

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 11, 2014

v

DARIUS WARREN DENNIS,

Defendant-Appellant.

No. 310178
Wayne Circuit Court
LC No. 11-008376-FC

Before: METER, P.J., and JANSEN and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to 30 to 50 years' imprisonment for the second-degree murder conviction, three to seven years' imprisonment for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

I. FACTS AND PROCEDURAL HISTORY

This case arises from the shooting death of Kevin Sturgis on the night of July 27, 2009. At the time, Sturgis was in a relationship with Deanna Young, but was also dating Heather Louser, the mother of his child. At the same time, Louser was in a relationship with defendant.

On July 27, Sturgis and Young went to Louser's apartment complex so that Sturgis could say hello to his son, who was outside on a balcony. Meanwhile, defendant arrived at the complex in Louser's white Impala. Sturgis and Young left in Sturgis's black Saturn Ion and, as they were driving, Young noticed that defendant was following them in the white Impala. Sturgis and Young decided not to return to their new home in Detroit because they were afraid that defendant would learn where they lived. Instead, Young testified that Sturgis drove around and defendant tailgated him. Young further testified that Sturgis stopped his black Ion on Marlowe, and defendant and a silver car, either a Grand Prix or Grand Am, stopped too. Young saw defendant exit the white Impala and retrieve a gun from under the hood of the silver car.

Young recalled at trial that Sturgis drove the length of six homes away from defendant. Young, at Sturgis's request, exited the car. As Young approached a nearby home, she saw Sturgis exit the car also. She did not see Sturgis with a gun, but she saw defendant was

“[c]oming down the street.” Young took four or five steps toward the porch of the home she had approached and then she heard gunshots. Young ran to the backyard and heard “a lot” of rapid gunshots, but did not see who was firing the gun. Young heard glass breaking and then a car speeding away. When Young returned to the front yard of the home, she saw that Sturgis had been shot in his head. Young called the police. Sturgis was transported by EMS to a hospital and later died.

At the scene, the police recovered two different types of shell casings. Aside from Young, who told police that defendant shot Sturgis, individuals who lingered at the scene and lived in nearby homes refused to get involved in the investigation.

According to Louser, defendant returned to her apartment complex 20 to 30 minutes after he had left. Defendant was the passenger in a friend’s silver Bonneville, not Louser’s Impala, which defendant said was “around the block.” Louser testified that they drove to her car and she noticed that the right tire “looked like something had struck it” and was “going flat.” Louser and defendant took her car to another individual’s home, where they stayed several nights. Louser testified that, on the second night, defendant left in her car, but returned without it, stating to Louser that he needed to get rid of the car. A few days later, defendant, Louser, and her son went to Alabama. Louser recalled that, when she eventually left defendant to go to her father’s home in North Carolina, defendant told her, “[D]on’t say anything, don’t tell nobody nothing.” Defendant could not be located until July 2011, when he was arrested in Tennessee.

At trial, defendant claimed that Sturgis had actually been following defendant after he left the apartment complex. Defendant testified that, on Marlowe, Sturgis stopped his car—facing defendant. Defendant testified that he saw Sturgis “rise up and start shooting” from about four or five houses away. Defendant slammed on the breaks and reached for his .40 caliber gun “between the seats” with his left hand. He thought Sturgis was trying to kill him, so he pointed the gun out of the car window and started firing. Defendant explained that he “had no other choice but to return fire or I was going to be hit,” or his son, who he also claimed was in the car, “was going to be hit. I felt that’s what I had to do.” Defendant fired his gun eight or nine times. Defendant testified that he never exited his car during the shooting. Defendant admitted that, sometime after the shooting, he dumped the gun in a trash can and abandoned Louser’s car somewhere in Detroit, but he did not know where.

Voir Dire

On the first day of trial, the trial court conducted voir dire. The trial court asked the prospective jurors if any recognized or knew a prospective witness, whether any had previously served on a jury, and whether any had been a witness in a case. The trial court inquired whether any were connected to law enforcement or if any had relatives or friends in law enforcement. The trial court instructed that the testimony of police officers was to be evaluated by the same standards as any other witness, and asked the prospective jurors if they could apply the instruction. The trial court inquired whether any, either personally, a relative, or a friend, had a connection to the legal profession or had been a victim of a crime. The same question was posed regarding whether any had been arrested, charged, or convicted of a crime. If a prospective juror answered affirmatively to any of the questions posed by the trial court, the trial court asked each

juror extensive follow-up questions to inquire whether it would affect the person's ability to be impartial as a juror.

In addition, the trial court instructed the prospective jurors on the presumption of innocence, burden of proof, and reasonable doubt, and the prospective jurors answered affirmatively that they could apply the legal principles. The trial court asked each prospective juror about their occupation, city of residence, and whether he or she was married or residing with a significant other. Defense counsel and prosecution exercised peremptory challenges. After the prosecution passed for peremptory challenges, when given the opportunity to exercise another peremptory challenge, defense counsel stated, "I think we've got a jury, Judge."

Autopsy Photographs

The prosecution filed a motion in limine with the trial court to admit photographs from the Wayne County Medical Examiner, which depicted Sturgis's gunshot wounds to the forehead and thigh. At the motion hearing, defense counsel stated, "I don't have any objection with respect to their being submitted and exposed to the jury, to [sic] we can cut right through that." At trial, the trial court warned spectators that the photographs may "be troubling or upsetting," but they were admitted without objection.

Recorded Jail Conversation

The prosecution also sought to admit evidence of a recorded jail telephone conversation involving defendant and an unidentified caller. The recording provided:

Unidentified Caller: Why'd they show you pictures?

Defendant: All that shit in my discovery packet.

Unidentified Caller: Oh.

Defendant: Crime scene, all that shit. My shit is some bullshit. I prayed on that shit too.

Unidentified Caller: Prayed on what?

Defendant: For forgiveness.

The recording was admitted, over defendant's objection. Afterwards, defendant testified that he prayed for forgiveness because of his religion and "for what happened, what I was forced to do."

Defendant's Motion to Remand with This Court and Evidentiary Hearing

Following defendant's convictions, this Court granted defendant's motion to remand pursuant to MCR 7.211(C)(1) for the trial court to conduct an evidentiary hearing on defendant's claims related to ineffective assistance of counsel.¹

At the *Ginther* hearing, defendant maintained that, during the shooting, Sturgis's car was facing him and that he never exited the car but, instead, fired his gun through the window. Although defendant claimed the tire was "shot out" of Louser's white Impala because "it went flat and it had a big hole in it," defendant also testified that he felt the tire start to lose air right before he arrived at the scene of the shooting.

Defendant testified that defense counsel asked for \$2,500 to hire a private investigator to search for potential witnesses who lived on Marlowe Street. Defendant told him that he didn't have the money, but that he would talk to his sister, Shanika Dennis (Shanika). Shanika testified that she told defense counsel that she had already paid him all the money that she had and asked if he could use some of it to hire an investigator. Even though defense counsel did not state that his fee would include an investigator, defense counsel replied that he would "work with what he had." Defense counsel never hired an investigator.

Following his convictions, defendant hired an investigator, who canvassed Marlowe Street and located two witnesses, who were sitting on their front porch at the time of the shooting—Darrell Foster and Ciara Gardner.

Foster testified that he was good friends with Sturgis. On the night of the shooting, Foster testified that he saw a white Impala and gray car chasing Sturgis and his girlfriend in a black car. He also saw Sturgis's girlfriend jump out of the car and try to run. According to Foster, the cars stopped and then both Sturgis and the individual in the white Impala exited their cars simultaneously and began shooting at each other. Foster testified that Sturgis fired his gun two or three times.

Gardner testified that she also saw two cars chasing the black car and, when they stopped, they were all facing the same direction. Gardner testified that she saw Sturgis and his girlfriend exit the car. Sturgis's girlfriend ran to a backyard. Gardner testified that she did not see Sturgis holding a gun. A man exited the white car and crouched behind the driver's side door. Gardner recalled that she then heard gunfire, but she did not see who shot first.

Defense counsel had no recollection of a conversation with defendant or Shanika about his need for \$2,500 to hire an investigator. Defense counsel testified that he knew from the police reports that the police had canvassed the neighborhood in search for potential witnesses, but that none of the individuals were forthcoming. Defense counsel thought defendant's testimony, on its own, was sufficient to establish that he shot Sturgis in self-defense. In addition,

¹ *People v Dennis*, unpublished order of the Court of Appeals, entered March 7, 2013 (Docket No. 310178).

defense counsel stated that testimony from a potential witness that she saw a black car that was being chased by a white and gray car would have not been beneficial for defendant because it would have contradicted defendant's version of the shooting. Although defense counsel testified that he "wanted that car" that defendant claimed was damaged during the shooting, he made no effort to locate it because of the length of time that had passed between the shooting and when defense counsel was hired by defendant. The investigator that defendant hired after his convictions was unable to locate the white Impala.

The trial court concluded that defense counsel's assistance was not ineffective for failing to hire an investigator and locate potential witnesses:

Defense counsel's failure to obtain an investigator did not render his performance ineffective. His belief that attempts to interview persons who were present on Marlowe Street on the day of the shooting would not be fruitful are borne out by the testimony of Mr. Foster and Miss Gardner. In fact, their testimony contradicts the testimony of the Defendant both at the Ginther Hearing and at the trial which indicated that he was being chased by the Defendant [sic] victim.

Both Mr. Foster and Miss Ciara Gardner indicated that the black [car] which was being driven by Mr. Sturgis was being chased by the white Chevy Impala which turned out to be driven by the Defendant. This testimony would have undermined the Defendant's claim of self[-]defense in that it would tend to indicate that Mr. Dennis was the aggressor by pursuing Mr. Sturgis. Also, these witnesses' testimony would also have contradicted Defendant's testimony that Mr. Sturgis' car was facing the Defendant's vehicle instead of away from it.

An aggressor cannot maintain a claim of self[-]defense. The Defendant has failed to establish his burden that his trial counsel was ineffective for failing to obtain an investigator.

Even assuming Defendant could show that trial counsel's performance fell below an objective standard of reasonableness, there was no reasonable probability that but for the deficient performance, the outcome of the trial would have been different.

The testimony of Mr. Foster and Miss Gardner about the chase would have further corroborated the trial testimony of Miss Deanna Young, Mr. Sturgis' girlfriend who was riding with him in the black car as to being chased by the Defendant. [Internal citations to testimony omitted.]

The trial court further held that defense counsel was not ineffective for failing to endeavor to locate the white Impala driven by defendant at the time of the shooting:

It is not reasonable to conclude that Attorney Curtis should have been able to successfully locate the white Impala nearly three years after the shooting. Even if the vehicle had been located by Attorney Curtis or an investigator, it would not in any way have aided the Defendant's case.

During the trial, witness Heather Louser the owner of the vehicle, and the Defendant testified that the damaged right front wheel had been replaced by the Defendant the day after the shooting.

The Defendant further testified at the trial that he had parked the Chevrolet and left it someplace in Detroit with no intention of getting it back[.]

Even if the car had been located before the trial, the damaged tire would not have been on it as the Defendant had replaced it by his own admission during trial.

The Defendant has failed to establish that Attorney Curtis' failure to locate the car was ineffective assistance of counsel, or that but for the Counsel's deficient performance a different result would have been reasonably probable. Both of these requirements must be met in order to establish ineffective assistance of Counsel [sic][.] [Internal citations to testimony omitted.]

II. VOIR DIRE

Defendant first argues that he was denied a fair trial because the trial court, and not his attorney, conducted voir dire. But by expressing satisfaction with the jury as impaneled, defendant waived and extinguished any error. See *People v Hubbard (After Remand)*, 217 Mich App 459, 466–467; 552 NW2d 784 (1997), overruled in part on other grounds *People v Bryant*, 491 Mich 575, 618; 822 NW2d 124 (2012) and *People v White*, 168 Mich App 596, 604; 425 NW2d 193 (1988). Even if we were to consider defendant's claim of error, we would find that the trial court adequately questioned jurors regarding potential bias so that challenges for cause could be intelligently exercised. *People v Washington*, 468 Mich 667, 674; 664 NW2d 203 (2003); MCR 6.412(C)(1).

III. AUTOPSY PHOTOGRAPHS

Defendant argues that the trial court abused its discretion in admitting autopsy photographs of Sturgis. Again, at the hearing on the prosecution's motion in limine to admit the autopsy photographs, defense counsel stated that he had no objection to them. Consequently, defendant waived appellate review of this claim also. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) ("One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error.").

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that his defense counsel's assistance with respect to voir dire, the investigation of the case, and the autopsy photographs was ineffective. We disagree.

A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision to grant or deny a motion for new trial. *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012). Whether a person has been denied the effective assistance of counsel is a mixed question of fact

and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002); *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011). The trial court’s factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

Although defendant’s claims of ineffective assistance of counsel relating to voir dire and the autopsy photographs are preserved for review, defendant only addressed the failure to investigate and call witnesses at the evidentiary hearing. Consequently, this Court’s review of his voir dire and autopsy photographs claims is limited to the record established before the evidentiary hearing. *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

B. ANALYSIS

Effective assistance of counsel is presumed. *People v Mack*, 265 Mich App 122, 129; 695 NW2d 342 (2005). To establish a claim for ineffective assistance of counsel, a defendant must satisfy the two-part test articulated in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). First, the defendant must establish that “counsel’s representation fell below an objective standard of reasonableness.” *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012), citing *Strickland*, 466 US at 688. Second, the defendant must show that defense counsel’s deficient performance prejudiced his defense. *Strickland*, 466 US at 687. To demonstrate prejudice, a defendant must show the existence of a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Vaughn*, 491 Mich at 669, citing *Strickland*, 466 US at 694.

Voir Dire

Defendant has failed to show that defense counsel’s performance fell below an objective standard of reasonableness for not objecting to the trial court’s voir dire. The trial court was permitted to conduct the examination of prospective jurors. See MCR 6.412(C)(1). As we noted in part II, the trial court adequately questioned jurors regarding potential bias so that challenges for cause could be intelligently exercised. See *Washington*, 468 Mich at 674. Consequently, any objection to the trial court conducting of voir dire would have been futile. “Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel.” See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Moreover, defendant has failed to establish a factual predicate for his claim that defense counsel failed to submit potential voir dire questions to the trial court. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Even if defense counsel’s performance fell below an objective standard of reasonableness, defendant has failed to establish that there was a reasonable probability that the result of the proceeding would have been different. Defendant contends that “[i]t is not outside the realm of possibility that with a different jury, that a different verdict could have been reached.” However, defense counsel exercised peremptory challenges and, as noted above, there is no evidence that the jury was biased as a result of the jury selection process.

Failure to Investigate, Call Witnesses, and Locate the White Impala

Defendant argues that defense counsel was ineffective for failing to investigate, and call to testify at trial, potential witnesses to substantiate his claim that he shot Sturgis in self-defense.

We disagree. Defense counsel's decisions regarding what evidence to present are presumed to be matters of trial strategy. *People v Rocky*, 237 Mich App 74, 76; 601 NW2d 887 (1999). "[T]he failure to call witnesses only constitutes ineffective assistance of counsel if it deprives the defendant of a substantial defense." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Here, defense counsel was informed that the police canvassed the neighborhood in search of potential witnesses and that no one was forthcoming. In addition, defense counsel testified that he did not hire an investigator to search for potential witnesses because he thought that defendant's testimony, on its own, was sufficient to establish that defendant shot Sturgis in self-defense. "This Court does not second-guess counsel on matters of trial strategy, nor does it assess counsel's competence with the benefit of hindsight." *Russell*, 297 Mich App at 716.² Therefore, defendant has failed to show that his defense counsel's performance fell below an objective standard of reasonableness. See *Vaughn*, 491 Mich at 669.

Defendant also has not demonstrated prejudice under the second prong of *Strickland*. As the trial court found at the *Ginther* hearing, Foster's and Gardner's testimony actually contradicted defendant's testimony. Defendant claimed he was being chased by Sturgis, but Foster and Gardner saw defendant's white car following Sturgis's black car. Defendant claimed that Sturgis parked facing defendant's car before allegedly Sturgis charged in defendant's direction firing shots, but Gardner testified that the cars were pointed in the same direction. Although defendant maintained that he never exited his car during the shooting, both Foster and Gardner testified otherwise. The trial court found that these inconsistencies would have undermined his claim of self-defense and defendant has not persuaded this Court that a mistake was made. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003) (a trial court may evaluate credibility when deciding a motion for a new trial, and deference should be accorded its opinion).

Defendant also argues that defense counsel was ineffective for failing to locate the white Impala in which defendant was driving at the time of the shooting. We disagree. Defense counsel's failure to locate the car was reasonable given that over two years had passed between the shooting and when defendant hired defense counsel. As the trial court found, the car would not have aided defendant's case because defendant replaced the damaged tire after the shooting and before he abandoned the car "somewhere in Detroit." Moreover, defendant's claim that a bullet damaged the tire was undermined by defendant's own conflicting testimony that he felt the tire start to lose air right before the shooting commenced. Therefore, counsel's alleged failure to investigate did not undermine confidence in the trial's outcome. See *People v Grant*, 470 Mich 477, 493; 684 NW2d 686 (2004).

Autopsy Photographs

Defendant's claim that defense counsel was ineffective for failing to object to the admission of the autopsy photographs is without merit. Photographic evidence is generally

² Foster's and Gardner's affidavits regarding some of the details of the shooting differed from their testimony at the *Ginther* hearing. A reasonable attorney may also have elected not to call these witnesses after weighing the risks of their inconsistent testimony on the defense strategy.

admissible as long as it is relevant, MRE 401, and not unduly prejudicial, MRE 403.” *Gayheart*, 286 Mich App at 227. “While gruesome photographs should not be admitted solely to garner sympathy from the jury, a photograph that is admissible for some other purpose is not rendered inadmissible because of its gruesome details.” *People v Mesik (On Reconsideration)*, 285 Mich App 535, 544; 775 NW2d 857 (2009). “Photographs may be used to corroborate a witness’ testimony, and gruesomeness alone need not cause exclusion.” *Gayheart*, 285 Mich App at 227 (citations and quotation marks omitted). The injuries depicted in the autopsy photographs were relevant to the charges and were used to corroborate the medical examiner’s testimony. Given that the photographs were admissible, an objection to the photographs would have been futile. Thus, defense counsel was not ineffective for failing to raise a futile objection. See *Ericksen*, 288 Mich App at 201.

V. PROSECUTORIAL MISCONDUCT

Defendant claims he is entitled to a new trial because the prosecutor improperly commented on Young’s and Louser’s credibility during her closing argument. We disagree. This Court reviews claims of prosecutorial misconduct on a case-by-case basis, reviewing the prosecutor’s remarks in context. *People v Orlewicz*, 293 Mich App 96, 106; 809 NW2d 194 (2011). The test is whether the defendant was deprived of a fair trial. *Id.*

A prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge concerning a witness’s truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, “a prosecutor may comment on his own witnesses’ credibility during closing argument, especially when there is conflicting evidence and the question of the defendant’s guilt depends on which witnesses the jury believes.” *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

During closing arguments, the prosecutor stated:

Also, you have to believe that there’s a coincidence, a mere coincidence, between Deanna Young and Heather Louser’s testimony and that I already mentioned. This is about the silver Grand prix or silver Bonneville. Those two women, ladies and gentlemen, were very honest with you. They don’t --.

Defense counsel objected, stating, “She cannot vouch for the credibility of any witness whatsoever.” The trial court instructed the prosecutor to rephrase. The prosecution then stated:

Those two women, ladies and gentlemen, their testimony was straight forward. They don’t like each other and they never have liked each other. They’re not friends. They don’t hang out. They haven’t had any contact with each other. Why would they know -- why would there be a mere coincidence between their testimony about the car that Mr. Dennis was connected to that day?

The trial court instructed the jury that it should determine the credibility of the witnesses, and that counsels’ arguments were not evidence.

The record evidence does not support the assertion that the prosecutor vouched for the credibility of her witnesses by implying that she had some special knowledge concerning

Young's and Louser's truthfulness. The record reflects that the prosecutor was commenting on her own witnesses' credibility during closing argument when defendant offered conflicting evidence, and the question of defendant's guilt depended on which witnesses the jury believed. See *Thomas*, 260 Mich App at 455. Consequently, the prosecutor's comments did not constitute prosecutorial misconduct.

Contrary to defendant's claim, even if the prosecutor's comments constituted prosecutorial misconduct, the trial court's jury instructions cured any error. The trial court instructed the jury that statements made by counsel were not evidence and that credibility was for the jury to decide. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Therefore, defendant was not deprived of a fair trial.

VI. HEARSAY

Defendant argues that the trial court abused its discretion in admitting the recorded jail conversation between him and another individual. We disagree.

A trial court's decision whether to admit or exclude evidence will be affirmed in the absence of a clear abuse of discretion. *People v King*, 297 Mich App 465, 472; 824 NW2d 258 (2012). The trial court abuses its discretion when its decision is outside the range of principled outcomes. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). This Court reviews de novo the trial court's rulings on preliminary questions of law regarding the admissibility of evidence, such as the application of a statute or rule of evidence. *King*, 297 Mich App at 472.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c); *People v Dendel*, 289 Mich App 445, 452; 797 NW2d 645 (2010). Hearsay is generally inadmissible unless it comes within an exception to the hearsay rule. *Id.* MRE 801(d)(2)(A) provides that a statement offered against a party is not hearsay if it is "the party's own statement, in either an individual or a representative capacity, except statements made in connection with a guilty plea to a misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles." MRE 801(a) defines a "statement" as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." An assertion must be capable of being true or false. See *People v Jones (On Rehearing After Remand)*, 228 Mich App 191, 204; 579 NW2d 82 (1998), mod 458 Mich 862 (1998).

Here, the trial court did not abuse its discretion in determining that the recorded jail conversation was admissible as a statement of a party opponent under MRE 801(d)(2)(A). Defendant's declaration that he prayed for forgiveness was an assertion. The fact that he prayed for forgiveness after he saw photographs of Sturgis is capable of being true or false. Contrary to defendant's argument, MRE 801(d)(2)(A) does not require that the statement of a party be an admission. Rather, it requires that the statement be made by the party and be offered against the party. There is no dispute that the statement was made by, and offered against, defendant. Therefore, no abuse of discretion occurred.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder