

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 22, 2011

v

RAYMOND DANIEL GRIM,

Defendant-Appellant.

No. 300392
Cheboygan Circuit Court
LC No. 10-004133-FH

Before: STEPHENS, P.J., and SAWYER and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions for failing to register a change of address under the Sex Offender Registration Act, MCL 28.729(1)(a). Following a jury trial, the trial court sentenced defendant as a habitual offender, fourth offense, MCL 769.12, to 46 months to 15 years in prison. We affirm.

I

Defendant was required to register his address under MCL 28.729(1)(a), and to provide notice of a change of address within ten days of moving. His registered address was 2262 Aspen Drive, Wolverine, in Cheboygan County. At the time of his arrest on January 28, 2010, defendant was living at 2941 Pine Grove, Gaylord, in Otsego County.

On January 7, 2010, defendant and Justin Kohler, defendant's roommate, met with Michelle Hagerman, an eligibility specialist, at the Department of Human Services to apply for food benefits and other public assistance. This meeting was prompted by an application, completed January 4, 2010. On that application, defendant stated that he lived at the Pine Grove address. The application is sworn, under penalty of perjury, to be accurate. Hagerman confirmed the address during the meeting.

Around the week of January 25, 2010, Michigan State Trooper Hansz was searching for defendant for a parole violation or parole abscond warrant. After three days of surveillance of the Aspen Drive address, Trooper Hansz concluded that defendant was not living there. He learned of the Pine Grove address from the Department of Human Services, and began observing that address. At 7:00 a.m., January 28, 2010, he knocked on the door of the Pine Grove address and defendant answered the door. Defendant was sleepy and not wearing pants. In the bedroom of the Pine Grove address, there was a mattress with sheets and blankets, clothing, mail addressed

to defendant, and defendant's dog. Defendant asked Kohler to watch the dog and gave him a debit card for the purpose of paying rent before being arrested by Trooper Hansz.

At the beginning of the trial, it was agreed upon that no reference to defendant having been in jail or defendant's parole status be made. During the trial, Trooper Hansz made the following statements: "for the last over three years I've been assigned to the State Police Fugitive Team that operates out of Gaylord," and "I was contacted by the Michigan Department of Corrections, Special Agent Charles Levinz and requested to locate and arrest a subject for parole violation or parole abscond warrant." When asked who the individual he was searching for was, he responded, "that was [defendant]." Defense counsel's objection is not on the record, but he did request a sidebar and objected at that time. He later moved for a mistrial because of these statements. The mistrial was not granted. Defendant was found guilty of failing to register a change of address under the Sex Offender Registration Act.

II

Defendant argues that Trooper Hansz's statements regarding his parole status were irrelevant, were decisive of the outcome of the trial, and eliciting them constituted prosecutorial misconduct; thus, he was denied a fair trial and due process of law. We disagree. Claims of prosecutorial misconduct are considered on a case-by-case basis, and the actions of the prosecutor are to be considered as a whole and evaluated in light of the defense arguments and the relationship they bear to the evidence admitted at trial. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403. Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury. *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). "It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause. When such is the case and the antecedent event incidentally involves the commission of another crime, the principle that the jury is entitled to hear the 'complete story' ordinarily supports the admission of such evidence." *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978).

In this case, in addition to the testimony regarding defendant's parole status, Trooper Hansz also stated that he was a part of the State Police Fugitive Team, that he sought out, and that he knew defendant from prior contact. From these three statements, a jury could have figured out that defendant was on parole and was wanted by police without ever having heard the statements in question. Additionally, Trooper Hansz never made any statements regarding the validity of the parole violation or the severity of the underlying crime. Thus, regardless whether it was an error to allow these statements, the effect was harmless.

Plaintiff argues that defense counsel did not object on the record to Trooper Hansz's statements regarding defendant's parole status, and so this issue is unpreserved. We disagree. To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

In this case, defense counsel did request a sidebar following Trooper Hansz's statements, though the contents of this sidebar are not on the record. When referencing this sidebar, the trial court stated, "the objection was made to that." Defense counsel later moved for a mistrial because of Trooper Hansz's statements. Thus, defense counsel did object to Trooper Hansz's statements and so the issue is preserved. Accordingly, we affirm the trial court's conviction.

III

Defendant next argues that there was no direct evidence that he had been living at the Pine Grove address for more than ten days and that the only direct evidence was Kohler's testimony that defendant had only been living at the address for less than one week; thus, the evidence was not constitutionally sufficient to sustain the conviction. We disagree. Challenges to the sufficiency of the evidence in a criminal trial are reviewed de novo to determine whether, when viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

An appellate court must not interfere with the jury's role of deciding the weight and credibility to be given to the testimony. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). It is the function of the jury alone to listen to testimony, weigh the evidence, and decide questions of fact. *People v Palmer*, 392 Mich 370, 375; 220 NW2d 393 (1992). The jury is free to believe or disbelieve, in whole or in part, any of the evidence presented at trial. *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Although the prosecution bears the burden of proving guilt beyond a reasonable doubt in a criminal trial, it need not negate every theory consistent with defendant's innocence. *People v Coy*, 258 Mich App 1, 21; 669 NW2d 831 (2003).

In this case, it is true that there was no direct evidence that defendant had been living at the Pine Grove address for more than ten days. There is circumstantial evidence of this, however. The application from the Department of Human Services is evidence that defendant had been living at the Pine Grove address as early as January 4, 2010. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *Allen*, 201 Mich App at 100. Kohler testified that defendant had only been living at the Pine Grove address for under a week, but the jury is free to believe or disbelieve his testimony. *Eisenberg*, 72 Mich App at 115. In addition, the determination must be made in a light most favorable to the prosecution. *Randolph*, 466 Mich at 572. And a reviewing court is

required to make credibility choices in support of the jury verdict. *Nowack*, 462 Mich at 400. Thus, reasonable people could have found beyond a reasonable doubt that the elements had been satisfied. Accordingly, we affirm the trial court's conviction.

IV

Defendant next argues that defense counsel failed to properly object on the record to Trooper Hansz's testimony and failed to renew a motion for directed verdict at the close of proofs; thus, he was denied the effective assistance of counsel. We disagree. Because there has not been a *Ginther*¹ hearing related to defendant's claim of ineffective assistance of counsel, our review is limited to the errors that are evident on the record properly before this Court. *People v Seals*, 285 Mich App 1, 19-20; 776 NW2d 314 (2009). The determination of whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of law and fact. *People v Leblanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A judge must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel. *Id.* The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

In order to prevail on an appeal based on a claim of ineffective assistance of counsel, defendant must establish that his attorney's assistance "fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). There is a strong presumption that defense counsel's actions were sound trial strategy. *Id.* Trial counsel cannot be faulted for failing to raise an objection or motion that would have been futile. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

In this case, we have already concluded that defense counsel objected to and preserved the issue of Trooper Hansz's statements regarding defendant's parole status. Additionally, we have concluded that a reasonable person could have found beyond a reasonable doubt that the elements of the crime had been satisfied. To renew the motion for directed verdict would have been futile, and failure to make a futile motion does not constitute ineffective assistance of counsel. *Id.* Thus, defendant was not denied effective assistance of counsel. Accordingly, we affirm the trial court's conviction.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

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