

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALONZO WALKER,

Defendant-Appellant.

UNPUBLISHED
September 8, 1998

No. 195596
Recorder's Court
LC No. 95-010685

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for malicious destruction of property over \$100, MCL 750.377a; MSA 28.609(1), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with malicious destruction of property over \$100 and felony-firearm, MCL 750.227b; MSA 28.424(2), in connection with the vandalism of complainant's car. Complainant testified that he heard three gun shots, came out of his house, and discovered that his car had been shot up. He testified that defendant had previously threatened to destroy the car, and that there was an ongoing two year feud between defendant's and complainant's families. Complainant's son testified that he saw defendant firing a shot at the car. A police officer verified that he was called to the scene, and observed extensive damage to complainant's car from what appeared to be multiple shotgun blasts.

At the conclusion of the trial, the court accepted the testimony presented, and found defendant guilty of malicious destruction of property over \$100. The court dismissed the felony-firearm charge without comment. Defendant was sentenced to three years probation.

On appeal, defendant asserts that he was deprived of the effective assistance of counsel where trial counsel failed to object to testimony regarding prior threats between family members, and that the verdicts were inconsistent and invalid in the context of a bench trial.

To establish an ineffective assistance of counsel claim, defendant must show that counsel's performance was deficient and that under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. Defendant must overcome the presumption that the challenged action was sound legal strategy, and must establish that the deficiency was prejudicial. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Defendant has failed to overcome the presumption that counsel's actions were part of a legitimate trial strategy. Counsel's primary argument was that complainant was biased against him, and brought the charges based on the families' feud. Evidence of threats by other family members would reinforce defendant's strategy rather than diminish it. Where the damage to complainant's car was tangible, and there was eyewitness testimony that defendant did the shooting, the evidence of threats from other family members did not affect the outcome of the case.

Plaintiff concedes that the trial court erred in reaching inconsistent verdicts. While a jury is not held to rules of logic, and is allowed a capacity for leniency, these considerations are not present when a case is tried by a judge sitting without a jury. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). However, a new trial is not required in the context of this case. Unlike *People v Fairbanks*, 165 Mich App 551; 419 NW2d 13 (1987), here there is no indication that the trial court's findings of fact are suspect. The court clearly credited the testimony of the witnesses for the prosecution. It made no specific findings on the felony-firearm charge, which it dismissed. The only explanation for the decision is the court's desire to extend leniency to defendant. While the court exceeded its power, under these circumstances the verdict did not constitute a miscarriage of justice as to defendant. *People v Collins*, 381 Mich 131; 156 NW2d 566 (1968).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh