

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JAMES SHAW,

Defendant-Appellant.

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UNPUBLISHED

March 22, 2002

No. 228037

Wayne Circuit Court

LC No. 99-002490

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317. He was sentenced to twenty-five to fifty years' imprisonment for the conviction. We affirm.

Defendant first argues that the trial court erred in admitting a steak knife into evidence because the knife was confiscated from defendant's person during an illegal arrest. Defendant did not preserve this issue below by objecting to the admission of the knife on the same ground asserted on appeal. MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999).<sup>1</sup> Thus, our review is limited to whether the admission of the knife constituted plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Reversal is warranted only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of the judicial procedures. *Id.*

Because the alleged lack of probable cause to arrest defendant was not raised as an issue below, the record is not developed in that regard.<sup>2</sup> Detroit Police Sergeant Voizell Jennings' trial testimony touched on the circumstances surrounding defendant's arrest. Sergeant Jennings testified that while investigating the scene where the victim was found, a relative of the victim

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<sup>1</sup> Defense counsel objected to the knife's admission at trial on the bases that the knife was irrelevant to any issue in the case and any probative value was outweighed by prejudicial effect.

<sup>2</sup> We note that defendant brought a motion in this Court to remand the case to the lower court for development of the record regarding whether the police had probable cause, which this Court denied. *People v Shaw*, unpublished order of the Court of Appeals, entered March 27, 2001 (Docket No. 228037).

approached the police. The police then went to that relative's home, where they were informed that defendant was the last person seen with the victim. Jennings instructed two uniformed officers to arrest defendant. One of those officers testified at trial that the steak knife was found inside defendant's jacket during a pat down search. Given that defendant did not challenge his arrest below on the basis that the police lacked probable cause to arrest him, the record is devoid of other evidence regarding other information the police may have had justifying the arrest of defendant. Therefore, defendant has not shown plain error affecting his substantial rights. *Carines, supra*.

Moreover, a review of the record shows overwhelming evidence that defendant committed the crime and was not acting in self-defense. Defendant admitted to repeatedly beating the fifteen-year-old victim with a brick. The forensic evidence confirms that the victim was beaten in the head repeatedly with a blunt object. The medical examiner testified that the victim was struck at least fifteen times. The nature of the abrasions discovered on the victim's hands and arms indicated the victim was attempting to cover his face while being beaten. The police recovered a chunk of concrete from the scene that had blood on it and was shaped consistent with the victim's wounds. Forensic evidence further indicated the victim was stabbed four times. Defendant admitted to putting the victim in a dumpster, fleeing the scene, and dispensing of his clothing soon after the incident. Testimony at trial further suggested that defendant took the victim's watch. The multitude of strong evidence that defendant committed the crime and the severity of the injuries suggests that defendant did not act in self-defense. Under these circumstances, defendant has not shown that admission of the knife resulted in the conviction of an actually innocent person or was error seriously affecting the fairness, integrity, or public reputation of the judicial procedure. *Carines, supra*.

Defendant also argues that his trial counsel was ineffective for failing to object at trial to the admission of the knife on the basis that the knife was discovered during a search incident to an illegal arrest. Limiting our review to errors apparent on the record, *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992), *People v Marji*, 180 Mich App 525, 533; 447 NW2d 835 (1989),<sup>3</sup> we conclude that this issue lacks merit.

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that because of such representation, he was prejudiced to the extent that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). To demonstrate prejudice, a defendant must show that, but for trial counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must overcome a strong presumption that his counsel's actions constituted sound trial strategy. *Id.* at 687.

As discussed, the overwhelming evidence, even without considering the discovery of the knife, supports the verdict. Consequently, defendant has not demonstrated prejudice such that the outcome of his trial would have been different were it not for counsel's alleged error. *Stanaway, supra* at 687-688.

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<sup>3</sup> See, *supra*, n 2.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra