

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDDIE STEWART, JR.,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 209250
Oakland Circuit Court
LC No. 97-155631 FH

Before: Doctoroff, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of unlawful use of a motor vehicle, MCL 750.414; MSA 28.646. Defendant was sentenced to nine months to two years in prison for his conviction as an habitual offender pursuant to MCL 769.13; MSA 28.1085. We affirm.

Defendant's first issue on appeal is that there was insufficient evidence to convict defendant of unlawful use of a motor vehicle and that the trial court erred when it denied defendant's motion for a directed verdict. We disagree. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

The elements of the specific intent offense of unlawful use of a motor vehicle are (1) the motor vehicle did not belong to the defendant, (2) having obtained lawful possession of the vehicle from the owner, the defendant used it beyond the authority which was given to him, and (3) the defendant must have intended to use the vehicle beyond the authority granted to him, knowing that he did not have the authority to do so. *People v Hayward*, 127 Mich App 50, 60-61; 338 NW2d 549 (1983).

Here, defendant was driving a vehicle that did not belong to him. Defendant was only given authority to take the van home on the morning of October 3, 1997, because he needed to make another work related run at 1:30 p.m. that day. Defendant was told that he was not authorized to use the van for any personal business. Defendant kept the van in his possession and did not return to work on

October 3, 4, and 5, 1997. Eugene O'Neil testified that defendant did not answer his door on October 3, 1997, at 4:00 p.m. and the van was not in defendant's parking lot or in any of the surrounding apartment complex parking lots. Defendant was stopped while driving the van two days after the van was reported stolen. Defendant had not been at work that night. Viewed in the light most favorable to the prosecution, this evidence was sufficient to prove beyond a reasonable doubt that defendant committed unlawful use of a motor vehicle. Furthermore, given the same evidence, the trial court did not abuse its discretion when it denied defendant's motion for a directed verdict.

Defendant's second issue on appeal is that the trial court abused its discretion when it refused to hear or reserved its ruling on defendant's motion for directed verdict. We disagree. A defendant may move for a directed verdict at the close of the prosecutor's case. If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). If the defendant does not move for a directed verdict until after presentation of his own proofs, the court may reserve decision until after the jury has completed its deliberations. MCR 6.419(A).

Here, defendant claims that the trial court refused to acknowledge his counsel's timely attempt to make her motion for a directed verdict after the prosecutor rested, but before the defense rested. However, a careful reading of the trial transcript reveals that defendant's counsel moved for a directed verdict after she indicated that the defense rested.¹ After the jury was excused to begin deliberations, defense counsel renewed her motion for a directed verdict and the trial court denied it. According to MCR 6.419(A), if the defendant does not move for a directed verdict until after presentation of his own proofs, the court may submit the case to the jury and decide the motion before or after the jury has completed its deliberations. In the instant case, defense counsel did not move for a directed verdict until after she indicated that she did not intend to call any witnesses. Therefore, the trial court acted properly when it reserved its decision on the motion for a directed verdict until after the jury had begun deliberations.

Defendant's next issue on appeal is that the trial court record failed to establish a knowing, free and voluntary waiver of defendant's right to testify. We disagree. The constitutional right to testify on one's own behalf at a criminal trial is essential to due process of law. *People v Soloman (Am Op)*, 220 Mich App 527, 533-537; 560 NW2d 651 (1996). Defendant claims that he was denied the right to testify on his own behalf and that there was no waiver of his right to testify made on the record. However, this Court has held that there is no requirement in Michigan that there be an on-the-record waiver of a defendant's right to testify. *People v Harris*, 190 Mich App 652, 661; 476 NW2d 767 (1991).

In *Harris*, the defendant claimed that she was denied a fair trial because she was denied the right to testify on her own behalf and there was no waiver on the record. *Harris, supra*, 190 Mich App 661. This Court held that the trial court had no duty to advise her of the right, nor was it required to determine whether she made a knowing and intelligent waiver of the right. *Id.* at 661-662. Accordingly, in this case, even though there is no waiver of defendant's right to testify on the record, the trial court did not err.

Defendant's final issue on appeal is that defendant was denied fundamental due process and a fair trial based on the cumulative effect of each individual error. We disagree. Only actual errors are aggregated to determine their cumulative effect. *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995). Defendant's three allegations of trial error are without merit. Accordingly, there are no actual errors whose cumulative effect was so prejudicial as to deny defendant due process and a fair trial.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

¹ The in-court exchange went as follows:

THE PROSECUTION: We rest, Your Honor.

THE COURT: The defense calling any witnesses?

DEFENSE COUNSEL: One moment, Your Honor. No, Your Honor.

THE COURT: All right, that concludes the evidence in this case. We're now ready to proceed with closing arguments. Approach the bench for a moment.

(Short conference)

DEFENSE COUNSEL: For directed verdict please.

THE COURT: I said you can do it later. Go ahead.