STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 5, 2011
v	No. 296780 Wayne Circuit Court
ALFRED JOHN SHEFFIELD, Defendant-Appellant.	LC No. 09-022276-FC

Before: BORRELLO, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317, for which he was sentenced to 40 to 60 years' imprisonment. For the reasons set forth in this opinion, we affirm the conviction and sentence of defendant.

I. FACTS

On July 20, 2009, while walking his dog in an alley between Sturdevant and Highland Streets in Highland Park, Michigan, Robert Wilson noticed a body. Wilson immediately notified the police, who arrived at the scene and identified the victim as Mary McCullum. McCullum was found in some tall grass with her pants unbuttoned and unzipped. According to officers on the scene, judging from the tracks formed in the tall grass, her body had been dragged to the location where she was found. As police worked the case, they eventually were told of two possible suspects, "Al" and "Ace."[1] Following a lead that defendant owned a van which matched a description given by an anonymous source, defendant voluntarily appeared at the Highland Park Police Station for an interview. After initially telling detectives that he did not know the victim or anyone named Ace, he subsequently changed his story and told police that on July 20, 2009, at around 1:30 a.m., he drove Ace to a gas station where they met the victim. Ace then propositioned the victim for sex. According to defendant's statement, he drove Ace and the victim to a location where they could "take care of business." After defendant left his van, he

[1] "Ace" was later identified as Arthur Henry Murray. Murray pled guilty to second-degree murder and was sentenced to 12 to 20 years' imprisonment on February 16, 2010.

noted that people were coming up and buying drugs from Ace, and eventually defendant asked Ace if he was finished, and Ace responded that he thought the victim had stolen money from him. According to defendant, he suggested that Ace search the victim. Defendant also stated that he drove Ace and the victim to another location. It was at this location, an alley between Highland and Sturdevant, that defendant stopped the van and Ace dragged the victim out of the van and beat her. According to defendant's statement, when he confronted Ace, Ace threatened to kill defendant. On August 14, 2009, Murray was arrested and charged in the killing of Mary McCullum.

On August 19, 2009, police arrested defendant and impounded his van. A second interview of defendant was conducted. Although in the first statement defendant had asserted that he left Ace and the victim in the alley, to be flagged down by Ace at a different location, in his second statement, defendant told police that he observed Ace stomp on the victim's head, drag her to a nearby fence and hit her with a brick. He also told police that Ace may have used a knife from defendant's van to stab the victim. Defendant told police that following the killing of the victim, Ace requested to be driven home and defendant complied.

Following defendant's arrest he was tried and convicted of second-degree murder on a theory that he aided and abetted Murray in the commission of the offense. This appeal ensued following defendant's conviction and sentence.

II. SUFFICIENCY OF EVIDENCE

On appeal, defendant argues that the evidence presented was insufficient to support his second-degree murder conviction as an aider and abettor. A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

The conviction of a defendant for second-degree murder requires the prosecution to show "(1) a death, (2) caused by an act of the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm [i.e., malice]." *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996) (quotation and citation omitted). Further, a conviction of a defendant as an aider and abettor requires the prosecution to show "that the crime was committed by the defendant or another, that the defendant performed acts or gave encouragement that aided or assisted the commission of the crime, and that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time the defendant gave the aid or assistance." *People v Jones*, 201 Mich App 449, 451; 506 NW2d 542 (1993). A defendant is also liable for the crime the defendant intends to aid or abet as well as the natural and probable consequences of that crime. *People v Robinson*, 475 Mich 1, 14-15; 715 NW2d 44 (2006). In *Robinson*, our Supreme Court held:

> a defendant is criminally liable for the offenses the defendant specifically intends to aid or abet, or has knowledge of, as well as those crimes that are the natural and probable consequences of the offense he intends to aid or abet. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense. [*Robinson*, 475 Mich at 14-15.]

Viewing the evidence in the light most favorable to the prosecution, a reasonable jury could find defendant guilty of second-degree murder as an aider and abettor. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Defendant correctly asserts that "[m]ere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to establish that a defendant aided or assisted in the commission of the crime." *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). However, defendant's involvement amounted to more than just his "mere presence." According to defendant's own statement, he allowed Ace (Murray) and the victim to have sex and use drugs in his van. At some point, Murray became angry and accused the victim of stealing his money. Murray asked defendant what to do, and defendant encouraged Murray to assault the victim. Subsequently, defendant drove his van to a dark and secluded alley where Murray beat and stabbed the victim to death in the middle of the night. Defendant also acknowledged that the knife used by Murray came from his van. Defendant waited while Murray stabbed the victim and disposed of the knife. Defendant then drove Murray away from the crime scene.

Viewing this evidence in the light most favorable to the prosecution, a reasonable jury could conclude that defendant encouraged or assisted Murray in killing the victim with knowledge of Murray's intended actions. The jury could reasonably conclude that defendant encouraged Murray to assault the victim when he told Murray to search her for the money. The evidence presented by the prosecutor could also lead the jury to reasonably conclude that defendant encouraged Murray to assault the victim by driving them to a dark and secluded alley. The evidence clearly revealed that defendant assisted Murray by providing a knife that was in his van. Additionally, the evidence, when viewed in the light most favorable to the prosecution, could reasonably lead the jury to conclude that defendant assisted or encouraged Murray when he waited for him and subsequently drove him away from the crime scene. Further given the circumstances surrounding the killing, it was reasonable for defendant to expect, and for the jury to find, that the victim's death would be the natural and probable cause of the intended wrongdoing. *Robinson*, 475 Mich at 11. Therefore, sufficient evidence existed to support defendant's conviction.

III. DEFENDANT'S STANDARD 4 BRIEF

Defendant has also filed a Standard 4 brief, see Michigan Supreme Court Administrative Order 2004-06, Standard 4, in which he raises several additional issues.[2]

Defendant argues that he was denied the effective assistance of trial and appellate counsel. Defendant failed to preserve these issues. Review of an unpreserved claim of ineffective assistance of trial counsel is limited to mistakes apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). A defendant has waived the issue if the record on appeal does not support the defendant's assignments of error. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). A claim of ineffective assistance of counsel is a mixed question of law and fact. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review a trial court's findings of fact, if any, for clear error, and review the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo. *Id.*

A defendant has the guaranteed right to the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Aceval*, 282 Mich App 379, 386; 764 NW2d 285 (2009). Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *LeBlanc*, 465 Mich at 578. Generally, to establish an ineffective assistance of counsel claim, a defendant must show (1) that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Bell v Cone*, 535 US 685, 695; 122 S Ct 1843; 152 L Ed 2d 914 (2002); *People v Davenport*, 280 Mich App 464, 468; 760 NW2d 743 (2008). However, such performance must be measured without the benefit of hindsight. *Bell*, 535 US at 698; *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

Defendant contends that his trial counsel failed to properly investigate his case. Specifically, defendant argues that despite Detective Lorenzo Veal's testimony that defendant was stopped once by the police, he was actually stopped twice. Defendant asserts that, "[h]ad trial counsel investigated this matter, he would have been able to raise doubt as to the Detective's testimony which was false." Defendant also asserts that trial counsel failed to investigate the police officer's bad faith effort in searching for the knife at the crime scene.

The failure to conduct a reasonable investigation can constitute ineffective assistance of counsel if, due to the omission, counsel fails to uncover evidence that would have made a different result reasonably probable. *People v McGhee*, 268 Mich App 600, 626; 709 NW2d 595 (2005). The defendant must show that counsel's inadequate preparation resulted in not presenting valuable evidence that would have substantially benefited the defendant. *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990). In the present case, defendant does not identify with specificity any errors resulting from trial counsel's failure to investigate, how any alleged error fell below an objective standard of reasonableness under prevailing norms, or

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[2] In his standard 4 brief, defendant also argues that there was insufficient evidence; however, we have discussed this issue *supra* and find his claim lacks merit.

how any error prejudiced him. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999) (observing that the defendant "has the burden of establishing the factual predicate for his claim of ineffective assistance of counsel"). Specifically, defendant does not offer what evidence, if any, trial counsel's investigation into whether the police initiated two traffic stops on defendant, as opposed to one, would have uncovered to support his defense. He also fails to provide an explanation of the significance or potential prejudice arising from trial counsel's neglect to further investigate the effort made by the police to find the knife. Furthermore, a thorough review of the record does not reveal that trial counsel was unprepared. Trial counsel adequately cross-examined Detective Veal and elicited testimony regarding the effort made by the police to recover the knife. Detective Veal stated that he and other police officers returned to the field, a large area with overgrown foliage covered with garbage, and were unable to find the knife. There was no indication from the record that trial counsel lacked preparation or familiarity with the case. Accordingly, defendant has failed to make a showing that trial counsel failed to uncover evidence that would have made a different result reasonably probable or that trial counsel's inadequate preparation resulted in not presenting valuable evidence that would have substantially benefited him. Consequently, defendant has failed to substantiate his ineffective assistance claim. We hold that defendant has not shown that trial counsel's performance fell below an objective standard of reasonableness or that defendant was prejudiced by trial counsel's assistance.

Defendant next argues that trial counsel's failure to request a jury instruction for accessory after the fact deprived him of the effective assistance of counsel. Defendant has not overcome the presumption that trial counsel's failure to request the instruction was sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994) (holding that a defendant must satisfy a heavy burden to overcome the presumption that counsel employed sound trial strategy). An accessory after the fact is a person who, with knowledge of the other's guilt, gives assistance to a felon in the effort to hinder the felon's detection, arrest, trial or punishment. *People v Perry*, 460 Mich 55, 62; 594 NW2d 477 (1999).

Defendant's theory of the case was that he had absolutely nothing to do with the crime. An instruction for accessory after the fact, which implied that defendant was involved in some manner in the crime, would have undermined this theory. We hold that defendant failed to establish that trial counsel's performance was below an objective standard of reasonableness under prevailing professional norms or that there was a reasonable probability that, but for his trial counsel's error, the result of the proceedings would have been different.

Defendant also contends that he was denied the effective assistance of appellate counsel because his appellate counsel failed to raise on appeal issues regarding trial counsel's ineffective assistance. The test for ineffective assistance of appellate counsel is the same as that for trial counsel. *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002). To establish a claim of ineffective assistance of appellate counsel, a defendant must show that his appellate counsel's decision not to raise a claim fell below an objective standard of reasonableness and prejudiced his appeal. *People v Uphaus (On Remand)*, 278 Mich App 174, 186; 748 NW2d 899 (2008). In order to provide effective assistance, appellate counsel must be an active advocate, "rather than a mere friend of the court assisting in a detached evaluation of the appellant's claim," although he need not advance every possible argument for review. *People v Johnson*, 144 Mich App 125, 131; 373 NW2d 263 (1985) (quoting *Evitts v Lucey*, 469 US 387, 394; 105 S Ct 830; 83 L Ed 2d

821 (1985)). Further, appellate counsel's decision to winnow out weaker arguments and focus on those more likely to prevail is not evidence of ineffective assistance. *Pratt*, 254 Mich App at 430.

Appellate counsel made one argument to this Court regarding the sufficiency of the evidence supporting defendant's conviction. Defendant argues that appellate counsel should have made additional arguments regarding trial counsel's failure to investigate his case and to request a jury instruction for accessory after the fact. As discussed at length *supra*, defendant's arguments regarding trial counsel's alleged ineffective assistance lack merit and, therefore, defendant cannot show that appellate counsel's performance was deficient or that he was prejudiced by counsel's failure to make the arguments. Defendant also did not suffer prejudice because he was able to make the arguments he thought appellate counsel should have made in his Standard 4 Brief on appeal. Accordingly, defendant has not established that he was denied the effective assistance of appellate counsel.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Henry William Saad