

STATE OF MICHIGAN
COURT OF APPEALS

In re BRIANNA SHARP, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

BRIANNA SHARP,

Respondent-Appellant.

UNPUBLISHED

June 17, 2004

No. 245698

Washtenaw Circuit Court

Family Division

LC No. 02-000176-DL

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Respondent appeals as of right her convictions of breaking and entering with damage to a vehicle, MCL 750.356a(3), and malicious destruction of property less than \$200, entered after a jury trial. We affirm.

Respondent (DOB 9-3-86) was charged as a juvenile in connection with damage done to a vehicle in the student parking lot of her high school. Complainant, the vehicle's owner, testified that she observed three persons, one of whom was respondent, in or near her vehicle. Complainant indicated that the interior of her vehicle was damaged and various items were missing. Respondent denied participating in the incident, and presented two alibi witnesses who testified that she was in their company at the time of the incident and could not have committed the crimes. The jury found respondent guilty on an aiding and abetting theory.

The standard of proof in a trial involving a juvenile is beyond a reasonable doubt. MCR 3.942(C); *In re Weiss*, 224 Mich App 37, 42; 568 NW2d 336 (1997).

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

Respondent argues that insufficient evidence was produced to support her convictions. We disagree. The testimony of alibi witnesses is not always sufficient to create a reasonable doubt if other substantial evidence is presented. *People v Amos*, 10 Mich App 533, 536; 159 NW2d 855 (1968). The jury was entitled to accept complainant's testimony and reject that given by respondent and her alibi witnesses. *Milstead, supra*; *People v Diaz*, 98 Mich App 675, 682; 296 NW2d 337 (1980). The lack of other evidence was not fatal to the prosecution's case. A surveillance tape made of a portion of the student parking lot and later destroyed did not depict the area in which complainant's car was parked, and thus could not have created reasonable doubt. The decision whether to collect evidence such as fingerprints or a handwriting sample is a police investigative choice. *People v Stephens*, 58 Mich App 701, 705-706; 228 NW2d 527 (1975). The evidence, viewed in a light most favorable to the prosecution, was sufficient to support respondent's convictions. *Wolfe, supra*.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Carbin, supra*, 600.

Respondent argues that trial counsel rendered ineffective assistance by failing to: file a pretrial motion to dismiss on the grounds that the surveillance camera tape had been destroyed and fingerprints had not been obtained, request the services of a handwriting analyst, and call her mother as a witness. We disagree. The surveillance tape would have been without value to the case because it did not depict the area of the parking lot in which complainant's vehicle was located. The lack of fingerprints had the potential to damage the prosecution's case more than defendant's case since the prosecution had the burden of proof. *Stephens, supra*, 705. Respondent has not established that it is likely that a handwriting analyst would have concluded that she did not write on complainant's shoes. Trial counsel did not render ineffective assistance by failing to file meritless motions. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Similarly, trial counsel did not render ineffective assistance by failing to call respondent's mother to testify that respondent suffered from asthma. Another witness testified that respondent had asthma. Nothing on the record shows that respondent's mother would have testified that respondent's asthma precluded her from engaging in activities such as running. Counsel's decision to refrain from calling respondent's mother as a witness was trial strategy. We do not substitute our judgment for that of trial counsel on matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray