

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 8, 2001

Plaintiff-Appellee,

v

ERRICO EURRON REID,

No. 217663
Kalamazoo Circuit Court
LC No. 98-000947-FC

Defendant-Appellant.

Before: Doctoroff, P.J., and Holbrook, Jr., and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree murder, MCL 750.317; MSA 28.549. Defendant was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to forty to sixty years' imprisonment. We affirm.

Defendant's conviction stems from the death of a fifteen-month-old victim. The prosecution's forensic pathologist testified that the victim's death was caused by significant blunt force impact injuries to the boy's chest and abdomen, that resulted in bruising, large lacerations of his liver, and extensive internal bleeding.

Defendant first claims that the trial court should have granted his motion for new trial based on the deficient performance of his trial counsel, which defendant contends, prejudiced his opportunity for a fair trial. We disagree. We review a trial court's decision on a motion for new trial for an abuse of discretion. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999).

To establish ineffective assistance of counsel, defendant must show that his counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). To establish the requisite level of prejudice, defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 674 (1984). "Effective assistance of counsel is presumed. The defendant bears a heavy burden of proving otherwise." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant claims that defense counsel's ineffectiveness is evidenced in four ways. First, defendant asserts that trial counsel was deficient for failing to impeach the testimony of the victim's bother, Darcus Coleman, with prior inconsistent statements Darcus had given. We agree with the trial court that defense counsel's decision to impeach Darcus by means other than direct confrontation was a matter of reasonable trial strategy, *People v Mitchell*, 454 Mich 145, 163; 560 NW2d 600 (1997), for which we will not substitute our judgment. See *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). Further, we disagree with defendant's assertion that counsel's decision not to call Darcus' therapist to testify about alleged inconsistent statements made by Darcus was objectively unreasonable and prejudicial. The record supports the trial court's determination that defense counsel made a reasoned, strategic decision, whereby he weighed the risks and benefits, in deciding not to call Darcus' therapist to testify.

Second, defendant claims that trial counsel was ineffective for failing to challenge Darcus' capacity to testify as a witness based on the therapist's diagnosis of him as suffering from major depression and post-traumatic stress disorder. We disagree. It appears that defense counsel did not even have knowledge of Darcus' mental health problems until after Darcus first testified. Further, defendant has not shown that Darcus' problems undermined his capacity to perceive and recollect relevant factual impressions. MRE 601. We agree with the trial court that there was nothing suggesting that Darcus was incompetent to testify and that there was no apparent basis on which to raise such a challenge. *People v Flowers*, 222 Mich App 732, 737; 565 NW2d 12 (1997).

Third, defendant has not established that counsel was ineffective for failing to object to testimony by the victim's grandmother regarding a "tacit admission" by defendant, or for eliciting on cross-examination that she was an ex-police officer. We agree with the observation of the trial court that an objection regarding the purported tacit admission, even if it would have been sustained, could have had the negative effect of highlighting the testimony for the jury. Defense counsel's strategy of discounting the witness' testimony by arguing that no one else heard the purported admission and by pointing out the witness' bias was an appropriate alternative strategy that was not objectively unreasonable and which we will not second-guess. *Stewart, supra* at 42.

Fourth, we reject defendant's assertion that he was prejudiced by his counsel's closing statement. Contrary to defendant's claim, it is clear from the record that counsel did argue that there were inconsistencies and weaknesses in the testimony and the evidence presented by the prosecution. Although the argument was somewhat disconnected at times, it was not, as defendant claims, incoherent.

Next, defendant contends that no evidence was presented to establish either that he caused the victim's death or that he acted with the requisite intent. We disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

The prosecution's forensic pathologist concluded that the fatal injuries were caused by the infliction of significant blunt force—such as punching with a fist or fingers—to the victim's

chest and abdomen, and not by rough horse play or by improperly administered CPR. Darcus testified that he heard punching noises emanating from the room in which defendant had taken the victim. The evidence also establishes that defendant was the last person to have any interaction with the victim before his lifeless body was found by his mother. We believe this evidence does establish that defendant inflicted the blows that caused the victim's death.

We also believe the jury could reasonably infer the requisite intent from the nature and extent of the victim's injuries, *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995), modified and remanded 450 Mich 1212 (1995), as well as evidence regarding defendant's behavior after the fatal blows were administered. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Just prior to the discovery of the victim's body, defendant rushed out of the house. His behavior at the hospital can be understood to be an attempt to dissuade medical personnel from performing an autopsy. Further, defendant gave conflicting statements to the police about what he did with the victim prior to the boy's death.

Contrary to defendant's claim, the record does not reveal that the guilty verdict could have been reached only by the impermissible pyramiding of inferences upon inferences. See *People v Atley*, 392 Mich 298, 315; 220 NW2d 465 (1974). Independent evidence was presented to support each inference to be made and the evidence was legally sufficient to support the conviction of second-degree murder.

Finally, we find no merit to defendant's claim that the verdict was against the great weight of the evidence. We review a trial court's determination that a verdict was not against the great weight of the evidence for an abuse of discretion. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). We accord great deference to the trial court's determination that the verdict was not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hospital Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

Defendant argues that the verdict was against the great weight of the evidence because the evidence established that it was more likely that the victim's injuries were caused by Darcus having knocked him over while Darcus was playing basketball in his bedroom, and because there was no evidence that defendant acted with the requisite intent. We have previously rejected the contention that no evidence was introduced establishing intent. And while some evidence was presented that the victim's injuries could have been inflicted by someone other than defendant, we cannot conclude that the trial court's decision "was manifestly against the clear weight of the evidence." *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). Accordingly, we cannot say that the trial court abused its discretion in denying defendant's motion for new trial based on the great weight of the evidence.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski