STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HAROLD EUGENE ROSS, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

HAROLD EUGENE ROSS,

Respondent-Appellant.

UNPUBLISHED
April 16, 2002

No. 227463
Wayne Circuit Court
Family Division
LC No. 96-339542

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Following a bench trial, respondent appeals as of right his adjudications of guilty of negligent homicide, MCL 750.324, receiving and concealing stolen property worth at least $1,000 but less than $20,000, MCL 750.535(3)(a), motor vehicle felony, MCL 257.732, and violation of the curfew provision of Detroit City Code 33-3-1. The family court committed respondent to the custody of the Michigan Family Independence Agency under the Youth Rehabilitation Services Act, MCL 803.301 *et seq*., for confinement in a medium-level facility. We affirm in part, reverse in part and remand to the trial court for further findings of fact.

A vehicle allegedly driven by respondent collided with the front porch of a house and landed on its top. The accident resulted in the death of one minor and severely injured respondent and another minor passenger. The evidence presented at trial conflicted regarding whether respondent drove the vehicle at the time of the accident, the number of individuals inside the vehicle and their positions therein, and whether at the time of the accident the vehicle had been stolen or the vehicle's owner had reported it stolen.

Respondent first contends that the trial court made insufficient findings of fact and conclusions of law with respect to (1) his identity as the vehicle's driver at the time of the accident, an essential element of three offenses for which he was found guilty, (2) whether the vehicle was stolen and reported stolen at the time of the accident, and (3) whether he had any knowledge that the vehicle had been stolen. To facilitate appellate review, a trial court sitting without a jury must make separate findings of fact and conclusions of law. MCR 2.517(A);

People v Johnson (On Rehearing), 208 Mich App 137, 141; 526 NW2d 617 (1994). The sufficiency of the findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence. *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989), aff'd 437 Mich 149; 468 NW2d 487 (1991). A trial court's factual findings are sufficient so long as it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989). Remand for further articulation is unnecessary when it is manifest that the court was aware of the factual issues and resolved them, and it would not facilitate appellate review to require additional explication of the path the court followed in reaching the result. *Johnson, supra* at 141-142.

In this case, the trial court made almost no explicit findings of fact whatsoever. After testimony concluded, the court simply stated that it found respondent guilty of four charges,[1] without explaining what facts supported its conclusions or how it weighed the credibility of the witnesses, and not guilty of two charges.[2] The trial court inexplicably failed to rule on one of the charged offenses.[3] Because the trial court did not set forth factual findings, we are unable to ascertain the path the court followed in concluding that respondent drove the vehicle for purposes of the negligent homicide, receiving and concealing stolen property, and motor vehicle felony charges, or on what basis the court found that the vehicle was stolen and had been reported stolen at the time of the accident and that respondent had knowledge that the vehicle was stolen at the time he allegedly possessed it. Accordingly, we remand for further findings of fact that will facilitate appellate review.

With respect to respondent's assertion that insufficient evidence warranted his adjudication of guilty of the receiving and concealing stolen property charge, our review of the record reflects that the prosecutor failed to prove all elements of that offense. The elements of receiving and concealing stolen property worth at least $1,000 but less than $20,000 are that (1) the property was stolen, (2) the property had a fair market value of at least $1,000, but less than $20,000, (3) the defendant bought, received, possessed or concealed the property with knowledge that the property was stolen, and (4) the property was identified as being previously stolen. MCL 750.535(3)(a); *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993). The prosecutor presented testimony from the owner of a green Dodge Neon, similar to the vehicle involved in the accident, that his vehicle had been stolen and that he had reported it stolen the day after he discovered it missing. However, the witness could not identify the vehicle in photographs of the accident as his Neon, and the witness did not clearly specify when he had reported the vehicle stolen in relation to the occurrence of the accident. No witness provided any testimony that respondent participated in stealing the witness' Neon or that respondent, who apparently possessed a key to the vehicle that crashed, had any reason to know that the vehicle involved in the accident might have been stolen. We further note that no evidence showed

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[1] As mentioned, the trial court adjudicated respondent guilty of negligent homicide, receiving and concealing stolen property worth at least $1,000 but less than $20,000, motor vehicle felony and curfew violation.

[2] The trial court adjudicated respondent not guilty of unlawfully driving away an automobile, MCL 750.413, and driving without an operator's permit, MCL 257.301, 257.311.

[3] The trial court did not address the manslaughter charge pursuant to MCL 750.321.

whether the one-year-old vehicle was worth less than $20,000. Even viewing the existing record in the light most favorable to petitioner, we conclude that the evidence was insufficient to prove beyond a reasonable doubt respondent's guilt of the receiving and concealing charge. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

Contrary to respondent's assertion, however, petitioner did present sufficient evidence to prove respondent's guilt of negligent homicide. To be found guilty of negligent homicide, a defendant must have (1) operated a vehicle at an immoderate rate of speed or in a negligent manner (2) that was a substantial cause of injuries resulting in another's death. MCL 750.324; *People v Lardie*, 452 Mich 231, 247-248, n 25; 551 NW2d 656 (1996). The parties did not dispute that the accident resulted in a death, and the circumstances of the accident raise an inference that the vehicle was operated in a negligent manner. *Nowack, supra* at 400. Furthermore, one of the passengers in the vehicle at the time of the accident testified that respondent was the vehicle's driver. Accordingly, although sufficient evidence supported a finding beyond a reasonable doubt that respondent was guilty of negligent homicide, we nonetheless remand for further findings of fact because the trial court failed to explain whether or how it reconciled the evidence that raised the inference that respondent might have been a passenger inside the vehicle.

Respondent next argues that the trial court erroneously admitted a police officer's accident reconstruction testimony. We agree that the trial court abused its discretion when it admitted the officer's accident reconstruction testimony regarding the estimated speed of the vehicle at the time it left the roadway without first establishing the officer's qualifications to offer his expert opinion. MRE 702; *People v Peebles*, 216 Mich App 661, 667-668; 550 NW2d 589 (1996). We nonetheless find the admission of the officer's testimony harmless, however, because other evidence of record amply demonstrated that the vehicle was driven negligently at the time of the accident. MCL 769.26; *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Respondent lastly claims that his trial counsel was ineffective for failing to investigate and present witnesses, specifically the emergency workers who extracted respondent from the vehicle, the alleged fourth passenger in the vehicle, and respondent's mother, who could have corroborated that respondent was not the driver of the vehicle at the time of the accident. Because respondent failed to request from the trial court an evidentiary hearing or new trial on the basis of ineffective assistance, we limit our review of this claim to the existing record. *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). In order to establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that a reasonable probability exists that, but for counsel's error, the result of the proceedings would have been different. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000). A defendant must overcome the strong presumption that the challenged action by counsel constituted sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

With respect to respondent's mother and the alleged fourth passenger of the vehicle, respondent offers only speculation that these witnesses might have been able to provide some information favorable to his position at trial that he did not drive the vehicle at the time of the accident. Regarding the emergency workers, although respondent suggests these individuals could have testified regarding their extrication of respondent from the back of the vehicle, we

note that more than one witness testified at the hearing that respondent appeared to be in the back seat of the crashed vehicle. Because respondent sets forth no basis for a finding that defense counsel's failure to call these witnesses deprived him of a substantial defense, we conclude that his claim of ineffective assistance lacks merit. *People v Hyland*, 212 Mich App 701, 710-711; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996).

Because the existing record clearly indicated that in the early morning hours of April 23, 1999 respondent left his house and went out in public without adult supervision, and because respondent does not challenge the trial court's curfew violation determination, we affirm respondent's adjudication of guilty of curfew violation. We reverse respondent's adjudication of guilty of receiving and concealing stolen property worth at least $1,000 but less than $20,000. We remand so that the trial court may (1) set forth its factual findings regarding the elements of negligent homicide and the related motor vehicle felony charge, and (2) explain what disposition it intended with respect to the manslaughter charge and the factual basis therefor. Jurisdiction is retained.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray