# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>July 20, 2006 |
| v | No. 260151<br>Kent Circuit Court |
| ANTHONY LLOYD BROOKS,<br><br>Defendant-Appellant. | LC No. 04-006541-FH |

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530, and possession of marijuana, MCL 333.7403(2)(d). Defendant appeals as of right, and we affirm.

Defendant was charged and convicted following the unarmed robbery of Robert Toebes on June 18, 2004. Defendant and his codefendant, Raymond Lockridge, followed Toebes from a Shell gas station. The two men "jumped" Toebes from behind, and each punched him in the head at least once. Defendant and Lockridge stole Toebes's wallet and cellular telephone. Toebes suffered a broken nose and lost three teeth in the altercation.

Defendant first claims on appeal that Detective Les Smith's testimony, that Lockridge never denied being at the scene of the crime and never disputed that the blood on his clothing was from Toebes, was inadmissible hearsay. We review unpreserved claims of error for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999).

Hearsay is defined as "a statement, other than 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 McGhee*, 268 Mich App 600, 639; 709 NW2d 595 (2005). A statement offered to show the effect of the out-of-court statement on the hearer is not hearsay. *People v Lee*, 391 Mich 618, 642; 218 NW2d 655 (1974); *People v Flaherty*, 165 Mich App 113, 122; 418 NW2d 695 (1987). In the present case, Lockridge's statements were not offered to prove the truth of the matter asserted. Rather, the statements were offered to prove their effect on Smith. Because Lockridge never denied being at the scene of the crime or that the blood found on his clothing came from Toebes, Smith explained that he had no reason to request that DNA testing be performed on Lockridge's clothing in order to prove that the blood was Toebes's blood. Because

Lockridge's statements were not offered for the truth of the matter asserted, Smith's testimony was not hearsay. The trial court did not err, much less plainly err, in allowing Smith's testimony.

Because Smith's testimony was not hearsay, defendant's argument that Smith's testimony violated his right of confrontation is without merit. The Sixth Amendment, US Const, Am VI, does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. *People v McPherson*, 263 Mich App 124, 133; 687 NW2d 370 (2004), quoting *Crawford v Washington*, 541 US 36, 59 n 9; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Thus, because Lockridge's statements were not offered for the truth of the matter asserted, Smith's testimony did not implicate defendant's right of confrontation.

Finally, defendant argues that he received ineffective assistance of counsel because his counsel failed to object to Smith's testimony or to request a limiting instruction. To prevail on this claim, defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Counsel is presumed to have provided effective assistance, and defendant bears a heavy burden of proving otherwise. *People v Mack*, 265 Mich App 122, 129; 695 NW2d 342 (2005). The defense presented by defendant presupposed the substance of Lockridge's statements. In addition, defendant, by his own statements, admitted the substance of Lockridge's statements. Defendant told police that Lockridge attacked the victim, and that he got the victim's blood on himself when he attempted to pull Lockridge off of the victim. Counsel's failure to object to an alleged hearsay statement or to request a limiting instruction on the use of a statement, which supports the defense presented, does not fall below an objective standard of reasonableness. Furthermore, because Smith's testimony was not hearsay, any objection would have been futile. Counsel is not ineffective for failing to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). Defendant was not denied the effective assistance of counsel.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray