

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODRIGO MARTINEZ, JR.,

Defendant-Appellant.

UNPUBLISHED
December 9, 1997

No. 196790
Van Buren Circuit Court
LC No. 95-009697 FH

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of burning insured property, MCL 750.75; MSA 28.270. He was sentenced to seventy days in jail. He now appeals as of right. We affirm.

I

Defendant argues that he was denied effective assistance of counsel where his attorney did not request the opportunity to voir dire a juror about a conversation the juror had with a prosecution witness. We disagree.

When asserting a claim of ineffective assistance of counsel, a defendant must first be heard in the trial court by way of a motion for a new trial or an evidentiary hearing, in order to establish a record of the facts pertaining to such a claim. *People v Kesi*, 167 Mich App 698, 702; 423 NW2d 365 (1988) (citing *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973)). Here, defendant did not so move; therefore, our review is limited to the existing record. *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). The Michigan Supreme Court adopted the test for ineffective assistance of counsel in *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994):

[T]o find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. [*Id.* at 338.]

Here, after a two-hour lunch recess, the following colloquy took place:

THE COURT: Mr. Hunt [defense counsel], let me place on the record that it was brought to my attention by the Prosecutor that one of the jurors . . . spoke to the last witness . . . and I am advised that the discussion had nothing to do with this case and, therefore, I see no problem. The jurors do go home at night. They go out to eat. They shop after work. So they do talk to a lot of the people and if someone happened to be a witness in the case, the jurors are only instructed not to talk about this case. So I am satisfied we may proceed unless there is an objection by the Prosecutor. Is there an objection that we proceed?

MR. BEDFORD [prosecutor]: No, Your Honor.

THE COURT: Mr. Hunt?

MR. HUNT: No, Your Honor.

THE COURT: Okay. Let's bring the Jury in.

On this record, defendant cannot establish that his attorney's failure to delve further into this issue constituted conduct that fell below an objective standard of reasonableness, or that this conduct denied him a fair trial. Thus, we decline to reverse on this issue.

II

Defendant next argues that the trial court erred in denying his motion for a directed verdict of acquittal. We disagree.

The test to determine whether a motion for directed verdict should have been granted is whether, viewed in the light most favorable to the prosecution, the evidence was sufficient to permit a rational trier of fact to find the essential elements of the crime to be proven beyond a reasonable doubt. *People v Herbert*, 444 Mich 466, 473; 511 NW2d 654 (1993) (citing *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979)); MCR 6.419(A).

In this case, the evidence, when viewed in the light most favorable to the prosecution, showed that defendant knew that his van was burned, and that he lied about the carjacking. Defendant asked the police "You don't think I would burn my own vehicle or hire somebody to steal it, do you?" He asked this question before the police told him that his vehicle was found burned. There was also evidence that: (1) defendant stated that he walked several miles home after his car was stolen but, although his supposed route went past several businesses and a pay phone, he did not make a call or seek help, (2) defendant failed to mention that he had been carjacked when he first reported his van stolen, (3) the van was not stripped, as stolen vehicles usually are, (4) the van fire was the product of arson, (5) defendant had a container of gasoline in the van, and (6) defendant drove out of his way to buy \$2 of gasoline on the night the van was burned. Finally, there was evidence that defendant and his wife were having difficulty making payments on the van, and that all but \$120 of the loss on the van was covered by insurance.

This circumstantial evidence leads to a logical inference that defendant burned the van. Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995). We conclude that the evidence in this case, viewed in the light most favorable to the prosecution, was sufficient to permit a rational trier of fact to find defendant guilty beyond a reasonable doubt. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gribbs