STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 18, 2000
v	No. 204716 Recorder's Court
WILLIAM LEE, Defendant-Appellant.	LC No. 96-006807

Before: Griffin, P.J., and Holbrook, Jr., and J.B. Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of aggravated stalking, MCL 750.411i(2)(c); MSA 28.643(9)(2)(c), and malicious destruction of personal property over $100, MCL 750.377a; MSA 28.609(1). Defendant was sentenced to six months to five years in prison for the aggravated stalking conviction, and six months to four years in prison for the malicious destruction of personal property conviction. Defendant appeals as of right. We affirm.

Defendant was originally charged with aggravated stalking for violation of a restraining order, MCL 750.411i(2)(a); MSA 28.643(9)(2)(a). The trial court permitted the prosecution to amend the information to reflect a charge of aggravated stalking for making one or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim, MCL 750.411i(2)(c); MSA 28.643(9)(2)(c). Defendant argues that the amendment to the information on the day of trial prejudiced his defense. Defendant claims that if he had known that the prosecution would present evidence of threats made against Rowsey and her children, he would have offered an alibi defense that he was out of town on the dates in question. We reject defendant's claim of prejudice.

The information may be amended at any time before, during or after trial. MCL 767.76; MSA 28.1016; *People v Goecke*, 457 Mich 442, 459-460; 579 NW2d 868 (1998). Pursuant to MCR 6.112(G), "the court may permit the prosecutor to amend the information unless to do so would unfairly surprise or prejudice the defendant." *Goecke, supra* at 460. A defendant is entitled to a continuance,

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

upon his motion, if the amendment to the information would unfairly surprise or prejudice him. MCL 767.76; MSA 28.1016. Defendant has not preserved this issue for appeal. Defendant failed to effectively object to the amendment at trial, and failed to request a continuance. Furthermore, we find no prejudice to defendant as a result of the amendment to the information. At defendant's *Ginther*[1] hearing, defendant failed to substantiate claims that he was out of town on the dates in question. In addition, these claims would not preclude a finding that defendant threatened Rowsey by telephone.

Defendant also challenges the sufficiency of the evidence supporting his conviction for malicious destruction of personal property over $100. Defendant claims that the prosecution presented insufficient evidence that the damage to Rowsey's car exceeded $100. We disagree. "When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence 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 proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994)." *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

The malicious destruction of personal property statute provides that the defendant will be guilty of a felony "if the damage resulting from such injury shall exceed $100." MCL 750.377a; MSA 28.609(1). The complainant's testimony regarding the cost of repairs is evidence of the amount of damage. *People v Hamblin*, 224 Mich App 87, 98-99; 568 NW2d 339 (1997). Rowsey testified that the cost of repairs to her vehicle was $2,000. Although such testimony is not determinative of the value of damage, we conclude that in the instant case, the evidence was sufficient. Rowsey's car was a 1995 Chrysler LeBaron. The car had scratches on the hood, the driver's side, the passenger's side, and the trunk. We conclude that the evidence was sufficient to find that the damage to the car exceeded $100.

Finally, defendant claims that he was denied the effective assistance of counsel. Defendant claims that his attorney failed to call defendant to testify at trial and failed to pursue an alibi defense. Counsel is presumed to be effective. Defendant shoulders the burden of proving that counsel was ineffective. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). In order to establish a claim of ineffective assistance of counsel, defendant must first show that his attorney performed below an objective standard of reasonableness. *People v Pubrat*, 451 Mich 589, 596; 548 NW2d 595 (1996). Secondly, defendant must establish that his counsel's deficient performance resulted in prejudice to defendant. *People v Lloyd*, 459 Mich 433, 445-446; 590 NW2d 738 (1999), quoting *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674, on remand 737 F2d 894 (CA 11, 1984).

We conclude that defendant was not denied the effective assistance of counsel. "[T]his Court will not second-guess counsel regarding matters of trial strategy, and even if defense counsel was ultimately mistaken, this Court will not assess counsel's competence with the benefit of hindsight." *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). We find no merit to defendant's claim that his attorney prevented him from testifying at trial. Defense counsel testified at the

Ginther hearing that he discussed with defendant whether defendant would testify, and that it was defendant's decision not to testify. Defense counsel stated that defendant never told him that he was out of the state on the relevant dates. Moreover, defendant presented no evidence of a viable alibi defense at the *Ginther* hearing. There is no evidence to suggest that defendant's failure to testify was the result of anything other than trial strategy.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan

[1] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).