

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARWIN CAREY PARKER,

Defendant-Appellant.

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UNPUBLISHED

May 23, 1997

No. 170765

Recorder's Court

LC No. 93-006218

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of receiving and concealing stolen property valued over \$100, MCL 750.535; MSA 28.803. We affirm.

Defendant first argues that the trial court erred in denying his motion for a separate trial. We disagree. We review a trial court's denial of a defendant's motion for a separate trial for an abuse of discretion. *People v Cadle (On Remand)*, 209 Mich App 467, 468; 531 NW2d 761 (1995). Under MCR 6.121(C), severance is mandated

only when a defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice. [Footnote omitted.] The failure to make this showing in the trial court, absent any significant indication on appeal that the requisite prejudice in fact occurred at trial, will preclude reversal of a joinder decision. [*People v Hana*, 447 Mich 325, 346-347; 524 NW2d 682 (1994).]

In this case, defendant did not provide the court with any supporting affidavit or make an offer of proof that demonstrated that his rights would be prejudiced by a joint trial. Defendant merely stated that it was possible that his codefendant may be "pointing the finger" at defendant. This was not enough to warrant a separate trial. There must be concrete facts on which the trial court may grant a separate

trial; mere finger pointing does not suffice. *Hana, supra* at 355. Furthermore, there is no significant indication on appeal that prejudice in fact occurred at trial. The codefendant's testimony was presented for the main objective of negating her culpability. In doing so, however, the codefendant's testimony was inconsistent with defendant's testimony. Her testimony, however, could have been admitted against defendant had he received a separate trial. We fail to see how its admission at a joint trial prejudiced a substantial right of defendant's.

Defendant next argues that his trial counsel was ineffective because he failed to properly move for separate trials and failed to support the motion by affidavit or offer of proof. We disagree. In order to succeed on an ineffective assistance of counsel claim, the defendant must first show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 687-688.

Defendant has failed to make a showing on either prong of this test. First, defense counsel learned just prior to the commencement of trial that the codefendant intended to raise an inconsistent defense and immediately moved to sever the trials. Second, although counsel failed to support the motion by affidavit or offer of proof, the trial court considered the motion on the merits and denied relief. There is no indication that the trial court's ruling would have been different had the motion been supported by an affidavit or offer of proof. Thus, defendant has failed to demonstrate that his counsel's performance was below an objective standard of reasonableness or that he was prejudiced by counsel's alleged error. Under these circumstances, defendant was not denied effective assistance of counsel.

Defendant next argues that there was insufficient evidence to convict him. We disagree. In reviewing the sufficiency of the evidence, we 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 proven beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). In order to succeed in its case against defendant, the prosecutor had to establish the following elements: (1) the property was stolen; (2) the property was worth over \$100; (3) defendant received or concealed the property with knowledge that the property had been stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty constructive or actual knowledge of defendant that the property received or concealed had been stolen. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996).

Defendant was charged with receiving and concealing a stolen truck. The truck was found in a stripped condition in an alley. It was missing various parts and the interior was damaged. The parties did not dispute that the truck and its parts were stolen and worth over \$100. That defendant received or possessed the stolen truck can be inferred from the testimony of two police officers who observed defendant sitting in the stolen truck and saw defendant and others carrying a cassette player, battery, and jumper cables taken from the truck. Moreover, the officers found pliers in defendant's pockets and seven screwdrivers, lug nuts, and lug nut covers near defendant's car. The stolen truck's steering column and ignition were damaged, and the cassette player, battery, and tires were missing. Viewing

this evidence in the light most favorable to the prosecution, there was sufficient evidence to establish that defendant received and concealed stolen property valued over \$100.

Defendant next argues that the trial court erred in failing to grant defendant an adjournment or appoint a deputy to locate a material witness. We disagree. This Court reviews a trial court's decision to grant or deny a motion to adjourn for an abuse of discretion. *City of Lansing v Hartsuff*, 213 Mich App 338, 350-351; 539 NW2d 781 (1995). In the instant case, however, defendant never specifically requested that the trial court grant an adjournment or assist in locating any witnesses. At the beginning of trial, defense counsel noted on the record that months before trial defendant indicated that he wished to call at least two witnesses to testify at trial. Despite counsel's repeated requests for the names and addresses of these witnesses, defendant provided only one name and address. Defense counsel twice talked to the potential witness who denied any knowledge of the incident. During the course of trial, defendant again raised the issue of a potential defense witness. However, defendant admitted that he had not given the witness's address to counsel. The trial court concluded that defendant's failure to cooperate with defense counsel in locating the potential witnesses prior to trial coupled with defendant's comments concerning the potential witnesses at trial demonstrated that defendant was merely trying to delay trial. The trial court further concluded that the potential defense witnesses either did not exist or would not have provided testimony favorable to defendant. Based upon this record, we find that the trial court did not abuse its discretion.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Hilda R. Gage