

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY CHARLES JACOBSON,

Defendant-Appellant.

UNPUBLISHED
October 24, 2013

No. 303786
Kent Circuit Court
LC No. 10-000397-FC

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant, Jeffrey Charles Jacobson, appeals as of right his convictions, following a jury trial, of one count of first-degree home invasion,¹ four counts of first-degree criminal sexual conduct (CSC I),² and one count of assault with a deadly weapon.³ The trial court sentenced Jacobson as a second habitual offender⁴ to serve concurrent terms of 7.5 to 30 years' imprisonment for the home invasion conviction, two to six years' imprisonment for the assault conviction, and 15 to 45 years' imprisonment for each of the CSC I convictions.

The complainant testified that Jacobson forced his way into her home in violation of a protection order, drew a knife, threatened her, and forced her to have sexual intercourse with him. Because we conclude that Jacobson's claims concerning the sufficiency of the evidence, the effectiveness of his counsel, and prosecutorial misconduct are meritless, we affirm.

¹ 750.110a(2).

² 750.520b.

³ 750.82.

⁴ 769.11.

I. FACTS

A. BACKGROUND

The complainant testified that her marriage with Jacobson began to break down in July 2009. By November 2009, she wanted their marriage to be over. According to Jacobson, the complainant told him to move out of the home. Jacobson told her that he would move into the basement, but that he had a right to stay in the home. Before the complainant obtained the protection order, she told him that the police said that she could not make him leave, but if he did not move out, "things are going to get ugly."

According to the complainant, on December 8, 2009, she and their oldest son obtained a personal protection order against Jacobson because she was afraid of him, he had threatened to punch his oldest son in the face, and there had been several altercations between them, including one around Thanksgiving during which he had grabbed her arm and attempted to prevent her from leaving by taking her car keys. Jacobson testified that he was holding the keys first and the complainant dug her nails into his hand and took them from him. Jacobson's daughter testified that she heard a verbal argument about car keys, but she did not witness it or see any physical altercation. The complainant testified that after that argument, she wanted Jacobson out of the house.

Despite the protection order, the complainant and Jacobson continued to communicate, primarily to make arrangements for Jacobson to pick up their children. The day before the assault, Jacobson was at the complainant's home to take the children sliding. The complainant testified that Jacobson asked the complainant to create a resume for him, but she declined to do so. According to Jacobson, the complainant said that she would help him with his resume the next day, and he agreed to return a knife that he had borrowed.

B. THE COMPLAINANT'S TESTIMONY

The complainant testified that on January 4, 2010, she took her oldest two children to school and then came home and got on the computer. The doorbell rang at about 9:00 or 9:30 a.m. She looked out the window and saw Jacobson's van in the driveway. She opened the door and looked around the corner, and saw him near her car. She then closed the door and locked it. She did not expect him to be there.

Jacobson started knocking on the door. When the complainant asked him what he wanted, he said that he left some papers on the kitchen counter. She saw that there were some tax papers on the counter, took them to the door, opened it a little, and stuck them out. Jacobson shoved the door open and she stumbled backwards onto the stairs. Jacobson pushed her the rest of the way down onto the stairs and started yelling that she took his life from him. Jacobson appeared very intoxicated and seemed to be in a fit of rage. He pulled a sheathed knife from his coat pocket, drew it from its sheath, and told the complainant he was going to take her life because she took his.

At one point, the complainant told him that she had started working on his resume to calm him down. Jacobson let her stand up, and they went over to the computer. Jacobson left the knife on the table, but she did not run away because she did not think that she could outrun

him. The complainant testified that while she was opening the resume file, she and Jacobson were speaking, something upset him again, and he said that he had “gone too far” and was “gonna have to end this[.]” She told him that she would move away or he could move back in, “whatever would make him happy so that he wouldn’t kill me.”

Jacobson told her that he wanted to “make love[.]” but she told him “no” and that she was not comfortable doing that. Jacobson insisted. The complainant asked if she had to, to which Jacobson responded, “Yes.” The complainant went to the bedroom. Jacobson then orally and vaginally penetrated her two times.

Eventually, the complainant convinced Jacobson that she needed to run errands. After Jacobson left, she ran to her car and drove across the street to her children’s school. She told the school counselor that she had been attacked, and the counselor called the police. Officers went to the house and arrested Jacobson.

C. JACOBSON’S TESTIMONY

According to Jacobson, he was not intoxicated that morning. When the complainant answered the door, he tried to hand the knife to her, but she would not take it. She told him to put it on the kitchen counter, and he left it there. He went over to her computer so that they could work on his resume.

He and the complainant began to talk about moving to Dallas, and she told him that she wanted him to return home. She also told him that she wanted to have sex with him. He had intercourse with her, which was consensual. He did not at any point force her to have sex with him or threaten her with a knife. Afterward, they both got up and got dressed.

The complainant said that she was going to go to her mother’s to print the resume. He left and went to where he was staying, packed up his things, and returned to the house. When he returned to the house, the complainant was not there. Eventually, officers arrested him.

D. OTHER EVIDENCE

Officer Richard Dame testified that he checked the Law Enforcement Information Network while officers transported Jacobson to jail, and it indicated that the complainant had a personal protection order against Jacobson.

In lieu of receiving testimony from Jacobson’s doctor, Jacobson’s counsel stipulated that Jacobson had a vasectomy in 2001. The Michigan State Police laboratory conducted an immunological test on the samples from the complainant’s CSC kit, which revealed seminal fluid on the swabs, but there were no sperm cells in the fluid, which was consistent with a history of vasectomy.

The complainant testified that Jacobson wrote her at least 50 letters from jail, some of which included apologies. The complainant testified that she did not provide the prosecution with all the letters and that she had thrown some of them away.

Defense counsel challenged the authenticity of one of the letters on the basis that it was forged. Jacobson testified that he did not write two pages of the challenged letter. The complainant testified that she believed that the letter was in Jacobson's handwriting, and that she did not write those pages and insert them into the letter. The trial court ruled that the letter was admissible, but allowed the jury could make its own determination about the weight and value of the letter.

The letter contained several apologies, and also stated:

. . . By 8:15 in the morning I was completely annihilated, way past the legal intoxication level, 16 beer equivalent. I got to your house at 8:30 and you know the rest.

[Complainant,] I am on my knees with tears in my eyes bawling, what I did was despicable. It was not planned and I wish it never happened. Can you find it in your heart to forgive me? . . . I would never intentionally hurt you, never ever.

Jacobson testified that he was asking the complainant to forgive him for ruining their marriage. Jacobson testified that the prosecutor was not reading from letters in which Jacobson told the complainant that he forgave her too, or those in which he asked her why she was trying to frame him. Another letter stated:

. . . Why did you start hating me? I can't imagine anyone doing this to another person. Who in their right mind would ruin a person's life just because they [had] a problem with them . . . ?

Defense counsel argued in closing that the complainant was not a credible witness and the physical evidence was more consistent with a consensual encounter than a sexual assault. The jury found Jacobson guilty of home invasion, four counts of first-degree criminal sexual conduct (CSC I), and assault with a dangerous weapon.

At the sentencing hearing, the trial court noted that stand-in counsel was representing Jacobson, because his trial counsel's license to practice law was suspended for six months "for conduct unrelated to this case[.]" Jacobson read a statement indicating that he had inadequate representation at trial.

E. EVIDENTIARY HEARING

Jacobson moved for a new trial and an evidentiary hearing. At the *Ginther*⁵ hearing, Jacobson testified that trial counsel was not effectively able to represent Jacobson because of his misconduct proceedings. Counsel testified that he was not suspended during Jacobson's trial, and that his suspension did not affect his representation of Jacobson.

⁵ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Jacobson testified that counsel only visited him twice, and one of the times he did not discuss the case. Counsel testified that they had met many more times than twice—before every hearing and twice before the preliminary exam—and had numerous contacts with Jacobson’s family. Counsel testified that Jacobson was easily sidetracked, appeared to have difficulty taking in and understanding their conversations, and sometimes appeared not to remember their previous discussions.

Jacobson testified that counsel never went over trial strategy with him, and that his strategy should have been to show that the complainant was lying and was not credible. Counsel testified that the defense was primarily a consent defense, and that Jacobson’s contentions that the complainant was lying and framing him were related to the consent issue.

Jacobson testified that counsel failed to adequately impeach the complainant. Counsel testified that when he was cross-examining the complainant, he wanted to emphasize certain inconsistencies in the complainant’s behavior and testimony. Counsel testified that he believed that the jury responds more favorably when counsel has a theme to his or her cross-examination.

Jacobson testified that he never received copies of the letters that the prosecution submitted, and that he attempted to provide counsel with more favorable letters but counsel refused to use them. Counsel testified that Jacobson alternated between stating that he had made copies of the letters and that he did not have copies of the letters, and ultimately did not give counsel copies of the letters. As a result, he used favorable statements from the prosecution’s exhibit of letters.

The trial court found that counsel and Jacobson agreed on the trial strategy and that counsel pursued that strategy effectively. It found that counsel effectively cross-examined the complainant and that counsel’s cross-examination resulted in the jury acquitting Jacobson of assault with intent to commit murder. It found that Jacobson wrote all the letters and was aware of their contents, and that if there were any more favorable letters, Jacobson did not share them with counsel. The trial court found that counsel’s bar grievance proceedings were not involved with Jacobson’s case and that he was not denied the effective assistance of counsel on that basis. It found that counsel had a reasonable basis for all of his decisions in Jacobson’s case, that his representation was not objectively unreasonable, and that there was no indication that, had counsel done anything differently, the result of the proceedings would have been different.

II. BINDOVER FOR HOME INVASION

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

Generally, this Court reviews for an abuse of discretion the trial court’s decision to bind a defendant over.⁶ However, defense counsel did not raise this issue before the trial court. “Generally, an issue is not properly preserved if it is not raised before, addressed by, or decided

⁶ *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997).

by the circuit court or administrative tribunal.”⁷ We review unpreserved issues for plain error affecting a party’s substantial rights.⁸ An error is plain if it is clear or obvious.⁹ The error affected the defendant’s substantial rights if it affected the outcome of the lower court proceedings.¹⁰

B. LEGAL STANDARDS

The district court must bind a defendant over if evidence at the preliminary examination establishes that (1) a felony was committed, and (2) there is probable cause to believe that the defendant committed the crime.¹¹ At the preliminary hearing, the question is whether there is credible evidence to support the existence of an element of the crime.¹² Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support a bindover.¹³

First-degree home invasion has several alternative elements. ¹⁴A person commits the felony of first-degree home invasion when he or she breaks and enters a dwelling or enters a dwelling without permission; commits or intends to commit a felony, larceny, or assault while entering, exiting, or being present in the dwelling; and either the person is armed with a dangerous weapon or another person is present.¹⁵

C. APPLYING THE STANDARDS

Jacobson contends that the trial court improperly bound him over on a charge of home invasion because he owned the dwelling and therefore could not enter it without permission. We disagree.

We conclude that evidence at the preliminary hearing supported a charge of home invasion because Jacobson broke and entered his home in violation of a court order. The first element of first-degree home invasion is (1) breaking and entering a dwelling, or (2) entering without permission.¹⁶ “A breaking is any use of force, however slight, to access whatever the

⁷ *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

⁸ *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999).

⁹ *Carines*, 460 Mich at 762-763.

¹⁰ *Id.*

¹¹ *Terry*, 224 Mich App at 451.

¹² *Id.*

¹³ *Id.*

¹⁴ *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010).

¹⁵ MCL 750.110a(2) and (5).

¹⁶ *Id.*

defendant is entering.”¹⁷ A person can break and enter his or her own home if his or her entry violates a court order.¹⁸

Here, the complainant testified that she had obtained a protection order that prohibited Jacobson from being present at the home. She testified that he came to the home and, when she opened the front door a little to pass him some papers, he pushed the door open, entered, shoved her down, drew a knife, and threatened her with it. This evidence sufficiently established probable cause to believe that Jacobson committed the crime of home invasion, in part because the protection order deprived Jacobson of permission to be at the home while the complainant was present. We conclude that the trial court did not clearly err when it bound Jacobson over on the charge of first-degree home invasion.

III. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

This Court reviews de novo a defendant’s challenge to the sufficiency of the evidence supporting his or her conviction because a claim that the evidence was insufficient to convict a defendant invokes that defendant’s constitutional right to due process of law.¹⁹ We review the evidence in a light most favorable to the prosecution to determine whether any trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt.²⁰

B. LEGAL STANDARDS AND APPLICATION

Jacobson contends that the prosecutor did not prove the elements of these crimes beyond a reasonable doubt because the protection order was invalid, the complainant was not credible, and no direct physical evidence linked him to the crimes. We disagree.

We conclude that the prosecutor established that the complainant had a valid protection order against Jacobson at the time of the crimes. Officer Richard Dame testified that at the time that officers arrested Jacobson, the Law Enforcement Information Network showed that the complainant had a protection order against Jacobson. To the extent that Jacobson contends that the protection order was issued without a basis in fact, he had a right to challenge the protection order when it was issued,²¹ but he did not do so. This appeal is not the place to challenge the validity of the order. We conclude that the evidence was sufficient to establish that Jacobson’s entry into the home violated a valid protection order.

¹⁷ *People v Heft*, 299 Mich App 69, 76; 829 NW2d 266 (2012).

¹⁸ *People v Szpara*, 196 Mich App 270, 273; 492 NW2d 804 (1992).

¹⁹ *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

²⁰ *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

²¹ See MCL 600.2950(14).

We reject the remainder of Jacobson's assertions, all of which concern the complainant's credibility. This Court will not interfere with the trier of fact's role to determine the credibility of the witnesses.²² The jury was able to see and hear the witnesses, and was in a better position to determine their credibility.²³ Here, the jury was free to believe the complainant's testimony, which was sufficient to establish the elements of the crimes even if the jury concluded that the physical evidence was inconclusive.

We conclude that the evidence, viewed in the light most favorable to the prosecution, was sufficient to support Jacobson's convictions.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

In his in propria persona supplemental brief, filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, Jacobson contends that he was ineffectively assisted by counsel.

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

A defendant's ineffective assistance of counsel claim "is a mixed question of fact and constitutional law."²⁴ 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.²⁵

B. LEGAL STANDARDS

A criminal defendant has the fundamental right to effective assistance of counsel.²⁶ The same standards apply to trial counsel and appellate counsel.²⁷ 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.²⁸

²² *Wolfe*, 440 Mich at 514-515.

²³ *Id.* at 515.

²⁴ *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

²⁵ *Id.*

²⁶ US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984).

²⁷ *People v Uphaus (On Remand)*, 278 Mich App 174, 185-186; 748 NW2d 899 (2008).

²⁸ *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

The defendant must overcome the strong presumption that defense counsel's performance constituted sound trial strategy.²⁹ A defendant was prejudiced if, but for defense counsel's errors, the result of the proceeding would have been different.³⁰

C. APPLYING THE STANDARDS

1. JOHNSON'S CONTENTIONS

Jacobson contends that he was denied the effective assistance of trial counsel because counsel (1) abandoned his case and refused to give him his case files, (2) had a conflict of interest because of state bar grievance proceedings, (3) should have pursued alternative trial strategies, and (4) stipulated that Jacobson had a medical history of vasectomy. We reject each of Jacobson's contentions.

2. CASE ABANDONMENT

Jacobson contends that he was entirely denied the assistance of counsel during the critical pre-trial stage because trial counsel abandoned his case. We disagree.

Jacobson testified that his trial counsel only visited him twice, and one of the times he failed to discuss the case. Trial counsel testified that he met Jacobson many more times than that—twice before the preliminary exam and once before every hearing, as well as the day before trial. Trial counsel testified that he had numerous contacts with Jacobson's family. The trial court was in a better position to judge the credibility of the witnesses to resolve the conflict between Jacobson's testimony and counsel's.³¹ It found that counsel maintained adequate contact with Jacobson. After our review of the record, we conclude that the trial court's finding that trial counsel acted reasonably was not clearly erroneous.

3. ALTERNATIVE TRIAL STRATEGIES

Jacobson contends that trial counsel was ineffective for pursuing unreasonable trial strategies. Because Jacobson contends that counsel should have pursued the exact strategy that he *actually did* pursue—that is, discrediting the complainant's credibility—we conclude that Jacobson's contention is without merit. Further, “[a] particular strategy does not constitute ineffective assistance of counsel simply because it does not work.”³² We conclude that the trial court's findings, that trial counsel pursued the exact strategy that he and Jacobson agreed on and that the strategy was not unreasonable in this case, were not clearly erroneous.

²⁹ *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997).

³⁰ *People v McGraw*, 484 Mich 120, 142; 771 NW2d 655 (2009).

³¹ See *Wolfe*, 440 Mich at 514-515.

³² *People v Matuszak*, 263 Mich App 42, 61; 687 NW2d 342 (2004).

4. TRIAL COUNSEL'S GRIEVANCE PROCEEDINGS

Jacobson contends that trial counsel's grievance proceedings created a conflict of interest that prevented him from adequately representing Jacobson. 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.’”³³ 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.³⁴ An attorney’s suspension for misconduct in another case does not necessarily create a conflict of interest.³⁵ While there is a potential for an attorney’s self-interest to conflict with a defendant’s representation, “there is no automatic correlation[.]” A finding of ineffective assistance on the basis of an attorney’s suspension is only warranted when a defendant has, for that reason, been ineffectively assisted by counsel.³⁶

We conclude that the trial court did not clearly err when it determined that trial counsel’s bar grievance proceedings and suspension were unrelated to Jacobson’s case and had no effect on his representation. From our review of the record, trial counsel appears to have been well-prepared concerning the issues in the case, adopted a reasonable trial strategy as discussed above, and effectively presented opening and closing statements and direct and cross-examinations. There is no support in the record for Jacobson’s argument that trial counsel was distracted by his own grievance proceedings.

5. MEDICAL RECORDS

Jacobson contends that his trial counsel rendered ineffective assistance when he stipulated that Jacobson had a medical history of vasectomy. We disagree.

Jacobson contends for the first time on appeal that his medical records should have been privileged. Jacobson’s counsel never contended at trial that his medical records were privileged. Both MCR 2.314 and MCL 333.1750(1) prohibit disclosure of privileged information in criminal cases unless the patient has waived the privilege, or an exception applies. However, because Jacobson testified on his own behalf in this case, defense counsel may have simply stipulated to Jacobson’s vasectomy to prevent the prosecutor from asking him about it. In that case, it would not have been an unreasonable trial strategy.

Additionally, Jacobson has not shown that defense counsel’s decision had an effect on the outcome of his case. Jacobson testified that he had intercourse with the complainant—the only

³³ *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).

³⁴ *Smith*, 456 Mich at 557.

³⁵ See *People v Pubrat*, 451 Mich 589, 598; 548 NW2d 545 (1996); *Smith*, 456 Mich at 557.

³⁶ *Id.*

dispute was whether she consented. Whether Jacobson previously had a vasectomy would have no bearing on the jury's determination concerning whether the complainant consented.

We conclude that the trial court properly determined that Jacobson was not ineffectively assisted by counsel.

V. PROSECUTORIAL MISCONDUCT

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

In his in propria persona supplemental brief, filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4, Jacobson asserts that the prosecutor committed misconduct. Jacobson did not challenge any of the asserted incidents of prosecutorial misconduct below. This Court will not reverse a conviction on the basis of prosecutorial misconduct unless the defendant "timely and specifically" challenges the alleged misconduct before the trial court, or unless a failure to review the issue would result in the miscarriage of justice.³⁷ We review unpreserved issues for plain error affecting the defendant's substantial rights.³⁸ An error affects the defendant's substantial rights when that error prejudices the defendant.³⁹

B. LEGAL STANDARDS

The prosecutor has committed misconduct if the prosecutor abandoned his or her responsibility to seek justice and, in doing so, denied the defendant a fair and impartial trial.⁴⁰

C. APPLYING THE STANDARDS

1. JOHNSON'S CONTENTIONS

Jacobson contends that the prosecutor committed misconduct by (1) suppressing exculpatory evidence, (2) manipulating innocuous evidence, (3) knowingly submitting false evidence, and (4) improperly adjourning his trial to obtain his medical records.

2. EXCULPATORY EVIDENCE

Jacobson contends that the prosecutor withheld exculpatory evidence by failing to submit additional letters in which Jacobson accused the complainant of trying to frame him. We disagree.

³⁷ *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008) (emphasis added).

³⁸ *Id.*; *Carines*, 460 Mich at 763-764.

³⁹ *Id.* at 764.

⁴⁰ *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007).

Failure to provide exculpatory evidence to the defendant constitutes prosecutorial misconduct.⁴¹ However, “[t]he prosecutor’s office is not required to undertake discovery on behalf of a defendant.”⁴²

Here, the record does not support Jacobson’s assertions that the prosecutor failed to preserve exculpatory evidence or withheld it from Jacobson. The complainant testified that she did not give all of the letters to the prosecutor and that she threw some away.

Additionally, the defendant must show that the evidence might have exonerated him.⁴³ The record reflects that the prosecution did submit letters in which Jacobson implicitly accused his wife of attempting to frame him, including the following:

. . . Why did you start hating me? I can’t imagine anyone doing this to another person. Who in their right mind would ruin a person’s life just because they [had] a problem with them . . . ?

As well as the statements in the letter above, the jury was able to consider Jacobson’s testimony that he believed that the complainant was framing him and that the most damaging letter was a forgery. Jacobson further testified that additional letters existed in which he accused the complainant of trying to frame him. The jury rejected those contentions.

We conclude that the prosecutor did not commit misconduct by failing to provide Jacobson with additional letters that the prosecutor did not have access to.

3. MANIPULATING INNOCUOUS EVIDENCE

Jacobson contends that the prosecutor manipulated innocuous evidence by using letters in which Jacobson was begging the complainant for forgiveness for ending their marriage to contend that Jacobson was begging her forgiveness for raping her. We disagree.

A prosecutor may argue all the facts in evidence and all reasonable inferences arising from them, as they relate to the prosecutor’s theory of the case.⁴⁴ A reasonable inference from Jacobson’s repeated requests for the complainant’s forgiveness was that he was asking her to forgive him for his conduct on the day of the assault. We conclude that the prosecutor did not commit misconduct when making this argument.

⁴¹ *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963); *People v Leo*, 188 Mich App 417, 426; 470 NW2d 417 (1991).

⁴² *Leo*, 188 Mich App at 417.

⁴³ *Hanks*, 276 Mich App at 95-96.

⁴⁴ *Unger*, 278 Mich App at 236.

4. KNOWINGLY SUBMITTING FALSE EVIDENCE

Jacobson contends that the prosecutor committed misconduct by knowingly submitting a forged confession letter. We disagree.

We conclude that the prosecutor did not knowingly submit false evidence. A conviction on the basis of false evidence violates a defendant's due process rights.⁴⁵ The prosecutor must correct false evidence.⁴⁶ There is no reason for this Court to conclude that the complainant testified falsely when she stated that the confession letter was in Jacobson's handwriting, and no indication that the prosecutor knew that she was testifying falsely even if she did so. Therefore, we conclude that the prosecutor did not knowingly obtain Jacobson's conviction with false evidence.

5. USE OF MEDICAL RECORDS

Jacobson contends that the prosecutor committed misconduct by improperly adjourning the trial to obtain his medical records and by submitting his privileged medical records as evidence. We disagree.

Jacobson contends that the prosecutor improperly adjourned his trial to seek the medical records of his vasectomy because defense counsel could have stipulated to the use of medical records. Jacobson's contention is not supported by the record. The record indicates that defense counsel was aware that the prosecutor sought to adjourn the trial to attempt to obtain Jacobson's medical records, but he did not offer to stipulate to the use of Jacobson's medical records to avoid the adjournment.

Conversely, Jacobson contends that the prosecutor committed misconduct attempting to use his privileged medical records at trial. This contention is also unsupported by the record. Jacobson's counsel stipulated that Jacobson had had a vasectomy: the prosecution thus never attempted to submit his medical records as evidence. Further, even had the prosecutor attempted to submit Jacobson's medical records as evidence, "[a] prosecutor's good-faith effort to admit relevant evidence does not constitute misconduct."⁴⁷ We conclude that the prosecutor did not commit misconduct by attempting to use Jacobson's medical records at trial.

VI. CONCLUSION

We conclude that the evidence at the preliminary hearing was sufficient to bind Jacobson over on the charge of home invasion, and the evidence at trial was sufficient to convict him of the offenses of which the jury found him guilty. We also conclude that the trial court did not clearly err when it found that trial counsel effectively assisted Jacobson. Finally, there is no

⁴⁵ *People v Herndon*, 246 Mich App 371, 417; 633 NW2d 376 (2001).

⁴⁶ *Id.* at 417 (internal quotations omitted).

⁴⁷ *Dobek*, 274 Mich App at 70.

evidence in the record to support Jacobson's assertions that the prosecutor committed misconduct.

We affirm.

/s/ Joel P. Hoekstra

/s/ William C. Whitbeck

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY CHARLES JACOBSON,

Defendant-Appellant.

UNPUBLISHED
October 24, 2013

No. 303786
Kent Circuit Court
LC No. 10-000397-FC

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

SHAPIRO, P.J. (*concurring*).

I concur in the result only.

/s/ Douglas B. Shapiro