

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY HUGH JACKSON, JR.,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 248545
Washtenaw Circuit Court
LC No. 02-001514-FH

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant¹ appeals as of right his conviction of carrying a concealed weapon in a vehicle, MCL 750.227(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested following a traffic stop. The officers observed defendant's passenger making furtive movements toward the underside of the driver's seat and upon searching the vehicle, discovered a handgun under the driver's seat. The trial court found defendant guilty of carrying a concealed weapon and felon in possession of a firearm, MCL 750.224f, concluding that defendant's act of leaving the vehicle quickly, the passenger's furtive movements after defendant was arrested, and the location of the weapon in a spot where defendant could reach it supported a finding that he knowingly carried the weapon in the vehicle.

Defendant argues that the evidence was insufficient to support his conviction of carrying a concealed weapon in a vehicle. We disagree.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985). A trial court's findings of fact are reviewed for clear error. MCR 2.613(C).

¹ Defendant's appointed counsel has filed a brief on appeal, and defendant has filed a supplemental brief pursuant to Administrative Order No. 1981-7, § 4(11) ("Standard 11").

The elements of carrying a concealed weapon in a vehicle are: (1) the weapon was in a vehicle operated or occupied by the defendant; (2) the defendant knew the weapon was in the vehicle; and (3) the defendant took part in carrying or keeping the weapon in the vehicle. CJI2d 11.1. Carrying a concealed weapon is a general intent crime. The only intent needed is that necessary to do the prohibited act, i.e., to knowingly carry a weapon in a vehicle. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987). The element of “carrying” is distinct from knowledge of the weapon’s presence in the vehicle, and does not automatically follow from proof of knowledge. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982).

The prosecution was not required to negate all theories consistent with defendant’s innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The evidence that defendant exited the vehicle immediately upon stopping supported an inference that he was attempting to divert the officers’ attention, and the evidence that the passenger quickly made furtive movements toward the area under the driver’s seat only after defendant was arrested supported an inference that defendant knew the weapon was in the vehicle and that his passenger attempted to assist him by making an effort to conceal the weapon. The evidence, viewed in a light most favorable to the prosecution, established that defendant knowingly carried the weapon in the vehicle and was sufficient to support defendant’s conviction.

Defendant argues that he was denied due process and the effective assistance of counsel by the prosecution’s failure to produce res gestae witness Kiesha Taylor, his passenger, at trial and by trial counsel’s failure to take steps to ensure that Taylor testified at trial. We disagree.

A res gestae witness is one who witnessed some event in the continuum of a criminal transaction and whose testimony would aid in developing a full disclosure of the facts. *People v Long*, 246 Mich App 582, 585; 633 NW2d 843 (2001). A prosecutor must list the names of known res gestae witnesses on the information. *People v Perez*, 469 Mich 415, 418-419; 670 NW2d 655 (2003). MCL 767.40a. The purpose of the listing requirement is to notify the defendant of the witness’ existence and res gestae status. *People v Gadomski*, 232 Mich App 24, 36; 592 NW2d 75 (1998).

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, 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. *Id.*

Contrary to defendant’s assertion, the prosecution did not list Taylor as a known res gestae witness as required by MCL 767.40a. The prosecution’s failure to list Taylor as a res gestae witness or to produce her at trial did not deny defendant due process. The trial court would have been entitled to reject any testimony given by Taylor, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), and to conclude that defendant placed the gun under the seat. Defendant has not shown that the prosecution’s failure to list Taylor as a res gestae witness resulted in plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Counsel’s failure to secure Taylor’s presence at trial did not deprive defendant of a substantial

defense, *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902; 554 NW2d 889 (1996), and the decision to refrain from calling Taylor as a witness likely was a matter of 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). Counsel's performance at trial did not result in prejudice.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski