STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 13, 2004
v	No. 246011 Wayne Circuit Court
LONNIE CHARLES WILLIAMS, Defendant-Appellant.	LC No. 02-002659

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, arising from the shooting death of his wife, Valerie Jones. Defendant was sentenced to life imprisonment without parole for the first-degree murder conviction, a concurrent term of two to five years' imprisonment for the felon in possession conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

I

Defendant first argues that the circuit court reversibly erred in admitting hearsay statements by the victim regarding previous threats by defendant, her separation from defendant, and her fear of defendant. According to defendant, the circuit court erroneously admitted the statements pursuant to MRE 803(3) because he never placed the victim's state of mind into issue during trial. We review for an abuse of discretion the evidentiary rulings of a trial court. *People v Gonzalez*, 256 Mich App 212, 217; 663 NW2d 499 (2003). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000), or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

In defendant's brief on appeal, he only challenges, specifically, the following statements of the victim's mother, Pearlie Jones, as inadmissible hearsay:

Prosecutor: Okay. On December 23, 2001, where were you and your daughter at [sic] when this conversation took place?

Jones: In my bedroom.

Prosecutor: And how was your daughter seated next to you or near you?

Jones: She was like slumped over . . . laying over on my shoulder . . . .

Prosecutor: Okay. And what was she doing as she was slumped over laying on your shoulder?

Jones: She was crying and talking to me and crying.

Prosecutor: And what was she saying to you?

Jones: She was telling me about how tired she was of Lonnie stalking her, threatening her and she was just tired because she couldn't take no more [sic] and she was afraid for her life. She was afraid and she was just tired.

In addition to the challenged testimony, the victim's brother, Dexter Jones, similarly testified that in December 2001, the victim told him that she felt tired of defendant and "wanted to get away from him." According to the victim's friend, Kelvin Norman, the victim told him that she felt unhappy living with defendant. Yasmenda Marion, the victim's sister, and Rolanda Brew, who had dinner with the victim about one week before she was killed, testified that the victim had made statements that she had left defendant, met someone else, and intended to "move on with her life and be happy."

The victim's statements concerning her (1) unhappiness with defendant and feelings of exhaustion with his stalking behavior and threats, (2) feelings of fear for her life, (3) desire to escape from defendant, (4) eventual happiness at ending her relationship with defendant, and (5) plan to pursue happiness with someone else, all fall squarely within the plain language of MRE 803(3).[1] Because the victim's statements expressed her then existing emotions, states of mind,

[1] MRE 803(3) provides as follows:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> * * *
>
> (3) *Then Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact

(continued…)

and plans or intent, the circuit court correctly determined that they qualified as hearsay exceptions pursuant to MRE 803(3). *People v Fisher*, 449 Mich 441, 449-451; 537 NW2d 577 (1995).

The victim's states of mind had probative force to establish that defendant had a motive to kill her, and in murder cases motive is generally relevant to show the intent necessary to prove murder. *People v Herndon*, 246 Mich App 371, 412-413; 633 NW2d 376 (2001). The victim's expressions of her states of mind, together with trial testimony regarding defendant's threats to kill the victim if she ever left him, and the evidence that the victim had changed the locks on the house when defendant moved out shortly before the offense, tend to make it more likely that defendant had a motive to kill the victim, who felt tired of defendant and intended to leave him, especially in light of the fact that the victim made the statements within a week or just over a month before she was killed. MRE 401; *Fisher*, *supra* at 453 (recognizing that evidence of marital discord is relevant to motive); *People v Ortiz*, 249 Mich App 297, 307-310; 642 NW2d 417 (2002) (recognizing that evidence of the victim's state of mind and plans, which reflected the ending of her marriage with the defendant and tension between she and defendant, demonstrated the defendant's motive to kill her). As our Supreme Court further observed in *Fisher*, *supra* at 453, "numerous prior cases have upheld the admissibility of evidence showing marital discord as a motive for murder, or as circumstantial evidence of premeditation and deliberation." See also *Ortiz*, *supra* at 310.

Defendant suggests that the circuit court nonetheless should have excluded the evidence of the victim's statements because it caused him unfair prejudice. "The pivotal consideration is whether the probative value of the testimony is substantially outweighed by unfair prejudice. MRE 403." *Fisher*, *supra* at 451. In this case, in which defendant challenged his identity as the shooter, evidence of his motive for killing the victim was highly relevant. Compare *Fisher*, *supra* at 453 (stating that when the only proofs are circumstantial and the only witness is the accused, evidence of a motive would be highly relevant). Because defendant entirely fails to explain on appeal what *unfair* prejudice, or "'tendency . . . to inject[] considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock,'" was occasioned by the admission of the victim's expressions of her state of mind, we find that defendant has failed to establish that any unfair prejudice substantially outweighed the high probative value of the evidence. MRE 403; *Fisher*, *supra* at 452, quoting *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984).

For the above reasons, we cannot conclude that the circuit court abused its discretion in admitting the witnesses' testimony regarding the victim's statements of her intent, plans and state of mind.[2]

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> remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

[2] Although not raised by defendant on appeal, the recent United States Supreme Court decision in *Crawford v Washington*, 541 US __; 124 S Ct 1354, 1364; 158 L Ed 2d 177 (2004) does not change our determination with regard to the challenged statements made by the unavailable (continued…)

II

Defendant next argues that the circuit court admitted improper other acts evidence that he possessed a handgun during the months preceding the charged offense and that he had recently slashed the tires on the victim's car. Because defendant did not lodge an objection to this evidence at trial premised on MRE 404(b), he has not properly preserved this issue for appellate review.[3] MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). When a defendant has failed to properly preserve for appeal his objection to the trial court's admission of evidence, this Court reviews the defendant's claim of evidentiary error only to ascertain whether plain error occurred that affected the defendant's substantial rights. *People v Ackerman*, 257 Mich App 434, 446; 669 NW2d 818 (2003).

A

With respect to the trial testimony by the victim's sons and Brew that they observed defendant in possession of a handgun on occasions before the charged offense, we observe that MRE 404(b) does not control the introduction of this evidence. In *People v Hall*, 433 Mich 573, 575-580 (opinion by Boyle, J.), 589 (concurrence by Brickley, J.); 447 NW2d 580 (1989), our Supreme Court upheld the admissibility of evidence that the defendant, who was on trial for assisting in the November 1984 robbery of a video store during which he brandished a sawed-off

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victim. We note that the challenged statements were not "testimonial," in nature and, thus, are not barred by the Confrontation Clause. See *Id.* at 541 US at __; 124 S Ct at 1364, 1374. The statements defendant contends were improperly admitted, were not testimonial in nature as a government official did not elicit them, the statements were not any type of "*ex parte* in-court testimony or its functional equivalent," and the statements were not given with an eye toward trial. See *Id.* at 541 US at __; 124 S Ct at 1364; see also *People v Geno*, __ Mich App __; __ NW2d __ (Docket No. 241768, issued April 27, 2004), slip op p 4. The Court in *Crawford* did not define "testimonial" instead left it "for another day." *Id*. at 541 US at __; 124 S Ct at 1374. But the Court in *Crawford* noted that "[w]hatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." *Id*. The statements at issue in the present case are not akin to any of those type statements listed as testimonial in *Crawford*. The Court in *Crawford* 541 US at __; 124 S Ct at 1374, provided that "[w]here nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law." Therefore, we conclude that the challenged testimony, with regard to the nontestimonial statements, was not improper pursuant to *Crawford*, and was properly admitted under Michigan hearsay law.

[3] Defendant objected at trial to the admission of Brew's testimony that she knew defendant to have possessed a handgun on the basis that the evidence was irrelevant and more prejudicial than probative, and the circuit court ruled on these questions. Defendant also objected at trial on the basis of relevance to Cameron Scott's testimony that he saw defendant slash the tires on the victim's car. But defendant made no specific objections at trial to the admission of this evidence premised on MRE 404(b), and therefore defendant has not properly preserved this issue for appellate review. MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999).

shotgun, also had a sawed-off shotgun in his possession and control at the time of his arrest in June 1985. The Court explained that "[e]vidence of a defendant's possession of a weapon of the kind used in the offense with which he is charged is routinely determined by courts to be direct, relevant evidence of his commission of that offense." *Id*. at 580-581. The Court found that the evidence concerning the defendant's possession of a sawed-off shotgun at the time of his arrest was "clearly relevant to make the defendant's identity as the gunman in the charged robbery 'more probable . . . than it would be without the evidence.'" *Id*. at 582-583, quoting MRE 401. According to the following logic, the Supreme Court rejected the applicability of MRE 404(b) under the circumstances:

> Nor does MRE 404(b) act to preclude the evidence. The fact that establishing defendant's possession of the shotgun also necessarily constitutes evidence of a separate crime, wrong, or act (possession of a sawed-off shotgun) does not alone bring the proof within the compass of MRE 404 preclusion. Unlike the "exceptions" contained in MRE 404(b), in which relevance rests on a circumstantial inference from the other act to the fact in issue, the shotgun itself was equally as direct an item of evidence of defendant's commission of the charged robbery in this case as marked bills or identifiable jewelry would be in another, while the testimony by various witnesses to the circumstances of its seizure was relevant to connect the defendant to both it and the car. [*Hall*, *supra* at 583.]

In the present case, Kris Hooper, the lone eyewitness to the January 2002 shooting of the victim, testified that he saw defendant standing in the street near his vehicle, and holding in his left hand a silver or chrome, nickel-plated pistol that he pointed and fired toward the front window of the victim's house. The prosecutor elicited from Brew that she had resided with the victim, her children and defendant, and that sometime during the summer of 2001, she observed defendant playing with a handgun. The victim's sons also recalled that while defendant resided with them, they saw that he owned a handgun, which one of the sons described as a type of "old western gun[] with a long nose and . . . the things that spin" where the bullets go, and which they never saw again after defendant moved out of the house, two weeks before the charged offense.

Defendant's possession of a handgun, within approximately six or seven months before the charged offense, tends to make more probable that Hooper correctly identified defendant as the shooter, who fired a handgun toward the victim's house. MRE 401; *Hall*, *supra* at 582-583. The circuit court properly admitted the testimony regarding defendant's ownership of a handgun "under MRE 401 as evidence of defendant's commission of the charged" offense, "without reference to MRE 404(b)." *Hall*, *supra* at 580, 584. The evidence of defendant's gun ownership (1) was relevant to proving defendant's identity as the shooter, which was the primarily disputed issue in the case, (2) "was mostly foundational, necessary to show . . . defendant's knowing possession and control of the . . . gun," and (3) was unlikely to confuse the jury regarding the nature of the crime charged against defendant. *Id.* at 584-585. Because no danger of unfair prejudice existed substantially outweighing the probative value of the evidence that defendant possessed a handgun, the circuit court did not abuse its discretion by admitting the evidence. See MRE 403. In addition, the admission of testimony that defendant possessed a handgun prior to the charged offense does not constitute plain error affecting defendant's substantial rights. See *Ackerman*, *supra* at 446.

B

Even assuming that MRE 404(b) should govern the admissibility of the testimony by the victim's sons and Hooper that defendant slashed the victim's tires, the circuit court properly could have introduced the evidence pursuant to this rule. Evidence qualifies as admissible pursuant to MRE 404(b)(1) when (1) the prosecutor offers the evidence for a proper noncharacter purpose, (2) the evidence has relevance to a fact of consequence at trial, and (3) the trial court determines pursuant to MRE 403 that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Ackerman*, *supra* at 439-440.

The testimony that, one to two weeks before the victim was shot, defendant slashed the tires on the victim's car when the children refused to allow his entry into the house has high probative value in tending to establish that marital discord existed between defendant and the victim and, consequently, defendant's motive for killing the victim, a proper noncharacter purpose and a fact in issue, in this case, given defendant's challenge to his identity as the shooter. MRE 401; MRE 404(b)(1); *Fisher*, *supra* at 450, 453. Despite defendant's protestations that the evidence simply smeared his character by portraying him as a domestic abuser, we detect no danger of unfair prejudice in the form of jury bias, sympathy, anger, or shock from the introduction of this evidence that would substantially outweigh its significant probative value. MRE 403; *Fisher*, *supra* at 452.

Because the circuit court properly admitted the challenged evidence, regarding defendant slashing the victim's tires, no plain error occurred that affected defendant's substantial rights.[4] See *Ackerman*, *supra* at 446.

III

Defendant also raises two claims of instructional error, specifically that the circuit court (1) invaded the province of the jury by informing it that it could make an inference concerning

[4] The parties agree that the prosecutor did not provide pretrial notice of his intent to introduce the tire-slashing evidence or the basis therefor, as required by MRE 404(b)(2). This Court has characterized this failure of notice as a plain error. *People v Hawkins*, 245 Mich App 439, 453; 628 NW2d 105 (2001). But this Court also recognized that this plain error might qualify as harmless if the record tends to establish the fulfillment of the following goals behind MRE 404(b)(2): (1) to force the prosecutor to identify and seek to admit only prior bad acts evidence that meets the relevancy threshold, (2) to ensure that the defendant has an opportunity to object to the evidence and defend against it, and (3) to facilitate a thoughtful ruling by the trial court that either admits or excludes the evidence and is grounded in an adequate record. *Hawkins*, *supra* at 454-455. In this case, the lack of notice qualifies as harmless because (1) the evidence of defendant's tire slashing had relevance to the case that was not substantially outweighed by any danger of unfair prejudice and, thus, notice "would not have had any effect on whether the trial court should have admitted it at trial, regardless of the record or arguments that could have been developed and articulated following notice," (2) defense counsel, who possessed copies of the witness statements that contained the information regarding tire slashing, had the opportunity to argue before the circuit court that the evidence qualified as irrelevant, and (3) the circuit court provided a thoughtful explanation of the basis for its decision to admit the evidence. *Id.* at 455.

defendant's state of mind on the basis of his possession of a dangerous weapon, and (2) advised the jury regarding evidence of flight when no such evidence was presented. We decline to consider defendant's claims of instructional error because defendant has waived appellate review of these issues.

After the proofs concluded, the circuit court briefly entertained the parties' requests or objections to proposed jury instructions, and then conducted a bench conference off the record for the parties "to let me know what you wish me to give." On returning to the record, the following exchange occurred:

> *The Court*: Any additions, corrections, modifications?
>
> *Prosecutor*: It's satisfactory to the People.
>
> *Defense counsel*: Satisfactory to the defense, your Honor.

The circuit court then listed for the record the agreed upon instructions, which included both CJI2d 4.4, regarding flight, and CJI2d 16.21, concerning inferences of state of mind. The circuit court read the instructions to the jury the next morning, and then made the following inquiry:

> *The Court*: Counsel, any objections to the verdict form or to the instructions as read to the jury?
>
> *Prosecutor*: None by the People.
>
> *Defense counsel*: None on behalf of Lonnie Williams, your Honor.

Defendant's affirmative expressions of satisfaction with the jury instructions given extinguished any error, and constitute defendant's waiver of appellate review of his instructional arguments. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000); *Ortiz*, *supra* at 311.

IV

Defendant further contends that in several respects his trial counsel provided ineffective assistance. When reviewing defendant's claim of ineffective assistance of counsel, our review is limited to the facts contained on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002). "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *Id*. at 579. The court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel. *Id*. The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id*.

To establish ineffective assistance of counsel, a defendant must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced the defendant that he was deprived of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); see also *Bell v Cone*, 535 US 685, 695; 122 S Ct 1843, 152 L Ed 2d 914 (2002). With respect to the prejudice aspect of the test for ineffective

assistance, the defendant must demonstrate a reasonable probability that but for counsel's errors the result of the proceedings would have been different, and that the proceedings were fundamentally unfair and unreliable. *Pickens, supra* at 312, 326-327; *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

A

Defendant first suggests that defense counsel was ineffective by failing to request a limiting instruction regarding the hearsay evidence of the victim's state of mind, and by failing to object to the other acts evidence and the erroneous instructions regarding flight and inferring intent. In light of our conclusions that (1) no error occurred in the circuit court's admission of the testimony regarding the victim's state of mind, (2) the court correctly admitted the relevant and probative evidence of defendant's other acts, and (3) the court properly instructed the jury pursuant to CJI2d 16.21 and 4.4, defendant's claim of ineffective assistance must fail because he cannot establish both deficient performance and a reasonable probability that but for counsel's errors the result of the proceedings would have been different, and that the attendant proceedings were fundamentally unfair and unreliable.[5] *Pickens*, *supra* at 326-327; *Rodgers*, *supra* at 714.

B

We also reject defendant's suggestion that defense counsel unreasonably and prejudicially failed to present an alibi defense. In support of this claim, defendant attaches to his supplemental brief on appeal two affidavits: (1) his own affidavit in which he insists that he repeatedly told defense counsel of his desire "to present several witnesses who would have given evidence that I could not have been at the seen [sic] of the shooting, because I was in attendance at a party and intoxicated thereat,"[6] and (2) the affidavit of Sherrita Wright, in which Wright avers that beginning at 4:30 p.m. on the day of the offense, defendant attended Wright's birthday party where he acted as a disc jockey, and that the party "concluded between 10:00 p.m. and 10:30 p.m.," at which time defendant "was sprawled out on a couch, apparently intoxicated."

But in light of the consistent trial testimony by the victim's sons and Hooper that the shooting occurred after 10:30 p.m. on January 27, 2002, specifically between 11:30 and 11:40 p.m., the evidence of defendant's presence at Wright's party even as late as 10:30 p.m. that night does not establish an alibi or other substantial defense that might have made a difference in the outcome of the trial. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996). In the absence of any alibi evidence, we conclude that defendant has failed to overcome the strong presumption that counsel made a sound strategic decision by instead extensively attempting to cast doubt on the veracity and likelihood of the testimony of Hooper, the lone eyewitness to the shooting. *Rodgers, supra* at 714-715.

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[5] We further note that counsel is not required to advocate a meritless position. *Snider*, *supra* at 425.

[6] Defendant's affidavit also indicates that the statements "of these witnesses are appended to my Supplemental Brief," but only one other witness' affidavit was attached to the brief.

Based on the record, upon a de novo review of this constitutional issue, defendant has not established the deficient performance and prejudice required to succeed on a claim of ineffective assistance of counsel. See *LeBlanc*, *supra* at 579.

V

Defendant also asserts that his mandatory life sentence for his first-degree murder conviction violates the Michigan Constitution because of its determinate nature and because it constitutes cruel or unusual punishment. Defendant failed to preserve any objection to the constitutionality of his first-degree murder sentence by raising this issue during his sentencing hearing and, therefore, must demonstrate on appeal that a plain error affected his substantial rights. *People v Sexton*, 250 Mich App 211, 227-228; 646 NW2d 875 (2002). This Court has specifically ruled that life sentences without the possibility of parole are constitutional. *Snider*, *supra* at 426-427, citing *People v Cooper*, 236 Mich App 643, 660-664; 601 NW2d 409 (1999).

The parties agree that the mandatory sentence of life imprisonment without parole for first-degree premeditated murder qualifies as a determinate or fixed-term sentence. MCL 750.316(1); *People v Cooper*, 236 Mich App 643, 660; 601 NW2d 409 (1999). With respect to Const 1963, art 4, § 45, on which defendant relies, this Court has recognized that "[w]hile this constitutional provision plainly authorizes indeterminate sentencing, it includes no *prohibition* against a statute *requiring* determinate sentencing as a punishment for crime." *Cooper*, *supra* at 661 (emphasis in original). Instead, "Const 1963, art 4, § 45 reflects an *expansion* of legislative power to include the power to provide for indeterminate sentences for crimes, not a *removal of* the previously existing power to provide for determinate sentences." *Cooper*, *supra* at 662 (emphasis in original). This Court characterized the power of the Michigan Legislature as broad and concluded that "an enacted statute in force regarding *any* subject or establishing *any* type of rule is valid as long as it does not contravene a provision of the Michigan Constitution or federal law." *Id*. at 663-664 (emphasis in original). Because the Michigan Constitution does not bar determinate sentencing, defendant's statutory sentence of life imprisonment without parole does not qualify as unconstitutional because of its determinate nature. *Id*. at 662, 664.

We also reject defendant's contention that his sentence of life imprisonment without parole violates the cruel or unusual punishment provision of the Michigan Constitution, Const 1963, art 1, § 16. In *People v Hall*, 396 Mich 650, 657; 242 NW2d 377 (1976), the Supreme Court expressly rejected the defendant's assertions that a mandatory life sentence under MCL 750.316 violated both US Const, Am VIII, prohibiting "cruel and unusual" punishment, and Const 1963, art 1, § 16, forbidding "cruel or unusual" punishment. The Supreme Court found that "the punishment exacted is proportionate to the crime," that no indication existed that "Michigan's punishment is widely divergent from any sister jurisdiction," and that the sentence served the Legislature's permissible goal to deter similar conduct by others. *Hall*, *supra* at 658. The Court noted that the possibility of rehabilitation and release still existed pursuant to the sentence of life without parole in the form of the governor's commutation powers. *Id*.

VI

Defendant next argues that the circuit court erred by sua sponte, and over his objection, dismissing for cause prospective juror Jammica Williams from the jury panel. This Court generally reviews for an abuse of discretion a trial court's determination whether to excuse a

prospective juror for cause. *People v Eccles*, 260 Mich App 379, 382-383; 677 NW2d 76 (2004).

In questioning potential juror Williams concerning possible bias, the circuit court ascertained that Williams' brother was convicted of first-degree murder within the last ten to fifteen years. Further questioning revealed Williams' opinion that the judge presiding over his brother's case had treated his brother unfairly by imposing a sentence of mandatory life imprisonment without parole. Williams nonetheless opined that he would have no problem remaining fair to both sides if selected as a juror.

The circuit court found cause for excusing Williams in light of "the nature of his answers," and declined defendant's request that the court simply instruct Williams that the possible penalty could not influence his decision. The court elaborated that Williams' feelings of unfairness had related to his brother's conviction of the precise charge for which defendant stood trial, and the mandatory sentence of life imprisonment without parole at stake in defendant's case as follows: "[W]hen a person not only knows the penalty . . . but feels that penalty is unfair, that deems, in my view, that person is an unfit juror for a first degree murder case."

Williams' belief in the unfairness of his brother's mandatory sentence of life imprisonment without parole arising from a first-degree murder conviction tends to cast doubt on his capacity to restrict his finding of defendant's guilt or innocence of first-degree murder to the evidence introduced at trial, despite his protestations to the contrary. Furthermore, although it is not precisely clear from the transcript whether Williams had previous knowledge of the mandatory nature of the penalty for first-degree murder or gleaned this information from the circuit court's questioning, his awareness of the penalty at stake in defendant's trial plainly qualified as an improper consideration during jury deliberations of defendant's guilt or innocence. *People v Goad*, 421 Mich 20, 25-26; 364 NW2d 584 (1984). In light of the facts that (1) Williams expressed his view of the unfairness of the precise penalty at issue in defendant's case, (2) the circuit court had the opportunity to question Williams at some length, and (3) the circuit court has a "superior ability to assess from a venireman's demeanor whether the person would be impartial," *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000), we cannot conclude that the circuit court abused its discretion by finding cause to dismiss Williams, either because his state of mind would prevent his rendering of a fair verdict or his opinions would improperly influence his verdict. MCR 2.511(D)(4) and(5); MCR 6.412(D).[7]

[7] Even assuming that the circuit court abused its discretion in dismissing Williams, defendant fails to substantiate his suggestion that he suffered prejudice as a result of Williams' dismissal. First, defendant offers no authority in support of the notion that he had some entitlement to or vested interest in Williams' placement on the jury. *People v Green*, 260 Mich App 392, 414 n 5; 677 NW2d 363 (2004). Second, to the extent that defendant seeks to attack the ultimate composition of the jury, defendant's expression of satisfaction with the jury at the close of voir dire and his failure to exercise all of his available peremptory challenges amount to a waiver of his ability to challenge the composition of the jury thereafter impaneled and sworn. *People v Hubbard (After Remand)*, 217 Mich App 459, 466-467; 552 NW2d 493 (1996). Third, to the extent that defendant suggested that Williams might have been improperly excluded from the jury on the basis of his race, defendant makes absolutely no showing of the elements of a

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VII

Defendant lastly maintains that the circuit court erred by foreclosing defense counsel from conducting a proper cross-examination of the victim's son, Mark Scott. "A trial court's limitation of cross-examination is reviewed for an abuse of discretion." *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998). To the extent that this issue involves a constitutional question, this Court considers the question de novo. *People v Garza*, 469 Mich 431, 433; 670 NW2d 662 (2003).

During defense counsel's cross-examination of Scott, the prosecutor objected on the basis of relevance to defense counsel's question, "Wasn't there an occasion [in September 2001] when someone came in front of your house, another boy, with a gun?" The circuit court invited defense counsel to explain the relevance to the charged offense of his question "about an event that occurred some four or five months earlier in front of the house where the shooting occurred [during which] one of her children . . . may have been involved in a dispute about this son's girlfriend's friends bringing guns into the house." Defense counsel suggested that defendant had told him that on several occasions that he had observed guys with guns at the victim's house, but the circuit court reiterated its request for clarification whether some connection existed between this alleged evidence and the charged offense. Defense counsel responded that if Scott answered affirmatively the question whether anyone with guns had visited the house, then he would be able to pursue further exculpatory questions. Then, the circuit court advised defense counsel that without a determination of legal relevance, he could not simply "throw a theory in front of the jury so . . . they can decide if it has any bearing."

We conclude that the circuit court properly declined to permit defense counsel to question Scott regarding whether any of his friends or other young men with guns had been in front of the victim's house within four to five months before the crime. Despite having multiple opportunities to explain on the record what this information might have to do with this case, defense counsel entirely failed to supply the basis for any connection or relationship between the fact that one of Scott's friends, or a friend of Scott's friend, had a gun in front of the house in September 2001, and the victim's shooting death on January 27, 2002. We simply cannot conclude that the mere fact that some unidentified person had a gun in front of the victim's house in September 2001 tends to make more likely than not any material fact at issue in this case. MRE 401; see also *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). Because the proposed line of questioning regarding a young man with a gun has no relevance to the charged offense, the circuit court did not abuse its discretion or violate defendant's rights of confrontation or due process when it refused to permit the questioning. MRE 402; *Crawford*, *supra* at 620; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Furthermore, defense counsel otherwise had a reasonable opportunity to test the truth of Scott's testimony during cross-examination. *People v Ho*, 231 Mich App 178, 189-190; 585 NW2d 357 (1998); *Adamski*, *supra* at 138.

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cognizable claim that he suffered an infringement of his right to an impartial jury drawn from a fair cross-section of the community. *Id*. at 472-473.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kathleen Jansen
/s/ Michael J. Talbot