

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE SOMERVILLE,

Defendant-Appellant.

UNPUBLISHED
November 6, 2001

No. 226140
Wayne Circuit Court
LC No. 99-009350

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for larceny, MCL 750.356, and unlawful driving away of an automobile, MCL 750.413. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant testified that on August 20, 1999, defendant snatched her keys away from her while she was talking on a pay phone, and drove off with her van. Defendant was arrested after he was found walking away from the stolen van. Complainant identified defendant in a lineup, and at trial.

Defendant argues he was denied the effective assistance of counsel when trial counsel failed to give a closing argument. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant was not prejudiced by counsel's decision not to give closing argument. This was a simple case, and the prosecutor's closing only consisted of three sentences. The court was well aware of the issues to be tried, and defendant's theory of the case.

Defendant also argues that two of the trial court's findings of fact were clearly erroneous. A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction

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

that a mistake has been made. *People v Edward*, 225 Mich App 455; 571 NW2d 536 (1997). There is sufficient evidence to support the court's findings. Defendant did testify that there were two other people in the van when it was stopped, and then clarified that there were four people in the van altogether. The arresting officer testified that defendant left the van through the driver's side door, supporting the finding by inference that defendant was the driver.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker