

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES E. HUDSON,

Defendant-Appellant.

UNPUBLISHED

January 16, 2001

No. 216369

Wayne Circuit Court

LC No. 98-010665

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Following a bench trial, defendant Charles Hudson was convicted of felonious assault¹ and sentenced to serve two years' probation. Hudson appeals as of right and we affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The complainant testified at trial that Hudson, who was driving a cab, cut in front of her, forcing her into the next lane. While stopped at the intersection, Hudson lowered his passenger window and rhetorically asked the complainant if she had a driver's license. She responded that he had cut her off. According to the complainant, Hudson then raised his hand and pointed a handgun at her. She quickly realized it was a real gun, silver or metallic in color, with four bullets in the chamber. The complainant ducked down across the passenger seat and accelerated through the intersection. She dialed 911 on her cellular telephone.

The complainant testified that, after she drove through the intersection, she looked in the rearview mirror and saw Hudson following behind her rapidly and that she was driving fast to "lose him." She made several right turns and at one point lost control of her vehicle, striking a utility pole. She continued down the street after noticing that Hudson was no longer following

¹ MCL 750.82(1); MSA 28.277(1).

* Circuit judge, sitting on the Court of Appeals by assignment.

her. She drove back to 7 Mile Road where she saw Hudson's cab traveling fast down the road. She fled again and eventually flagged down a police car for help.

Hudson did not testify at trial, but the parties stipulated to admit his statement to police officers who questioned him the day after the incident. In the statement, Hudson admitted that he had an altercation with the complainant, but denied that he pointed a handgun at her. He stated, however, that he "pointed [his] finger (right index) at her while [he] was holding a red 'Bic' lighter."

At the close of evidence, the trial court stated that the crucial issue in the case was whether there was sufficient evidence that Hudson pointed a gun at the complainant and that the case presented a credibility contest between the complainant and Hudson. After reviewing the evidence, the trial court stated, "I have no reason to disbelieve the complainant and I find that she is a credible witness in this matter." The trial court then found Hudson guilty as charged of felonious assault.

II. Ineffective Assistance Of Counsel

A. Legal Standard

Hudson argues that his trial counsel was ineffective in failing to cross-examine and impeach the complainant with inconsistent statements. He argues that, because this was a credibility contest, such impeachment evidence was crucial to his defense. To establish a claim of ineffective assistance of counsel, a defendant must overcome the presumption that the challenged action was trial strategy and must establish a reasonable probability that, but for counsel's conduct, the result would have been different, thereby denying him a fair trial.² A defendant is presumed to have received effective assistance of counsel and he must overcome a heavy burden to prove otherwise.³ This Court will not second-guess a challenged action that might be considered sound trial strategy.⁴

B. The Inconsistent Testimony Argument

We have reviewed the alleged inconsistencies in the complainant's testimony and find them to be de minimus under the circumstances of the case and not probative of whether Hudson pointed a gun at the complainant, which was the ultimate issue in this case. Hudson's counsel vigorously cross-examined the complainant regarding the incident, and his decision not to delve into all contradictory aspects of her statements is a matter of trial strategy for which this Court

² *People v Hoag*, 460 Mich 1, 6, 7; 594 NW2d 57 (1999).

³ *People v Plummer*, 229 Mich App 293, 308; 581 NW2d 753 (1998).

⁴ *People v Stewart*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

will not substitute its judgment.⁵ Further, it is highly improbable that these inconsistencies would have altered the trial court's findings regarding credibility in this bench trial.⁶

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

⁵ *People v McFadden*, 159 Mich App 796, 800; 407 NW2d 78 (1987).

⁶ See *People v Caballero*, 184 Mich App 636, 639-640; 459 NW2d 80 (1990).