App. 1

943 N.W.2d 90 (Mem)
Supreme Court of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,
v.
Nasser Mohamad BAZZI, Defendant-Appellant.

SC: 159989
|
COA: 347765
|
May 15, 2020

Wayne CC: 13-007077-FC

Order

On order of the Court, the application for leave to appeal the May 30, 2019 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).

Cavanagh, J. (dissenting.)

I respectfully dissent from this Court's order denying defendant's application for leave to appeal because defendant presented sufficient evidence to warrant a remand for a *Ginther*[1] hearing on his claim of ineffective assistance of counsel.

In 2013, defendant was convicted after a jury trial of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a); two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); and two counts of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a), from charges stemming from the sexual abuse of his niece. His conviction was affirmed on appeal, and this Court denied his application for leave to appeal. *People v. Bazzi*, 499 Mich. 928, 878 N.W.2d 863 (2016). In 2018, defendant filed his first motion for relief from judgment. The trial court denied the motion, and the Court of Appeals denied defendant's application for leave to appeal. Defendant now seeks leave to appeal in this Court.

In his motion for relief from judgment, defendant contended, among other things, that his attorneys were ineffective for failing to request an interpreter on his behalf. Defendant asserts that his primary language is Arabic and that he did not fully ***91** understand most of the trial proceedings, including plea negotiations. See *People v. Gonzalez-Raymundo*, 308 Mich. App. 175, 188, 862 N.W.2d 657 (2014) ("The lack of simultaneous translation implicated defendant's rights to due process of law guaranteed by the United States and Michigan Constitutions.").

In support, defendant submitted four affidavits, the results of an English proficiency test, and the results of a polygraph examination. Two of the affidavits are from defendant's two trial attorneys; one of them avers that defendant's English comprehension "was very low," and the other says that defendant's English language comprehension "may have been compromised." Both state that they are not prepared to say with certainty that defendant fully understood the consequences of going to trial or his right to take the stand in his own defense. The polygraph examination results show that the examiner believed that defendant was being truthful when he responded "no" when asked whether he understood most of the trial because of language and whether his attorney thoroughly explained the prosecutor's plea offer.

This was more than sufficient to warrant a *Ginther* hearing on defendant's claim of ineffective assistance of counsel. I would remand to the trial court to hold such a hearing.

All Citations

943 N.W.2d 90 (Mem)

Footnotes

1 *People v. Ginther*, 390 Mich. 436, 212 N.W.2d 922 (1973).

App. 2

Court of Appeals, State of Michigan

ORDER

People of MI v Nasser Mohammad Bazzi

Docket No. 347765

LC No. 13-007077-01-FC

Thomas C. Cameron
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan
Judges

The Court orders that the delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 30 2019
Date

Chief Clerk

App. 3

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Hon. Lawrence S. Talon
vs Case# 13-007077-01 FC

NASSER MOHAMAD BAZZI,
Defendant.
_____/

OPINION

On December 5, 2013, following a jury trial, defendant, Nasser Bazzi, was convicted of two counts of **first–degree criminal sexual conduct**, contrary to **MCL 750.520b**, two counts of **second-degree criminal sexual conduct**, contrary to **MCL 750.520c**, and two counts of **fourth-degree criminal sexual conduct**, contrary to **MCL 750.520e**. On December 19, 2013, defendant was sentenced to concurrent terms of one hundred thirty-five (135) months to twenty-two (22) years' incarceration for his CSC 1st degree conviction, ten (10) years to fifteen (15) years for his CSC 2nd degree conviction, and one (1) to two (2) years for CSC 4th degree conviction. On November 6, 2014, this Court denied defendant's motion for an evidentiary hearing, and his motion for a new trial. On October 1, 2015, Michigan's Court of Appeals affirmed defendant's conviction and sentence. *People v. Nasser Bazzi*, unpublished opinion, COA Docket# 320065 (2015). On May 24, 2016, Michigan's Supreme Court denied defendant's application for leave to appeal. Defendant now brings a motion for relief from judgment pursuant to **MCR 6.500 et seq.** The Prosecution has filed a response.

Defendant alleges three errors. Issue [1] Defendant argues he was deprived of a constitutionally fair trial because without an interpreter, he could not understand or fully participate in the proceedings against him. The trial court erred when it failed to appoint an interpreter, and trial counsel was ineffective for failing to inform defendant of his right to an interpreter. [2] Defendant argues the trial court erred when it proceeded without adhering to the requirements of **MCR 1.111** and trial counsel was ineffective for continuing at trial without lodging an objection, after it became clear that a witness's interpreter was making mistakes. [3] Defendant claims he is entitled to relief under **MCR 6.508(D)**, as he putatively has established good cause by the failure of his appellate attorney to raise these issues on direct appeal, and actual prejudice as a result of his total deprivation of his indispensable constitutional rights.

MCR 6.508(D) provides in relevant part:

> The Defendant has the burden of establishing entitlement to the relief requested. The court may not grant relief to the Defendant if the motion:
> ***
> (2) Alleges grounds for relief which were decided against the Defendant in a prior appeal or proceeding under this subchapter, unless the Defendant establishes
> (3) Alleges grounds for relief, except jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter, unless the Defendant demonstrates
>
> (a) Good cause for failure to raise such grounds on prior appeals or in the prior motion, and
> (b) Actual prejudice from the alleged irregularities that support the claim for relief. As used in this rule, "actual prejudice" means that
> (i) In a conviction following a trial, but for the alleged error the Defendant would have had a reasonably likely chance for an acquittal;
> ***

(iii) Or that the irregularity was so offensive to the maintenance of a sound judicial process it should not be allowed to stand regardless of its effect on the outcome of the case.

***

The court may waive the "good cause" requirement of sub-rule (D)(3)(a) if it concludes that there is a significant possibility that the Defendant is innocent of the crime.

Defendant's first and third arguments will be consolidated, as they are inter-related issues. In order to obtain relief under the provisions of **MCR 6.500 et seq**, the defendant must show good cause for failing to raise an issue that could have been raised on appeal and actual prejudice from the alleged error. **MCR 6.508(D)(3)(a)** and **(b)(i)**. Here, defendant contended that he had good cause for not raising these issues on appeal or in any prior post-conviction motion because his attorneys were ineffective. However, defendant has not provided any evidence or offer of proof to show any of his counsels were ineffective.

First, the question of whether this Court erred in declining to appoint defendant an interpreter (sua sponte) was not preserved, therefore, defendant must satisfy the burden of proof under the Plain Error Doctrine, which is 1] an error, must have occurred, 2] the error was plain (clear or obvious), and 3] the plain error must have affected defendant's substantial rights. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999). The third prong requires the defendant to establish that the error affected the outcome of the lower court proceedings. *People v. Borgne*, 483 Mich 178, 196; 768 NW2d 290 (2009). Moreover, once the defendant has satisfied all of the aforementioned elements, reversal is only warranted if the "forfeited error resulted in the conviction of an actually innocent defendant, or the error seriously affected the fairness, integrity or public reputation of the judicial proceedings independent of the

defendant's innocence." *People v Leonard*, 224 Mich App 569; 569 NW2d 663 (1997). Although, defendant asserts this issue as a constitutional structural defect, failure to appoint an interpreter is not part of the explicitly enumerated list, and in the absence of a request has not been ruled to be a structural error, but, rather an unpreserved error. *Borgne, supra.*

Second, defendant claims his attorneys were ineffective for failing to request an interpreter for him during his trial. However, in order for defendant to obtain post-conviction relief for ineffective assistance of trial counsel based upon counsel's alleged failures, he must show trial counsel's representation fell below an objective standard of reasonableness and that trial counsel's representation was constitutionally deficient. Defendant must show that counsel's performance was deficient, and, under an objective standard of reasonableness, that the error was so serious that counsel was not functioning as an attorney (constitutionally deficient) as guaranteed under the Sixth Amendment. *People v. Hurst*, 205 Mich App 634, 640-641; 517 NW2d 858 (1994). The determination of whether a defendant has been deprived of the effective assistance of counsel is a mixed question of fact and law. *People v. Dendel*, 481 Mich 114, 124, 748 NW2d 859 (2008). This Court reviews the trial court's factual findings for clear error and reviews its constitutional determinations de novo. *Id.* As defendant did not establish a testimonial record regarding the ineffective assistance of counsel claim, review is limited to mistakes apparent on the record. *People v. Wilson*, 242 Mich App 350, 352, 619 NW2d 413 (2000).

Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v. LeBlanc*, 465 Mich. 575, 578, 640 NW2d 246 (2002). Generally, to

establish ineffective assistance of counsel, a defendant must show: (1) that counsel's performance was below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, *Strickland v. Washington*, 466 US 668, 688, 694, 104 S Ct 2052, 80 LEd2d 674 (1984); *People v. Frazier*, 478 Mich. 231, 243, 733 N.W.2d 713 (2007), and (3) that the resultant proceedings were fundamentally unfair or unreliable, *People v. Odom*, 276 Mich App 407, 415, 740 NW2d 557 (2007). Counsel's performance must be measured against an objective standard of reasonableness and without the benefit of hindsight. *People v. LaVearn*, 448 Mich 207, 216, 528 NW2d 721 (1995). Counsel must investigate, prepare, and present all substantial defenses. *In re Ayres*, 239 Mich App 8, 33, 608 NW2d 132 (1999). This Court, however, will not substitute its judgment for the judgment of counsel regarding matters of trial strategy. *People v. Rockey*, 237 Mich App 74, 76, 601 NW2d 887 (1999).

Although, defendant has provided two affidavits from his trial attorneys, which purport in hindsight, they should have hired an interpreter to ensure defendant completely understood what was going on with his case; an attorney's mere claim that when looking back with the benefit of hindsight, he now is uncertain whether or not his client understood him does not meet the standard of legal incompetence or unprofessional conduct. **MRPC 1.4(b)**.[1] If defendant's attorneys, Cyril Hall and Amir Makled, realized he did not understand what they were saying to him, or was unable to interact with them to assist them in his own defense,

[1] A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. **MRPC 1.4(b)**.

then **MRPC 1.4(b)** and *Strickland* would be breached. However, neither Mr. Hall nor Mr. Makled in their affidavits makes this assertion; rather they claim in retrospect, defendant could have benefited from an interpreter. Consequently, defendant fails to carry his burden of proof. Thus, he is not entitled to relief. Both the Plain Error Doctrine and Ineffective Assistance of Counsel require a showing that a plain error was made by this Court or by his attorneys. However, defendant only provides suggestions in hindsight that he should have had an interpreter, not evidence that he actually needed one. Similarly, defendant has not shown sufficient evidence that his appellate counsel's decision not to raise this issue during his appeal of right constituted error, and thus, summarily has failed to meet the good cause requirement of **MCR 6.508(D)(3).**

Third, throughout the trial, defendant displayed a clear understanding of the English language, completely contrary to the assertions made by him within his motion. This Court had numerous opportunities to interact with the defendant throughout the trial and sentencing, and at no time did he display any of mental deficits or difficulty in understanding spoken English. In fact, defendant routinely greeted the court and staff with "Good Morning or Good Afternoon" where appropriate. Prior to the trial, when questions were raised about immigration consequence pertaining to a potential guilty plea, defendant affirmatively answered that he was a United States Citizen. Moreover, this Court conducted a voir dire of the defendant as it pertained to the People's plea deal:

THE COURT:	Okay. You may put your hand down. Tell me your full name, please.
DEFENDANT BAZZI:	Nasser Mohamad Bazzi.

THE COURT: And how old are you, Mr. – Bazzi is how you pronounce it?

DEFENDANT BAZZI: Bazzi.

THE COURT: Okay. And how old are you?

DEFENDANT BAZZI: Forty-three.

THE COURT: How far have you gone in school?

DEFENDANT BAZZI: The tenth grade.

THE COURT: All right. Mr. Hall is your attorney?

DEFENDANT BAZZI: Yes, sir.

THE COURT: Okay. Do you understand the offer that's been made?

DEFENDANT BAZZI: Yes, sir.

THE COURT: Have you had an opportunity to discuss this offer with Mr. Hall?

DEFENDANT BAZZI: Yes.

THE COURT: And have you made a decision?

DEFENDANT BAZZI: Yes.

THE COURT: Do you wish to accept the prosecutor's offer or reject it?

DEFENDANT BAZZI: Reject.

THE COURT: Okay. Has anyone threatened you to get you to make this decision?

DEFENDANT BAZZI: Not at this time.

THE COURT: All right. Has anyone forced you to get you to make this decision?

DEFENDANT BAZZI: No, sir.

THE COURT: Anyone promised you anything in exchange for making this decision?

DEFENDANT BAZZI: No, sir.

THE COURT: Is it your own choice?

DEFENDANT BAZZI: Yes, sir.

THE COURT: Are you making it freely and voluntarily?

DEFENDANT BAZZI: Yes, sir.[2]

Further, on November 26, 2013, this Court informed defendant he was late for court, and defendant responded, "I'm sorry", "there was a lot of traffic." In fact, this Court conducted voir dire with this defendant on his right to testify, and after his conviction, during his sentencing hearing.[3] [4] At no time did the defendant appear to lack any understanding of the English language or indicate he was confused or in need of an interpreter on or off the record. *People v Atsilis*, 60 Mich App 738; 231 NW2d 534 (1975). The question of whether an interpreter is needed for the defendant is a matter for the trial judge's discretion. **MCL 775.19a.** When there is no evidence presented to make language an issue in the case, the trial court has no duty to affirmatively establish defendant's proficiency in English. *Id.* As defendant presented no evidence to show he suffered from any English language comprehension deficiencies, this Court did not have an affirmative duty to show he was proficient in English or to sua sponte appoint an interpreter simply because he immigrated into this country.

Defendant's final argument is that he was deprived of a fair trial because Afrah Hamid's interpreter was inaccurate and not properly certified. Defendant also claims his attorneys were ineffective for failing to object to the interpreter. The standard of review of an unpreserved error is done under the Plain Error Doctrine. *Carines, supra.* If a defendant can satisfy all the above requirements, reversal is only warranted if the forfeited error resulted in the conviction of an actually innocent defendant or the error seriously affected the fairness,

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[2] T. 11/22, 4-9.
[3] T. 12/4, 4-6.
[4] SEN 12/19, 5-8.

integrity or public reputation of the judicial proceedings independent of defendant's innocence. *Id.* However, this Court finds no error in the appointment of Samerah Rahal, who is a qualified Arabic interpreter on the Michigan Supreme Court's List of qualified foreign language interpreters to translate Arabic to English. Witness, Afrah Hamid, was able to speak and understand both English and Arabic, and during her direct and cross-examination, she was able to answer all of her questions in English. This Court's appointment of Ms. Rahal was a prophylactic measure pursuant to **MCR 1.111**, to ensure she would have assistance to prevent any potential problems.

> In order to determine whether the services of a foreign language interpreter are necessary for a person to meaningfully participate under subrule (B)(1), the court shall rely upon a request by an LEP individual (or a request made on behalf of an LEP individual) or prior notice in the record. If no such requests have been made, the court may conduct an examination of the person on the record to determine whether such services are necessary. During the examination, the court may use a foreign language interpreter. For purposes of this examination, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely. **MCR 1.111(B)(3).**

> The court shall appoint a single interpreter for a case or court proceeding. The court may appoint more than one interpreter after consideration of the nature and duration of the proceeding; the number of parties in interest and witnesses requiring an interpreter; the primary languages of those persons; and the quality of the remote technology that may be utilized when deemed necessary by the court to ensure effective communication in any case or court proceeding. **MCR 1.111(F).**

Finally, defendant did not object to the appointment of Ms. Rahal. He cannot now claim he feels she misinterpreted some of Afrah's statements, when he voiced no such objection during trial, and by his own admission, is not proficient enough in English to qualitatively question Ms. Rahal's translation of Afrah Hamid's statements in Arabic to

English. Defendant's assertions do not meet the prejudice prong of either *Strickland* or *Carines*. His challenge of Ms. Rahal's interpretation and claim of ineffective assistance of counsel are both unfounded claims as neither were deficient in their respective duties for this Court or for their representation for the defendant.

Defendant has already exhausted his appeals, and this is his third post-conviction motion, yet this is the first time he has raised any issue pertaining to the need of an interpreter or translator, or that Afrah Hamid's interpreter erroneously translated her statements to the court. Therefore, this Court finds defendant has not demonstrated both good cause and actual prejudice for the reasons stated above; and as such, defendant's arguments fail to meet the heavy burden under **MCR 6.508 (D)(3)(a)**. Thus, this Court holds defendant's motion for relief from judgment requesting a new trial and the assistance of an interpreter is **DENIED**.

Dated: 10/24/2018

OCT 2 4 2018

Circuit Court Judge

LAWRENCE S. TALON

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY _____ DEPUTY CLERK

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Hon. Lawrence S. Talon

vs

Case# 13-007077-01 FC

NASSER MOHAMAD BAZZI,
Defendant.
_____/

ORDER

At a session of this Court held in the Frank

Murphy Hall of Justice on OCT 24 2018

PRESENT: HON. LAWRENCE S. TALON
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing Opinion;

IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment, requesting a New Trial and the assistance of an interpreter is **DENIED**.

Circuit Court Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY _____ DEPUTY CLERK

PROOF OF SERVICE

I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on 10/24/2018

Name

App. 4

AFFIDAVIT

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The undersigned deposes and states as follows:

1. I, Cyril C. Hall, represented Mr. Nasser Bazzi. The case went all the way to jury trial with a guilty verdict.
2. I have first-hand knowledge that Mr. Bazzi's primary language is Arabic, and that during all relevant proceedings his English language comprehension may have been compromised.
3. I did not employ a translator during trial preparation. However, I did work very closely with attorney Amir Makled, who has a basic understanding of Arabic.
4. I am not a certified translator, nor am I fluent in Arabic.
5. I did not request a translator to assist Mr. Bazzi during his preliminary examination or his trial, or discuss with Mr. Bazzi the right to request the assistance of a certified translator.
6. I recall Mr. Bazzi complaining of translation during the trial, especially during testimony regarding the audio recording entered into evidence at trial.
7. Mr. Makled and I did our best to fully explain the plea offer to Mr. Bazzi. However, in retrospect, I am not prepared to say with certainty that he fully understood the consequences of going to trial.
8. Mr. Makled and I did our best to fully explain to Mr. Bazzi his right to take the stand in his own defense. However, in retrospect I am not prepared to say with certainty that Mr. Bazzi fully understood that right.

9. I did assist Mr. Bazzi's appellate attorney, Mr. Cornelius Pitts, in developing issues to raise on appeal. Mr. Pitts and I did not discuss the matter of Mr. Bazzi's right to assistance by a translator.

I do affirm that the above statements are true to the best of my knowledge, information, and belief.

Cyril C. Hall

Subscribed and sworn before me this 26th day of March, 2018, by:

Notary Public, Wayne County, MI

My commission expires 3/14/23

LAMA KHARBOUTLI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires Mar. 14, 2023
Acting in the County of Wayne

App. 5

AFFIDAVIT

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The undersigned deposes and states as follows:

1. I, Amir Makled, represented Mr. Nasser Bazzi. The case went all the way to jury trial with a guilty verdict.
2. I have first-hand knowledge that Mr. Bazzi's primary language is Arabic, and that during all relevant proceedings his English language comprehension was very low.
3. I did not employ a translator during trial preparation. However, I have a very basic understanding of Arabic.
4. I am not a certified translator, nor am I fluent in Arabic or, in particular, Arabic with a Lebanese dialect.
5. I did not request a translator to assist Mr. Bazzi during his preliminary examination or his trial, or discuss with Mr. Bazzi the right to request the assistance of a certified translator.
6. I recall Mr. Bazzi complaining of translation during the trial, especially during testimony regarding the audio recording entered into evidence at trial.
7. Mr. Hall and I did our best to fully explain the plea offer to Mr. Bazzi. However, in retrospect, I am not prepared to say with certainty that he fully understood the consequences of going to trial.
8. Mr Hall and I did our best to fully explain to Mr. Bazzi his right to take the stand in his own defense. However, in retrospect I am not prepared to say with certainty that Mr. Bazzi fully understood the consequences of going to trial.

I do affirm that the above statements are true to the best of my knowledge, information, and belief.

Amir Makled

Subscribed and sworn before me this 26th day of March, 2018, by:

Notary Public, Wayne County, MI

My commission expires 3/14/23

LAMA KHARBOUTLI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires Mar. 14, 2023
Acting in the County of Wayne

App. 6

AFFIDAVIT OF NASSER MOHAMAD BAZZI

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The undersigned deposes and states as follows:

1. I, Nasser Mohamad Bazzi, am the defendant in this matter and was convicted after a jury trial before the Honorable Lawrence S. Talon of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), two counts of second-degree criminal sexual conduct (CSC II), MCL 740.520c(1)(a), and two counts of fourth-degree criminal sexual conduct (CSC IV), MCL 520e(1)(a).
2. My primary language is Arabic, and this is the language I spoke with my family and in my community until I was convicted. At the time of my trial, my English language skills were very limited.
3. I went to school in Beirut until I was 10 years old. I never went to school in the United States. When I told the trial judge that I had gone to school through the tenth grade, I did not understand the trial judge's question.
4. Attorneys Cyril C. Hall and Amir Makled represented me before and during trial.
5. I had very few communications with my trial attorneys. I never spoke with Attorney Hall, and my discussions with Attorney Makled were limited.
6. I asked to bring my wife, an English speaker, to attorney visits, but my attorneys told me it was best for her not to get involved.
7. My brother, Haidar Bazzi, was their main contact throughout the proceedings. Haidar would speak to my attorneys and then update me in Arabic.

8. I did not understand much of the dialogue during the hearings or during trial. I would ask Haidar to explain what happened after we left the court.
9. In rejecting the prosecutor's plea offer and during all questioning by the trial court I indicated my assent at the direction of counsel, but did not fully understand the nature of the court proceedings.
10. My attorneys told me not to accept the plea agreement because the case against me was "bullshit." They did not explain the consequence of accepting the plea agreement or the consequence of being convicted after a trial.
11. Had I understood the plea agreement and the risk of going to trial, it is very likely that I would have accepted the plea agreement. I cannot say that I would have accepted with absolute certainty because I did not understand the terms when offered and I do not know what they were.
12. Neither Mr. Hall nor Mr. Makled informed me that I had the right to a court-appointed interpreter or recommended that an interpreter assist in the preparation of my defense.
13. My attorneys told me, through Haidar, over and over that I had nothing to worry about, and that they would handle everything. I was not aware of any reason to doubt that this was true.
14. I told Attorney Makled that I was having trouble understanding the testimony and what was happening in the courtroom because Arabic is my first language and I am not fluent in English. Attorney Makled told me not to worry about it.
15. I also informed Attorney Makled during trial that the witness translator was making mistakes in her translation. The translator spoke a different dialect than my family.

16. Attorney Cornelius Pitts represented me on direct appeal. He visited me twice but did not bring a pen or paper. Attorney Pitts came once for 30 minutes to introduce himself and once before he filed the appeal.
17. I did not understand who Attorney Pitts was or what he was doing in relation to my case.
18. I had trouble communicating with Attorney Pitts but Attorney Pitts did not inquire about my need for an interpreter.
19. If called to testify, I can and will provide further information.

I do affirm that the above statements are true to the best of my knowledge, information, and belief.

Nasser Bazzi

Nasser M. Bazzi

Subscribed and sworn before me this 20th day of ~~March~~ April, 2018, by:

Joseph E Niemiec

Notary Public, Montcalm County, MI

My commission expires July 21, 2018

JOSEPH E. NIEMIEC
NOTARY PUBLIC, STATE OF MI
COUNTY OF MONTCALM
MY COMMISSION EXPIRES Jul 21, 2018
ACTING IN COUNTY OF Montcalm

App. 7

2015 WL 5749385
Only the Westlaw citation is currently available.

UNPUBLISHED
Court of Appeals of Michigan.

PEOPLE of the State of
Michigan, Plaintiff–Appellee,
v.
Nasser Mohamad BAZZI, Defendant–Appellant.

Docket No. 320065.
|
Oct. 1, 2015.

Wayne Circuit Court; LC No. 13–007077–FC.

Before: WILDER, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

Opinion

PER CURIAM.

***1** Defendant appeals as of right his jury trial convictions of first-degree criminal sexual conduct (CSC–I), MCL 750.520b(1)(a), two counts of second-degree criminal sexual conduct (CSC–II), MCL 750.520c(1)(a), and two counts of fourth-degree criminal sexual conduct (CSC–IV), MCL 750.520e(1)(a). The trial court sentenced defendant to 135 months to 22 years for each CSC–I conviction, 10 to 15 years for each CSC–II conviction, and one to two years for each CSC–IV conviction, all sentences to be served concurrently. We affirm.

I

A

Defendant's convictions arise out of instances of sexual abuse against his niece during her childhood and teenage years. Before the victim married her husband in November 2011, she lived with her mother, Afrah Hamid, and eight siblings in the family home in Dearborn, Michigan. Her father also lived with the family until his death. Various family members testified that defendant was a frequent visitor and often spent the night in available spaces in the family home, including the room shared by the victim and four of her sisters.

The victim testified that defendant started to abuse her when she was 11 years old and described multiple instances of sexual abuse at trial.[1] In the context of explaining her relationship with defendant, the victim explained that, when her father was not present, defendant disciplined the children and even hit them, without objection from her mother. The victim further explained that avoiding disrespect is very important in Lebanese–American culture, and the men in her family are like kings, whereas women are like servants. As a result, she continued to interact with defendant after the abuse began and behaved according to her culture's expectations because, otherwise, she feared that defendant or her mother would "make a problem out of it."

Despite the fact that defendant threatened to kill her if she revealed his abuse, and that talking about molestation was not a "comfortable" subject within her family, the victim testified that she eventually began to reveal the abuse that had occurred. The victim explained that her family repeatedly urged her to maintain her secrecy after she revealed the abuse, reasoning that it could cause embarrassment. The victim further clarified that, if a man knows a woman has been "touched before[,] ... it's like you're trash ... like you're not worthy to marry a good man."

Zeina Hamid, the wife of the victim's brother, Ahmad Hamid, recalled overhearing a conversation at her house between the victim's sisters (Latefa and Fatema Hamid) and the victim's friend (Hoda Fawaz) about the molestation.[2] She later directly confronted the victim about the abuse, but, at the urging of Latefa, Fatema and Hoda, did not report the conduct.[3] Zeina testified that the victim's mother and sister, Laila Hamid, subsequently warned her to maintain the secrecy for the sake of the girls' reputations and their abilities to marry. At trial, Laila admitted that she warned Zeina to stay out of her family's business.

***2** When the victim was engaged in August 2011, and began planning her wedding, her mother wanted defendant to sing at the wedding.[4] The victim testified

that the victim confronted her mother directly about the abuse in order to explain why she did not want defendant to sing. At trial, the mother testified that the victim never told her that defendant had abused her and only indicated that he abused others. Additionally, the mother stated that the victim's accusations that defendant abused others were merely suspicions, with no personal observations, and constituted a sin in their religion.

According to the victim, she secretly recorded a subsequent conversation with her mother about defendant's abuse two or three weeks after she first revealed the abuse to her mother because of her mother's lack of support with regard to the allegations and a fear that she would be accused of lying. The recording was primarily in Arabic, and the record demonstrates a dispute among the witnesses and an interpreter regarding the English translation of the conversation. The victim testified that, during that conversation, she again told her mother that defendant abused her and others, but her mother angrily expressed concerns about "how this would look if people found out in the community," stating that the victim should lie about it, even if she had a gun pointed to her head, and take the information to her grave. Likewise, Ahmad confirmed that that his mother and sister "were talking about how [defendant] molested her and pretty much, you know, my mom was telling her to stay quiet, not tell anybody." The prosecutor also elicited testimony that, in the recording, the victim mentioned whom she had previously told about the abuse. In contrast, Latefa claimed that her mother never told the victim to lie, and Laila and the mother testified that they did not hear any reference to the victim or her sisters being abused on the recording. Instead, they testified that the victim had only stated that the defendant had abused "somebody else" or "other people," and that the mother had only told the victim to stop talking about her suspicions, which were not based on anything that the victim witnessed herself. [5]

After the victim's wedding in November 2011, Ahmad noticed that his family was treating the victim and Zeina differently. When he confronted the victim, she revealed defendant's abuse. Ahmad testified that, afterward, he discussed the abuse with their mother, who urged him to keep the secret to preserve his sisters' ability to marry. Ahmad also discussed the abuse with his brothers and his father's brothers, who called a family meeting at one of their homes the next day.

The victim testified that, at the family meeting, (1) she discussed the abuse that she had suffered, (2) Mariam admitted to having heard the victim's allegations once before, and, (3) although they initially denied that defendant had abused them, Fatema and Latefa ultimately revealed that they were victims as well. Ahmad and Zeina, as well as the victim's aunt (Soufa Moukdad) and her uncle (Moustafa Hamid), testified similarly on rebuttal that, at the meeting, the victim, Fatema, and Latefa revealed that defendant had abused them; these witnesses explained that the victim's sisters initially denied the abuse, but admitted it after an uncle suggested a polygraph examination. According to the victim, the meeting ended with the family crying and hugging one another. The victim testified that she did not go to the police afterward because she lacked the necessary confidence and self-esteem; she was also trying to give her sisters time to process their revelations.

***3** Defendant's witnesses testified very differently regarding the family meeting. They maintained that Fatema and Latefa denied any abuse throughout the meeting, despite the suggestion of a polygraph and Ahmad's "very explosive" behavior and tendency to gesture toward his waist—where a gun could have been stored in a holster—when the sisters refused to change their stories. Likewise, Fatema and Latefa again testified at trial that defendant never abused them.

The victim testified that, after the meeting, her mother, sisters, and two brothers (Hassan and Ali Hamid) never talked to her again. Although she admitted that her mother attempted to contact her while she was pregnant, the victim did not respond. She suspected that her mother only wanted to save face in the community. Ahmad similarly had little contact with his family after the meeting and explained that he lost respect for his mother, who was most worried about "hiding everything."

In June 2012, the victim recorded her feelings about defendant's conduct in a diary. She testified that she did not specifically describe what occurred during the molestation. In her diary, she also discussed her family's attempts to interfere with her marriage.

Ahmad testified that, in January 2013, which was approximately one year after the family meeting, he could no longer maintain the family's secret. Despite his

mother's warnings that his sisters would be blacklisted, he reported the abuse of his sisters by defendant to the police so that he would not "do something crazy" and "go to jail." Afterward, his mother cut off all ties with him. The investigating officer testified that she reached out to Laila, Fatema, Latefa, and Mariam, but only Mariam responded, indicating that she did not want to be involved.

B

At trial, the prosecutor indicated during her opening statement that "there were allegations that came out and there was [sic] some disclosures" at the family meeting. Subsequently, during his opening statement, defense counsel asserted that although the victim claimed to the police that defendant also abused Laila, Fatema, and Latefa, "[n]ever was [defendant] ever confronted with having touched one of those younger sisters." He later asserted that Ahmad used a gun and threatening conduct at the family meeting "to solicit and demand and extract confessions from the girls[, but even] ... in the face of ... all those threats[,] all the girls are consistent, nothing ever happened to us, what are you doing and why are we here and why are we going through this?" Subsequently, witnesses offered conflicting testimony regarding whether the victim's sisters were abused by defendant and whether the sisters disclosed that they were abused during the family meeting. During their testimony, the sisters consistently maintained that they were not sexually abused by defendant. The defense did not make a timely objection to the prosecutor's opening statement or to any of the references to defendant's abuse of the other sisters during the prosecution's case-in-chief. During his closing argument, the defense argued that the victim was not credible in making her allegations against defendant because she lied when she claimed that her sisters had made similar allegations.

***4** Additionally, the prosecutor elicited the following testimony from the victim's brother, Ali:

Q. Now, you said you would never—you'd never of thought that your uncle would do something, correct, to your sisters?

A. No, I wouldn't of.

Q. And you don't want that to be true, is that correct?

A. It's not true.

Q. Fair to say you wouldn't want that to be true, correct?

A. It's not true.

Q. Sir, yes or no, is it fair to say that you wouldn't want that to be true?

A. Yes.

Q. Okay. And if it were true that would mean that you, as an older brother, failed to protect your younger sisters, isn't that correct?

A. It's a hypothetical. I'm not even going to answer it.

Q. Would that mean you failed, as an older brother, to protect your younger sisters?

A. No, I don't think so.

Q. If your uncle who was living in the house was molesting your sisters-

A. No.

Q.—you wouldn't feel guilty at all?

A. No.

Also during trial, defense counsel attempted to elicit testimony, which the trial court excluded, regarding the details of a variety of matters, including, *inter alia,* the family's dissatisfaction with the victim's husband; the criminal record of the victim's husband; the family's disapproval of Zeina before she married Ahmad; the family's relationship and contact with Zeina and Ahmad after their marriage; the interactions between the victim's mother and Ahmad's and Zeina's child; an instance during which Ahmad allegedly assaulted his mother; defendant's relationship with the victim's father; an instance during which defendant "demanded" that the victim dance with him; whether Ahmad apologized after the family meeting; how Latefa would have responded if she had told her mother that she had been abused and her mother did not believe her; whether the victim changed her phone number after her wedding; and the mother's contact and relationship with the victim before and after the wedding.

Following the parties' closing arguments, the trial court specifically instructed the jury, "If you believe that a witness previously made a statement inconsistent with his or her testimony at this trial[,] the only purpose to which that earlier statement can be considered by you is in deciding whether the witness testified truthfully in court. The earlier statement is not evidence that what the witness said earlier is true."

Following his trial and sentencing hearing, defendant filed a motion for a new trial and request for a *Ginther*[6] hearing, which the trial court denied. Subsequently, defendant filed in this Court a motion to remand for an evidentiary hearing in order to further develop the factual record. On January 23, 2015, this Court denied the motion, stating:

> The Court orders that the motion to remand pursuant to MCR 7.211(C)(I) is DENIED. Defendant-appellant previously moved for a new trial and requested an evidentiary hearing under MCR 7.208(8) on the same grounds raised in the motion to remand, which the trial court denied. Defendant-appellant has not demonstrated that the trial court should have conducted an evidentiary hearing on the issues raised in his motion for a new trial. The majority of the arguments involve matters that can be reviewed based on the existing trial record. On the remaining issue involving the trial court's ruling limiting cross-examination regarding motive or bias, defendant-appellant has not supported his motion with an affidavit or offer of proof to establish how he would further develop the record on that issue on remand. [*People v. Bazzi,* unpublished order of the Court of Appeals, entered January 23, 2015 (Docket No. 320065).]

II

***5** Except as noted below in Part V, all of defendant's claims of evidentiary error and prosecutorial misconduct are unpreserved, as defendant failed to make a timely objection to the evidence that he challenges on appeal and failed to object to the alleged instances of prosecutorial misconduct.MRE 103(a)(1); *People v. Metamora Water Serv,* 276 Mich.App 376, 382; 741 NW2d 61 (2007). We review unpreserved issues for plain error affecting substantial rights. *People v. Vandenberg,* 307 Mich.App 57, 61; 859 NW2d 229 (2014), citing *People v. Carines,* 460 Mich. 750, 763; 597 NW2d 130 (1999). To demonstrate such an error, the defendant must show that (1) an error occurred, (2) the error was clear or obvious, and (3) "the plain error affected [the defendant's] substantial rights," which "generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Carines,* 460 Mich. at 763.

Additionally, our review of defendant's ineffective assistance of counsel claims is limited to errors apparent from the lower court record because a *Ginther* hearing was not held in the trial court. *People v. Jordan,* 275 Mich.App 659, 667; 739 NW2d 706 (2007) (citations omitted). "A claim of ineffective assistance of counsel is a mixed question of law and fact. A trial court's findings of fact, if any, are reviewed for clear error, and this Court reviews the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo." *People v. Petri,* 279 Mich.App 407, 410; 760 NW2d 882 (2008), citing *People v. LeBlanc,* 465 Mich. 575, 579; 640 NW2d 246 (2002).

> Effective assistance of counsel is presumed, and defendant bears a heavy burden of proving otherwise. To demonstrate ineffective assistance, defendant must show: (1) that his attorney's performance fell below an objective standard of reasonableness, and (2) that this performance so prejudiced him that he was deprived of a fair trial. "To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." [*People v. Gaines,* 306 Mich.App 289, 300; 856 NW2d 222 (2014) (citations omitted).]

"A defendant must also show that the result that did occur was fundamentally unfair or unreliable." *People v. Lockett,* 295 Mich.App 165, 187; 814 NW2d 295 (2012).

III

Defendant first argues that the trial court erred by admitting evidence that the victim alleged that he not only abused her, but also her sisters. Defendant contends that this was improper other-acts evidence and inadmissible hearsay. We disagree.

The record discloses that defendant first opened the door for evidence regarding these allegations in his opening

statement. See *People v. Bates,* 91 Mich.App 506, 510; 283 NW2d 785 (1979) (stating, in the context of other-acts evidence, that a defendant may put a matter into "issue by opening argument, cross-examination, or the presentation of affirmative evidence"). He cannot now complain of an error that he precipitated. To hold otherwise would allow defendant to harbor error as an appellate parachute. See *People v. Carter,* 462 Mich. 206, 214216; 612 NW2d 144 (2000); *People v. Knapp,* 244 Mich.App 361, 378; 624 NW2d 227 (2001) ("A defendant will not be heard to introduce and use evidence to sustain his theory at trial and then argue on appeal that the evidence was prejudicial and denied him a fair trial"); *People v. Green,* 228 Mich.App 684, 691; 580 NW2d 444 (1998) ("A defendant should not be allowed to assign error on appeal to something his own counsel deemed proper at trial."). [7] Therefore, defendant's argument is without merit. [8]

***6** Defendant also asserts that defense counsel was ineffective for either failing to object to, or by introducing, the victim's statements regarding the alleged abuse against her sisters. We disagree.

Here, because defense counsel opened the door to the challenged evidence, any objection to the prosecutor's questioning on the same topic would have been futile; thus, defense counsel's failure to object did not constitute ineffective assistance. *People v. Unger,* 278 Mich.App 210, 256; 749 NW2d 272 (2008). Furthermore, to the extent that defendant suggests that defense counsel was ineffective for introducing the challenged evidence, decisions regarding what evidence to present are generally presumed to be matters of trial strategy. *LeBlanc,* 465 Mich. at 578; *People v.. Horn,* 279 Mich.App 31, 39; 755 NW2d 212 (2008). Defense counsel introduced evidence of the victim's allegations that defendant abused her sisters, but then elicited testimony from her sisters that they were never abused. As such, it is apparent that defense counsel used this evidence to support a defense theory that the victim's allegations involving her sisters were not credible and, therefore, the victim's allegations against defendant were not credible. Thus, because defendant has not overcome the strong presumption of reasonable trial strategy, which this Court will not second-guess, defendant has failed to establish that defense counsel was ineffective. *Horn,* 279 Mich.App at 39.

IV

Defendant next argues (1) that it was improper to admit testimony regarding whether the victim's brother, Ali, would feel guilty or feel as though he failed to protect his sisters if the allegations against defendant were true, and (2) that the evidence elicited by the prosecutor that sexual abuse could tarnish a woman's reputation in the victim's culture was irrelevant and constituted improper reputation evidence. [9] We disagree.

A

On appeal, defendant describes the prosecution's questioning of Ali with regard to how he would feel if the allegations against defendant were true as "guilt-assuming hypotheticals" that impermissibly attacked defendant's character and violated defendant's right to be presumed innocent. Contrary to this characterization, Ali did not testify regarding defendant's character or reputation in the community or his own character or reputation in the community. Instead, Ali testified regarding his own feelings about what he would and would not *want to be true* and whether he would personally feel guilty for not protecting his sisters from defendant's abuse. As such, defendant's reliance on authority regarding guilt-assuming hypotheses by character witnesses is inapposite because, here, Ali was a fact witness, and he was not testifying about defendant's reputation in the community.

If the prosecutor had established that believing the allegations against defendant would have made Ali feel guilty, the prosecutor could have argued that Ali was motivated to disbelieve those allegations and, thus, provided biased testimony on behalf of defendant. "A witness's bias is always relevant." *People v. McGhee,* 268 Mich.App 600, 637; 709 NW2d 595 (2005). However, Ali denied that he would feel any guilt and reiterated during the questioning that the allegations against defendant were untrue and that the prosecutor's questions were "hypothetical." Therefore, defendant has failed to establish that this line of questioning was prejudicial and affected his substantial rights. *Carines,* 460 Mich. at 763. Likewise, defendant's claim of ineffective assistance on this basis must fail because an objection would have been futile, see *Unger,* 278 Mich.App at 256, and defendant has

failed to establish that he was prejudiced by this line of questioning, see *Gaines,* 306 Mich.App at 300.

B

***7** With regard to defendant's argument that the testimony regarding a woman's reputation in Lebanese–American culture was irrelevant, evidence is relevant under MRE 401 when it has a tendency to make a material fact that is of consequence to the action more or less probable. *People v. Sabin,* 463 Mich. 43, 56–57; 614 NW2d 888 (2000). Contrary to defendant's claim, "[m]ateriality ... does not mean that the evidence must be directed at an element of a crime or an applicable defense. A material fact is one that is 'in issue' in the sense that it is within the range of litigated matters in controversy." *Id.* at 57 (citations and quotation marks omitted).

From the outset of the case, beginning with his opening statement, defense counsel attacked the victim's credibility by arguing that her delay in reporting the allegations indicated that the allegations were untrue. As such, any explanations for the delay were relevant to whether the victim was fabricating the allegations. The victim testified that, in her culture, if a man knows that a woman has been "touched before[,] ... it's like you're trash ... like you're not worthy to marry a good man." Additionally, the victim testified that when her family finally learned about the abuse, she was repeatedly warned to keep the information a secret in order to protect her reputation. The jury could infer that, as a result of this cultural belief, the victim did not reveal the abuse immediately, and even when she did reveal the abuse, the information was contained within the family for months for the same reason before Ahmad sought help from the police. Thus, the evidence regarding the perception of sexual abuse in the victim's culture was relevant, and its admission was not plain error. Moreover, defense counsel was not ineffective for failing to object because any objection would have been futile. *Unger,* 278 Mich.App at 256.

V

Next, defendant argues that many of the trial court's rulings on the admission of evidence during defense counsel's cross-examination of the prosecution's witnesses and direct examination of the defense witnesses denied him the constitutional rights to present a defense and confront the witnesses against him. We disagree.

When an issue is preserved, we review a trial court's evidentiary ruling for an abuse of discretion. *People v. Chelmicki,* 305 Mich.App 58, 62; 850 NW2d 612 (2014). Preliminary questions of law underlying the trial court's ruling, such as whether a rule of evidence precludes admissibility, are reviewed de novo. *Id.* A preserved evidentiary error is presumed to be harmless, and defendant bears the burden of proving otherwise. *People v. Lukity,* 460 Mich. 484, 493–495; 596 NW2d 607 (1999). This Court only reverses if, " 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *Id.* at 495–496, quoting MCL 769.26. The "examination of the entire cause" encompasses evaluating the error in the context of the untainted evidence. *Lukity,* 460 Mich. at 495.

***8** A defendant's constitutional right to present a defense and confront his accusers is secured by the right to cross-examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1, § 20; *People v. Adamski,* 198 Mich.App 133, 138; 497 NW2d 546 (1993). However, the right to present a defense and cross-examine witnesses is not absolute. See *People v. Hayes,* 421 Mich. 271, 279; 364 NW2d 635 (1984); *People v. Arenda,* 416 Mich. 1, 8; 330 NW2d 814 (1982). "A witness may be cross-examined on any matter relevant to any issue in the case," MRE 611(c); see also *People v. Layher,* 464 Mich. 756, 764; 631 NW2d 281 (2001), but neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject, *Adamski,* 198 Mich.App at 138. Rather, a court has wide latitude to impose reasonable limits on cross-examination based on concerns such as prejudice, confusion of the issues, or questioning that is only marginally relevant, among others. *Id.; People v. Canter,* 197 Mich.App 550, 564; 496 NW2d 336 (1992). Likewise, a defendant is not permitted to introduce irrelevant evidence, MRE 402, and a trial court may properly exclude evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," MRE 403.

To the extent that defendant provides a specific basis for his claims of evidentiary error, the thrust of his argument is that the trial court erroneously precluded him from eliciting evidence demonstrating that the prosecution's witnesses had reasons or motivations to lie, which was relevant in response to the prosecution's theory of the case that her witnesses, particularly the victim and Ahmad, lacked a motive to lie about the allegations against defendant. For the following reasons, we find no basis for reversal.

Defendant challenges the preclusion of defense counsel's question to Mariam regarding whether she discussed her dissatisfaction with the victim's "choice of husband" and Laila's testimony that the victim's husband had a criminal record. The trial court ruled that the evidence regarding Mariam's dissatisfaction with the victim's husband was not relevant and struck Laila's statement regarding the victim's criminal history from the record. Defendant elicited evidence throughout trial in support of his theory that the family's disapproval of the victim's husband motivated her to fabricate the allegations of abuse. As such, any testimony from Mariam and Laila about the same subject would have been cumulative, and defendant does not argue how the family's specific reason for disliking the victim's husband—an alleged criminal record—was material to his case. Therefore, even if we assume, arguendo, that the trial court erroneously excluded this evidence, defendant cannot establish that it is more probable than not that the exclusion of this evidence was outcome-determinative, as defendant's theory of the case was adequately presented by other witnesses and arguments. *Lukity,* 460 Mich. at 495.

***9** Defendant also cites excluded questions regarding the family's disapproval of Zeina; the family's relationship with Ahmad and Zeina after their marriage; whether Zeina knew that the victim's mother did not want Zeina to influence her daughters; and the extent of Zeina's contact with the women in the family. The prosecutor objected to these questions on several grounds, including relevance. Even if this evidence was relevant, *inter alia,* to demonstrate Ahmad's and Zeina's motivation to lie about defendant because they had a poor relationship with the family, it would have been cumulative. The record demonstrates that the same questions were asked of other witnesses, and defense counsel relied on their responses in his arguments to the jury regarding the defense's theory of the case. Thus, even if we assume, without deciding, that the trial court erred in excluding the testimony regarding these matters, defendant cannot establish that it is more probable than not that the exclusion of this evidence was outcome-determinative. *Lukity,* 460 Mich. at 495.

Defendant cites questions by defense counsel regarding the interactions of the victim's mother with Ahmad's and Zeina's child and whether they accused her of hurting their son. But, again, the record already demonstrated that a conflict existed between Ahmad and Zeina and the rest of his family. Although the couple's belief that the mother abused their son may have demonstrated their bias against the mother, defendant fails to explain how this bias was material to any alleged bias against defendant; rather, defendant elicited testimony that Ahmad and defendant had been great friends, who often socialized together. As such, defendant once again cannot establish that it is more probable than not that the exclusion of this evidence was outcome-determinative. *Lukity,* 460 Mich. at 495.

Defendant cites numerous other trial court rulings without any analysis regarding why the trial court abused its discretion in excluding the evidence. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *People v. Kevorkian,* 248 Mich.App 373, 389; 639 NW2d 291 (2001) (quotation marks and citation omitted). Accordingly, we conclude that these additional claims of evidentiary error are abandoned.

VI

Defendant argues that the victim's diary entries were inadmissible hearsay, that the elicitation of this evidence amounted to prosecutorial misconduct, and that defense counsel provided ineffective assistance by failing to object to the diary entries. We disagree.

MRE 801(c) defines hearsay as "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." "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." MRE 801(a).

Hearsay is not admissible, except as specifically provided by the rules of evidence. MRE 802.

***10** With regard to prior consistent statements, MRE 801(d) provides, in relevant part:

> (d) Statements which are not hearsay. A statement is not hearsay if—
>
> (1) Prior statement of witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is ... (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive....

In *People v. Jones,* 240 Mich.App 704, 706–707; 613 NW2d 411 (2000), this Court, quoting *United States v. Bao,* 189 F3d 860, 864 (CA 9, 1999), held that the party offering a prior consistent statement must establish four elements:

> (1) the declarant must testify at trial and be subject to cross-examination; (2) there must be an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony; (3) the proponent must offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and, (4) the prior consistent statement must be made prior to the time that the supposed motive to falsify arose. [Quotation marks omitted.]

First, defendant contests the second element of the inquiry, arguing that defense counsel's challenges to the victim's credibility in his opening statement were insufficient to constitute express or implied charges of fabrication because he had not yet cross-examined the victim and his opening statement was in response to the prosecution's opening statement. This Court rejected this same argument in *Jones,* holding that the second element was satisfied by defense counsel's comments during her opening statement that the witness's testimony resulted from improper influence or motive. *Jones,* 240 Mich.App at 707–708. Although defendant asserts that *Jones* was wrongly decided, we are bound by that decision. See MCR 7.215(J)(1). Therefore, we reject defendant's claim given the express and implied charges in defense counsel's opening statement that the victim's allegations against defendant were fabricated.

Second, defendant contests the fourth element, asserting that the victim did not compose the diary entries before the time that the supposed motive to falsify arose. We agree that, by the time the victim wrote the diary entries in 2012, the alleged motive to falsify—retribution for her family's disapproval of her husband—had already arisen. However, even if the diary entries were therefore hearsay, such that the admission of the diary entries constituted plain error, defendant cannot establish that the evidence affected his substantial rights. The victim's testimony regarding the specific instances of sexual abuse by defendant, standing alone, was sufficient to support defendant's convictions. See MCL 750.520h; *People v. Hallak,* —Mich.App ——, ——; — NW2d —— (2015) (Docket No. 317863); slip op at 4. The victim testified that she only made general allegations of abuse and explained how she felt afterward in her diary. The record demonstrated that the victim made similar, general allegations to her sisters, to her friend, to her family at a meeting, and to her husband. Defendant does not argue on appeal that this evidence also should have been excluded. In light of this cumulative evidence in the record, we conclude that any error in the admission of the diary entries did not affect defendant's substantial rights because defendant has not shown that the admission of the evidence affected the outcome of the proceedings. *Carines,* 460 Mich. at 763.

***11** We further reject defendant's claim of prosecutorial misconduct because he does not argue that this evidence was presented in bad faith, see *People v. Dobek,* 274 Mich.App 58, 70; 732 NW2d 546 (2007) ("A prosecutor's good-faith effort to admit evidence does not constitute misconduct."), and a cautionary instruction could have cured any prejudice, *People v. Ackerman,* 257 Mich.App 434, 449; 669 NW2d 818 (2003). Additionally, we reject defendant's claim of ineffective assistance. [10] We will not second-guess defense counsel's strategy, which included not objecting to the diary entries and using evidence from the same entries to attack the victim's credibility—including that the victim wrote that defendant only "tried to do things" to her and left her alone when she asked —and support the defense theory that the victim blamed

defendant as retribution for the discord in her family related to her marriage. *LeBlanc,* 465 Mich. at 578; *Horn,* 279 Mich.App at 39. Likewise, there is no indication that defendant was prejudiced by defense counsel's failure to object to the statements in the diary for the reasons stated above.

VII

Defendant argues that testimony regarding the contents of the recorded conversation between the victim and her mother constituted inadmissible hearsay. We disagree.

As stated above, MRE 801(c) defines hearsay as "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." The victim testified that she recorded a conversation between herself and her mother about defendant's abuse of her so that her mother could not later accuse her of lying about the incidents. The prosecutor elicited testimony that, in the recording, the victim mentioned whom she previously told about the abuse. The victim and Ahmad also testified that, in the recording, their mother angrily expressed concerns about "how this would look if people found out in the community" and encouraged the victim to lie about it. Contrary to defendant's claim on appeal, we find that the contents of the recording were not offered to prove the truth of the statements it contained (i.e., that defendant abused the victim or that the victim's reputation in the community was actually at risk). Although the prosecutor did not have an opportunity to explain the reason why the evidence was offered because defendant failed to object to the testimony, the statements made by the parties during their opening statements and closing arguments and the context of the prosecutor's elicitation of the evidence indicates that the testimony was offered to explain why the victim maintained her secrecy and did not go to the police. [11] "An out-of-court statement introduced to show its effect on a listener, as opposed to proving the truth of the matter asserted, does not constitute hearsay under MRE 801(c)." *Gaines,* 306 Mich.App at 306–307. Therefore, it was not plain error to admit evidence of these statements from the recording.

***12** Likewise, to the extent that Ahmad described the subject matter of the recording during his testimony, our review of the record indicates the testimony regarding the contents of the tape was not offered to prove the truth of the statements, but to show the effect they had on the victim's reporting of the incident. See *Gaines,* 306 Mich.App at 306–307. Furthermore, the context of the prosecutor's examination of Ahmad indicates that the statement was also intended to show the recording's effect on Ahmad, which resulted in him speaking with his mother and contacting his brothers and uncles, who initiated a family meeting. *Id.* Therefore, we conclude that it was not plain error to admit the victim's and Ahmad's testimony regarding the statements in the recording.

Defendant also challenges the prosecutor's elicitation of testimony from Zeina about the recording. However, Zeina merely testified that she heard the recording, that she did not have a copy of the recording until shortly before trial, and that she did not recall sharing the recording with the police. None of this evidence involved out-of-court statements. MRE 801. Therefore, we reject defendant's claim that Zeina's testimony constituted inadmissible hearsay.

Additionally, defendant challenges testimony from the victim's mother, Ali, [12] and Latefa on cross-examination by the prosecutor, which indicated that the victim said in the recording that defendant only abused "somebody else" or "other people." [13] Because it was the prosecutor's burden to prove that defendant abused *the victim,* we conclude that it was not her intent with this testimony to show that defendant only abused others. Therefore, the statements were not offered for their truth and, therefore, did not constitute inadmissible hearsay. MRE 801(c). Rather, this testimony demonstrated that defendant's witnesses testified in a way to further conceal a family secret and further explained why the victim would have delayed reporting.

Moreover, we reject defendant's claim of prosecutorial misconduct because he has failed to establish that the prosecutor offered the recording in bad faith, *Dobek,* 274 Mich.App at 70, and, to the extent that defendant argues that defense counsel was ineffective by failing to object to evidence of the recording, any objection would have been futile because it was not inadmissible hearsay for the reasons stated above. *Unger,* 278 Mich.App at 256.

Finally, we find no basis for reversal based on defendant's claim that the jury impermissibly used the statements regarding the recording and the sisters' out-of-court

statements at the family meeting as substantive evidence of his guilt. The trial court instructed the jury that it may only consider prior inconsistent statements in order to determine whether the witness testified truthfully in court, specifically stating that "[t]he earlier statement is not evidence that what the witness said earlier is true ." "Juries are presumed to follow their instructions," *People v.. Rodgers,* 248 Mich.App 702, 717; 645 NW2d 294 (2001), and defendant has failed to rebut that presumption.

VIII

***13** Lastly, defendant asserts that the prosecution improperly bolstered the credibility of the out-of-court statements made by the victim's sisters at the family meeting by eliciting testimony that the victim's sisters changed their stories after a suggestion was made that they take a polygraph examination regarding whether they were abused. We disagree.

"Normally, reference to a polygraph test is not admissible before a jury. Indeed, it is a bright-line rule that reference to taking or passing a polygraph test is error." *People v. Nash,* 244 Mich.App 93, 97; 625 NW2d 87 (2000) (citations omitted). But the mere mention of the word "polygraph" does not necessarily require reversal. *Id.* at 98, citing *People v. Rocha,* 110 Mich.App 1, 8–9; 312 NW2d 657 (1981); *People v. Kosters,* 175 Mich.App 748, 754; 438 NW2d 651 (1989).

> [R]eference to polygraph examinations need not always constitute reversible error. A reference may be a matter of defense strategy, the result of a nonresponse answer, or otherwise brief, inadvertent and isolated. [T]his Court has analyzed a number of factors to determine whether reversal is mandated ... (1) whether defendant objected and/or sought a cautionary instruction; (2) whether the reference was inadvertent; (3) whether there were repeated references; (4) whether the reference was an attempt to bolster a witness's credibility; and (5) whether the results of the test were admitted rather than merely the fact that a test had been conducted. [*Rocha,* 110 Mich.App at 8–9 (citations omitted); see also *Nash,* 244 Mich.App at 98.]

Here, the references were not inadvertent or isolated. The prosecutor specifically elicited testimony from several prosecution witnesses about whether anyone at a family meeting suggested the use of a polygraph examination when the sisters denied any abuse. And the reference to the polygraph examination could have added to the credibility of the prosecution's witnesses, who claimed that the sisters finally admitted that defendant abused them after the polygraph was suggested. But there was no evidence that a polygraph was actually given. Thus, no results were considered by the jury. In addition, defendant did not object to the evidence or request a cautionary instruction. Rather, defendant used the evidence to support his defense theory. The defense witnesses testified that the sisters' claims that they were never abused remained consistent throughout the family meeting—even in the face of what they described as violent threats by Ahmad and the suggestion that they take a polygraph. The jury could infer from this testimony that the sisters were truthful and that they would not have otherwise undergone such pressure to protect a lie.

Because the defense relied on the polygraph references to support its argument that its witnesses were credible, defendant cannot establish that this evidence affected his substantial rights, i.e., that it was outcome-determinative. *Carines,* 460 Mich. at 763. To the extent that defendant claims that the prosecutor's elicitation of the challenged testimony amounted to misconduct, again, "[a] prosecutor's good-faith effort to admit evidence does not constitute misconduct," *Dobek,* 274 Mich.App at 70, and there is no indication that the prosecution elicited the testimony in bad faith or that the prosecutor suggested that she had special knowledge of the witnesses' credibility based on the references to a polygraph, see *People v. Bennett,* 290 Mich.App 465, 477; 802 NW2d 627 (2010). Moreover, in light of defense counsel's clear strategy to use the suggestion to take a polygraph examination as additional evidence that the sisters, who testified on defendant's behalf, were unwavering, defendant has failed to overcome the strong presumption that defense counsel's failure to object to the challenged evidence was a reasonable trial strategy. *Horn,* 279 Mich.App at 39; *Unger,* 278 Mich.App at 242. Likewise, for the reasons

stated above, there is no indication that the outcome of the trial would have been different but for defense counsel's failure to object to the challenged evidence. *Gaines,* 306 Mich.App at 300.

***14** Affirmed.

SHAPIRO, J. (*concurring*).
I concur in the result only.

All Citations

Not Reported in N.W.2d, 2015 WL 5749385

Footnotes

1 The prosecution witnesses and defense witnesses provided different accounts of the details of the home and plausibility of the victim being alone with defendant at specific times throughout her childhood and teenage years.

2 Zeina testified that the victim's family generally did not like her, and defendant's witnesses offered similar testimony. Latefa explained that her mother accepted Zeina as Ahmad's wife, but “always made us keep a certain distance away from her.” Defense counsel elicited testimony from the victim's sister, Mariam Hamid, that their parents did not want Ahmad to marry Zeina.

3 Latefa, Fatema, and Hoda denied any such conversations.

4 On direct examination, the victim admitted that her family did not like her husband. Everyone but Ahmad objected to the wedding, but her mother ultimately gave her permission to marry, and the family attended the ceremony. The victim's mother explained that, despite her daughter's choice for a husband, she wanted to be at the wedding to support her. The family purchased wedding gifts for the victim, but the victim never collected them from the family home. The victim also prevented her family from throwing a shower for her and shopping for her wedding dress, and several witnesses testified that she was standoffish at her wedding.

5 Ali Hamid also testified that he heard the tape, but he did not remember what his mother and sister said on the tape.

6 *People v. Ginther,* 390 Mich. 436, 443; 212 NW2d 922 (1973).

7 We reject defendant's claim that the prosecutor first introduced this challenged evidence in her opening statement, as the prosecutor's statement did not include any reference to abuse perpetrated by defendant against the victim's sisters.

8 We also reject defendant's argument that reversal is required regardless of whether the defense opened the door to the evidence given the mandatory notice requirement under MRE 404(b)(2). Even if a prosecutor plainly errs by failing to provide notice, a defendant still must show that the error affected his substantial rights, i.e., that the error affected the outcome of the trial court proceeding; reversal is only warranted “when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.” *Carines,* 460 Mich. at 763 (quotation marks and citations omitted). On the record before us, we conclude that defendant has failed to establish prejudice from the prior-acts evidence, especially given the consistent, in-court statements of the victim's sisters that defendant did not abuse them, and the defense's use of the victim's allegations involving her sisters to undercut the victim's credibility.

9 We reject defendant's argument that there was any claim at trial in violation of MRE 404 that the victim possessed a chaste or virtuous character. The prosecutor only argued that the victim was motivated by her family to keep the sexual abuse—which signified a lack of virtue in her culture—a secret.

10 Defendant argues for the first time in his reply brief that defense counsel was ineffective when he failed to object to the diary entries because defense counsel never asserted in his opening statement that the victim's allegations were *recently* fabricated. Defendant did not raise this argument in his brief on appeal, and this argument is not responsive to the prosecution's brief. Therefore, we decline to address it. See MCR 7.212(G) (“Reply briefs must be confined to rebuttal of the arguments in the appellee's or cross-appellee's brief and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities.”). However, we note that the remarks in defense counsel's opening statement also implied that the victim had a *motive to falsify* based on her family's, and defendant's, disapproval of her husband. *Jones,* 240 Mich.App at 706–707 (“[T]here must be an express or implied charge of recent fabrication *or* improper influence or motive of the declarant's testimony....” [Emphasis added.]).

11 In making this conclusion, we find significant the fact that the victim's testimony regarding the statements in the recording did not include a description of defendant's abuse. Although she testified that the topic of the conversation was “what [defendant] did to me,” the rest of her testimony concerned why she recorded the conversation, how her mother reacted

to the news, and other topics that they discussed during the conversation (e.g., how the situation would appear if other individuals in the community were aware of it and to whom the victim had disclosed her allegations).

12 The portion of the transcript cited by defendant only indicates that Ali confirmed that he had heard the recording; Ali stated that he could not remember what was said.

13 Defendant claims the introduction of statements in the recording about “other people” or “somebody else” was more prejudicial than probative under MRE 403. But as discussed earlier, defendant's strategy was to claim that the victim lied about defendant's abuse of others and, therefore, similarly lied when she claimed that defendant abused her. Because the challenged evidence also supported defendant's strategy, we reject defendant's claim.

End of Document

App. 8

AFFIDAVIT

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The undersigned deposes and states as follows:

1. I, Haidar Bazzi, am the brother of the Defendant in this case, Mr. Nasser Bazzi. Although the case went all the way to jury trial with a guilty verdict, it was myself and my brother Kassem who would constantly communicate with Nasser's trial attorneys, Mr. Hall and Mr. Makled, on Nasser's behalf.

2. I primarily met with the attorneys because my English was more proficient than that of my brother Nasser, but also because attorneys Hall and Makled consistently advised me there was no need to meet with Defendant Nasser Bazzi because "he wasn't going to testify and that the case of the prosecution was bullshit and we had nothing to worry about."

3. Only one time, a day or two before the trial began, did the attorneys meet with Defendant Nasser Bazzi and I was present. I acted as a translator and the meeting had nothing to do with trial strategy. Instead, it only involved instructions on how Nasser should sit, dress etc., to portray the best image for the jury.

4. I have first-hand knowledge that Defendant Nasser Bazzi's primary language is Arabic, as is mine, and that during all relevant proceedings his English language comprehension was very low. Nasser relied on me after court proceedings to advise him based on what I could comprehend as I am not a native English speaker.

5. I asked Nasser Bazzi's attorneys for an independent translator during trial preparation and at trial. I told the lawyers that translation of Arabic was essential for two reasons. First, Defendant Nasser Bazzi needed to know exactly what was going on, as he could not assist in his own defense without this knowledge. Second, as we got closer to trial, I advised both attorneys that the recordings needed to be independently translated and we should have our own interpreter at the trial to advise the judge of what the English translation is/was on the recordings. I knew this was critical despite the fact that my English language ability is moderate at best because I knew of recordings and how critical they were if introduced at trial.

6. I recall in the evening during the trial at home, Defendant Nasser Bazzi complained of translation presented at the trial, especially during testimony regarding the audio recording entered into evidence at trial but only after I told him what I believed was translated in English to the judge and jury for consideration.

7. I recall and am certain that Defendant Bazzi wanted to testify at his trial and Mr. Hall told him 'he absolutely could not.' Defendant Bazzi and I took this to mean he did not have a

right to take the stand in his own defense. After the fact and in speaking to other attorneys, I learned that this is untrue. I am prepared to say with certainty that Mr. Bazzi did not fully understand the consequences of going to trial, he did not participate in his own defense, and he absolutely did not knowingly waive his right to testify.

8. Defendant Bazzi to the best of my recollection dropped out of school in or around the age of 10 while in Lebanon. I am certain that he did not attend any schooling whatsoever here in the United States.

I do affirm that the above statements are true to the best of my knowledge, information, and belief.

Haider Bazzi

Subscribed and sworn before me this 5th day of ~~March~~ April, 2018, by:

Notary Public, Wayne County, MI

My commission expires 12-26-2023

HUDA M. ALAWI
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
ACTING IN THE COUNTY OF Wayne
MY COMMISSION EXPIRES 12/26/2023

App. 9

Lanfear Consulting & Investigations Ltd

P. O. Box 183356 Shelby Township, Michigan 48318

October 2, 2017

PRIVILEGED AND CONFIDENTIAL

Ms. Janet Napp, Attorney at Law
Flood Law, P.L.L.C.
401 North Main Street
Royal Oak, Michigan 48067

Re: NASSER MOHAMMED BAZZI
Inmate / MDOC – Carson City Facility
10274 East Boyer Road
Carson City, Michigan 48811
Polygraph # LCI-1002-17

POLYGRAPH EXAMINATION REPORT

HISTORY

Nasser Bazzi was charged and convicted in a Wayne County Circuit Court with Criminal Sexual Conduct. He is serving a multiple year sentence and is currently at the Carson City East Correctional Facility of the Michigan Department of Corrections. Nasser Bazzi is an immigrant to the United States of America from Iraq. During his trial he was not afforded an interpreter. He complained about it to his counsel and his wife. At the request of his appellate counsel, Ms. Janet Napp, Nasser Bazzi is now going to submit to a polygraph examination. The purpose of this polygraph examination is to determine if Nasser Bazzi is being truthful about not understanding much of what was said and argued at his trial.

EXAMINATION DATE

A polygraph examination was scheduled for NASSER MOHAMMED BAZZI in the Carson City Correctional Facility located at 10274 East Boyer Road, Carson City, Michigan at 9:00 AM, 10-02-17.

POLYGRAPH RIGHTS

NASSER MOHAMMED BAZZI was informed of his rights according to Act 295, P.A. 1972. The advice of rights and permission forms were reviewed and signed.

REVIEW MATERIAL

Ms. Napp's office provided the background information necessary to conduct this polygraph examination of Nasser Mohammed Bazzi, in this matter.

Lanfear Consulting & Investigations Ltd. P.O.Box 183356 Shelby Twp, Mi 48318

PRETEST INTERVIEW

Nasser Bazzi said he could understand some of the words being said but could not completely understand most of what was being said. He said when the prosecutor or judge or witnesses, or even his own defense counsel spoke quickly or used some words he did not know, or had not heard before, he would then not be able to understand them. He also complained that the female used to translate Arabic to English for the court was incorrect in her interpretations. In particular Nasser Bazzi said that he did not completely understand the plea offer made by the prosecutor. It should be noted that I employed the use of an interpreter and spoke slowly avoiding complicated terms. Even after several years in prison with only English spoken to him Nasser Bazzi was puzzled many times and needed the interpreter to explain my statements. All test questions were formulated and reviewed with NASSER MOHAMMED BAZZI. He acknowledged that he understood them.

INSTRUMENT

During the polygraph examination a Lafayette Statesman Instrument, Model #761-60SA, containing electrically enhanced components was used. The control question technique was utilized.

RELEVANT TEST QUESTIONS

1. (Q) You said you did not understand most of the trial, because of language, is that a lie?
   (A) No.

2. (Q) Did your attorney explain thoroughly the plea offer made by the prosecutor?
   (A) No.

OPINION

It is the opinion of the undersigned examiner, based on the analysis of the polygraph examination of NASSER MOHAMMED BAZZI, that he is being truthful to the pertinent test questions.

Respectfully submitted,

Christopher J. Lanfear
Certified Polygraph Examiner
Michigan License # PE-163

CJL/ml

- Act 295, P.A. of 1972 (MCL 338.1728)

Any recipient of information, reports or results from a polygraph examiner, except for the person tested, shall not provide, disclose or convey such information, report or results to a third party, except as may be required by law and the rules promulgated by the State Board of Forensic Polygraph Examiners.

App. 10

Test Report for BAZZI NASSER

ID Number: 311669
Test Date: 06/03/15
Run Date: 06/03/15

ECF 6/2/15
TABE 9/10 Survey

Subtests	L/F	NC	NA	SS	GE	NP	NRS	NS	OM	Predicted GED
Reading	E0	8	25	322	1.5	5	1	4	20	
Math Compu	E0	19	25	432	3.8	18		4	80	
Applied Math	E0	6	23	327	1.8	4		4	0	
Language	E0	7	25	375	1.8	8	1	4	0	
Total Math		25	48	379	2.6	7	2	4		
Total Battery		40	98	358	2.0	4		4		

L/F=Test Lev & Frm NC=No. Correct NA=No. Attempted
SS=Scale Score GE=Grade Equiv NP=National %ile
NRS=Literary Level NS=National Stan OM=% Obj. Mastered

Objectives	Score	MST	Percent
Reading			
E01 INTRP GRAPH	3/ 4	+	75
E02 WDS CONTEXT	0/ 4	-	0
E03 RECALL INFO	2/ 7	-	28
E04 CONST MEAN	1/ 5	-	20
E05 EVAL/EX MNG	2/ 5	-	40
Subtest Avg			32
Math Compu			
E11 ADD WHL NUM	6/ 6	+	100
E12 SUB WHL NUM	4/ 5	+	80
E13 MUL WHL NUM	5/ 5	+	100
E14 DIV WHL NUM	1/ 5	-	20
E15 DECIMALS	3/ 4	+	75
Subtest Avg			76
Applied Math			
E21 NUM OPERATN	0/ 5	-	0
E22 COMP CONTXT	1/ 3	-	33
E23 ESTIMATION	1/ 2	P	50
E24 MEASUREMENT	1/ 3	-	33
E25 GEOMETRY	0/ 2	-	0
E26 DATA ANALY	2/ 4	P	50
E27 STAT/PROB	0/ 2	-	0
E28 PRE-ALG/ALG	0/ 2	-	0
E29 PROB SOLVG	1/ 2	P	50
Subtest Avg			24

Objectives	Score	MST	Percent
Language			
E30 USAGE	3/ 5	P	60
E31 SENT FORMA	0/ 4	-	0
E32 PARA DEVEL	1/ 4	-	25
E33 CAPITALIZ	1/ 4	-	25
E34 PUNCTUATION	0/ 4	-	0
E35 WRITG CONV	2/ 4	P	50
Subtest Avg			28
Total Average			40