STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 26, 2000
v	No. 211356 Wayne Circuit Court
EURAL KIRKSEY, Defendant-Appellant.	LC No. 97-005734

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant appeals by right from his conviction, following a bench trial, of attempted larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1); MCL 750.92; MSA 28.287. The trial court sentenced him to six to thirty months in prison. We remand for further findings of fact.

This case arises from the carjacking of a Chevrolet Astro van owned by Lawrence Houston on July 14, 1997. Houston had just finished pumping gas at a gas station located at 17707 Plymouth Road in Detroit when his van was stolen by two males. Later that evening, two Detroit police officers spotted defendant attempting to remove the tires of the van in the backyard of a house at 9101 Norcross Street in Detroit. The officers apprehended defendant at this time.

At trial, defendant claimed that he did not know the van was stolen when he attempted to remove the tires. He claimed that he was approached by two men in the Astro van while he was visiting a friend and that he agreed to switch the vans' tires with the tires of another vehicle in exchange for money. Additionally, defendant denied taking part in the carjacking; he testified that he had not been at 17707 Plymouth Road on July 14, 1997.

At the conclusion of the trial, the court set forth its findings and conclusions as follows:

> THE COURT: *The Court finds that the defendant Kirksey was at 17707 Plymouth Street* [sic, Road], *in the City of Detroit, on July 14th, 1997.*

> MR. SKYWALKER [THE PROSECUTOR]: *Judge, if that's your finding, we would ask that you consider that it was a continuous transaction that went to 9101 Norcross.*
>
> THE COURT: *All right. And also 9101 Norcross.* While at that address, he did attempt to commit the offense of larceny from a motor vehicle. The police officers who testified at the trial said that they saw the defendant attempting to remove a tire from a motor vehicle that was owned by Mr. Lawrence Houston. He did not have Mr. Houston's permission to do so. The defendant Kirksey intended to commit the crime of attempted larceny from a motor vehicle. He committed an overt act necessary to commit that crime by laying on the ground with the necessary tools, near the tire, and had already removed a hubcap from the tire. The defendant attempted an unlawful – attempted to unlawfully remove the tires from the 1987 Chevy Astro van that belonged to Mr. Lawrence Houston. Therefore, the Court finds the defendant guilty of attempt to commit a larceny from a motor vehicle. [Emphasis added.]

Defendant contends that the trial court erred in finding that defendant was present at 17707 Plymouth Road on July 14, 1997. We review a trial court's findings of fact for clear error. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997). A finding of fact is clearly erroneous if, after reviewing the entire record, we are left with the definite and firm conviction that a mistake has been made. *Id.*

We agree with defendant that the trial court clearly erred in finding that defendant was present at 17707 Plymouth Road on July 14, 1997. Indeed, not one witness testified that defendant was present at the gas station on the day of the carjacking. While it is true that defendant's alibi for July 14, 1997 was somewhat suspect, and while defendant was the same race and height as one of the carjackers spotted at the gas station by Mr. Houston, those facts alone were insufficient to support a finding that defendant was present at the gas station on the day in question. Moreover, after Houston was questioned about whether he had previously identified defendant as one of the carjackers, the trial court stated:

> It's the Court's understanding that the question is: "Did you identify the defendant as being at the car-jacking?" And this Court feels that it's irrelevant whether or not Mr. Kirksey was at the car-jacking. He's not being charged with having had anything to do at the car-jacking scene, so therefore it's irrelevant. Therefore, the Court will . . . disallow the question as being irrelevant.

Because the court itself precluded questioning regarding defendant's presence at the carjacking scene, and because no evidence supported a finding that defendant was indeed involved with or present during the carjacking, we are left with the definite and firm conviction that the trial court made a mistake in finding that "defendant Kirksey was at 17707 Plymouth Street, in the City of Detroit, on July 14th, 1997."

We note that because the trial court itself precluded questioning about defendant's presence at the carjacking scene, it is possible that the trial court misspoke itself in finding that defendant was present at 17707 Plymouth Road on the day in question. From this record, however, given the wording of the trial court's findings, we are left with the impression that the trial court intentionally made a finding that defendant was present at the carjacking scene and that the attempted larceny was a continuous transaction that carried over from 17707 Plymouth Road to 9101 Norcross Street.

Defendant contends that the inadequacy of the trial court's factual findings merits a remand for further findings. MCR 6.403 states:

> When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

As this Court stated in *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), the factual findings made in conjunction with a bench trial are sufficient under MRE 6.403 as long as it appears that the trial court was aware of the factual issues and correctly applied the law. See also *People v Wardlaw*, 190 Mich App 318, 321; 475 NW2d 387 (1991). A central issue in this case was whether defendant knew the van was stolen at the time he attempted to remove the tires. The trial court, in rendering a guilty verdict, implicitly concluded that defendant did indeed possess the necessary guilty knowledge.

It is unclear from this record, however, whether the trial court based its implicit finding of guilty knowledge on (1) its erroneous conclusion that defendant either participated in or witnessed the carjacking, or (2) other, competent evidence, such as the circumstances surrounding the removal of the tires. Indeed, we cannot tell from the current record whether the trial court was sufficiently aware of the factual issues as required by *Kemp, supra* at 322, and *Wardlaw, supra* at 321 (i.e, we cannot tell if the trial court made the necessary finding that defendant's guilty knowledge was independently supported by something other than his alleged presence at the gas station during the carjacking). Under these circumstances, we must remand this case to the trial court for further findings of fact regarding defendant's state of mind at the time he attempted to remove the tires. See *Kemp, supra* at 325. The trial court shall have fifty-six days from the date of this opinion in which to make such further findings and certify them to this Court. We will review defendant's challenge to the sufficiency of the evidence after obtaining the trial court's updated factual findings.

Remanded for further findings of fact. We retain jurisdiction.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens