STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 11, 2011
v	No. 297831 Genesee Circuit Court
GREGORY SHAWN MORRIS, Defendant-Appellant.	LC No. 09-025785-FC

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendant Gregory Shawn Morris appeals following the trial court's sentencing order. Defendant was convicted of assault with intent to murder, MCL 750.83, felonious assault with a weapon, MCL 750.82, possession of a firearm during the commission of a felony, MCL 750.227b, and being a felon in possession of a firearm, MCL 750.224f. Defendant was sentenced as a habitual offender to concurrent prison terms of 360-600 months, 36-96 months, and 43-120 months on counts I, II, and IV, respectively, and to two-years for count III, to be served consecutively to counts I and IV only. We affirm.

I

On the night of the incident, the victim finished work, and when she went to her car, defendant drove his minivan into the passenger side of her car and then shot at her before she started her car and drove away. The victim had worked with defendant for several months and identified him as the shooter and the driver of the minivan to the police. At trial, defendant testified that he was at home or took a walk at the time of the incident and that he did not hit the victim's car nor did he attempt to shoot at her.

II

Defendant first contends that his conviction should be reversed because he received ineffective assistance of counsel. We disagree.

"Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The trial court's findings of fact will be reviewed by an appellate court for clear error. *Id.* An

appellate court should then make a de novo review to determine whether or not the facts constitute ineffective assistance of counsel. *Id*.

Defendant has the burden of overcoming the presumption of effective assistance of counsel. *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). "To succeed on a claim of ineffective assistance of counsel, the defendant must show that, but for an error by counsel, the result of the proceedings would have been different, and that the proceedings were fundamentally unfair or unreliable." *Id*. There is a strong presumption that counsel's trial strategy was sound. *Id*. at 411. An appellate court may not "substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *Id*., quoting *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001).

Defendant contends that he received ineffective assistance of counsel when his trial counsel failed to object to the trial court's ruling on the alibi-notice statute. Defendant was asked where he was on the date of the incident, but the prosecutor objected, arguing that defendant had not filed an alibi notice. The trial judge decided, after speaking with counsel and reviewing the applicable statute, that he could not allow defendant's trial counsel to specifically ask defendant where he was at the time of the incident because he was not allowing an alibi defense; however, the trial judge allowed trial counsel to ask if defendant was at the scene of the incident at the alleged time.

While the jury heard no specifics as to where defendant was, the jury still heard defendant testify that he was not at the scene of the incident as alleged. Regardless of the trial judge's ruling on the alibi-notice statute, the record indicates that defendant's trial counsel was only attempting to elicit defendant's testimony that he was not at the scene of the crime at the time of the incident. Because the jury heard the pertinent information of the testimony, defendant has failed to show that the trial would have ended differently.

Defendant next contends that trial counsel erred in not objecting to the prosecutor's questioning of defendant about his receipt of government benefits. Defendant argues that the receipt of government benefits had no relevance to any issue legitimately to be decided at trial, and it was prejudicial to defendant's character and credibility. However, the prosecution contends that the questioning was within the scope of MRE 608(b).

At trial, the prosecutor questioned defendant about his receipt of government benefits despite him being employed. MRE 608(b) allows questioning about specific instances of conduct that do not result in a conviction to be used to attack the credibility of a witness for untruthfulness. Therefore, defendant's trial counsel may have concluded that defendant's receipt of government benefits while working fell within this rule of evidence. An appellate court should not enter its opinion on counsel's strategy or competence based on hindsight. *Petri*, 279 Mich App at 411. Because defendant's trial counsel may have reasonably believed at the time that the questioning correctly fell under MRE 608(b), he had no duty to raise an unnecessary objection, and this Court should not enter its opinion on counsel's strategy based on hindsight. Furthermore, defendant has failed to establish any evidence or argument that the proceedings would have ended differently had the questioning been omitted. Therefore, defendant has not shown that he was deprived of effective assistance of counsel.

III

Defendant next contends that his conviction should be reversed because the trial court allowed defendant to be shackled at trial in violation of his right to a fair trial. We disagree.

A trial court's decision to shackle a defendant is reviewed for an abuse of discretion. *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996). A reviewing court should only find an abuse of discretion if the trial court's decision falls outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). If a defendant fails to preserve a claim at trial, that issue must be reviewed under plain error. *Carines*, 460 Mich at 763-764.

Defendant has a right to be free from shackles or handcuffs during trial; however, a trial court may order a defendant to be restrained if it is necessary to maintain order or prevent injury or escape. *People v Dunn*, 446 Mich 409, 425; 521 NW2d 255 (1994). Defendant can only be restrained upon the trial judge making specific findings on the record, based on record evidence, to support the restraining of defendant. *Id*. at 425-427.

Here, plaintiff admits that the trial court failed to make any findings on the record, let alone findings that were supported by evidence from the record. Plaintiff further admits that this was a plain error.

However, under plain-error review, defendant must still show that the error prejudiced the trial. *People v Horn*, 279 Mich App 31, 36; 755 NW2d 212 (2008). To establish prejudice, defendant may show that the restraints were visible to the jury. *Id*. at 36-37.

Defendant has established no evidence that the jury was able to see the shackles during trial. Furthermore, even though the issue was discussed at trial, defendant did not object to the shackles at trial. Therefore, defendant has failed to establish evidence that the shackles prejudicially affected the outcome of the trial and is unable to show that the shackles deprived him of his due process.

IV

Defendant finally contends, in a Standard 4 Brief, that his conviction should be reversed because the court proceedings in Genesee County are illegal, unconstitutional, and lack integrity. We disagree.

Defendant did not preserve the claim at trial, so the issue will be reviewed for plain error. *Carines*, 460 Mich at 763-764.

If defendant does not argue the merits of the issue in his brief, the issue will be considered abandoned. *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995), citing *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994). In his Standard 4 brief, defendant failed to provide any facts or legal citation for the issues he raised on appeal. Furthermore, the overall integrity of the Genesee County Circuit Court system is beyond the scope of this appeal. Defendant has also alleged no fact or proof that minorities were far down

the list during jury selection. Because defendant has failed to make an attempt to discuss the merits of the issue based on the record, this issue will be considered abandoned.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer