S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 25, 2017
v LINDON JAMESCOLE ANDRITSIS, Defendant-Appellant.	No. 331191 Oakland Circuit Court LC No. 2015-254150-FC

Before: MURPHY, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions for two counts of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, assault with a dangerous weapon, MCL 750.82, and four counts of possession of a firearm when committing a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent sentences of 15 to 60 years in prison for the armed robbery convictions, 4 to 10 years in prison for the felon in possession of a firearm conviction, and 3 to 8 years in prison for the felonious assault conviction, to be served consecutive to a two-year term in prison for the felony-firearm convictions. We affirm.

Defendant's sole argument is that defense counsel was ineffective for failing to object to a police officer's testimony opining that defendant was guilty of the crimes. Where no *Ginther*[1] hearing was held, our review is limited to mistakes apparent on the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). Criminal defendants have a right to effective assistance of counsel under both the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. "Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise." *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). To demonstrate the ineffective assistance of counsel, the 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 Gaines*, 306 Mich App 289, 300; 856 NW2d 222 (2014). "To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the

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[1] *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973).

result of the proceeding would have been different." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Counsel is not required to raise futile objections. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Under MRE 701, police officers are permitted to testify about their opinions or inferences formed as a result of their observations and rational perceptions as police officers. *People v Oliver*, 170 Mich App 38, 49-50; 427 NW2d 898 (1988), mod on other grounds by 433 Mich 862 (1989). However, "[a] witness may not opine about the defendant's guilt or innocence in a criminal case." *People v Heft*, 299 Mich App 69, 81; 829 NW2d 266 (2012).

At trial, Officer Rene Gobeyn testified regarding his investigation of this case. The following exchange occurred during his direct examination:

> *Q*. At some point, you developed Lindon Andritsis as a suspect?
>
> *A*. That's correct.
>
> *Q*. Did you make any observations about—how did—did you ever see any pictures of him or—
>
> *A*. Yes, I did.
>
> *Q*. What was that?
>
> *A*. He matched the physical description that was given by both witnesses. The age description, hairline that was described. So it was a very, very close match to the description given by our victims.

During cross-examination, Officer Gobeyn was further questioned regarding his investigation as follows:

> *Q*. Did you look into any other friends of Roshaun Smith?
>
> *A*. As far as suspects?
>
> *Q*. Yes.
>
> *A*. I was pretty clear once I've concluded my portion of the investigation who the suspect was.
>
> *Q*. Did you ever look into anybody named Keegan Bailey?
>
> *A*. No.

A fair reading of the officer's testimony reveals that he was explaining the steps of his investigation from his personal perceptions. This type of opinion testimony is permissible under MRE 701. Officer Gobeyn testified that he began investigating this case when, after nearly a year, one of the perpetrators had not been identified. He explained that he utilized phone numbers used to contact the victim in his search for a suspect. The officer then stated that he

was able to obtain defendant's photograph, and he observed that the photo closely matched the witnesses' descriptions of the perpetrator. This statement was not a statement about defendant's guilt in general, but it was an explanation of the officer's investigation and how he discovered the connections that led him to defendant. Police officers do not present improper opinion testimony when explaining, among other things, the process of the investigation and how the investigation led them to focus on the defendant. *Heft*, 299 Mich App at 82-83. Similarly, Officer Gobeyn's statement that he was "pretty clear" of the suspect after concluding his investigation was not improper. It is significant that he made the statement in response to defense counsel's inquiry into his decision to stop questioning other possible suspects. In that light, the officer was explaining the steps of his investigation from his personal perceptions. Because Officer Gobeyn's testimony was an explanation of his investigation and not an expression of any opinion that defendant was guilty, the testimony was proper. An objection to the testimony would have been futile. *Ericksen*, 288 Mich App at 201. Thus, counsel's failure to object to the testimony did not fall below an objective standard of reasonableness.

Furthermore, even if it had, we cannot conclude that Officer Gobeyn's testimony affected the outcome of the proceedings, given the other identification evidence presented. Murphy identified defendant as the other perpetrator with "90 percent" certainty from a photographic lineup two years after the crimes occurred. He then identified defendant at trial, claiming he was 100 percent certain of his in-court identification because he needed to see defendant "in real life." There was also circumstantial evidence connecting defendant to the crimes, including evidence about his tattoo, his connection with the other robber, and his phone calls indicating participation in the robbery. Given this evidence, we conclude that defendant has failed to demonstrate that he was denied the effective assistance of counsel.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Michael J. Kelly