# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>September 10, 2009 |
| v | No. 285782<br>Oakland Circuit Court |
| RICO ETHAN WILLIAMS,<br><br>Defendant-Appellant. | LC No. 08-002123-FC |

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of carjacking, MCL 750.529a. Defendant was sentenced, as a third habitual offender, MCL 769.11, to ten years and seven months to 25 years of imprisonment. We affirm.

On October 1, 2007, Darrell Williams[1] was at a friend's home. Defendant appeared and confronted Darrell about statements purportedly made by Darrell concerning defendant. To distance himself from defendant, Darrell left the front porch but was physically assaulted by defendant on the front sidewalk. Defendant's uncle, Kevin Williams, arrived and became involved in the fight. Darrell tried to retreat but was tackled by Kevin. Kevin and defendant continued to assault Darrell while he was on the ground. Darrell was eventually able to disengage and walk home, leaving his car parked at his friend's house.

When Darrell arrived home, he informed his uncle, Todd Harrison, about the assault. Darrell returned with Todd to retrieve his car. Defendant emerged from a nearby house and initiated another fight. Darrell testified that after Kevin broke the fight up, defendant pulled a gun and verbally threatened him. Todd testified that he saw defendant draw the gun but that he handed it to another person without issuing any threats. Darrell ran to his parked car. As Darrell tried to start the vehicle, defendant and his family members rushed forward. Todd tried unsuccessfully to block the group's approach. Defendant arrived at the driver's door of the vehicle and began striking Darrell about the face and shoulder. Darrell escaped and defendant entered the vehicle. Darrell and Todd ran back to their home and defendant drove off in

[1] Darrell Williams is not related to defendant.

Darrell's car. Defendant later drove the vehicle by Darrell's house several times, while verbally mocking Darrell.

Darrell requested people in the neighborhood to keep a look out for his car. The next day, Darrell was notified that the car was located on a nearby street. Using a spare set of keys, Darrell retrieved the vehicle. The keys that defendant used to take the car were missing. Two months later, on December 19, 2007, Darrell witnessed an unidentified person enter his vehicle and drive away as if the person possessed the car keys. The vehicle was never recovered.

On appeal, defendant challenges the sufficiency of the evidence to support the *mens rea* element pertaining to his carjacking conviction. A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

"A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking . . . ." MCL 750.529a(1); *People v McGee*, 280 Mich App 680, 685 n 21; 761 NW2d 743 (2008). Larceny requires, as an element, the intent to permanently deprive the owner of his property. *People v Langworthy*, 416 Mich 630, 657; 331 NW2d 171 (1982); *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002). Minimal circumstantial evidence is sufficient to prove a defendant's intent. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

Defendant asserts that his driving up and down the street after taking the car, while taunting and heckling, demonstrates that he lacked the intent to permanently deprive Darrell of the vehicle. Contrary to defendant's contention, and viewed in a light most favorable to the prosecution, the taunting could be seen as reinforcing the idea that defendant now "owned" the car. Defendant also relies on the fact that the car was "returned" undamaged the following day. However, this assertion is grossly misleading because defendant is implying that he returned the car to Darrell, when, in fact, the car was found by neighbors. Because defendant did not make any effort to return the vehicle and retained possession of the car keys, a jury could have reasonably inferred that defendant intended to permanently deprive Darrell of the vehicle.

Defendant also contends that he was deprived of the effective assistance of counsel at trial. Whether a defendant has been deprived of the effective assistance of counsel presents "a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). The court must first determine the facts and then decide "whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *Id.* The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *Id.*

Defendants have the guaranteed right to the effective assistance of counsel. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Aceval*, 282 Mich App 379, 386; 764 NW2d 285 (2009). Effective assistance of counsel is presumed, and a defendant bears a heavy burden of proving otherwise. *LeBlanc*, *supra* at 578. "[T]o establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness" under prevailing professional norms "and that there was a reasonable probability that the result of the proceeding would have been different." *People v Davenport*, 280 Mich App 464, 468; 760 NW2d 743 (2008). An attorney's performance is to be evaluated without the benefit of hindsight. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995).

Defendant initially contends that the evidence of the December car theft was irrelevant and counsel should have objected. In response, the prosecution claims that the evidence of the second car theft was relevant because "it countered defense counsel's claim that the victim had inconsistently stated under oath that he 'never got the car back.'" A prosecutor is allowed to rehabilitate a witness whose credibility has been attacked. See *People v Jones*, 240 Mich App 704, 707 n 1; 613 NW2d 411 (2000). Therefore, the prosecutor was entitled to offer evidence rebutting defense counsel's attack on Darrell's credibility.

Defendant also challenges Darrell's testimony identifying the second thief as a person who possessed a set of car keys. Defendant contends that this testimony allowed the jury to speculate that defendant committed the second theft and impermissibly permitted conviction of defendant based on an inference of his "bad character." Contrary to defendant's assertion, this testimony was relevant for proving defendant's intent. MRE 404(b) allows the introduction of other wrong acts as proof of a defendant's intent. If the jury believed that defendant was responsible for both thefts, it could use the December incident as circumstantial evidence of defendant's intent to permanently deprive Darrell of his car in October. Because testimony regarding the December car theft was admissible, any objection by defense counsel would have been futile. Counsel's failure to make a meritless objection does not constitute ineffective assistance of counsel. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995).

In addition, even if Darrell's testimony regarding the December car theft was not admitted, it is unlikely that a different outcome would have resulted based on the existence of sufficient evidence to convict him of the October carjacking. *Davenport*, *supra* at 468. Defendant drove Darrell's car away after assaulting him and when the car was recovered the keys were missing. A logical inference is that defendant retained possession of the keys and intended to permanently deprive Darrell of the vehicle.

Defendant also argues that counsel was ineffective because he elicited evidence of an earlier physical altercation between defendant and another individual that occurred shortly before the carjacking. An attorney's judgment with regard to trial strategy is not to be second-guessed by hindsight. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). It appears that defense counsel was attempting to impeach Darrell by bringing to the jury's attention that this altercation was never referenced in Darrell's statement to police. Hence, defense counsel's reference to this inconsistency comprised an attempt to convince the jury that Darrell was not truthful. Further, even if this evidence was admitted due to the attorney's ineffective assistance, there is nothing to suggest that the outcome of the trial would have been different. Because

ample evidence existed to support the elements of carjacking, any testimony that defendant fought another individual would have little or no impact on the jury's determination of guilt.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens