

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRIN SCOTT LAPINE,

Defendant-Appellant.

UNPUBLISHED

October 25, 2002

No. 235377

Chippewa Circuit Court

LC No. 99-6806-FH

Before: Hood, P.J., and Bandstra and O’Connell, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ Defendant appeals as of right, and we affirm.

Defendant first alleges that trial counsel was ineffective for failing to suppress or request a limiting instruction regarding the testimony of domestic assaults by defendant’s ex-girlfriend, Jennifer LeFevre. We disagree. To establish a claim of ineffective assistance of counsel, the defendant must demonstrate that his attorney’s representation fell below an objective standard of reasonableness and was so prejudicial that the defendant was denied a fair trial. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). The defendant must overcome the presumption that the challenged action was trial strategy and also establish a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Defendant has failed to overcome the burden that the challenged action was trial strategy. At the beginning of cross-examination, defense counsel stated that he would need a score card to keep track of the number of lies told by LeFevre. Indeed, LeFevre admitted to telling lies to both police and defendant. While LeFevre testified that defendant struck her, she also testified that she had financial and other support to leave the abusive situation. She reported being knocked unconscious by defendant for two and a half days, but never reported the incident or sought medical treatment. Defense counsel also explored the dismissal of a drunk driving charge against LeFevre as a motivation for her to fabricate

¹ Defendant was sentenced to concurrent terms of 38 to 120 months’ imprisonment for one assault conviction and 57 to 120 months’ imprisonment for the second assault conviction, to be served consecutively to two years’ imprisonment for the felony-firearm conviction.

testimony about defendant. Under the circumstances, we cannot conclude that trial counsel rendered ineffective assistance, but rather, acted to discredit all aspects of LeFevre's testimony.

Defendant next alleges that the trial court erred in failing to suppress an incriminating letter. We disagree. Following de novo review of this issue, *People v Goforth*, 222 Mich App 306, 310 n 4; 564 NW2d 526 (1997), we cannot conclude that the trial court erred. The search warrant expressly provided that police could examine text in order to recover drug or bomb related materials. Accordingly, the letters were authorized within the scope of the search warrant. See *People v Jones*, 249 Mich App 131, 136; 640 NW2d 898 (2002).

We note that defendant filed a supplemental brief in propria persona. However, we conclude that the issues raised are without record support and without merit. Lastly, while the trial court agreed to disregard challenge inaccuracies contained in the presentence investigation report (PSIR), it does not appear that all challenges were stricken. Accordingly, we remand for the limited purpose of correction of the PSIR. *People v Britt*, 202 Mich App 714, 718; 509 NW2d 914 (1993).

Affirmed. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell