

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY SCOTT KING,

Defendant-Appellant.

---

UNPUBLISHED

December 18, 2001

No. 224919

Oakland Circuit Court

LC No. 99-168202-FH

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for third-degree fleeing and eluding, MCL 257.602a(3), for which he was sentenced, as a fourth habitual offender, MCL 769.12, to 30 to 180 months' imprisonment. We affirm.

On appeal, defendant first argues that he was denied the effective assistance of counsel because his attorney did not object to the trial court's failure to provide a limiting instruction before the jury viewed a videotaped re-creation of the charged offense that contained references to the van defendant was driving as being reported stolen. Because a *Ginther*<sup>1</sup> hearing was not conducted, this Court's review is limited to errors apparent on the record. See *People v Lee*, 243 Mich App 163, 183; 622 NW2d 71 (2000).

To establish a claim of ineffective assistance of counsel, a defendant must affirmatively show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). The defendant has to overcome the presumption that the challenged actions might be considered sound trial strategy. *People v Charles Williams*, 240 Mich App 316, 331-332; 614 NW2d 647 (2000).

In this case, the charged offense was fleeing and eluding. The police officer who was involved in the rather extended car chase, Officer Bean, offered testimony as to why he was in pursuit of the vehicle defendant was driving. The testimony included that the van defendant was

---

<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

driving fit the description of a vehicle that had been reported stolen and that he ran the license plate through the computer system which resulted in a match for the stolen vehicle. However, the officer also testified that defendant was not charged in this case with being in possession of a stolen vehicle. Therefore, any reference to the vehicle being reported as stolen in the videotaped re-creation simply repeated what the testimony already established, i.e., the reason the officer was pursuing the vehicle was because it had been reported stolen. Contrary to defendant's argument on appeal, the information was not impermissible 404(b) evidence, but simply explained the officer's actions. Consequently, defense counsel's failure to object to the absence of such instruction was not objectively unreasonable and so prejudicial as to affect the outcome of the trial. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Next, defendant argues that he was denied a fair trial because the prosecutor improperly vouched for Officer Bean's credibility during his closing and rebuttal arguments. We disagree. Defendant did not object to the remarks in the trial court; therefore, we review this issue for plain error that affected defendant's substantial rights. See *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

When reviewing allegations of prosecutorial misconduct, this Court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context to determine whether the defendant received a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). A prosecutor may not "vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness." *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, prosecutors are free to argue the evidence and all reasonable inferences as they relate to the theory of the case. *Id.* at 282.

After examining the prosecutor's remarks in context, the allegedly improper comments were based on evidence produced at trial and were in rebuttal to defendant's challenge to Officer Bean's credibility. Defendant's defense to the charge of fleeing and eluding was that he did not know that he was being pursued by police. In response to defendant's theory, the prosecutor merely reiterated Officer Bean's testimony, which included that he was pursuing defendant with his emergency lights and siren activated, to illustrate how incredible defendant's theory was in light of the uncontested evidence. Further, the prosecutor did not improperly vouch for Officer Bean's credibility but, rather, permissibly advanced a sound rebuttal argument in support of his credibility based on the evidence presented. See *Schutte*, *supra* at 722; *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). In sum, defendant has not established plain error that affected his substantial rights.

Finally, defendant argues that the evidence was insufficient to support his conviction because the police car that was pursuing him was not sufficiently "marked" as a law enforcement vehicle. We disagree. In reviewing a sufficiency claim, this Court considers the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

MCL 257.602a(1) provides:

A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful

performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the *officer's vehicle is identified as an official police or department of natural resources vehicle.*

Officer Bean's uncontested testimony included that he was pursuing the vehicle that defendant was driving in his official police-issue vehicle with his emergency oscillating blue lights and siren activated. Nevertheless, defendant urges us to construe the statute as requiring that the police vehicle have "police markings on it" in order to conclude that it was sufficiently identified as an official police vehicle. We decline to adopt such a narrow construction.

Statutory language that is clear and unambiguous is not subject to further construction. *People v Stephan*, 241 Mich App 482, 496; 616 NW2d 188 (2000). In this case, Officer Bean's vehicle clearly was equipped with sufficient indicia of an official police vehicle. Only police vehicles are permitted to be equipped with oscillating blue lights, MCL 257.698(5)(a), and only emergency vehicles may be equipped with a siren, MCL 257.706(b), and (d). To construe the statute as requiring additional identification would act to deny the fair and natural import of the statutory terms and impermissibly promote absurd results, injustice, or prejudice to the public interest. See *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999); *Stephan, supra* at 497. Consequently, the evidence, viewed in a light most favorable to the prosecution, was sufficient for the jury to conclude beyond a reasonable doubt that defendant was guilty of fleeing and eluding.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Mark J. Cavanagh  
/s/ Jane E. Markey