

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYAN DARRELL WALKER,

Defendant-Appellant.

UNPUBLISHED

January 14, 2010

No. 289362

Wayne Circuit Court

LC No. 08-007634

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant, Bryan Walker, of second-degree murder.¹ The trial court sentenced Walker as a fourth habitual offender² to 30 to 50 years in prison. Walker appeals as of right. We affirm. We decide this appeal without oral argument.³

I. Basic Facts And Procedural History

This case involves the murder of Latisa Hayes, who died as the result of multiple stab wounds. Forensics evidence linked Walker to Hayes. However, the most compelling evidence linking Walker to the murder was the testimony of Angela Carr. Carr reported getting into a car in which Walker and Vaughnisha Reed were arguing. She said that Hayes was in the backseat, but Hayes did not speak to Carr, was sitting with her hands clenched at her face, and did not make any movement. Hayes did not move or say anything as Walker moved her forward, put a leather coat on her, placed her arms in each sleeve, and leaned her back. Hayes' eyes were slightly halfway open. Carr claimed that Walker warned her not to speak of what she saw and that she then got out of the car and proceeded to a drug house. Carr asserted that Walker came to the house several hours later and again threatened her. She testified that Walker said, "I did what I had to do, I killed Latisa." In a recorded statement played for the jury, Walker apparently said that he was present but that another person stabbed Hayes. Walker was convicted as stated above, and he now appeals.

¹ MCL 750.317.

² MCL 769.12.

³ MCR 7.214(E).

II. Forensics Examination

A. Standard Of Review

Walker argues that the trial court abused its discretion in failing to order a forensics examination. Preliminarily, we note that Walker conflates the right to a forensic examination when a defendant is asserting an insanity defense with the right to a forensics examination to determine competence to stand trial or assist with the defense. Walker did not raise an insanity defense. Accordingly, we will address only the competency issue. We review for an abuse of discretion a trial court's decision regarding a defendant's competence to stand trial.⁴

B. The Request For A Forensics Examination

Two weeks before trial, Walker's defense counsel requested a forensics examination, indicating that he found it impossible to communicate with Walker, that Walker refused to discuss the case in a rational manner, and that Walker accused him of cooperating with the prosecutor. The trial court questioned Walker, who indicated that he knew he was charged with killing someone. He "thought" the charge meant that he was accused of taking someone's life. He "guessed" that he understood that he was being charged with premeditated murder and that this meant he thought about killing someone. He acknowledged that it was a crime and not okay to take someone's life. He said that his attorney was working with the prosecutor and was trying to get him to "do some time" for something he did not do. The trial court concluded that Walker understood the charge and that his defense was his claim that he was not involved in the incident.

C. Legal Standards

MCL 330.2020(1) provides:

A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

MCL 330.2026 provides that the trial court must order a competency hearing "[u]pon a showing that the defendant may be incompetent to stand trial[.]"⁵ A "bona fide doubt" as to competence must be established.⁶ This Court also reviews for an abuse of discretion a trial court's determination regarding a bona fide doubt.⁷

⁴ *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

⁵ See also MCR 6.125(C)(1).

⁶ *Harris*, 185 Mich App at 102.

⁷ *Id.*

D. Applying The Standards

Walker asserts, in essence, that defense counsel's representations constituted prima facie evidence of incompetence that entitled him to a forensics examination. However, the required "showing" requires that the defendant must present some *evidence* of incompetency.⁸ In *People v Blocker*,⁹ the Michigan Supreme Court indicated that an attorney's representation alone would not suffice. As in *Blocker*, here, Walker did not offer any evidence of incompetency but merely relied on his defense counsel's representations. To the contrary, the evidence that the trial court adduced through its questioning of Walker established that he understood that he was being charged with premeditated murder and that he could aid in his own defense. Moreover, even if defense counsel's statements were considered to be a "showing," there was no abuse of discretion in concluding that Walker's responses to the trial court's questions indicated that there was no bona fide doubt regarding his ability to understand "the nature and object of the proceedings against him" or to rationally assist "in his defense." Accordingly, we conclude that there was no abuse of discretion.

III. Sufficiency Of The Evidence And Ineffective Assistance Of Counsel

A. Standard Of Review

Walker argues that the evidence was insufficient to link him to the murder. In essence, he claims that a rational jury could not have believed Angela Carr. Walker focuses on Carr's preliminary examination testimony, which was not introduced at trial. He also asserts that defense counsel provided ineffective assistance by not using the preliminary examination testimony to impeach Carr. We will therefore examine whether defense counsel's failure to bring out the preliminary examination testimony constituted ineffective assistance in that the testimony would have cast such doubt on Carr's testimony that a rational jury could not have believed her.

In *People v Cline*,¹⁰ this Court stated:

An accused's right to counsel encompasses the right to the "effective" assistance of counsel. US Const Am VI; Const 1963, art 1 § 20; *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 674 (1984). Reversal of a conviction is required where counsel's performance falls below an objective standard of reasonableness, and the representation so prejudices the defendant as to deprive him of a fair trial. *Strickland, supra* at 687-688. The defendant must overcome the presumption that counsel's actions were based on reasonable trial strategy. *Id.* at 689. "[T]his Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). However, counsel will still be found ineffective on the basis of a strategic decision if the strategy employed was not a sound or

⁸ *People v Blocker*, 393 Mich 501, 509-510; 227 NW2d 767 (1975).

⁹ *Id.* at 506-510.

¹⁰ *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007).

reasonable one. *People v Dalessandro*, 165 Mich App 569, 577-578; 419 NW2d 609 (1988).

B. Carr's Testimony

At trial, Carr acknowledged that she gave numerous untruthful statements to the police shortly after the crime in 2005 and when the investigation was reopened in 2008. She said that she was scared because she had been threatened and because she thought she could get the same amount of time in prison as Walker. Carr said that she ultimately came forward because it was the right thing to do. She also said that she was a drug abuser in 2005 but stopped using drugs in 2007 when she became pregnant.

On cross-examination, Carr admitted that she sometimes has a reason to lie and that one reason might be that she did not want to get prosecuted for a crime. She acknowledged her previous lies. Defense counsel implied that she would have more reason to lie now because she had a baby. Defense counsel then brought out inconsistencies in Carr's story regarding whether she thought Hayes was dead or alive when Carr saw her in the car. Defense counsel had Carr confirm that Walker's alleged statement regarding having killed Hayes was made at the drug house and then inquired whether she had told police that the statement occurred in the car. She then said it was said in both places. Finally, defense counsel inquired whether it was hard to tell a lie the same way twice, and Carr said no. When he asked if it was easy, she said, "I don't remember."

Walker asserts that Carr's credibility would have been further called into question if his defense counsel had impeached Carr with her preliminary examination testimony. According to Walker, there were inconsistencies between her trial testimony and her preliminary examination testimony regarding Walker's threats to her, Walker and Reed's argument in the car, Walker's placement of an object that he hid at the drug house, and her reasons for talking to the police.

Of the matters cited, we find that the only matter that demonstrated a clear contradiction was the testimony regarding Walker's placement of an object that he hid at the drug house. At trial, Carr said that Walker stashed something in a compartment over his head, but at the preliminary examination, Carr said that Walker stashed something in a floor duct shaft. Even if this were indicative of a lack of credibility, it would not have added anything substantial to the impeachment of Carr. Defense counsel may have determined that he effectively impeached Carr in his cross-examination, and that a foray into these matters, which Carr might have explained, would not be beneficial. We decline to second-guess this apparent strategy.¹¹

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

¹¹ *Cline*, 276 Mich App at 637.