

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LES PAUL JONES, a/k/a PAUL JONES,

Defendant-Appellant.

UNPUBLISHED

June 17, 2003

No. 239032

Kent Circuit Court

LC No. 01-003836-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant was charged in the alternative with unlawfully driving away a motor vehicle (UDAA), MCL 750.413, and receiving and concealing stolen property valued at \$1,000 to \$20,000 (R&C), MCL 750.535(3)(a). At trial, the court dismissed the receiving and concealing charge and the jury found defendant guilty of the lesser included offense of unlawful use of a motor vehicle, MCL 750.414. He was later sentenced as an habitual offender, fourth offense, MCL 769.12, to one to four years in prison. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCL 7.214(E).

Defendant first contends that the court erred in failing to give, and defense counsel was ineffective for failing to request, jury instructions on the defense of mistake (CJI2d 6.4) and honest buying or receiving (CJI2d 26.5). Defendant failed to request either instruction and thus his claim of instructional error is not preserved for appeal. *People v Sardy*, 216 Mich App 111, 113; 549 NW2d 23 (1996). Therefore, review is precluded unless defendant shows plain error that affected the outcome of the proceedings and this Court determines that the error resulted in the conviction of an innocent person or seriously affected the fairness, integrity or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Rodriguez*, 251 Mich App 10, 23-24; 650 NW2d 96 (2002).

The court is required to instruct the jury on any requested defenses that are supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). The offense of UDAA does not require an intent to steal, but does require the specific intent to take possession of the vehicle unlawfully. *Landon v Titan Ins Co*, 251 Mich App 633, 640; 651 NW2d 93 (2002). A defendant's honest mistake or a misunderstanding about what he was supposed to do negates the requisite specific intent. CJI2d 6.4. Thus, it would be a defense to UDAA if defendant thought he had the owner's permission to take the car. Here, there is no

evidence to support such an assertion and defendant never claimed to have the owner's permission to take or use the car.

It is a defense to receiving and concealing if the defendant obtained stolen property under the honest belief that he has a right to do so. CJI2d 26.5. Inasmuch as the court dismissed the receiving and concealing charge, an instruction regarding defendant's defense thereto was unnecessary.

Because defendant failed to raise his claim of ineffective assistance of counsel below in a motion for a new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). The record shows that counsel did not request CJI2d 6.4 or CJI2d 26.5. However, as explained above, neither instruction was appropriate and defense counsel was not ineffective for failing to advocate a meritless position. *Id.* at 425.

Defendant next challenges the sufficiency of the evidence.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of unlawful use of an automobile are (1) the vehicle belonged to someone other than the defendant, (2) the defendant took or used the vehicle without authority, and (3) the defendant intended to take or use the vehicle knowing that he did not have the authority to do so. *People v Crosby*, 82 Mich App 1, 2-3; 266 NW2d 465 (1978); CJI2d 24.2.

The evidence showed that the car belonged to another person, who did not give anyone permission to take or keep the car. The police found defendant driving the vehicle. A police officer and defendant's nephew both testified that defendant knew that the car was stolen, from which one could reasonably infer that defendant knew that he did not have authority to take or use the vehicle. Such evidence, if believed, was sufficient to enable a rational trier of fact to conclude that the elements of the offense had been proved beyond a reasonable doubt.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette