

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLIFFORD BRAZILLE,

Defendant-Appellant.

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UNPUBLISHED

September 10, 1999

No. 207463

Recorder's Court

LC No. 97-000528

Before: Markman, P.J., and Saad and P.D. Houk,\* JJ.

MEMORANDUM.

Defendant appeals by right from his bench trial conviction of receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803, for which he was sentenced to one to five years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that he was denied his constitutional right to the effective assistance of counsel because trial counsel failed to subpoena and interview two witnesses who could have allegedly corroborated defendant's testimony as to his location moments before his arrest. We disagree. Because defendant did not move for a *Ginther*<sup>1</sup> hearing, this Court's review is limited to mistakes apparent on record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). Trial counsel's failure to call witnesses is presumed to be trial strategy. *People v Mitchell*, 454 Mich 145, 163; 560 NW2d 600 (1997).

Here, the record is silent as to whether the witnesses in question were still available to testify at the time of trial, or whether they were interviewed and assessed as potential witnesses by trial counsel. There is also no record establishing what these witnesses would have actually testified. Moreover, defendant's own trial testimony indicates that the witnesses were not present at the time the police officers allegedly spotted him pushing the stolen vehicle. Rather, defendant testified that he had dropped the witnesses off several blocks away at some unspecified time earlier that evening. On this record, there is simply no basis to conclude that the failure to present the witnesses was error or that, had the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

witnesses been presented, the factfinder would have had a reasonable doubt respecting defendant's guilt. *Mitchell, supra* at 166.

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk

<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).