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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v DANELL MAURICE MOORE, Defendant-Appellant.	UNPUBLISHED October 21, 2026 10:35 AM No. 364065 Wayne Circuit Court LC No. 20-003905-01-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of first-degree premeditated murder, MCL 750.316(1)(a), and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him to life imprisonment without the possibility of parole for the first-degree murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Montanay Williams was shot and killed on the street outside of her home on March 13, 2020. Defendant and Williams had been arguing, pushing, and hitting each other near the driver's side of defendant's pickup truck. On the passenger side of the truck, Jasmine Barnes, who was Williams's cousin and defendant's friend, was arguing with Williams's sister, Monae Murphy. Williams was kicking the front of defendant's pickup truck and pulling on the passenger-side mirror. Both Murphy and her daughter, AG, saw defendant grab something from the driver's side of the truck. Murphy did not see what the object was, but AG saw that it was a gun. Murphy heard Williams say "oh, you got a gun." AG testified that defendant shot once in the air and once at Williams, but she admitted on cross-examination that she never saw anyone fire a weapon and only heard the gunshots. She saw Williams fall to the ground, and defendant "hopped in his truck and drove off." Barnes and AG called 911.

Emergency medical services personnel arrived and found Williams dead. When police officers arrived and began their investigation, they arrested Barnes for interfering with the investigation and disobeying lawful orders from police officers, and they recovered a nine-

millimeter semiautomatic handgun from her waistband. In the hours following the shooting, Barnes and Murphy gave statements to the responding police officers about what they had witnessed. Three days later, AG participated in a forensic interview.

Dr. Theresa Nguyen, an assistant medical examiner at the Wayne County Medical Examiner's Office, examined Williams's body and determined that Williams had died from a single gunshot wound to the head. Dr. Nguyen observed two fragments of a single bullet in Williams's right occipital lobe along the same path of entry. Brian Grabowski, a forensic scientist at the Michigan State Police Forensic Lab, assigned to the Firearms and Toolmark Unit, examined Barnes's nine-millimeter handgun and the two fragments of a fired bullet recovered from Williams's body. Grabowski concluded that the fired projectiles "could have, but also could not have been fired from the" nine-millimeter handgun, but there was no gunshot residue on the nine-millimeter handgun and the unfired jacketed bullets in the nine-millimeter handgun were inconsistent with the recovered lead bullet fragments.

Defendant was charged with first-degree murder and felony-firearm. In May 2022, defendant's trial counsel was appointed after his former counsel withdrew from the case for personal reasons unrelated to defendant's representation.

During trial, Murphy, Williams, AG, several responding officers, a forensic technician, Grabowski, and Dr. Nguyen testified during the prosecution's case-in-chief. After the prosecution rested its case on Friday, August 26, 2022, the trial court informed the jury that the trial would be adjourned until the following Tuesday, August 30, 2022, because a medical situation prevented a defense witness from testifying until then. As the trial court later summarized before the trial resumed on August 30, Barnes had tested positive for COVID-19 while in jail for an unrelated offense. She had recently been released from custody, and "the discussion was to hopefully have her Covid negative by Monday to be able to appear Tuesday with a negative test to be able to testify." But defense counsel informed the court that he was unable to locate and contact Barnes to secure her presence for trial, despite exhausting his efforts to locate her. The defense counsel rested without presenting any evidence in his case-in-chief, and defendant was convicted and sentenced as described.

In September 2023, defendant moved for a new trial, arguing that he was deprived of the effective assistance of counsel because defense counsel failed to (1) ensure that Barnes was present to testify at trial, (2) cross-examine Murphy about discrepancies between her testimony and her police statement, (3) consult with or present testimony from a firearms expert, and (4) prepare for trial by watching the video of AG's forensic interview. The trial court held a *Ginther*[1] hearing, during which the trial court learned that defendant's former trial counsel had consulted David Balash, a firearms expert, whose forensic examination produced conclusions that differed from Grabowski's. Balash, defense counsel, former trial counsel, and Barnes all testified at the hearing. The trial court ultimately denied defendant's motion for a new trial. This appeal followed.

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

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant contends that he is entitled to a new trial because he was denied the effective assistance of counsel. We disagree.

A. STANDARD OF REVIEW

"A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law." *People v Isrow*, 339 Mich App 522, 531; 984 NW2d 528 (2021) (quotation marks and citation omitted). "All findings of fact are reviewed for clear error, while the legal questions are reviewed de novo." *Id*. (quotation marks and citation omitted). "When the reviewing court is left with a definite and firm conviction that the trial court made a mistake, there is clear error." *Id*. (quotation marks and citation omitted).

A criminal defendant has a right to a fair trial, and therefore to the effective assistance of counsel. *Isrow*, 339 Mich App at 531, citing US Const, Am VI, and Const 1963, art 1, § 17. "To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Shaw*, 315 Mich App 668, 672; 892 NW2d 15 (2016), citing *Strickland v Washington*, 466 US 668, 687-688, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

"In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was born[e] from a sound trial strategy." *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). "This Court will 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." *People v Petri*, 279 Mich App 407, 411; 760 NW2d 882 (2008) (quotation marks and citation omitted). "[D]ecisions regarding what evidence to present and which witnesses to call are presumed to be matters of trial strategy." *People v Dunigan*, 299 Mich App 579, 589-590; 831 NW2d 243 (2013). "Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). "Yet a court cannot insulate the review of counsel's performance by calling it trial strategy." *Trakhtenberg*, 493 Mich at 52.

B. WITNESS SUBPOENA

Defendant argues that he was deprived of the effective assistance of counsel when his trial counsel failed to subpoena Barnes for trial. We disagree.

This case does not involve an attorney's strategic decision not to call a witness, but rather the failure to subpoena a witness and secure her attendance. Defense counsel testified at the *Ginther* hearing that he would generally subpoena any critical witness, but if he had a good relationship with the witness and was confident that the witness would appear to testify, he would not always issue a subpoena. Defense counsel did not initially issue a subpoena for Barnes because she was willing to testify. In fact, Barnes had reached out to defense counsel before the trial to

explain that she wanted to testify that defendant was not responsible for the shooting. Defense counsel first attempted to subpoena Barnes when he learned that she was in police custody the week before trial. At the time that the trial court adjourned the trial on Friday, August 26, 2022, Barnes was in jail and had tested positive for COVID-19. At 9:00 p.m. that night, Barnes was released from jail on a GPS tether. Over the weekend, defense counsel attempted to reach Barnes by calling all of the phone numbers that he had for her, speaking to Barnes's mother on the phone, driving to an address associated with Barnes, contacting the court clerk for Barnes's contact information, contacting Barnes's probation agent for her contact information, reaching out to Barnes's standby counsel in a different case, and calling the Tether Unit and leaving a voicemail. Barnes later claimed at the *Ginther* hearing that she called defense counsel several times from her phone and her sister's phone, but she admitted that her phone only worked if it was connected to Wi-Fi.

Defendant argues that defense counsel's efforts were objectively unreasonable because he should have issued a subpoena as soon as he had a trial date and because his efforts to locate Barnes did not cure that initial failure. Defendant also claims that defense counsel should have hired an investigator to locate Barnes. But the initial decision not to subpoena Barnes was not objectively unreasonable because defense counsel reasonably relied on Barnes's representations that she was willing to testify—she was defendant's friend and she had gone out of her way to contact defense counsel and ask to testify. When defense counsel learned that Barnes was in jail, he attempted to subpoena her and to locate her after she was released. The right to effective assistance of counsel is the right to reasonable performance, not perfect performance. See *People v LeBlanc*, 465 Mich 575, 592; 640 NW2d 246 (2002). It would not be reasonable to expect defense counsel to hire an investigator over the weekend to locate Barnes in addition to the efforts he personally made to locate her. Under these circumstances, the trial court did not err by determining that defense counsel's failure to secure Barnes's presence at trial did not constitute ineffective assistance of counsel.

In any event, defendant has not demonstrated that Barnes's absence from his trial prejudiced the defense. See *Shaw*, 315 Mich App at 672. Defense counsel expected Barnes to testify that defendant never had a gun in his hand on the night of the shooting. According to Barnes, she was arguing with Murphy by the passenger side of the truck with the door open and facing away from the driver's side. Barnes never saw defendant with a gun before, during, or after the shooting. Barnes also never saw the actual shooter. However, in her statement to the police just a few hours after the shooting, she explained that she identified defendant from a photograph as the person who "shot [Williams]." The prosecution likely would have used that statement to impeach Barnes. Moreover, Barnes's testimony about her belief that defendant was not the shooter would likely not have affected the outcome of the trial because she had admitted that she was facing away from defendant at the time of the shooting, that she did not realize he was outside the vehicle, and that she did not see the shooter. Therefore, even if Barnes had testified at trial, there is not a reasonable probability that the outcome of the trial would have been different. Defendant has not shown that he was denied the effective assistance of counsel on this basis.

C. WITNESS IMPEACHMENT

Defendant contends that he was deprived of the effective assistance of counsel when defense counsel failed to impeach Murphy with her police statement, after she claimed at trial that she had seen defendant grab something from his truck. We disagree.

"The questioning of witnesses is presumed to be a matter of trial strategy." *Petri*, 279 Mich App at 413. Defendant has not overcome that presumption. Defense counsel was aware that Murphy had given a statement to the police during the investigation, and he made reasonable use of that statement to impeach her at trial. Defense counsel attempted to discredit Murphy's testimony by noting that she never told the police that Williams had said that defendant had a gun[2] and that her testimony about whether she had heard any gunshots was inconsistent with her police statement. Defendant argues that defense counsel should have also asked Murphy why she did not tell the police that she saw defendant grab something from his truck. But Murphy's testimony at trial that she saw defendant grab something from his truck was not inconsistent with her police statement. As the trial court identified, the discrepancy "is not a contradictory statement but is instead Murphy's omission from her police statement that she saw Defendant grab something from his truck." Murphy had not changed her story; she simply included an additional detail. Given that Murphy had admitted both in the police statement and during cross-examination that she did not see a gun in defendant's hands, defense counsel reasonably could have determined that there was not much advantage in highlighting that particular omission.

Moreover, defendant has not shown that defense counsel's failure to question Murphy about the omitted statement prejudiced his defense. Murphy's statement that she saw defendant grab something from the truck was supported by AG, who testified that she saw defendant grab a gun from the truck. Impeaching Murphy's statement with a single question, in a manner that would not reveal an untruth or a shifting narrative, likely would not have affected the outcome of defendant's trial. See *Shaw*, 315 Mich App at 672. Defendant was not denied the effective assistance of counsel on this basis.

D. FIREARMS EXPERT

Defendant also argues that defense counsel was ineffective for failing to consult with and call a firearms expert. We disagree.

To support a claim premised on the failure to call an expert witness, a defendant must offer proof that the expert would have testified favorably for the defense. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). "An attorney's decision whether to retain witnesses, including expert witnesses, is a matter of trial strategy." *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009). "While an attorney's selection of an expert witness may be a paradigmatic example of trial strategy, that is so only when it is made *after* thorough investigation of [the] law

[2] Murphy's police statement actually did indicate that she heard Williams yell that defendant had a gun, but Murphy testified during cross-examination that the statement did not include that information.

and facts in a case." *People v Ackley*, 497 Mich 381, 390; 870 NW2d 858 (2015) (quotation marks and citation omitted; alteration in original). Counsel may be ineffective if he "had neither the education nor the experience necessary to evaluate the evidence and make for himself a *reasonable, informed determination* as to whether an expert should be consulted or called to the stand . . . ." *Trakhtenberg*, 493 Mich at 54 n 9 (quotation marks and citation omitted; alteration in original).

Although defense counsel did not call Balash or any other expert to testify, that decision was made after sufficient investigation. Defendant's first trial counsel hired Balash to personally examine and report his findings and opinions about the firearms evidence in this case. Balash personally examined the evidence but informed the first counsel that the bullets did not match what he would expect to be fired from a semiautomatic pistol and that he "needed to re-examine . . . specifically the fatal bullet against the known standard" when "a question about the rifling" arose. After defendant's first trial counsel was replaced with defense counsel, Balash informed defense counsel about the results of his initial examination and noted that he could not write his report until he examined the fatal bullet again. According to Balash, he and defense counsel did not have much substantive contact after that initial conversation, and Balash did not reexamine the evidence until appellate counsel requested his assistance for this appeal. But defense counsel had also reached out to several other potential firearms experts via e-mail and in-person conversations, although none of them had personally examined the evidence.

Defense counsel testified that he ultimately did not hire any experts for this case because he "could not find one that would help the defense." He testified that the police had already ruled out Barnes's firearm as the murder weapon and noted that in his experience, "it's very unusual to find somebody to examine the lead" when the police have not identified the gun that potentially fired the bullets. But even without an expert, defense counsel believed that he had presented a strong defense, and he was surprised to hear that the jury returned a guilty verdict because "the entire shooting was captured on video, and there's no muzzle flash coming anywhere from [defendant]. There's no firing of a gun seen by him on that video." Given the strength of the video evidence and the fact that the only gun recovered from the crime scene had already been ruled out as the murder weapon, defense counsel's decision not to continue Balash's services or retain another expert was a reasonable trial strategy. See *Ackley*, 497 Mich at 390. The missing murder weapon and video evidence justified a defense based on the prosecution's failure to present any physical or testimonial evidence that defendant had been holding a gun instead of a defense based on highly technical expert testimony about ballistics reports.

In any event, the decision not to call a firearms expert did not prejudice the defense. According to Balash, he would have testified that the bullet fragments came from a single bullet, and that the bullet was fired from a revolver, not Barnes's nine-millimeter pistol. This testimony would not have been meaningfully different from the trial testimony. Grabowski, the prosecution's firearms expert, testified that unfired bullets in Barnes's gun were inconsistent with the bullet fragments recovered from Williams's body and that there was no gunshot residue on Barnes's gun, which indicated that it had not been fired. Dr. Nguyen also testified that the bullet fragments came from a single bullet. And during closing arguments, the prosecution agreed that no murder weapon had been recovered and that Barnes's gun was not the murder weapon. Balash's testimony would not have presented the jury with any new information that could influence the verdict. Therefore, defendant was not denied the effective assistance of counsel on this basis.

E. FORENSIC INTERVIEW

Defendant contends that he was denied the effective assistance of counsel when defense counsel failed to adequately review AG's forensic interview and use the interview during AG's cross-examination. We disagree.

"Counsel always retains the 'duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.' " *Trakhtenberg*, 493 Mich at 52, quoting *Strickland*, 466 US at 690-691. But "[d]ecisions regarding what evidence to present . . . and how to question witnesses are presumed to be matters of trial strategy." *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008).

When preparing for trial, defense counsel did not watch the video recording of the interview because the video could only be opened with a program that was available for Windows PCs, but not with defense counsel's Mac computer. Within the first few weeks of discovery, defense counsel attempted to access a PC by using the computers in the courtroom's attorneys' lounge, but those computers were not operational. Defense counsel also attempted to use a computer at the Detroit Public Library, but the building was locked because of the COVID-19 restrictions in effect at that time. He requested a new video from the prosecution, but he received another copy of the same file that was incompatible with his Mac. Instead, defense counsel reviewed a transcript of the interview that he had received from defendant's previous counsel.[3] He intended to impeach AG with the transcript, but he failed to obtain the court's permission to use the transcript in lieu of the video recording. He was under the impression that defendant's previous counsel had secured the court's permission to use the transcript instead of the video, even though the previous counsel never told him that and he never asked the previous counsel to confirm his understanding. At trial, the prosecution objected to using the transcript, and the trial court sustained the objection. Defense counsel later described this situation as "last minute, going, Oh, crap," and he decided not to use the interview during AG's cross-examination "because he did not want to fumble through video he had not seen before."

We agree with the trial court's determination that defense counsel's failure to review the video of AG's interview was unintentional, not a matter of trial strategy. Defense counsel was familiar with the program needed to open the prosecution's video file and knew from his work on other cases that this type of file would play on a Windows PC, but not his Mac. Even if defense counsel reasonably believed that defendant's previous counsel had similar issues with the video, it was not reasonable for him to assume that the previous counsel had requested and received the court's permission to use the transcripts in lieu of the original video recording, especially because there was no record of a court order on the matter. Accordingly, it was also unreasonable for defense counsel not to request permission to use the transcripts before trial, especially because he

[3] There is no record that the trial court ordered the video to be transcribed, and it appears from the *Ginther* testimony that defendant's previous counsel received the video from the prosecution and had the video transcribed to assist in his preparation for trial.

became aware early in the case that the video was unplayable and had plenty of time for a motion in limine.

Despite defense counsel's deficient performance in this regard, his failure to use the interview on cross-examination did not prejudice the defense. See *Shaw*, 315 Mich App at 672. During the forensic interview, AG described the gun that she saw defendant holding as "one of the small ones, that the police carry, black," and she believed that it looked similar to Barnes's gun because that gun was also small and black. But at trial, AG testified that she did not remember the color of defendant's gun, did not remember what the gun looked like, and that she was generally not familiar with guns. Defendant argues that he was prejudiced because impeaching AG's testimony with the interview would have called AG's memory into question and, when combined with Balash's potential testimony that the murder weapon was a revolver instead of a pistol, would have convinced the jury that the gun that AG claimed to have seen defendant holding was not the murder weapon. See *People v Gaines*, 306 Mich App 289, 321-322; 856 NW2d 222 (2014) ("The cumulative effect of several errors can constitute sufficient prejudice to warrant reversal even when any one of the errors alone would not merit reversal, but the cumulative effect of the errors must undermine the confidence in the reliability of the verdict . . . .") (quotation marks and citation omitted). But AG had already admitted to the limitations in her memory and her understanding of guns, so impeaching AG with the interview to prove that point would not have substantially affected her credibility. And even if Balash had informed the jury that the murder weapon was likely a revolver, that fact was not inconsistent with AG's interview. A jury would likely conclude that AG actually saw defendant holding a black revolver, but in the heat of the moment and with her limited experience with handguns, she mistakenly believed it to be Barnes's pistol because both guns were small and black. Therefore, the failure to present Balash's potential testimony and the failure to use AG's forensic interview did not result in any new or cumulative prejudicial effects that would undermine our confidence in the reliability of the verdict. Defendant was not prejudiced by defense counsel's failure to use AG's interview, so he was not denied the effective assistance of counsel for that reason.

III. CONCLUSION

Defendant has not overcome the presumption that defense counsel's decisions not to subpoena Barnes earlier, impeach Murphy with her police statement, or call a firearms expert were matters of trial strategy. Although defense counsel should have requested the trial court's permission to use the transcripts of AG's interview before trial, that mistake did not prejudice the defense. Accordingly, defendant has not proven any of his claims of ineffective assistance of counsel, and the trial court did not err when it denied his motion for a new trial on that basis.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan