

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
April 12, 2012

v

DREW CARTER, III,

No. 301191  
Kalamazoo Circuit Court  
LC No. 2010-000548-FC

Defendant-Appellant.

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Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for assault with intent to do great bodily harm less than murder, MCL 750.84; possession of a firearm during the commission of a felony, MCL 750.227b; and carrying a concealed weapon, MCL 750.227. For the reasons set forth in this opinion, we affirm.

On March 21, 2010, defendant, along with members of his family, came to visit the the family of the victim, Erik Sistrunk, Sr. After defendant entered the victim's apartment, the victim, fearing that defendant intended to kill him, left the apartment and retrieved a stick and a can of mace from his car. The victim and his son, Erik Jr., called 911. Defendant then exited the victim's apartment, at which point, the victim sprayed defendant with mace.<sup>1</sup> The victim testified that defendant then drew a gun and shot him in the arm before fleeing. When the police arrived, the victim told them that defendant shot him and that there were letters written by the victim's wife, Teiksha Sistrunk<sup>2</sup> that proved that this shooting was part of a plan to kill the victim.

On September 17, 2010, defense counsel moved to adjourn the trial. The parties addressed this motion at the October 1, 2010, settlement conference before the trial court. Defense counsel stated that he felt unprepared and anticipated difficulties in the procurement of defense witnesses. The trial court denied the motion to adjourn, noting that defendant was

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<sup>1</sup> We note there is some conflicting testimony as to whether defendant was initially maced in the apartment or outside the apartment.

<sup>2</sup> Defendant is the nephew of Teiksha.

responsible for the alleged lack of preparation and that the defense still had sufficient time to prepare for trial.

*The Court:* I'm not going to adjourn the trial right now. I think that there's certainly time to prep. . . . [W]e've got the weekend. . . . I realize the predicament that [defense counsel is] in . . . but if your client fails to, I guess, provide you with witnesses until five days before the trial or four days before the trial. I don't know why [defendant] didn't provide those names before hand [sic] or the name.

*The Court:* [W]e have a trial on Tuesday. The case has been pending for awhile [sic]. It's a serious charge. I don't find a good reason to adjourn it based on the information that I've been provided. . . . It looks like there's [sic] been a couple appointments, that for whatever reason have been missed, and I don't see a reason why [defendant] would miss a meeting with an attorney, especially three of them.

On October 4, 2010, one day before defendant's trial, the prosecutor learned that the police had preserved a three minute tape containing three 911 telephone calls relating to defendant's alleged shooting. These tapes included the 911 call that the victim made, as well as a 911 call made by the victim's son, Erik Jr. The prosecutor obtained this tape from the police and gave a copy of it to defense counsel the next morning. Defense counsel again requested that the trial court grant an adjournment on the basis of this new discovery and potential "witness issues." Defense counsel stated that he had listened to the 911 tape one or two times and had reviewed it once with defendant, but counsel requested more time to thoroughly review the tape. Defense counsel also stated that some of the defense witnesses lived in Indiana and were not under subpoena, and it was possible that some of these witnesses might not appear when called to testify. The prosecutor opposed an adjournment and said he would stipulate to the tape's admissibility if defense counsel so desired. The trial court refused to grant an adjournment, stating that the evidence on the tape would not come in, if at all, until the next day, which would allow defense counsel enough time to review it with defendant. The trial court also noted that the "trial date had been set for quite some time" and that the defense had ample time to arrange for the witnesses, all of whom were defendant's relatives, to be present.<sup>3</sup> The trial court denied the motion to adjourn.

Defendant first argues that he was denied the effective assistance of counsel because his trial counsel failed to interview or produce Erik Jr. as a defense witness or move to admit the 911 telephone call from Erik Jr. We note that defendant previously brought a motion to remand this matter to the trial court to conduct a *Ginther*<sup>4</sup> hearing, which was denied.

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<sup>3</sup> During the trial, defendant played the portion of the tape that was the victim's 911 call. The portion of the tape that was Erik Jr.'s 911 call was not played during the trial.

<sup>4</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

In defendant's motion to remand, as well in his brief on appeal, defendant argues that if his trial counsel had interviewed and produced Erik Jr. as a witness or admitted Erik Jr.'s 911 call, the jury would have heard evidence that the victim was the aggressor and that defendant shot the victim in self-defense. Defendant supports his claim by citing to an affidavit of his appellate counsel, which he attached to his brief on appeal. In that affidavit, appellate counsel makes the following offer of proof:

3. On May 4, 2011, I spoke with Erik Sistunk Jr. by telephone. He informed me of the following:
  - a. That he was in a juvenile detention facility from September 14, 2010 until November 4, 2010 for battery and disorderly conduct.
  - b. That he was not contacted by Drew Carter's trial attorney.
  - c. That he witnessed the incident between his father, Erik Sistrunk Sr., and his cousin, Drew Carter on March 21, 2010 in Kalamazoo, Michigan.
  - d. That Drew Carter, Shajuana Crisler and Ruth Hoskins (Grannie) arrived at the apartment to drop off Grannie.
  - e. That upon their arrival, Erik Sr. 'went off' by saying that he didn't like Drew Carter, didn't want Drew Carter in his home, and that he was going to kill Drew Carter.
  - f. That Drew Carter brought in Grannie's suitcases and then sat down at the table to eat chicken.
  - g. That Erik Sr. got dressed and then went to his vehicle to get mace and a stick, which looked like a table leg.
  - h. That Erik Sr. came into the house and sprayed the mace at Carter.
  - i. That his mother pushed them outside.
  - j. That Drew Carter repeatedly said, 'I didn't come down for this.'
  - k. That Erik Sr. continued to spray mace at Carter, and that the mace also hit Grannie.
  - l. That Carter was trying to leave, but Erik Sr. sprayed the mace at him.
  - m. That Carter finally ran about a half block away, and that Erik Sr. followed him and continued to spray the mace and swing the table leg at Carter.
  - n. That Carter then pulled out a gun and fired three rounds at Erik Sr., and then Carter ran away.
  - o. That during the incident Erik Jr. came out with a knife to help Carter, but his mother stopped him.

p. That during the incident Erik Jr. called 911.

q. That Erik would have testified at Carter's trial, and that he is willing to now testify at an evidentiary hearing.

Appellate counsel provided further information regarding her conversations with defendant's trial counsel. In her affidavit, she asserts, in relevant part:

- a. After receipt of the 911 tapes/CD on the first day of trial, October 5, 2010, he wanted to use both the 911 call from the complainant, Erik Sr., and the 911 call from Erik, Jr.
- b. However, after learning that Erik Jr. was being detained in a juvenile facility, he believed he could not lay a foundation for admission of Erik Jr.'s 911 call.
- c. That he wanted to use Erik Jr.'s 911 call, but he wanted to interview Erik Jr. first and he needed an adjournment to secure Erik Jr.'s presence since he was in a juvenile facility.
- d. That he informed the judge of the problem in paragraph b, *supra*, during their discussions on the first day of trial.
- e. That he did not interview Erik Jr. prior to trial or during trial.

"The right to counsel guaranteed by the United States and Michigan Constitutions, US Const, Am VI; Const 1963, art 1, § 20, is the right to effective assistance of counsel." *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2001) (quotation omitted). "[T]his Court presumes that a defendant received effective assistance of counsel, and the defendant bears a heavy burden to prove otherwise." *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). "To establish a claim of ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation prejudiced him so as to deprive him of a fair trial." *Id.* To establish prejudice, "defendant must show that, but for the error, the result of the proceedings would have been different and that the proceedings were fundamentally unfair or unreliable." *Id.* Moreover, "defendant has the burden of establishing the factual predicate for his claim of ineffective assistance of counsel[.]" *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

For purposes of this appeal, this Court presumes that the all allegations contained in appellate counsel's affidavit are true. Having made this presumption, we are not persuaded that defendant has demonstrated any issue for which further factual development would advance his claim. *People v Chapo*, 283 Mich App 360, 369; 770 NW2d 68 (2009). See also, MCR 7.211(C)(1)(a). Accordingly, we find no need to remand the matter for an evidentiary hearing.

According to appellate counsel's affidavit, Erik Jr. would have testified that the victim was the aggressor and that the victim told defendant that he wanted to kill defendant. At trial, the victim admitted that he threatened to kill defendant. Defendant's trial counsel twice played the victim's 911 call for the jury, during which the victim threatened to kill defendant. The victim testified on direct examination that he retrieved a can of mace and a "stick" from his car,

and that he approached defendant and sprayed him with mace despite the fact that he had yet to brandish a weapon or exhibit any aggressive behavior.

Even more beneficial to defendant's claim of self-defense was the testimony of defendant's cousin, Shajuana Crisler. She testified that she came with defendant from Gary, Indiana to the victim's apartment in Kalamazoo on the date of the incident. Crisler testified that during the entire trip from Indiana to Michigan, she never observed defendant with a gun. Crisler testified that when defendant entered the victim's apartment, the victim became agitated simply over defendant's presence. Almost as soon as defendant arrived, Crisler testified she overheard a portion of the victim's telephone conversation with an unknown party requesting that person to "bring something." Crisler took that conversation as a threat not just to defendant, but to her and the other members of her family. She also testified to the victim's constant pacing within the apartment and his increasing hostility toward defendant and the other members of defendant's family.

Crisler testified that she was an eyewitness to the victim spraying mace directly into defendant's face while the victim was holding a "stick" in his other hand. During what Crisler portrayed as the victim's attack on defendant, she testified that defendant was holding his hands over his face trying to repel the mace. According to Crisler, the victim was clearly the aggressor. Though Crisler did not see defendant shoot a gun, she testified that she was in the process of moving her vehicle to get between defendant and the victim to thwart any further attack by the victim when she heard gun shots. Crisler testified that she never saw defendant shoot the victim.

We first consider defendant's claim that his trial counsel was ineffective during trial preparation by failing to interview Erick Jr. Defense counsel's performance is deficient where his decision not to interview a witness was unreasonable "under the circumstances and according to prevailing professional norms." *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). In deciding this issue, we presume that trial counsel's decision not to interview Erick Jr. was unreasonable under the circumstances. However, our resolution of the issue does not end with such a finding. This Court has held that: "[e]ven the failure to interview witnesses does not itself establish inadequate preparation. It must be shown that the failure resulted in counsel's ignorance of valuable evidence which would have substantially benefited the accused." *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990) (internal citations omitted). Consequently, resolution of this issue turns on whether discovery of Erik Jr.'s testimony would have offered defendant valuable evidence which would have substantially benefited the accused.

The victim testified that he threatened to kill defendant and that he sprayed him with mace. It is similarly clear that Crisler's testimony supported defendant's claim of self-defense by the way she described the victim pursuing defendant and spraying him with mace as he attempted to shield himself from the attack. Thus, Erik Jr.'s testimony would have been cumulative to other testimony admitted into evidence. Even assuming trial counsel's decision not to interview Erik Jr. constituted ineffective assistance of counsel, because such testimony would have been merely cumulative, we cannot classify the testimony as "valuable" or testimony that would have "substantially benefited the accused." Similarly, cumulative evidence cannot form the basis for a finding that there existed a reasonable probability that a different outcome would have resulted from Erik Jr.'s testimony. Such findings of prejudice to the defendant exists where there is a reasonable probability that a different outcome would have resulted had the

errors not occurred. See, generally, *People v Pickens*, 446 Mich 298, 314-327; 521 NW2d 797 (1994). Based on our review of the record evidence, and presuming Erik Jr.'s proffered testimony, we cannot find that Erik Jr.'s testimony would have likely produced a different outcome. Accordingly, we are not persuaded that defendant has met his burden of demonstrating that trial counsel's alleged error prejudiced defendant.

Next, we turn to the issue of whether trial counsel's failure to call Erik Jr. as a witness constituted ineffective assistance of counsel. For purposes of this issue we again presume that counsel's failure to call a potentially advantageous witness fell below an objective standard of reasonableness. Again, our inquiry does not end here as this Court has previously held: "[a] defendant must show that, but for the error, the result of the proceedings would have been different and that the proceedings were fundamentally unfair or unreliable." *Garza*, 256 Mich App at 255.

We conclude that the evidence proffered fails to demonstrate that but for the error, the result of the proceedings would have been different. Further, there is no assertion, nor do we find any indication, that failing to call Erik Jr. rendered the proceeding either fundamentally unfair or unreliable. Our conclusion is premised on our earlier finding that Erik Jr.'s proffered testimony was merely cumulative to the evidence introduced at trial. The victim testified that he threatened to kill defendant. The victim testified that he sprayed defendant with mace while armed with a "stick" and prior to defendant displaying any aggressive behavior. Crisler testified that the victim was threatening defendant, and that the victim sprayed defendant with mace while he was unarmed. Crisler also testified that defendant tried to shield himself from the mace and she never saw defendant shoot the victim. Thus, defendant has failed to meet his burden of demonstrating to this Court that, but for trial counsel's error, the result of the proceedings would have been different. *Id.*

Defendant also asserts that the failure to call Erik Jr. denied him the right to present the defense of self-defense. We agree with defendant that the evidence proffered by Erik Jr. went to the issue of whether defendant acted in self-defense. Self-defense is a defense to assault with intent to do great bodily harm less than murder. *People v James*, 267 Mich App 675, 676-677; 705 NW2d 724 (2005). Accordingly, self-defense constitutes a substantial defense and a defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990), *Chapo*, 283 Mich App at 371.

Trial counsel presented a two-prong defense. From the testimony of Crisler he argued that defendant did not shoot the victim and that the victim was clearly the aggressor, hence any act by defendant would have been in self-defense. In fact, Crisler testified that she was so concerned about defendant's safety that she was attempting to place a Blazer between the victim and the defendant. Such action was solely intended to repel what Crisler perceived as an attack by the victim on defendant.<sup>5</sup> Trial counsel also argued from the testimony of the victim and the

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<sup>5</sup> We also note that had trial counsel called Erik Jr. to the stand, he would have testified that he saw defendant shoot the victim. Such testimony would have been somewhat at odds with that of Crisler.

victim's 911 call that, even if the jury did find that defendant shot the victim, he did so in self-defense. Based on the record evidence, and the proffered testimony of Erik Jr., we find that the failure to call Erik Jr. to testify did not deprive defendant of the opportunity to present the theory of self-defense.

Next defendant argues that trial counsel's failure to play Erik Jr.'s 911 call constituted ineffective assistance of counsel.

Defendant argues that the 911 call reveals that Erik Jr. told the 911 operator that the victim had pepper sprayed his grandmother and had threatened to kill his cousin. Defendant further asserts that the victim had pepper spray and a stick, and that the victim was assaulting defendant and the victim had started the trouble. We glean no new evidence from this 911 call that was not otherwise introduced through the testimony of the victim or Crisler. Additionally, the victim's 911 call was played into evidence twice by trial counsel and in that recording the jury heard the victim threaten to kill defendant. Though trial counsel asserts through appellate counsel's affidavit that he wanted to play Erik Jr.'s 911 call, we cannot find that his failure to do so amounted to ineffective assistance of counsel. Failure to play what would have been cumulative evidence to the jury did not preclude defendant from asserting a substantial defense, nor did it deny defendant the opportunity to present meaningful evidence that was already before the jury. Erik Jr.'s 911 call would have only complemented the already existing record of the victim's conduct and threats. Even if we were to assume that trial counsel's failure to play the 911 call constituted ineffective assistance of counsel, defendant must still demonstrate that, but for counsel's error, the outcome of the trial could have been different. *Garza*, 246 Mich App at 255. Based on the record evidence coupled with the proffered testimony of Erik Jr. and appellate counsel in her affidavit, we cannot find that failure to play the 911 call prejudiced defendant. Accordingly, we cannot find that defendant is entitled to relief on this issue.

Defendant next argues that the trial court denied him his right to present a defense by erroneously denying defendant's requests for an adjournment. Defendant preserved this issue for appeal by moving for an adjournment. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). "This Court reviews the grant or denial of an adjournment for an abuse of discretion." *Id.* "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

"[A] request for an adjournment must be by motion or stipulation made in writing or orally in open court based on good cause." MCR 2.503(B)(1). "An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence." MCR 2.503(C)(2). "[T]o invoke the trial court's discretion to grant a continuance or adjournment, a defendant must show both good cause and diligence . . . . Even with good cause and due diligence, the trial court's denial of a request for an adjournment or continuance is not grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion." *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003).

Defendant's first request for an adjournment was premised on a need to prepare and to procure witnesses. The trial court properly denied defendant's request for an adjournment on the

basis that defendant had not shown due diligence. *Id.* “A trial court’s determination of due diligence will not be overturned on appeal absent an abuse of discretion. That determination is a factual matter, and the court’s findings will not be reversed unless clearly erroneous.” *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). In this case, the trial court noted that defendant had months to work with trial counsel to prepare for trial and procure potential witnesses, but defendant failed to attend all but one of his scheduled meetings with trial counsel. On these facts, the trial court did not abuse its discretion in finding a lack of due diligence. *Id.*

Defendant’s second request for an adjournment was based on defense counsel learning of the existence of 911 tapes the day before trial. Here, defendant appears to show good cause and due diligence in regards to the newly discovered 911 tape. See *Coy*, 258 Mich App at 18-19. The tape was not referenced in the police report and there was no evidence that defendant’s negligence led to its late discovery. However, a showing of good cause and due diligence does not require the trial court to grant the adjournment request, but merely “invoke[s] the trial court’s discretion to grant a continuance or adjournment[.]” *Id.* The trial court found that an adjournment was unnecessary because defense counsel had already reviewed the three minute tape and would have adequate time to review it further without an adjournment. We find this a close question, however, given that defendant ultimately admitted a portion of the tape (containing the victim’s 911 call) at trial and played it for the jury, we cannot conclude that the trial court’s denial of an adjournment “falls outside the range of reasonable and principled outcomes[.]” and thus was not an abuse of its discretion. *Unger*, 278 Mich App at 217. Moreover, defendant has failed to direct this Court to any evidence contained in the record which could lead us to conclude that an adjournment would have enabled defendant to produce additional valuable evidence or altered his theory of defense. Thus, defendant fails to demonstrate the requisite prejudice. See *Lawton*, 196 Mich App at 348.

Defendant’s final argument is that the trial court violated due process by admitting the hearsay statements of Teikesha and Ruthi Hoskins (“Grannie”) and by failing to give a limiting jury instruction. Defendant preserved his hearsay claim regarding Teikesha’s written statements, i.e., the letters, by objecting at trial to their admission on the ground that they were inadmissible hearsay. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). We review defendant’s preserved claim for an abuse of discretion. *Id.* However, defendant’s additional arguments on appeal that the letters were irrelevant and unduly prejudicial are unpreserved as his objection at trial did not specify these grounds. *Id.* We review defendant’s unpreserved claim for plain error affecting defendant’s substantial rights. *People v Conley*, 270 Mich App 301, 305; 715 NW2d 377 (2006).

“‘Hearsay’ is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c). Hearsay is not admissible unless it meets one of the exceptions provided by Michigan’s evidentiary rules. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). MRE 803(3) is an exception to the hearsay rule, and it provides that “[a] statement of the declarant’s then existing state of mind, emotion, [or] sensation” is not excluded by the hearsay rule. MRE 803(3) applies even where the declarant’s mental state is not at issue. *People v King*, 215 Mich App 301, 309; 544 NW2d 765 (1996); *People v Fisher*, 449 Mich 441; 537 NW2d 577 (1995).

The prosecution sought to admit the letters that the police found in the victim's car. Teiksha wrote these letters to her family a few months before the March 21, 2010, shooting, but the victim intercepted the letters and read them. The letters indicated that Teiksha wanted the victim dead.

Momma, I know that part of me likes [the victim] and the rest of me just wants to kill the hell out of him. I say to myself all the time, I should have just let [defendant] take his ass out, but with those nosey neighbors it wasn't worth it.

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I've asked him why did you cry and beg me to come back if you wasn't going to change, but I know this like I've told him, keep talking and your mouth will get shut for you.

At trial, defense counsel objected to the admission of the letters on the grounds that they were testimonial and inadmissible hearsay under *Crawford v Washington*, 541 US 36, 59; 124 S Ct 1354; 158 L Ed 2d 177 (2004). The prosecutor argued that the letters were not testimonial under *Crawford* and that they met the state of mind hearsay exception under MRE 803(3), as they evidenced Teiksha's then existing animosity toward the victim and their marriage. The prosecutor argued that these letters were relevant to show the extent of the marital discord and defendant's motive for murder. The trial court found that the letters were not testimonial under *Crawford*, and admitted the letters under MRE 803(3).

*The Court:* I don't find that the information in the letters is testimonial in nature. The letters outline [Teiksha's] feelings. I do believe that they fall under 803(3), that existing mental emotion or physical condition.

*The Court:* [T]he court finds that at the time the declarant [Teiksha] wrote the letters, she was outlining her then existing mental or emotional feelings or state of mind . . . [P]ortions of these letters are relevant to fact – or to this case.

Teiksha's written statements about her feelings toward the victim and their marriage constituted statements of Teiksha's "then existing state of mind, emotion, [or] sensation" under MRE 803(3). *Fisher*, 449 Mich at 450-451 (holding that where the declarant wrote in her journal describing her feelings toward her husband and their marriage, these hearsay statements were admissible "because they satisfy the exception to the hearsay rule" under MRE 803(3)). The letters were relevant to the case, as evidence of the marital discord and defendant's motive for shooting the victim. *Id.* Moreover, this probative value was not "*substantially outweighed* by the danger of unfair prejudice[.]" *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995) (emphasis in original); *People v Riggs*, 223 Mich App 662, 704-705; 568 NW2d 101 (1997) (holding that declarant's letter, which evidenced "marital discord between [the victim] and defendant was relevant to motive and more probative than prejudicial"). Defendant has failed to show that the trial court abused its discretion or committed a plain error by admitting the letters. *Aldrich*, 246 Mich App at 113; *Conley*, 270 Mich App at 305.

We additionally find that defendant affirmatively waived appellate review of his remaining arguments as to Grannie's hearsay statement and the trial court's jury instructions.

“[W]aiver is the intentional relinquishment or abandonment of a known right.” *United States v Olano*, 507 US 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quotation omitted). A defendant affirmatively waives an issue where defense counsel states that he has no objection or otherwise expresses satisfaction with the court’s ruling. *Carter*, 462 Mich at 214-216. See also, *People v Kowalski*, 489 Mich 488, 505; 803 NW2d 200 (2011).

In this case, defendant affirmatively waived his hearsay claim regarding Grannie’s statement where defense counsel seemingly indicated that he had no hearsay objection and believed the testimony was admissible. See, *Kowalski*, 489 Mich at 504-505; *Carter*, 462 Mich at 214-216. Defendant also affirmatively waived his claim regarding the jury instruction where defense counsel never requested a limiting instruction or objected to the trial court’s failure to give one, but instead expressed satisfaction with the given instructions. In *Kowalski*, 489 Mich at 504, our Supreme Court stated: “Thus, by expressly and repeatedly approving the jury instructions on the record, defendant waived any objection to the erroneous instructions, and there is no error to review.” Thus, there is no error for this Court to review.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Jane E. Markey  
/s/ Stephen L. Borrello