

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD GLYNN SPANGLER JR.,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2010

No. 292728  
Van Buren Circuit Court  
LC No. 08-016392-FC

Before: STEPHENS, P.J., and MARKEY and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of felony-murder, MCL 750.316(1)(b), for the August 2002 murders of Carlin and Roberta Noble. Defendant was sentenced to two terms of life imprisonment without the possibility of parole. We affirm.

Defendant claims that he was denied the effective assistance of counsel and a fair trial. Defendant failed to preserve this issue for review because he did not first move for a *Ginther*<sup>1</sup> hearing or a new trial. *People v Plummer*, 229 Mich App 293, 308; 581 NW2d 753 (1998). Our review is therefore limited to mistakes apparent on the record. *Id.* Whether defendant was denied his right to effective assistance of counsel generally presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A trial court's findings of fact, if any, are reviewed for clear error and issues of constitutional law are reviewed de novo by this Court. *Id.*

To demonstrate ineffective assistance, a defendant must show: (1) that his attorney's performance fell below an objective standard of reasonableness, and (2) that this performance so prejudiced him that he was deprived of a fair trial. *People v Grant*, 470 Mich 477, 485-486; 684 NW2d 686 (2004). "To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Defendant argues that trial counsel acted deficiently when he failed to object to the testimony of three prosecution witnesses regarding out-of-court statements that, before the murders, defendant stole Carlin's wallet. After reviewing the record, we conclude that the challenged evidence was offered in order to prove the truth of the matter asserted, and as such, the evidence amounted to inadmissible hearsay. MRE 801(c); MRE 802. However, any error on the part of defense counsel in failing to object did not impact the outcome of the trial. *Carbin*, 463 Mich at 600. In this case, the improper evidence was not a primary aspect of the prosecutor's case-in-chief, and there was substantial untainted evidence of defendant's guilt. Michelle Gogins, a convicted accomplice, testified that she, defendant, and Timothy Andrews were unemployed and needed money to buy drugs on the night of the murders. She stated that defendant specifically targeted the Nobles for robbery. Evidence showed that defendant knew the Nobles, as he dated their daughter for a time and did yard work for the couple. Evidence of defendant's desire to obtain money for drugs and his prior relationship with the victims was sufficient to allow a rational juror to infer that he had motive and opportunity to commit the crimes. See *People v Unger*, 278 Mich App 210, 223-224; 749 NW2d 272 (2008) (evidence of motive and opportunity are logically relevant in a prosecution for murder). Gogins testified that she, defendant, and Andrews went to the Nobles' residence, entered the residence with gasoline, robbed and killed Carlin and Roberta, and then started the house on fire. Gogins gave specific details on how defendant killed the victims, and the coroner's findings were consistent with Gogins' description of the manner in which the victims were killed. According to Gogins, defendant straddled Roberta and slit her throat with a knife as the woman pleaded for her life. The autopsy revealed that Roberta's throat was slashed, and that she suffered a blunt-force injury to her chest. Gogins testified that defendant and Andrews smothered Carlin to death before they set the house on fire. Consistent with Gogins' account of the murder, the autopsy showed that Carlin was smothered and strangled to death before the fire was started. Gogins asserted that defendant and Andrews poured gasoline around the Nobles' residence and started the house on fire, and the fire investigator's findings were consistent with Gogins' account of the origin of fire. Gogins testified that, after the murders, she and defendant went to the home of defendant's cousin to get drugs, and the cousin's testimony was consistent with Gogins' assertion.

In addition to Gogins' detailed testimony, defendant made incriminating statements to several individuals at an apartment sometime after the murders. According to the witnesses, defendant acted "weird" and nervous and spoke in riddles one night and stated that he "cut people" and "beat people," and that the victims were an elderly man and women. Another witness heard defendant state "I did it" and that he "stabbed" "tortured" "and beat" the victims and then burned their house down. The witness heard defendant mention the city of Lawton. Defendant made additional statements including that he hit a man with a bar, that he tied people up, and that "they" burned the house down. On another occasion, defendant talked about murders in Lawton when he attempted to sell his Oldsmobile to Ralph Boyer. Boyer testified that defendant indicated that the police searched the vehicle and took some of defendant's clothing, but defendant assured Boyer that the police would not find evidence because they took the wrong clothing. Defendant's incriminating statements would allow a rational juror to infer that he committed the murders. His statements mirrored the evidence found at the crime scene. The victims were elderly, Roberta was cut with a knife, both victims sustained blunt-force injuries, and the victims' home was burned down.

Defendant also made incriminating statements to the police when he placed himself at the crime scene on the evening of the murders. Defendant informed the police that he stopped by the Nobles' residence and spoke with Carlin sometime between 7:30 p.m. and 8:30 p.m., and that Carlin informed him that Roberta was upstairs (where firemen found her dead body). However, Roy Camburn testified that Carlin left his residence at about 8:30 p.m. that evening, and that Roberta left his residence at about 11:00 p.m. A juror could infer that defendant lied to the police about speaking with Carlin, and that he knew Roberta was upstairs in the home because he murdered her there. Additionally, some of the statements defendant gave to the police conflicted with other statements he made, and with testimony provided by defendant's alibi witnesses. See *Unger*, 278 Mich App at 225-226 (a defendant's conflicting statements are admissible and relevant to show his consciousness of guilt). Finally, two of defendant's alibi witnesses admitted that they discussed this case with defendant on the telephone before trial when defendant was in jail. A rational juror could infer that defendant attempted to influence the witnesses' testimony and conceal his involvement in the murders. See *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996) (defendant's attempts to influence a witness can be relevant to show a consciousness of guilt); *People v Cutchall*, 200 Mich App 396, 400-401, 404-405; 504 NW2d 666 (1993) (attempts to conceal the commission of a crime are relevant to show consciousness of guilt).

In sum, because of the substantial evidence of defendant's guilt in this case, defendant cannot show a reasonable probability that, but for defense counsel's failure to raise an objection to the hearsay evidence, the result of the proceedings would have been different. *Carbin*, 463 Mich at 600. Therefore, his claim of ineffective assistance of counsel on this basis fails. *Id.*

Next, defendant argues that defense counsel rendered ineffective assistance of counsel by failing to object when two prosecution witnesses testified that, shortly before the murders, Carlin stated that he was afraid of defendant and that he feared defendant would hurt him and Roberta. Defendant argues the evidence was inadmissible hearsay and the prosecutor argues that the evidence was properly admitted under MRE 803(3) as evidence of Carlin's state of mind to rebut a statement defendant made to the police.

MRE 803(3) provides in relevant part as follows:

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) [is admissible], but not including a statement of memory or belief to prove the fact remembered or believed....

In order to admit evidence under MRE 803(3), the declarant's state of mind must be at issue, and Carlin's state of mind was not at issue or relevant in this case. *People v DeWitt*, 173 Mich App 261, 269; 433 NW2d 325 (1988); see *People v Smelley*, 285 Mich App 314, 325; 775 Mich App 350 (2009), vacated in part on other grounds 485 Mich 1023 (2010) ("[a] victim's state of mind is usually only relevant in homicide cases when self-defense, suicide, or accidental death are raised as defenses to the crime"). Carlin's reference to past events and beliefs are specifically excluded under MRE 803(3). *People v Moorer*, 262 Mich App 64, 73; 683 NW2d 736 (2004). Regardless, defendant cannot show a reasonable probability that, but for counsel's failure to object to the evidence, the result of the proceeding would have been different. *Carbin*, 463 Mich at 600. As discussed above, there was overwhelming evidence of defendant's guilt in this case, and evidence of Carlin's fear was not a central aspect of the prosecution's case-in-chief.

Next, defendant argues that trial counsel rendered deficient performance when he failed to object to evidence that defendant stole tools from Boyer sometime after the murders. Defendant claims that the evidence was not relevant under MRE 401. A review of the record indicates that the evidence was relevant under MRE 401 for purposes of establishing a timeline regarding when defendant made incriminating statements to Boyer and others at Boyer's apartment. Defense counsel did not act deficiently in failing to object. See *People v Petri*, 279 Mich App 407, 415; 760 NW2d 882 (2008) ("Counsel need not make a futile objection").

Defendant further argues that counsel rendered deficient performance when he failed to object to police testimony concerning defendant's statements about falling at a Wal-Mart parking lot and breaking his arm within several days of the murders. Defendant argues that the evidence was not relevant. We disagree. Here, the record indicates that defendant inaccurately reported the details of his fall to Wal-Mart, which was relevant to the credibility of the statements defendant made to the police regarding how he sustained the injury. Whether defendant was honest when he spoke to the police was probative of his guilt and admissible under MRE 401. Defense counsel was not deficient in failing to object. See *Petri*, 279 Mich App at 415.

Because there were no errors of consequence, defendant's contention that the cumulative effect of defense counsel's errors warrants reversal lacks merit. *People v Knapp*, 244 Mich App 361, 388; 624 NW2d 227 (2001) (In order to reverse on grounds of cumulative error, several minor errors of consequence must be present.).

In a Standard 4 brief, defendant argues that he was denied his statutory right to a speedy trial. We disagree. Defendant was sentenced on December 20, 2002, to a maximum of ten years' imprisonment for an unrelated offense. On October 27, 2008, the prosecutor brought a felony complaint against defendant for the Noble murders. Defendant's trial in this case began 193 days later on May 12, 2009. On appeal, defendant argues that the prosecutor violated his right to a speedy trial under MCL 780.31 when he failed to bring defendant to trial within 180 days of the time defendant submitted a request for disposition of a felony suspect detainer in April 2007.

MCL 780.131 provides in relevant part:

(1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney ... written notice of the place of imprisonment of the inmate and a request for final disposition ... by certified mail. [MCL 780.131(1).]

Stated differently, the 180-rule under MCL 780.131 begins when:

(a) . . . the prosecutor knows that the person *charged with the offense* is incarcerated in a state prison or is detained in a local facility awaiting incarceration in a state prison, *or*

(b) . . . the Department of Corrections knows or has reason to know that a *criminal charge is pending against a defendant incarcerated in a state prison* or detained in a local facility awaiting incarceration in a state prison. [*People v Crawford*, 232 Mich App 608, 613; 591 NW2d 669 (1998), quoting MCR 6.004(D)(1)(a), (b) (emphasis added).]

A prosecutor complies with MCL 780.131 when he makes “good-faith efforts to proceed promptly with pretrial proceedings” and attempts to “bring the case to trial in a timely manner.” *People v Davis*, 283 Mich App 737, 743; 769 NW2d 278 (2009).

In this case, defendant incorrectly claims that the 180-day rule commenced in April 2007. At that time, defendant had not been charged with the offenses in the instant case; the statutory time deadline was not triggered until the murder charges were pending on October 27, 2008, when the felony complaint was entered. *Id.* And, although defendant’s trial did not commence until May 9, 2009, the prosecutor complied with the requirements of MCL 780.131 where he immediately commenced the action and made good faith efforts to proceed to trial within the statutory time deadline. *Id.* Defendant made numerous motions and requested a continuance that delayed the start of the trial. This delay is not counted against the prosecution for purpose of compliance with MCL 780.131. *Id.* at 741-742.

Next, defendant claims that the trial court violated his constitutional rights when it denied one of his motions to substitute counsel.<sup>2</sup> We disagree. Defendant makes various claims in his argument regarding what he believes amount to counsel’s deficiencies that entitled him to substitute counsel. These claims are not supported by the record. Moreover, as discussed above, defendant failed to show that trial counsel rendered ineffective assistance; further, defendant was not entitled to counsel of his choosing. See *People v Ackerman*, 257 Mich App 434, 456; 669 NW2d 818 (2003) (a defendant receiving counsel at public expense is not entitled to choose his attorney).

Next, defendant argues that the district court lacked subject matter jurisdiction in this case because the police did not properly obtain the arrest warrant. Specifically, defendant argues that the felony complaint was invalid, and that the magistrate did not have probable cause to issue the warrant. Defendant failed to preserve this issue for review because he did not raise an objection on the same basis at trial. *Ackerman*, 257 Mich App at 456. Unpreserved issues are reviewed for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999).

Before an officer can obtain an arrest warrant, he must submit a “proper complaint” to a magistrate. MCL 764.1a. In order to be valid, a complaint must be authorized by the prosecutor, MCL 764.1(1), and “shall recite the substance of the accusation against the accused. The complaint may contain factual allegations establishing reasonable cause.” MCL 764.1d. After

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<sup>2</sup> We note that the trial court record supports that this motion was heard and decided, contrary to defendant’s claim on appeal.

drafting the complaint, the police may obtain an arrest warrant pursuant to MCL 764.1a, which provides in relevant part as follows:

- (1) A magistrate *shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense.* The complaint shall be sworn to before a magistrate or clerk.
- (2) The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:
  - (a) Factual allegations of the complainant contained in the complaint.
  - (b) The complainant's sworn testimony.
  - (c) The complainant's affidavit.
  - (d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.
- (3) ☐ *The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both.* [Emphasis added.]

In this case, the police presented a valid complaint to the magistrate. The prosecutor authorized the complaint and the complaint recited "the substance of the accusations" against defendant. MCL 764.1; MCL 764.1d. Defendant's argument that the complaint was invalid because it did not contain detailed facts lacks merit. The statute states that a complaint "may" contain factual allegations, it does not mandate that the complaint contain a detailed factual account of the offenses. MCL 764.1d. Similarly defendant's repeated assertions that the complaint was invalid because it was based on Gogins' unreliable hearsay statements also lack merit. A complaint can be based on "information and belief." MCL 764.1a(3). The statute does not require that the complainant's information and belief be based on admissible evidence or credible witnesses. "The statutory warrant requirements address only whether there is probable cause to believe that the defendant committed the crimes charged. Other matters--including the weight and the credibility of the evidence, and the thoroughness of any police investigation--are for trial." *People v Hill*, 282 Mich App 538, 545; 766 NW2d 17 (2009), affirmed in part on other grounds 485 Mich 911 (2009).

After the police submitted the valid complaint for review, the magistrate properly issued an arrest warrant. There was reasonable cause to believe that defendant committed the offenses listed in the complaint. MCL 764.1a(1). The complaining officer made general allegations in the complaint that defendant committed the offenses. The officer provided the names of the victims, the date of the offenses, the general location of the offenses, and a description and citation to the applicable criminal statutes. The officer made a sworn statement in the complaint declaring that his allegations were true to the best of his "information, knowledge and belief." The complaint was sufficient for the magistrate to find probable cause that defendant committed

the alleged offenses, which, in turn, provided a proper basis to authorize the warrant. MCL 764.1a(2)(a) (c).

Defendant raises several other arguments in this portion of his Standard 4 brief including an equal protection and due process challenge. However, defendant fails to provide any meaningful analysis or citation of authority in support of his arguments, and he has therefore abandoned them for review. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority”).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Jane E. Markey

/s/ Kurtis T. Wilder