, 276 Mich App 613, 615; 741 NW2d 558 (2007). "However, '[w]hen the decision regarding the admission of evidence involves a preliminary question of law, such as whether a statute or rule of evidence precludes admissibility of the evidence, the issue is reviewed de novo.' " *Buie*, 298 Mich App at 71, quoting *Pattison*, 276 Mich App at 615 (quotation marks and citation omitted in *Pattison*).

"Use of other acts as evidence of character is generally excluded to avoid the danger of conviction based on a defendant's history of misconduct." *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). "A proper purpose for admission is one that seeks to accomplish something other than the establishment of a defendant's character and his propensity to commit the offense." *Id.* MRE 404(b)(1) addresses the admission of other acts evidence and provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Defendant first claims that the prosecution did not offer evidence related to the earlier homicide for a proper non-character purpose in violation of MRE 404(b). To admit other acts evidence, "the prosecutor must offer the other acts evidence under something other than a character to conduct or propensity theory." *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000). On the prosecution's motion, the trial court allowed the admission of evidence related to SM's murder to show the existence of a common plan or scheme. "[E]vidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an

[3] In a separate trial, defendant was convicted by a jury of murder and first-degree criminal sexual conduct in this earlier homicide. This Court affirmed those convictions. *People v Gilkey*, unpublished opinion per curiam, issued January 26, 2016 (Docket No. 323507).

inference that they are manifestations of a common plan, scheme, or system." *Id.* at 63-64. "To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." *Id.* at 65-66 (quotation omitted). "A high degree of similarity is required." *People v Smith*, 282 Mich App 191, 196; 772 NW2d 428 (2009), citing *Sabin (After Remand)*, 463 Mich at 65-66. There must be "such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations." *Sabin (After Remand)*, 463 Mich at 64-65 (citation, quotation marks, and emphasis omitted).

We find no abuse of discretion in the court's determination that the two homicides "shared sufficient common features to infer a plan, scheme, or system to do the acts." *Id.* at 66. Contrary to defendant's argument on appeal, both homicides contain common features linking defendant to the crimes beyond the mere commission of spontaneous acts of sexual assault and murder. *Id.* Both killings involved young, African-American women who were last seen walking alone at night or in the early morning hours in the same vicinity along Woodward. The killings occurred within close proximity in time to each other, just over one week apart. Both victims sustained stab wounds to the neck area and died from those wounds. The bodies of both victims were concealed in vacant areas in the same general vicinity. There was evidence that both victims were sexually assaulted before they were killed. Semen was found inside both of their bodies and they were both found partially clothed with their belongings near them. Defendant's DNA matched the semen found in both cases to a very high degree of probability.

We find the circumstances surrounding these homicides to be highly similar. *Smith*, 282 Mich App at 196, citing *Sabin (After Remand)*, 463 Mich at 65-66. Although there are some differences, the common scheme or plan "revealed need not be distinctive or unusual," instead "the common features must indicate the existence of a plan rather than a series of similar spontaneous acts." *Sabin (After Remand)*, 463 Mich at 65-66. The common features here are significant and indicate the existence of defendant's common scheme or plan of abducting young women walking alone during the late night or early morning hours along Woodward in the Six Mile area, taking them to an abandoned/concealed location, sexually assaulting them, and killing them by stabbing them in the neck with a knife. On this record, we cannot say that the court abused its discretion in finding that the homicides shared sufficiently common features to establish that defendant acted per a common scheme or plan in committing the sexual assaults and murders.

Further, contrary to defendant's assertion, there were legitimate grounds, distinct from an impermissible inference that defendant acted in conformity with his character, for offering evidence of SM's killing. Although the DNA evidence clearly linked defendant to the sexual assaults of both QR, the victim in this case, and SM, there was no other direct evidence linking defendant to their homicides—a knife was not recovered, there were no eyewitnesses to the homicides, and defendant denied involvement. Accordingly, the strong similarities between the two homicides serve to further connect defendant to the murders by showing that he acted in accordance with a common scheme, plan, or system. Thus, the evidence of defendant's common

scheme or plan is highly probative and material to rebut defendant's denial that he committed the sexual assault and killing in this case. *Sabin (After Remand)*, 463 Mich at 63-64; *Smith*, 282 Mich App at 196.[4]

Defendant next claims that, even if a valid purpose existed to justify the admission of evidence related to the earlier homicide under MRE 404(b), the evidence should have been precluded from admission under MRE 403. We disagree. To admit other-acts evidence, "a determination must be made whether the danger of undue prejudice substantially outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making [a] decision of this kind under Rule 403." *Sabin (After Remand)*, 463 Mich at 55-56 (citations and quotation marks omitted).[5] "[A]ll evidence elicited by the prosecution is presumably prejudicial to a defendant to some degree, and MRE 403 seeks to avoid *unfair* prejudice." *Smith*, 282 Mich App at 198. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

There is no doubt that evidence related to the earlier homicide of SM was inherently prejudicial considering the nature of the evidence. However, as discussed, the evidence was also highly probative to show that defendant acted per a common scheme or plan in assaulting and killing QR. We find that the high probative value of the evidence related to the earlier homicide to show a common scheme or plan was not substantially outweighed by the risk of undue prejudice. This is especially so here because the trial court, rather than a jury, decided this case. In a bench trial, any risk that evidence related to an earlier homicide might be used improperly as character evidence or be given undue or preemptive weight is minimized. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). We conclude that the trial court did not abuse its discretion in declining to exclude evidence of the earlier homicide.

Finally, to the extent that defendant argues that his due process right to a fair trial was violated by the admission of evidence related to SM's murder, this issue is not preserved because defendant did not raise this constitutional issue before the trial court. Our review of unpreserved allegations of constitutional error is limited to plain error effecting substantial rights. *Carines*, 460 Mich at 763-764. Because there was no error in the admission of the other acts evidence, it

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[4] Although not admitted for these purposes, we believe that the evidence was also admissible to show defendant's motive and intent, MRE 404(b)(1), material considerations in a prosecution for first-degree murder. The similarities between the two homicides made it more probable that defendant acted per his common scheme or plan to assault and kill the victims, from which it could be reasonably inferred that defendant planned and intended to kill QR after sexually assaulting her.

[5] MRE 403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

follows that defendant's right to due process was not violated by its admission. *People v Roscoe*, 303 Mich App 633, 646-647; 846 NW2d 402 (2014). Regardless, any error in the admission of evidence related to the earlier murder was not outcome determinative because the trial court explicitly indicated in its findings that it would have found defendant guilty regardless of that evidence.

III. WAIVER OF JURY TRIAL

Defendant next claims that he is entitled to a new trial on the basis that his purported waiver of his right to a jury trial was invalid. We disagree.

Generally, a "trial court's determination that a defendant validly waived his right to a jury trial is reviewed for clear error." *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997). However, we review unpreserved constitutional issues for plain error affecting substantial rights, i.e., prejudicial error that affected the outcome of the proceedings. *Carines*, 460 Mich at 763-764; MRE 103(d). "The adequacy of a jury trial waiver is a mixed question of fact and law." *People v Cook*, 285 Mich App 420, 422; 776 NW2d 164 (2009). To the extent that the issue involves interpretation of a court rule, our review is de novo. *People v Kimble,* 470 Mich 305, 308-309; 684 NW2d 669 (2004).

"A criminal defendant has a constitutionally guaranteed right to a jury determination that he is guilty beyond a reasonable doubt." *Cook*, 285 Mich App at 422; US Const, Am VI; Const 1964, art 1, § 20. "However, with the consent of the prosecutor and the approval of the trial court, a defendant may waive his right to a jury trial." *Cook*, 285 Mich App at 422. "In order for a jury trial waiver to be valid, however, it must be both knowingly and voluntarily made." *Id.* MCR 6.402(B) governs the procedure by which a defendant waives his right to a jury trial. *People v Mosly*, 259 Mich App 90, 93; 672 NW2d 897 (2003). Specifically, MCR 6.402(B) provides:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

"By complying with the requirements of MCR 6.402(B), a trial court ensures that a defendant's waiver is knowing and voluntary." *Cook*, 285 Mich App at 422-423. However, a "trial court's failure to follow the mandated procedural requirements of MCR 6.402(B) could be harmless if 'the record establishes that [the] defendant nonetheless understood that he had a right to a trial by jury and voluntarily chose to waive that right.' " *Id.* at 425, quoting *Mosly*, 259 Mich App at 96.

Our review of the record indicates that the trial court did not strictly comply with the mandated procedures of MCR 6.402(B) because, although defendant's right to a jury trial was referenced during the waiver procedure, the court did not explicitly "advise the defendant in open court of the constitutional right to trial by jury" as mandated by MCR 6.402(B). Nevertheless, because the record demonstrates that defendant "understood that he had a right to a

trial by jury and voluntarily chose to waive that right" to be tried by the court, the court's failure to fully comply with the procedural requirements of MCR 6.402(B) does not warrant reversal. *Cook*, 285 Mich App at 422; *Mosly*, 259 Mich App at 96.

Questioning by defense counsel and the court at the waiver hearing revealed that defendant consulted with his attorney about the waiver issue and understood that he was waiving his right to a jury trial and that his case would be decided by the judge alone. Defendant also acknowledged during questioning that he had prior experience with a jury trial, from which it is logical to infer that he understood the nature of a jury trial. Additionally, defendant's written waiver, which explicitly states, "I fully understand that under the laws of this state I have a constitutional right to a trial by jury" and "voluntarily waive and relinquish my [right] to a trial by jury and elect to be tried by a judge of the court," further evidences defendant's understanding that he was relinquishing his constitutional right to a jury trial. The court further questioned defendant to ascertain whether he was coerced, threatened, or made any promises that it would be better for a judge to decide his case and defendant acknowledged that the waiver was freely and voluntarily made. We conclude that the questioning of defendant by the court and defense counsel, as well as defendant's written waiver, sufficiently demonstrates that defendant understood his right to a jury trial and voluntarily chose to waive that right to be tried by the court, and thus, his wavier was constitutionally valid. *Cook*, 285 Mich App at 422; *Mosly*, 259 Mich App at 96; MCR 6.402(B). Defendant failed to demonstrate any plain error that affected his substantial rights from the court's failure to fully comply with the procedural requirements of MCR 6.402(B).

Defendant also asserts that his waiver is invalid because the trial court did not explain to him that a jury of 12 members must reach a unanimous verdict in order to convict him. However, a trial court "is not required to explain the unanimity required in a jury trial as compared to a bench trial." *Leonard*, 224 Mich App at 596. See also *People v James (After Remand)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992). Defendant further asserts that the waiver procedure was improper because he was not informed that he could participate in the selection of jurors and he was not placed under oath when executing the waiver of his jury trial right. However, there are no such requirements.

IV. SUBSTITUTION OF APPOINTED COUNSEL

Finally, defendant claims that the trial court abused its discretion in denying his request on the first day of trial for a new appointed counsel. We disagree. '"A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion."' *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011), quoting *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). '"A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes."' *Strickland*, 293 Mich App at 397, quoting *Yost*, 278 Mich App at 379.

"[T]he Sixth Amendment guarantees a defendant's right to counsel." *Buie*, 298 Mich App at 67 (citation omitted). However, as this Court explained in *Strickland*:

> An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that

> the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. [*Strickland*, 293 Mich App at 397 (citations and quotation marks omitted).]

"The circumstances that would justify good cause rest on the individual facts in each case." *Buie*, 298 Mich App at 67. See *People v Hernandez*, 84 Mich App 1, 7; 269 NW2d 322 (1978).

We find no abuse of discretion in the trial court's denial of defendant's request for new appointed counsel. Defendant's request was based on his complaints that his appointed counsel failed to move for independent DNA testing and to provide sufficient counseling, neither of which, on the facts of this case, amounts to good cause for the appointment of a new counsel. First, it is evident from the record that appointed counsel pursued retesting of defendant's DNA with the court, as defendant desired, as far as he could. Counsel informed the court that he was able to obtain a review of the testing laboratory's protocol, but when the review did not reveal any errors in the DNA analysis and indicated that the analysis was satisfactory, the court ended his pursuit. This is not an instance involving "a legitimate difference of opinion . . . between [] defendant and his appointed counsel with regard to a fundamental trial tactic" warranting good cause for substitution of appointed counsel. *Strickland*, 293 Mich App at 397.

Second, defendant's allegations that his appointed counsel spent little time with him and did not sufficiently counsel him, are not supported by the record. "The amount of time an attorney spends with his client is a factor used in determining whether he is adequately prepared to defend his client, but it is not the determinative factor." *Hernandez*, 84 Mich App at 7 (citations omitted). Appointed counsel informed the court that he communicated with defendant "plenty of times," speaking with defendant frequently, and visiting with him twice in jail. Further, there is no indication in the record that counsel was unprepared or that the alleged lack of communication prejudiced defendant's defense. The pertinent issue is whether defendant "can show or allege that prejudice resulted from the inadequate preparation." *Id.* at 8. No such showing has been made in the instant case. To the contrary, the record indicates that trial counsel was familiar with the case, was aware of defendant's position in the case, pursued that position before trial, and was ready for trial, and thus, counsel's level of contact appears sufficient to adequately prepare him to try defendant's case.

Moreover, defendant waited until the first day of trial to request a new appointed counsel when witnesses were present and ready to testify. Allowing a substitution of counsel on the day of trial certainly would have required an adjournment of the trial for new counsel to acquaint himself or herself with the case, thereby unreasonably disrupting the judicial process. *Strickland*, 293 Mich App at 399.

We cannot say on this record that the trial court abused its discretion in denying defendant's request for a substitution of appointed counsel. Although defendant expressed dissatisfaction with his appointed counsel, there is no indication that a complete breakdown in the attorney-client relationship had occurred, *Buie*, 298 Mich App at 67-68, that there existed a legitimate disagreement regarding trial strategy, *Strickland*, 293 Mich App at 397, or that

defendant was prejudiced by the alleged lack of communication or counseling, *Hernandez*, 84 Mich App at 8. Without such a showing, there are insufficient grounds for substitution of counsel. "A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause." *Strickland*, 293 Mich App at 398.

Affirmed.

/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan