

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIS BRY BOYD,

Defendant-Appellant.

UNPUBLISHED

October 19, 2001

No. 223849

Saginaw Circuit Court

LC No. 99-017018-FC

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

MEMORANDUM.

Defendant appeals as of right his jury convictions of carjacking, MCL 750.529a, possession of a firearm during the commission of a felony, MCL 750.227b, carrying a dangerous weapon in a motor vehicle, MCL 750.227, discharge of a firearm from a motor vehicle, MCL 750.234a, and assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was found not guilty of assault with intent to murder, MCL 750.83, and larceny from a motor vehicle, MCL 750.356a. We affirm.

Defendant first argues that expert testimony was improperly admitted. However, even assuming that this testimony regarding the source of a bullet hole in the car was outside the scope established as the proper province of the witness' accident reconstruction expertise, any error was harmless. The challenged testimony was clearly not outcome determinative, see *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999), where eyewitnesses identified defendant at the scene, saw defendant with a gun, and saw defendant shoot through the automobile's rear passenger window.

Defendant's next challenge, that he was denied effective assistance of counsel, fails to overcome the strong presumption that the assistance rendered by counsel was effective. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121; 115 S Ct 923; 130 L Ed 2d 802 (1995). Counsel's failure to present evidence at trial does not merit reversal where the failure did not deprive the defendant of a substantial, outcome-determinative defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), modified 453 Mich 902; 554 NW2d 899 (1996). Further, the mere fact that defense counsel did not call witnesses or cross-examine all witnesses called by the prosecutor in no way overcomes the presumption that this was trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Defense counsel's performance does not appear to have been below an

objective standard of reasonableness under prevailing professional norms. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *Stanaway*, *supra* at 688.¹

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

¹ The record indicates nothing to warrant a hearing pursuant to *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).