

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 14, 2012

v

MICHAEL DUANE CORNELIUS,

Defendant-Appellant.

No. 305076
Ingham Circuit Court
LC No. 10-000296-FC

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

Michael Duane Cornelius appeals as of right his jury trial conviction of felony murder,¹ felon in possession of a firearm,² carrying a concealed weapon (“CCW”),³ and possession of a firearm during the commission of a felony (“felony-firearm”).⁴ Cornelius was sentenced to concurrent terms of life imprisonment for murder, 76 to 152 months for felon in possession of a firearm, and 76 to 152 months for CCW. Cornelius also received a two-year prison term for felony-firearm, to run preceding and consecutive to the other three sentences. We affirm.

On October 28, 2009, Lansing police responded to a call regarding a shooting at the corner of Oakland and Seymour. Police were provided with a description of the shooter from an eyewitness. The witness described the shooter as a black male, approximately six feet tall, wearing a green t-shirt, with a bandana covering his face. Police also received a call from a local business indicating that they possibly had surveillance footage of the shooter. Police were able to extract a picture of the suspect from the surveillance footage taken from the business. The picture was aired on television on Crime Stoppers and put in the newspaper. A witness to the shooting watching Crime Stoppers recognized the photograph of Cornelius. Cornelius was also recognized by another individual who saw the photograph on Crime Stoppers.

¹ MCL 750.316.

² MCL 750.224f

³ MCL 750.227.

⁴ MCL 750.227b.

On appeal, Cornelius asserts that there was insufficient evidence to support the jury verdicts, as the prosecution did not prove his identity as the shooter. While Cornelius phrases the issue as a challenge to the sufficiency of the evidence, it appears that Cornelius is also attempting to assert that Rodney Lee and Sean Beene’s identifications of him as the shooter were impermissibly tainted and should not have been admitted. Cornelius did not make this assertion in the trial court. “Where issues concerning identification procedures were not raised at trial, they will not be reviewed by this Court unless refusal to do so would result in manifest injustice.”⁵ Cornelius challenges Lee’s identification of him during the preliminary examination and Beene’s identification of him after seeing his photograph on television. Both witnesses, however, also observed the shooter on the day of the incident and were able to identify the shooter as Cornelius by his physical features and clothing. Thus, we find that there would be no manifest injustice by not reviewing this issue. Regarding the sufficiency of the evidence, several witnesses testified regarding the identity of the shooter, which the jury determined was Cornelius. The trier of fact is responsible for assessing the credibility of witnesses and the weight to be given to witness testimony.⁶ Because this Court will not interfere with the jury’s assessment,⁷ reversal is not warranted.

Cornelius raises three issues in a Standard 4 brief and next argues that the complaint and warrant were not supported by probable cause. We decline to address this issue because Cornelius failed to state a factual basis for his claim. A party cannot simply assert an error or announce a position and then leave it to this Court to “discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.”⁸ That notwithstanding, we find that the sworn complaint based on the information and belief of a Lansing Police Department detective was sufficient.⁹

Cornelius also argues that his right to a speedy trial was violated because there was a delay of more than 18 months between his arrest and trial. We disagree. This unpreserved constitutional issue is reviewed for plain error affecting Cornelius’s substantial rights.¹⁰ “Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant” or “seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.”¹¹

⁵ *People v Whitfield*, 214 Mich App 348, 351; 543 NW2d 347 (1995).

⁶ *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98(2009).

⁷ *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

⁸ *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (quotation marks omitted).

⁹ MCL 764.1a.

¹⁰ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

¹¹ *Id.* (citation and internal quotation marks omitted).

“[T]he United States Constitution and Michigan Constitution guarantee a criminal defendant the right to a speedy trial.”¹² A defendant’s right to a speedy trial is also protected by statute and the Michigan court rules.¹³ Generally, the remedy for a violation of a defendant’s constitutional right to a speedy trial is dismissal of the charges with prejudice.¹⁴ To determine whether Cornelius’s right to a speedy trial was violated, this Court “must consider four factors: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant’s assertion of the right, and (4) any prejudice to the defendant.”¹⁵

Calculation of the delay begins when the defendant is arrested. “[I]f the delay is over 18 months, prejudice is presumed and the burden is on the prosecution to rebut the presumption.”¹⁶ This Court must examine the reasons for the delay and determine whether the “delay is attributable to the defendant or the prosecution.”¹⁷ The prosecution will be held responsible for unexplained delays and delays because of scheduling or docket congestion.¹⁸ The defense, however, will be responsible for delays because of the adjudication of defense motions.¹⁹

Cornelius was arrested on November 6, 2009, and trial began 18 months and ten days later, on May 16, 2011. Thus, the delay is presumed prejudicial to Cornelius. Because Cornelius’s contributions to the delay account for more than ten days of the delay, and Cornelius failed to object to any of the adjournments or assert a violation of his right to a speedy trial in the trial court, we find that Cornelius’s right to a speedy trial was not violated.²⁰

Finally, Cornelius contends that his trial counsel was ineffective for failing to: object to the validity of the complaint and warrant, assert his right to a speedy trial, and file a motion to dismiss. We disagree. We review this unpreserved issue for “errors apparent on the record.”²¹ Both the United States and Michigan constitutions guarantee a defendant the right to effective assistance of counsel.²² To successfully raise a claim of ineffective assistance of counsel, Cornelius must show: (1) “that counsel’s performance fell below objective standards of

¹² US Const, Am VI; Const 1963, art 1, § 20; see also *People v Waclawski*, 286 Mich App 634, 665; 780 NW2d 321 (2009).

¹³ MCL 768.1; MCR 6.004(A).

¹⁴ *Waclawski*, 286 Mich App at 664-665.

¹⁵ *People v McLaughlin*, 258 Mich App 635, 644; 672 NW2d 860 (2003).

¹⁶ *Waclawski*, 286 Mich App at 665.

¹⁷ *Id.* at 666.

¹⁸ *Id.*

¹⁹ *People v Gilmore*, 222 Mich App 442, 461; 564 NW2d 158 (1997).

²⁰ *McLaughlin*, 258 Mich App at 644.

²¹ *People v Unger*, 278 Mich App 210, 253; 749 NW2d 272 (2008).

²² US Const, Am VI; Const 1963, art 1 § 20.

reasonableness,” and (2) that but for counsel’s error, “it is reasonably probable that the results of the proceeding would have been different.”²³ Effective assistance of counsel is presumed and the burden is on the defendant to prove otherwise.²⁴ As discussed above, both the complaint and the warrant were valid and Cornelius’s right to a speedy trial was not violated. Additionally, while defense counsel did not file a motion to dismiss, counsel did move for a directed verdict, which was denied. Moreover, as found above, there was sufficient evidence to support the jury’s verdict. Because counsel is not ineffective for “[f]ailing to advance a meritless argument or raise a futile objection,” Cornelius’s argument must fail.²⁵

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan

²³ *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

²⁴ *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

²⁵ *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).