

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 26, 2014

v

CHRISTOPHER FLOYD NORTH,

Defendant-Appellant.

No. 316061
Wayne Circuit Court
LC No. 12-010216-FC

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Defendant, Christopher Floyd North, appeals as of right his conviction, following a jury trial, of second-degree murder.¹ The trial court sentenced North to serve 60 to 100 years' imprisonment. We affirm.

I. FACTS

A. MOORE AND REED'S TESTIMONY

North was charged with the murder of Dominic Barrera. According to Gregory Moore, he and Barrera were friends. Early in the morning on September 23, 2012, Barrera called Moore because Barrera had run out of gas. Moore was "buzzing" and had drunk six or seven beers and six or seven shots, but Gary Reed, another friend, was "pretty sober." Moore and Reed picked Barrera up. According to Reed, he was driving Moore's van because Moore was not sober. Reed and Barrera had been in the same gang when they were younger but Reed was no longer in the gang.

According to Moore, he, Reed, and Barrera went to a parking lot next to a bakery to meet North and Dawn Sajewski, North's girlfriend. Barrera and North had argued earlier in the day. Moore testified that he had a shot with Sajewski and North while in the parking lot. Reed testified that there was no alcohol in the car and no one was drinking.

¹ MCL 750.317.

Moore testified that, at some point, Sajewski began to argue with Barrera. Reed and Moore both testified that North left Sajewski's car, reached into the van, punched Barrera once in the face, and then dragged him out of the van by his feet. According to Moore, North started kicking Barrera, who did not fight back. According to Reed, Barrera was "knocked out." Moore testified that Sajewski started yelling for North to stop, and Moore put Barrera back into the van and closed the door. Moore testified that Barrera was conscious and breathing at that point. Reed testified that Sajewski argued with North and left.

According to Moore, after Sajewski left, North ripped the sliding door off the van, dragged Barrera back out, and began kicking him again. North kicked Barrera more than 30 times, many times in the head, and Barrera just lay on the ground. According to Reed, North started to punch, kick, and stomp on Barrera, but Moore's statement about the number of times North kicked Barrera was not accurate. Both Moore and Reed testified that North began looking for his knife and said that he wanted to "gut" Barrera.

Reed testified that he decided to drive North away and that he "knew that if he didn't get [North] out of there, [Barrera] was going to be dead." Reed left Barrera in the parking lot because he could not take Barrera and North at the same time. According to Moore, after leaving the parking lot, he, Reed, and North went to a gas station and then drove by Sajewski's house. Reed testified that he dropped North off at North's mother's house. Moore testified that he and Reed then spent the night together at Moore's house.

B. NORTH AND KING'S TESTIMONY

North testified that Barrera and Sajewski got into an argument because Barrera had struck his girlfriend with a pistol and knocked out her teeth. According to North, he got out of his car to tell Barrera to calm down. North knew that Barrera carried a handgun and knives, and Barrera had been acting aggressive lately. Barrera punched him, so he hit him back twice and Barrera fell to the ground. He then kicked Barrera two or three times and knocked him out. North began arguing with Sajewski and, while he was doing so, Moore and Reed put Barrera back in the van. Sajewski then left.

North denied going back into the van, and testified that he only fought to defend himself.. According to North, Barrera came out of the van with a six or seven inch black folding knife in his hand and said that he was going to "blow [North's] head off." Barrera swung at him with the open knife. Reed struck Barrera in the back of the head, and he fell to the ground. North kicked Barrera's arm and hand to knock the knife away, then picked it up and put it in his pocket.

According to North, he and Reed moved Barrera out of the parking lot and set him down. While they were walking away, Barrera reached out and grabbed Reed's ankle, causing him to almost fall. Reed turned around and kicked Barrera in the back of the head, telling him to stay down. While they were leaving, Barrera got up on his hands and knees, and then sat against the side of the building.

North testified that he, Moore, and Reed went to the home of Allen King, Reed's cousin. North testified that they discussed what had happened at King's house, and Reed and Moore

described the fight differently than they did in court. North denied that he met King in the jail's law library and coached his testimony.

King testified that North, Moore, and Reed came to his house between 3:00 a.m. and 4:00 a.m. and discussed the fight with Barrera. According to King, Moore and Reed said they came directly to his house from the parking lot and planned to go back to pick Barrera up after dropping North off. King testified that none of the three men blamed the other for what happened, and described the incident as a "fight." King denied that North coached his testimony or that he was afraid of North. On rebuttal, Joan Subhand testified that King is her nephew, he sold "dope" for North, and he had previously told her that he was afraid of North.

C. ADDITIONAL EVIDENCE

Dr. Francisco Diaz of the Wayne County Medical Examiner's Office testified that Barrera died of blunt force trauma to the head. Diaz could not state how many hits or what type of hits caused Barrera's death. Barrera's brain was swollen and bleeding, and he also had a linear fracture at the base of his skull that would have been fatal.

Moore testified that he found out the next day that Barrera had died. Moore and Reed met with a lawyer, who took them to the police department to give statements. Moore testified that he and Reed did not go to King's house. Moore and Reed testified that Barrera's face in the crime scene photos did not look like it did when they left him at the bakery.

At the close of proofs, North requested an involuntary manslaughter instruction. The trial court denied the instruction, and instructed the jury on first-degree premeditated murder and second-degree murder. The jury found North guilty of second-degree murder.

D. SENTENCING HEARING

North has an extensive criminal history, with seven prior felony and four prior misdemeanor convictions, and he was on parole at the time of the offense. North's sentencing guidelines score provided for a minimum sentence of 365 to 1200 months' or life imprisonment. The trial court sentenced North to serve 60 to 100 years' imprisonment.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.² Thus, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.³

² *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

B. LEGAL STANDARDS

The crime of second-degree murder has four elements: “(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse.”⁴

This Court will not interfere with the trier of fact’s role to determine the weight of the evidence or the credibility of the witnesses.⁵ When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact’s role to determine the weight of the evidence or the credibility of the witnesses.⁶ Circumstantial evidence and reasonable inferences arising from that evidence can prove the elements of a crime.⁷ We must resolve any conflicting evidence in the prosecutor’s favor.⁸

C. APPLYING THE STANDARDS

North contends that there was insufficient evidence to prove that he caused Barrera’s death because Moore and Reed were not credible witnesses and other evidence cast doubt on the cause of Barrera’s death. We disagree.

The jury has the opportunity to hear and consider North’s and King’s testimonies, as well as Moore’s and Reed’s testimonies. The jury was in the best position to decide which testimony to believe. Further, to the extent that there were gaps in the prosecutor’s proofs—including the manner in which Barrera’s body was found and how his face appeared when North, Reed, and Moore left—the jury was entitled to rely on inferences to fill in those gaps. It is for the jury, not this Court, to decide whether the prosecutor proved its case beyond a reasonable doubt.

Here, Moore and Reed testified that North punched Barrera in the face and repeatedly kicked him in the head. Moore testified that North kicked Barrera more than 30 times, many of them in the head. Reed testified that North knocked Barrera unconscious and his actions included punching, kicking, and stomping on Barrera. Diaz testified that Barrera died from blunt force trauma to the head. The jury was free to find that it was North’s actions that caused Barrera’s death rather than the actions of some unknown assailant after North, Moore, and Reed left. We conclude that the evidence sufficiently supported North’s conviction.

³ *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

⁴ *Id.*

⁵ *Wolfe*, 440 Mich at 514-515; *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

⁶ *Kanaan*, 278 Mich App at 619.

⁷ *Id.* at 622.

⁸ *Id.* at 619.

III. CRUEL OR UNUSUAL PUNISHMENT

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

The defendant must challenge a sentence as unconstitutionally cruel and unusual before the trial court to preserve a challenge on this ground.⁹ Here, North did not raise this challenge before the trial court. Accordingly, this issue is not preserved. We review unpreserved issues for plain error affecting the defendant's substantial rights.¹⁰ An error is plain if it is clear or obvious.¹¹ The error affected the defendant's substantial rights if it affected the outcome of the lower court proceedings.¹²

B. LEGAL STANDARDS

The Michigan constitution provides broader sentencing protection than the federal constitution.¹³ If a sentence is constitutional under Michigan's constitution, it is also constitutional under the federal constitution.¹⁴

Our Legislature subscribed to the principle of proportionality as enshrined in the Michigan and United States constitutions when it fashioned the sentencing guidelines.¹⁵ Accordingly, this Court presumes that sentences within the guidelines range are proportionate.¹⁶ "[A] sentence that is proportionate is not cruel or unusual punishment."¹⁷

C. APPLYING THE STANDARDS

North contends that his sentence of 60 to 100 years' imprisonment was cruel or unusual punishment. We disagree.

North's sentence was well within the sentencing guidelines and was presumptively proportional. North's criminal history began when he was a juvenile and includes several felonies and misdemeanors, demonstrating that he is not amenable to rehabilitation. Further, North was convicted of murder, an extremely serious crime.

⁹ *People v Bowling*, 299 Mich App 552, 557; 830 NW2d 800 (2013).

¹⁰ *Id.*; *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999)

¹¹ *Id.*

¹² *Id.*

¹³ *People v Nunez*, 242 Mich App 610, 618 n 2; 619 NW2d 550 (2000).

¹⁴ *Id.*

¹⁵ *People v Babcock*, 469 Mich 247, 263; 666 NW2d 231 (2003).

¹⁶ *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).

¹⁷ *Id.*

We conclude that the trial court did not plainly err by sentencing North to serve 60 to 100 years' imprisonment for murder. North has not overcome the presumption of proportionality in this case and his sentence did not constitute cruel or unusual punishment.

IV. NORTH'S ADDITIONAL ISSUES

North raises additional issues in his pro per supplemental brief, filed pursuant to Michigan Supreme Court Administrative Order No. 2004-6, Standard 4.

A. INEFFECTIVE ASSISTANCE OF COUNSEL

1. STANDARD OF REVIEW

When reviewing an ineffective assistance of counsel claim, this Court reviews for clear error the trial court's findings of fact, and reviews de novo questions of law.¹⁸ When the trial court has not conducted a hearing to determine whether a defendant's counsel was ineffective, our review is limited to mistakes apparent from the record.¹⁹

2. LEGAL STANDARDS

To prove that his defense counsel was not effective, the defendant must show that (1) defense counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that counsel's deficient performance prejudiced the defendant.²⁰ The defendant must overcome the strong presumption that defense counsel's performance constituted sound trial strategy.²¹ A defendant must also demonstrate "a reasonable probability that but for the unprofessional errors the result of the proceeding would have been different[.]"²²

3. TRIAL PREPARATION

First, North contends that defense counsel erred when he failed to investigate a police case summary and obtain a copy of a videotape from a nearby business in which Barrera may have appeared. What evidence to present is a matter of trial strategy.²³

Here, Detroit Police Officer Patrice Little testified that she was the officer in charge of the case, and that Sergeant Bart Hill reported to her that the person in the video was not Barrera.

¹⁸ *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

¹⁹ *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

²⁰ *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *Riley*, 468 Mich at 140.

²¹ *Strickland*, 466 US at 690; *Riley*, 468 Mich at 140.

²² *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997).

²³ *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008).

And there is no evidence in the record that the videotape actually showed Barrera after the assault. Finally, there is no evidence that counsel actually failed to read and investigate the various discovery materials that the prosecutor provided. We conclude that North has not shown that counsel failed to investigate and present the videotape, or that counsel's failure to investigate the videotape affected the outcome of his trial.

Second, North contends that defense counsel failed to adequately investigate the blood evidence at the scene of the crime when counsel failed to obtain an expert regarding blood spatter. Without some indication that a witness would have testified favorably, a defendant cannot establish that counsel's failure to call the witness would have affected the outcome of his or her trial.²⁴

Here, there is no evidence in the record to support North's assertion that an expert witness on blood spatter would have provided evidence that would have exonerated him. On the basis of the record before this Court, we conclude that counsel did not unreasonably fail to obtain a blood spatter expert and that an expert on blood spatter would not have affected the outcome of North's trial.

Third, North contends that trial counsel was ineffective when he failed to investigate and call Sajewski and Kami Youngblood, Barrera's ex-girlfriend, as witnesses. Defense counsel's decisions to call a witness is a matter of trial strategy.²⁵

Here, there are valid reasons why counsel may have decided not to call Sajewski or Youngblood. Both witnesses had reasons to be biased: Sajewski was North's girlfriend, and Youngblood was Barrera's ex-girlfriend whom he allegedly assaulted shortly before his death. Counsel may have reasonably decided that the witnesses' biases outweighed any benefit of calling them. We conclude that North has not demonstrated that trial counsel unreasonably failed to call Sajewski or Youngblood. Further, because there is no indication in the record that Sajewski or Youngblood would have offered favorable testimony, North cannot establish that the failure to call either witness affected the outcome of his case.

4. CROSS-EXAMINATION TACTICS

North contends that trial counsel failed to investigate, cross-examine, and impeach Moore and Reed. We disagree.

How counsel questions witnesses is a matter of trial strategy.²⁶ We will not substitute its judgment for that of defense counsel or review this issue with the benefit of hindsight.²⁷ Our review of the record indicates that trial counsel was familiar with the facts of the case and

²⁴ *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002).

²⁵ *Horn*, 279 Mich App at 39.

²⁶ *Horn*, 279 Mich App at 39.

²⁷ *Id.*

subjected both witnesses to a thorough cross-examination. While trial counsel may not have cross-examined Moore and Reed with the exact questions North believes that he should have asked, that counsel's trial strategy differed from North's trial strategy does not render counsel's trial strategy unreasonable.

We conclude that North has not demonstrated that trial counsel's cross-examination strategy was unreasonable or affected the outcome of his trial.

5. CONFLICT OF INTEREST

North contends that trial counsel had a conflict of interest that affected his right to a fair trial because he advanced his own interests above North's by "pursuing his feeble and heartless defense." We disagree.

"[I]n order to demonstrate that a conflict of interest has violated his Sixth Amendment rights, a defendant 'must establish that an actual conflict of interest adversely affected his lawyer's performance.'"²⁸ This Court presumes that the defendant was prejudiced only if (1) counsel actively represented conflicting interests, and (2) the conflict adversely affected counsel's performance.²⁹ "[T]here is no automatic correlation between an attorney's theoretical self-interest and an ability to loyally serve a defendant."³⁰

Here, North has shown that he and counsel disagreed about trial strategy: North wanted to pursue a defense that he did not cause Barrera's death, but trial counsel chose to defend on the basis that North did not premeditate or intend Barrera's death. North has not shown that *counsel himself* had two conflicting interests or that his supposed interest in pursuing his chosen defense interfered with his ability to loyally serve North. Further, it appears from the record that trial counsel represented North to the best of his ability when pursuing the trial strategy that he chose.

We conclude that North has not established that trial counsel represented conflicting interests or that such a conflict affected his performance.

²⁸ *People v Smith*, 456 Mich 543, 556; 581 NW2d 654 (1998), quoting *Cuyler v Sullivan*, 446 US 335, 350; 100 S Ct 1708; 64 L Ed 2d 333 (1980).

²⁹ *Smith*, 456 Mich at 557.

³⁰ *Id.*

B. COMPELLED TESTIMONY

1. STANDARD OF REVIEW

Generally, this Court reviews de novo issues of constitutional law.³¹ But North did not preserve this issue by raising it below.³² Accordingly, we will review this unpreserved issue for plain error.³³

2. LEGAL STANDARDS

The United States and Michigan Constitutions provide that a defendant cannot be compelled to incriminate him- or herself.³⁴ “However, as the Fifth Amendment privilege speaks only of compulsion, it is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion.”³⁵ Whether a defendant testifies on his or her own behalf is a fundamental decision that ultimately rests with the defendant.³⁶

3. APPLYING THE STANDARDS

North contends that he was compelled to testify when trial counsel told him that he had to take the stand. The record does not support North’s assertion. During the colloquy between North and the trial court, the trial court asked North whether he wished to testify and reminded him that the jury could not hold it against him if he did not. North responded, “I chose to testify, your Honor.” And even if counsel did advise North that he needed to take the stand to win the case, this is not the type of compulsion with which the Fifth Amendment is concerned. Accordingly, we reject North’s assertion that he was compelled to testify.

C. LESSER INCLUDED OFFENSE INSTRUCTION

1. STANDARD OF REVIEW

This Court reviews a defendant’s claim of instruction error de novo, viewing the instructions as a whole to determine whether they adequately presented to the jury the issues to be tried.³⁷ We review for an abuse of discretion the trial court’s decision regarding the

³¹ *People v Pennington*, 240 Mich App 188, 191; 610 NW2d 608 (2000).

³² See *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

³³ *Carines*, 460 Mich at 763.

³⁴ US Const, Am X; Const 1963, art 1, § 17; *People v Cheatham*, 453 Mich 1, 10; 551 NW2d 355 (1996) (opinion by BOYLE, J.).

³⁵ *People v Wyngaard*, 462 Mich 659, 672; 614 NW2d 143 (2000) (quotation marks and citation omitted).

³⁶ *Jones v Barnes*, 463 US 745, 751; 103 S Ct 3308; 77 L Ed 2d 987 (1983).

³⁷ *People v Martin*, 271 Mich App 280, 337-338; 721 NW2d 815 (2006).

applicability of a jury instruction to the facts of a specific case.³⁸ The trial court abuses its discretion when its outcome falls outside the reasonable range of outcomes.³⁹

2. LEGAL STANDARDS

When a defendant requests a jury instruction on a lesser offense, the trial court must provide the instruction if the instruction is on a lesser included offense and a rational view of the evidence supports it.⁴⁰ Voluntary manslaughter is a lesser included offense of murder.⁴¹

3. APPLYING THE STANDARDS

North contends that the trial court erred when it refused to give an instruction on manslaughter, a lesser included offense of murder. We disagree.

“Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool.”⁴² The difference between murder and voluntary manslaughter is the existence of provocation.⁴³ The provocation must be of the type that would cause a *reasonable* person to act out of passion rather than reason, and “[n]ot every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter.”⁴⁴ The defendant’s emotions must be so intense that they distort the defendant’s ability to reason practically.⁴⁵

Here, North testified that Barrera hit him first, he was afraid, and he fought back to defend himself. North testified that he kicked Barrera to knock him unconscious and kicked the knife out of Barrera’s reach. North’s actions indicate that he was not in such a serious passion that he was unable to reason practically. North’s testimony showed that, even if he was frightened and angry, his decision to repeatedly kick Barrera was a deliberate and reasoned act.⁴⁶

We conclude that the trial court did not abuse its discretion by denying North’s requested manslaughter instruction.

³⁸ *People v McKinney*, 258 Mich App 157, 163; 670 NW2d 254 (2003).

³⁹ *Babcock*, 469 Mich at 269.

⁴⁰ MCL 768.32(1); *People v Cornell*, 466 Mich 335, 354-355; 646 NW2d 127 (2002).

⁴¹ *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991).

⁴² *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ C.f. *id.* at 390 (the defendant’s decision to retrieve a gun illustrated that he was still acting deliberately).

D. CUMULATIVE ERRORS

North contends that cumulative errors deprived him of due process. However, because North's assertions of individual errors lack merit, his assertion of cumulative error necessarily lacks merit as well.

V. CONCLUSIONS

We conclude that sufficient evidence supported North's second-degree murder conviction. We conclude that North's sentence of 60 to 100 years' imprisonment for that conviction did not constitute cruel or unusual punishment. We conclude that North's trial counsel did not render ineffective assistance or compel North to testify. Finally, we conclude that the trial court properly denied North's request for an involuntary manslaughter instruction.

We affirm.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot