STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 19, 2002
v	No. 227356 Wayne Circuit Court
GEORGE ROBINSON, Defendant-Appellant.	LC No. 00-001998

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of receiving and concealing stolen property valued at $1,000 or more but less than $20,000, MCL 750.535(3)(a), and third-degree fleeing and eluding, MCL 257.602a(3). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of two to fifteen years' imprisonment for each conviction. We affirm.

This case arises from a police chase that began when defendant, driving a stolen vehicle, fled from police officers after he was stopped for a traffic violation in Detroit. On appeal, defendant first argues that insufficient evidence was produced to support his conviction of receiving stolen property because the prosecutor failed to establish that defendant knew the car he was driving was stolen. We disagree.

"The evidence in a bench trial is sufficient if, when viewed in the light most favorable to the prosecutor, a rational factfinder could determine that each element of the crime had been proved beyond a reasonable doubt." *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). The trier of fact may draw reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of receiving stolen property with a value of $1,000 or more but less than $20,000, MCL 750.535(3)(a), are: "(1) the property was stolen, (2) the property has a fair market value of over [$1,000 but no more than $20,000], (3) the defendant bought, received, possessed, or concealed the property with knowledge that the property was stolen, and (4) the property was identified as being previously stolen." *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993); see also *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). The crime of receiving stolen property is not a specific intent crime. *People v Ainsworth*, 197 Mich App 321,

325; 495 NW2d 177 (1992). The requisite guilty knowledge may be inferred from the circumstances of the case, such as the defendant's possession of the property shortly after it was stolen, or the lack of any reasonable explanation for the defendant's possession of the property. *People v Salata*, 79 Mich App 415, 421-422; 262 NW2d 844 (1977).

Here, the evidence established that the vehicle defendant was driving was stolen and valued at $11,000. In his statement to the police, admitted into evidence at the bench trial, defendant stated that the vehicle did not belong to him, that he did not know the registered owner of the vehicle, and that a drug dealer named Mike gave him the keys to the vehicle. In his statement, defendant said that he was using the vehicle to move his belongings to a motel, but then stated that he was sleeping in the vehicle. Defendant had the keys to the vehicle in his possession, but not the registration papers.

Defendant further stated that he fled from the police because he was "afraid" since "[he] knew the car was not [his]." While defendant expressly admitted in his statement to the police that he knew that he was driving a stolen car, on appeal defendant argues that a close reading of his statement reveals the contrary. The pertinent portion of that statement, given to officer Todd Hutchison, is as follows:

Q: When were you going to return the vehicle?

A: I don't know. I was sleeping in the car.

Q: When did you get the car?

A: I think it was Sunday.

Q: *Do you - - did you have knowledge that the vehicle would be reported stolen when you did not return it?*

A: Yes.

Q: So you was [sic] driving a stolen vehicle?

A: Yes. I needed some help. I'm on crack cocaine. [Emphasis supplied.]

Defendant argues that he understood the above emphasized question to mean that if he did not return the vehicle to the individual named Mike, it would be reported stolen. Defendant claims that this is not an admission of guilt nor evidence of his knowledge that the vehicle was stolen. We find this strained argument to be without merit. In the statement, defendant clearly acknowledged that he was aware the vehicle was stolen.

Further, on the basis of defendant's evasive conduct in fleeing the police after being stopped for a traffic violation, we believe that the factfinder could draw the reasonable inference that defendant was aware that the vehicle was stolen. See *People v Clark*, 154 Mich App 772, 775; 397 NW2d 864 (1986) abrogated on other grounds *People v Goecke*, 215 Mich App 623; 547 NW2d 338 (1996), rev'd 457 Mich 442 (1998); *People v Brewer*, 60 Mich App 517, 521; 231 NW2d 375 (1975). Further, defendant was observed driving the vehicle five days after it

was stolen, and he was unable to tell police who owned the vehicle. Defendant did not possess the vehicle's registration, and he conceded that he obtained the vehicle from a drug dealer named Mike. Thus, we are satisfied that the record evidence, viewed in the light most favorable to the prosecution, could lead a rational trier of fact to conclude that the elements of the offense were proven beyond a reasonable doubt. *Hawkins, supra* at 457.

Next, defendant argues that insufficient evidence was produced to support his conviction of third-degree fleeing and eluding. MCL 257.602a provides in pertinent part:

> (1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the motor vehicle, extinguishing the lights of the motor vehicle, or otherwise attempting to flee or elude the officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the officer's vehicle is identified as an official police or department of natural resources vehicle.
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> (3) . . . [A]n individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony punishable for not more than 5 years or a fine of not more than $1,000.00, or both, if 1 or more of the following circumstances apply:
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> (a) The violation results in a collision or accident.
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> (b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.
>
> (c) The individual has a prior conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.[1]

On appeal, defendant challenges the prosecutor's evidence with regard to MCL 257.602a(3)(a)-(c) only. Specifically, defendant maintains that the prosecutor did not prove that defendant's conduct resulted in an accident or a collision, or that any portion of the violation took place in an area where the speed limit was thirty-five miles an hour or less, or that defendant was previously convicted of a related offense. We disagree.

At trial, Officers Robin Cleaver and Carey Fortunate testified that on January 19, 2000, they were stopped at the intersection of Gratiot and Mack in the City of Detroit when they observed the vehicle defendant was driving disregard a red light. After Fortunate and Cleaver, both in uniform at the time, activated the traffic sirens on the marked police vehicle to initiate a

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[1] MCL 750.479a(3) also prohibits third-degree fleeing and eluding. See *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999).

traffic stop, defendant initially pulled over to the side of the road, but sped away when Cleaver and Fortunate exited the police vehicle. According to Cleaver's and Fortunate's trial testimony, they then proceeded to chase defendant's vehicle northbound on McDougall, through a field toward Mitchell and to Hale Road, after which defendant pulled into the field and ran on foot through an alley. During closing argument, defense counsel argued that the prosecutor failed to prove that the chase occurred in areas where the speed limit was thirty-five miles an hour or less. In response, the prosecutor noted that evidence demonstrated that the chase occurred on Hale, Mitchell, and McDougall, residential streets in the City of Detroit.

We have carefully reviewed the trial court's March 28, 2000, bench ruling. Although inartfully phrased, it is clear to us that on the basis of Cleaver's and Fortunate's testimony, the trial court took judicial notice of the fact that the chase occurred on residential streets where the posted speed limit was thirty-five miles an hour or less. "A court may take judicial notice [of a fact], whether requested or not . . . ." MRE 201(c); *People v Burt*, 89 Mich App 293, 297; 279 NW2d 299 (1979). MRE 201(b) allows a court to take judicial notice of facts not reasonably in dispute in that they are "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b); *People v Goecke*, 457 Mich 442, 448, n 2; 579 NW2d 868 (1998); *Hetrick v David A Friedman, DPM, PC*, 237 Mich App 264, 269; 602 NW2d 603 (1999). A court may take judicial notice of a fact "when the fact so noticed is one of general knowledge." *Protective Nat'l Ins Co of Omaha v Woodhaven*, 438 Mich 154, 170; 476 NW2d 374 (1991) (Cavanagh, C.J., dissenting).

We agree with the trial court that facts establishing that the streets where the chase took place were in residential areas within the City of Detroit with speed limits of thirty-five miles an hour or less can be said to be generally known within the trial court's territorial jurisdiction and capable of accurate and ready verification to the extent that the trial court properly took judicial notice of this information. Thus, we reject defendant's contention that the prosecutor did not offer sufficient evidence to sustain his conviction.

Finally, defendant claims that he was denied the effective assistance of counsel because his trial counsel failed to properly prepare for trial. Specifically, defendant argues that his trial counsel failed to advise him of his right to testify and that his prior convictions could be used against him if he were to testify, and that counsel failed to advise him of the consequences of holding a preliminary examination. Defendant also argues that the charge of receiving stolen property would have been dismissed for lack of evidence had trial counsel not stipulated to the use of the complaining witness' preliminary examination testimony at trial. We disagree.

Because defendant did not move the trial court below for a new trial or a *Ginther*[2] hearing, this issue is not preserved.[3] *People v Sabin (On Second Remand)*, 242 Mich App 656,

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

[3] Defendant's motion before this Court to remand for the purpose of filing a motion for a new trial or for a *Ginther* hearing was denied because he failed to convince this Court of the necessity for a remand. *People v Robinson*, unpublished order of the Court of Appeals, entered December 21, 2000 (Docket No. 227356).

658-659; 620 NW2d 19 (2000). Therefore, our review is confined to errors apparent from the appellate record. *Id.* at 659.

To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000). This Court presumes that a defendant received the effective assistance of counsel, and the defendant bears a heavy burden to overcome this presumption. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). In attempting to persuade this Court that counsel was ineffective, a defendant must overcome the presumption that the challenged action was trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). This Court will not substitute its judgment for that of counsel regarding matters of trial strategy with the benefit of hindsight on appeal. *Rockey*, *supra* at 76-77.

To the extent that defendant argues that he was not properly advised of his right to testify, a review of the record belies his claim. Specifically, during trial, defense counsel stated on the record that he had advised defendant of his right to testify, and defendant had declined.[4] Moreover, we have carefully considered each of defendant's other allegations of ineffective assistance of counsel, and on the basis of the record are unable to conclude that counsel's performance fell below an objective standard of reasonableness. Defendant has failed to overcome the presumption that trial counsel's actions were the product of sound trial strategy. *Rockey*, *supra* at 76. Therefore, we reject defendant's claim that he was denied the effective assistance of counsel.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jessica R. Cooper

[4] Likewise, at the commencement of the preliminary examination on February 7, 2000, trial counsel indicated on the record that he had "talked with [defendant] and discussed all of [defendant's] rights. [Defendant] wishes to hold the exam today."