

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY LENARD WELLS,

Defendant-Appellant.

UNPUBLISHED
December 8, 2009

No. 286213
Wayne Circuit Court
LC No. 07-024705-FC

Before: Servitto, P.J., and Fort Hood and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions following a jury trial of conspiracy to commit first-degree murder, MCL 750.157a and MCL 750.316(1)(a), assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of life with parole for the conspiracy conviction and 30 to 50 years for the assault with intent to murder conviction, as well as a consecutive two-year prison term for the felony-firearm conviction. Defendant's alleged coconspirator was killed at the scene of the shooting. Defendant was acquitted of six additional counts stemming from the incident. We affirm.

Defendant first argues that there was insufficient evidence to support his conspiracy to commit first-degree murder conviction. We disagree. "In reviewing a claim of insufficient evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004), quoting *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Respecting the jury's role in the process, and mindful that the assessment of witness credibility is within its province, we will not interfere with the jury's weighing of the evidence or its credibility determinations. *Id.* at 561.

"A conspiracy is an agreement, express or implied, between two or more persons to commit an unlawful or criminal act." *People v Barajas*, 198 Mich App 551, 553-554; 499 NW2d 396 (1993). To sustain a conviction for conspiracy to commit first-degree murder, the prosecution must prove beyond a reasonable doubt that the conspirators deliberated and planned the crime with the intent to kill the victim. See *People v Herndon*, 246 Mich App 371, 386; 633 NW2d 376 (2001). Premeditation and deliberation may be inferred from all of the facts and circumstances surrounding the crime. *People v Plummer*, 229 Mich App 293, 300-301; 581 NW2d 753 (1998). Because a conspiracy is complete upon formation of the agreement, no overt

act in furtherance of the conspiracy is necessary to support the conviction. *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991).

Here, there was sufficient circumstantial evidence to support defendant's conspiracy conviction. Defendant and the shooting victim had sold drugs together, and there was evidence that defendant owed the victim a significant amount of money for a past delivery. Defendant was driving the vehicle that pulled up behind the shooting victim and his wife. The victim denied having made arrangements to meet defendant and his coconspirator at the scene. Indeed, the victim testified that he did not know the coconspirator, yet it was this man who exited the vehicle defendant was driving and began shooting. There was evidence that defendant was also armed and that he had turned his gun on a Detroit Police officer before the officer shot him. The jury could reasonably infer from this evidence that defendant and his accomplice conspired to murder the shooting victim, to whom defendant owed an outstanding drug debt. Reasonable inferences stemming from the circumstances of the street encounter, the shooting itself, and the subsequent confrontation with the police provide sufficient support for defendant's conviction.

Next, defendant argues that the trial court abused its discretion when it denied defendant's request to sequester the victims in this case. "The decision whether to order the sequestration of a witness is left to the discretion of the trial court." *People v Jehnsen*, 183 Mich App 305, 309; 454 NW2d 250 (1990). An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

"The purposes of sequestering a witness are to 'prevent him from "coloring" his testimony to conform with the testimony of another,' and to aid 'in detecting testimony that is less than candid.'" *People v Meconi*, 277 Mich App 651, 654; 746 NW2d 881 (2008) (internal citations omitted). The sequestration of witnesses in general is addressed by MRE 615, which provides as follows:

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

More specifically, § 11 of the Crime Victim's Rights Act, MCL 780.751 *et seq.*, addresses sequestration of a testifying victim:

The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the court may, for good cause shown, order the victim to be sequestered until the victim first testifies. The victim shall not be sequestered after he or she first testifies. [MCL 780.761.]

When this issue was raised with the trial court, defendant failed to challenge the prosecutor's request by identifying good cause, but rather, opined that he wanted the civilian witnesses to testify before the police witnesses. In light of the evidence that included police officers on the scene at the time of the shooting and additional officers who came to the scene, we cannot conclude that the trial court's decision constituted an abuse of discretion. *Jehnsen, supra*.

We also reject defendant's ineffective assistance of counsel claim. To establish a claim of ineffective assistance of counsel, defendant bears the burden of showing that trial counsel's performance fell below an objective standard of reasonableness and that his representation was so prejudicial that he was denied a fair trial. *People v Hoag*, 460 Mich 1, 5-6; 594 NW2d 57 (1999). To meet the second part of the test, defendant must show that a reasonable probability exists that the outcome of his trial would have been different but for trial counsel's error. *Id.* at 6.

Defendant argues that defense counsel was ineffective for calling him to testify. A defendant has a constitutional right to testify at his own trial, *People v Boyd*, 470 Mich 363, 368; 682 NW2d 459 (2004), and the decision to exercise this right is a strategic assessment left to the discretion of defendant and his counsel, *People v Martin*, 150 Mich App 630, 640; 389 NW2d 713 (1986). Here, there is no evidence in the record to support that defense counsel either encouraged or discouraged defendant to take the stand. Defendant never indicated below that he was advised to testify even though he did not want to. Further, defendant's decision to commit perjury, which he admitted to on redirect examination, is not a circumstance that can give rise to a claim of ineffective assistance of counsel. There is no evidence that defense counsel advised or aided defendant in perjuring himself during his testimony.

Defendant also argues that he was denied the effective assistance of counsel when defense counsel asked him about ski masks found in the car he was driving on the night of the shooting. During defendant's testimony, defense counsel asked defendant if he owned the ski masks, and defendant responded that he was driving his ex-girlfriend's car and that the ski masks belonged to her. On cross-examination, plaintiff presented jailhouse tape recordings of defendant and his ex-girlfriend, one of which allegedly contains a conversation where defendant asked her to say that the masks were hers. Defendant asserts that defense counsel erred in opening the door to the damaging recording, and but for this error, the outcome of his trial would have been different.

Defendant's argument is essentially asking this Court to abandon its long established practice of refusing to assess trial counsel's competence with the benefit of hindsight. See *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). Plaintiff's theory of prosecution was that this was a planned assault and that the masks supported a finding of premeditation. Defense counsel was trying to separate defendant from the ski masks and the inference of premeditation plaintiff was arguing. We will not second-guess defense counsel's attempt to distance defendant from that evidence.

Further, defense counsel directly dealt with the contents of the tape recordings on redirect examination. During cross-examination, defendant denied that he was trying to get his ex-girlfriend to lie about the masks. He implied that she was denying the masks were hers because "[s]he don't want to be involved in it." On redirect examination, defense counsel asked defendant why he "ha[d] to remind her" that the masks were hers and defendant responded,

“Because she’s scared. She don’t want to have no parts in this.” Therefore, we conclude that defendant’s ineffective assistance argument must fail.

Finally, defendant argues that he is entitled to a new trial based on the cumulative errors that occurred in this case. Because we find no errors with regard to defendant’s issues on appeal, the cumulative-error argument is without merit. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

Affirmed.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Cynthia Diane Stephens