STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNY DEAN BRADSHAW a/k/ a LONNIE DEAN BRADSHAW,

Defendant-Appellant.

UNPUBLISHED
November 27, 2001

Nos. 221888; 233666
Midland Circuit Court
LC No. 99-009007-FC

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions, following a jury trial, of two counts of first-degree premeditated murder, MCL 750.316(1)(a), one count of first-degree home invasion, MCL 750.110a(2), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of life imprisonment without parole for each of the murder convictions, and 160 to 240 months' imprisonment for the home invasion conviction, to be served consecutively to the dual two-year terms for the felony-firearm convictions. We affirm.

I

This case arises from the brutal shooting deaths of defendant's brother, Roger Bradshaw, and his friend Ronald Woodcock in Woodcock's home on January 16, 1995. On appeal, defendant first argues that the evidence was insufficient to support his first-degree murder convictions. We disagree.

We review de novo the question whether the prosecution presented sufficient evidence to support defendant's conviction. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). This Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that each essential element of the crime was proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In doing so, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201-1202 (1992); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Also, a prosecutor need not negate every reasonable theory of innocence, but must

only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

First-degree premeditated murder is defined in MCL 750.316(1)(a) as a "willful, deliberate, and premeditated killing." Thus, a conviction of first-degree premeditated murder requires proof "that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). The elements of first-degree murder may be inferred from the circumstances surrounding the killing. *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999). However, those inferences must be supported by the record and may not be based on evidence that is uncertain or speculative or that raises merely a conjecture or possibility. *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998); *People v Fisher*, 193 Mich App 284, 289; 483 NW2d 452 (1992).

In this case, defendant asserts that the evidence was insufficient to link him to the charged murders. We disagree. Indeed, ample circumstantial evidence was presented establishing defendant's involvement in these crimes. "' Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proofs of the elements of a crime.'" *Nowack, supra* at 400. Specifically, evidence was presented showing defendant's animosity towards the victims and motive for the killings. In the days before the shootings, defendant had threatened the victims in the presence of others because he believed they were having an affair with his girlfriend and had taken some of defendant's money. On one occasion shortly before the murders, defendant specifically told two of his friends "[t]hat he was going to blow [the victims'] fucking heads off." Further, in the hours before the murders defendant approached the victims in a bar and told his brother Roger "that if [Roger] didn't do what [defendant] said [defendant] [would] blow both [the victims'] fucking heads off."

Likewise, the circumstantial evidence also indicated that defendant had an opportunity to kill the victims. There was evidence that defendant left his home at approximately 11:00 p.m. on the night before the murders and returned at 3:45 a.m., thus providing a window of opportunity in which to kill the victims. Apart from the evidence of motive and opportunity, the prosecution also presented evidence of various statements defendant made to the police and friends that revealed his familiarity with specific details of the crimes, many of which unknown to the general public. Specifically, defendant told the police: (1) about a knife found in the woods near Woodcock's home, (2) that the killer or killers entered Woodcock's home through the basement window rather than an adjoining sliding door, (3) that one of the victims had used the bathroom shortly before the killings, (4) the location of a bloodstain found in the basement of Woodcock's home, (5) that the victims were intoxicated, and, (6) that two separate firearms were used in the murders. According to the testimony of prosecution witnesses at trial, this information was not released to the public when divulged by defendant.

Defendant told friends and acquaintances further details regarding the murders even before they were known to police investigators, such as the fact that one of the victims had been shot twice, first in the chest and then in the buttocks, and that one of the victims was shot in the face. Additionally, defendant indicated that he knew that his brother was murdered before the police identified his brother as a victim. Viewed in a light most favorable to the prosecution, we agree with the trial court that the circumstantial evidence was sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant perpetrated these heinous crimes.

II

Defendant also argues that he should be afforded a new trial because the jury's verdict was against the great weight of the evidence. We disagree. A motion for a new trial based on the great weight of the evidence "'should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result.'" *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), quoting *State v Labouche*, 146 Vt 279, 283; 502 A2d 852 (1985). After reviewing the record evidence, we are not convinced that it preponderates heavily against the verdict to the extent that a miscarriage of justice has resulted. Thus, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

III

Defendant also challenges as error the trial court's decision to admit portions of a videotape where defendant is seen sitting next to a polygraph machine. We disagree.

We review a trial court's evidentiary rulings for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). Generally, reference to a polygraph examination at a defendant's criminal trial is not permitted. *People v Nash*, 244 Mich App 93, 97; 625 NW2d 87 (2000); *People v Rocha*, 110 Mich App 1, 8; 312 NW2d 657 (1981). Error may occur even if the results of the examination are not actually admitted, but only implied. See, e.g., *People v Frechette*, 380 Mich 64, 72; 155 NW2d 830 (1968); *People v Smith*, 211 Mich App 233, 234-235; 535 NW2d 248 (1995). This is because of the prejudicial effect that occurs when a prosecutor provides supposedly scientific evidence to demonstrate a defendant's lack of credibility. *Id.* However, the introduction of such evidence will not always warrant reversal. *Nash, supra* at 98. This Court has identified a number of factors that should be considered in determining whether reversal is required. As noted in *Nash*, these factors include:

> "(1) whether defendant objected and/or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster a witness's credibility; and (5) whether the results of the test were admitted rather than merely the fact that a test had been conducted." [*Id.*, quoting *People v Kiczenski*, 118 Mich App 341, 346-347; 324 NW2d 614 (1982), in turn quoting *Rocha, supra*.]

In this case, the jury was not told that defendant took a polygraph examination, or the results of any examination. Instead, the jury was instructed that defendant's interview with police in which he detailed the circumstances of the murders occurred in the context of a "polygraph examination preinterview." In this regard, the trial court gave the jury detailed instructions explaining the necessity of referencing the polygraph in order to view the videotape of defendant's interview with the police. The jury was specifically instructed not to speculate regarding whether defendant took a polygraph test following the interview. Further, there was no attempt to use the polygraph examination to bolster witness credibility, and repeated reference was not made to the polygraph. On this record, we are not persuaded that the trial court abused its discretion in allowing the evidence.

IV

Defendant next argues that the prosecutor's misconduct denied him a fair trial. Because defendant did not object to the alleged instances of misconduct at trial, he must demonstrate plain error affecting his substantial rights to avoid forfeiture of these issues on appeal.[1] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

Defendant first complains about a number of the prosecutor's allegedly improper comments at trial. After reviewing the challenged remarks in context, we conclude that the remarks either were not improper, or were not so egregious that any prejudice could not have been cured by a curative instruction. Thus, defendant has failed to demonstrate plain error affecting his substantial rights. See *People v Duncan*, 402 Mich 1, 16-17; 260 NW2d 58 (1977); *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996). Likewise, we reject defendant's claim that the prosecutor committed misconduct by introducing certain evidence. Defendant has not provided any support for a finding, nor is it apparent from our independent review of the record, that the prosecutor acted in bad faith in admitting the challenged evidence. Absent a showing of bad faith on the part of the prosecutor, we cannot conclude that the prosecutor engaged in misconduct. *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999) ("[P]rosecutorial misconduct cannot be predicated on good-faith efforts to admit evidence").

V

Defendant next claims that his trial counsel was ineffective for failing to object to the prosecutor's alleged misconduct or the introduction of the videotape of the pre-polygraph examination interview. Defendant properly preserved this issue by moving for a new trial in the lower court. However, because an evidentiary hearing was not held, our review is limited to errors apparent from the record. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000); *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). A defendant seeking a new trial on the ground that trial counsel was ineffective must first show "that counsel's performance was below an objective standard of reasonableness under prevailing professional norms." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Second, defendant must show that "there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *Id.* at 687-688.

Defendant first alleges that trial counsel was ineffective for failing to object to the references to the polygraph examination. We disagree. The admissibility of the videotape was discussed during a pretrial motion. It is apparent that both trial counsel and the prosecutor agreed to present the videotape for their own respective purposes. Following a discussion in chambers, the trial court allowed the jury to view the videotape, subject to appropriate cautionary

[1] To the extent that defendant may have objected to some of these instances of alleged misconduct, he did so only on the basis of challenging their admission as evidence, and did not argue that the prosecutor was engaging in misconduct. Thus, these issues are not preserved. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). ("An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground").

instructions given before the viewing of the videotape and during its final instructions. Our review of the record satisfies us that trial counsel's decision regarding the videotape was the product of sound trial strategy. Decisions regarding what evidence to present are considered matters of trial strategy. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *People v Rockey*, 237 Mich App 74, 77-78; 601 NW2d 887 (1999). Likewise, the fact that trial counsel's strategy was unsuccessful will not render it ineffective assistance of counsel. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Defendant also argues that trial counsel was ineffective for failing to make a number of other objections at trial, including objections to the introduction of evidence and the allegedly improper comments by the prosecutor. However, defendant provides no explanation in support of his claim that an objection to the challenged matters was warranted, nor provides any discussion regarding how he was prejudiced by any alleged error. It is not sufficient for a party simply to announce his position and then leave it to this Court to discover and rationalize the basis for his claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Accordingly, we deem this issue abandoned on appeal. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

VI

Defendant next argues that his sentence for first-degree home invasion is disproportionate. We disagree. The record reveals that the trial court properly considered the horrific circumstances surrounding the home invasion as well as defendant's prior violent criminal history in fashioning sentence. Consequently, we conclude that the trial court did not abuse its discretion because defendant's sentence for home invasion satisfied the concept of proportionality. *People v Oliver*, 242 Mich App 92, 98; 617 NW2d 721 (2000); *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999).

VII

Defendant also raises a number of issues in his supplemental brief on appeal. Because these issues were not properly raised in the lower court, we review for plain error affecting defendant's substantial rights. *Carines*, *supra* at 763. First, contrary to defendant's assertion on appeal, the record discloses that defendant was advised of, and waived his *Miranda*[2] rights before the pre-polygraph examination interview in which he recounted details of the crimes to the police. Second, it is not plainly apparent from the record that the evidence of the cigarette butt found at defendant's home was improperly seized. Third, to the extent defendant argues that trial counsel was ineffective for failing to pursue a motion for change of venue, we are satisfied from our review of the record that counsel was not deficient in this regard. Accordingly, we conclude that defendant's pro se issues do not warrant relief.

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[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

VIII

Finally, on the basis of the foregoing, we conclude that the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski