

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JANIRIO KING,

Defendant-Appellant.

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UNPUBLISHED  
February 13, 2007

No. 265365  
Wayne Circuit Court  
LC No. 05-002764-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for operating a chop shop, MCL 750.535a(2), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 17 months to 10 years in prison for the operating a chop shop conviction and two years for the felony-firearm conviction. We affirm.

This case arises out of the theft of a vehicle that the owner subsequently observed partly dismantled, along with another dismantled car, in the back yard of a house at 33 and 33½ Leslie Street in Highland Park. Police officers executed a search warrant at the house and found several individuals therein, including defendant. The police observed a loaded gun magazine and asked defendant about weapons. Defendant directed the officers to two firearms. After being advised of his rights and acknowledging that he understood them, defendant explained that he kept the guns for his own protection, because his family had been involved in a drug war and his brother had recently been shot and placed in the trunk of a car. He also stated that he had lived in the house for twelve years, and he gave the house as his address on a form he filled out. However, defendant later stated that the house was actually unlivable and vacant, and he only said that he lived there because he did not want to be charged with trespassing. Defendant admitted that he knew that the cars were stolen, but that he had not stolen them. Rather, defendant testified that they were stolen by a friend, and defendant permitted the friend to keep the cars in the back yard for the purpose of selling their parts. He further acknowledged that he did not contact the police because he did not believe that he should do their job for them. The police found marijuana in the house and a variety of car parts that defendant asserted were not stolen.

Defendant first argues that there was insufficient evidence to find him guilty of operating a chop shop as an aider and abettor. We disagree.

We review sufficiency of the evidence de novo to determine whether a rational factfinder could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v McGhee*, 268 Mich App 600, 612; 709 NW2d 595 (2005). Direct and circumstantial evidence is viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002). A person is guilty of operating a chop shop if that person “knowingly owns, operates, or conducts a chop shop or who knowingly aids and abets another person in owning, operating, or conducting a chop shop.” *People v Allay*, 171 Mich App 602, 609; 430 NW2d 794 (1988). A “chop shop” is defined as:

Any area, building, storage lot, field, or other premises or place where 1 or more persons are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle. [MCL 750.535a(1)(b)(i).]

Aiding and abetting is “any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime.” *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004) (citation omitted). The evidence must show that some principal committed the crime but does not have to establish the identity of that principal. *People v Vaughn*, 186 Mich App 376, 382; 465 NW2d 365 (1990).

The evidence is undisputed that there were two stolen and dismantled vehicles in the back yard of the house. The vehicles further showed damage characteristic of theft: one had been stolen by breaking and peeling off the top of the steering column to access the ignition, the other had been “punched,” referring to putting a screwdriver directly into the ignition. This evidence clearly was sufficient to conclude that there was a chop shop operation in the backyard of 33½ Leslie. When viewed in the light most favorable to the prosecution, the evidence shows that defendant lived at the house: he stated that he had lived there for twelve years and that he rented out the upstairs, he gave the house as his address, and he identified the back bedroom as his. By defendant’s own testimony, he knew that the cars were stolen and to be sold for parts, and he gave his permission for his friend to do so on his property. Knowingly permitting a friend to operate an illegal chop shop in one’s back yard is sufficient to establish aiding and abetting.

Defendant next contends that he was denied effective assistance of counsel at trial because defense counsel should have filed a motion to dismiss either the operating a chop shop charge or the two receiving and concealing charges. We disagree. Defendant did not move for a new trial or an evidentiary hearing before the trial court, so our review is limited to the existing record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Whether defendant received ineffective assistance of counsel is a question of both fact and constitutional law. The trial court’s findings of fact are reviewed for clear error, while questions of law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Defendant must show that counsel made such serious errors that defendant was deprived of the “counsel” guaranteed by the Sixth Amendment and of a fair and reliable trial, and that but for counsel’s errors the outcome would have been different. US Const, Am VI; Const 1963, art 1, § 20; *Strickland v Washington*, 466 US 668, 684, 687, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *LeBlanc, supra* at 578; *People v Pickens*, 446 Mich 298, 314, 318; 521 NW2d 797 (1994).. There is a strong presumption that defendant received effective assistance of counsel, and the burden is on defendant to prove counsel’s actions were not sound trial strategy. *Strickland, supra* at 689; *LeBlanc, supra* at 578.

In a case involving an offense of different degrees, a defendant is entitled to an instruction on a necessarily included lesser offense, but not an instruction on a cognate lesser offense. *People v Cornell*, 466 Mich 335, 354; 646 NW2d 127 (2002); MCL 768.32. A necessarily included lesser offense has the “absence of an element that distinguishes the charged offense from the lesser offense” and “can be proved by the same facts that are used to establish the charged offense.” *Cornell, supra* at 354. Defendant was originally charged with operating a chop shop, MCL 750.535a(2), two counts of receiving and concealing a stolen motor vehicle, MCL 750.535(7), and felony-firearm, MCL 750.227b. Under the receiving and concealing statute, “[a] person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing that the motor vehicle is stolen, embezzled, or converted.” MCL 750.535(7).<sup>1</sup>

At the close of trial, defense counsel argued that defendant could not be convicted of operating a chop shop and receiving and concealing a stolen vehicle under double jeopardy principles, so they should be alternate charges. The trial court concluded that the receiving and concealing counts were lesser included offenses of the operating a chop shop charge, and the trial court instructed the jury accordingly. As defined above, operating a chop shop necessarily entails receiving and concealing a stolen vehicle, so the trial court’s ruling was correct. “Trial counsel is not required to advocate a meritless position.” *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000). Moreover, trial counsel’s argument resulted in fewer possible charges of which defendant could be convicted, and it afforded defendant the possibility of a conviction on a lesser charge. We do not find that defendant received ineffective assistance of counsel.

Finally, defendant argues that the prosecutor’s questions regarding the sale of drugs at the house were improper. We disagree.

In general, “[p]rosecutors are accorded great latitude regarding their arguments and conduct” and are “free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case.” *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (citations omitted). Claims of prosecutorial misconduct are reviewed on a case-by-case basis to determine whether the defendant received a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). This Court examines the record and evaluates the remarks in context, taking into consideration defendant’s arguments. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). A prosecutor may fairly respond to an issue raised by the defendant. *People v Fields*, 450 Mich 94, 110-111; 538 NW2d 356 (1995).

One of defendant’s charges was for possessing firearms during the commission of a felony, either the operation of a chop shop or receiving and concealing stolen property. See

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<sup>1</sup> Effective October 1, 2006, this section is amended to “[a] person shall not buy, receive, possess, conceal, or aid in the concealment of a stolen motor vehicle knowing, *or having reason to know or reason to believe*, that the motor vehicle is stolen, embezzled, or converted.” 2006 PA 374 (emphasis added). In addition, the prosecution is correct in stating that the value requirement for this section was removed, effective April 1, 2003, so defendant’s argument regarding this “element” is without merit. 2002 PA 720.

*People v Guiles*, 199 Mich App 54, 58; 500 NW2d 757 (1993); MCL 750.227b. The prosecution was therefore required to prove that defendant possessed a firearm. At his arrest, defendant directed police officers to an unloaded semi-automatic rifle under a mattress, and officers also found an AK-47 rifle that was loaded and had its safety disengaged. No fingerprint testing was performed, and apparently no officer ever witnessed defendant physically touching either gun. When asked about the weapons, defendant responded that his family was involved in a drug war, his brother had been shot and placed in the trunk of a car, and he would rather be caught by the police with the weapons than not have them and be caught by the other family. Officers verified that a month before, a body was discovered in the trunk of a car in Highland Park, and the person had been shot in the head execution style. The police also found in the house around a hundred one-ounce baggies, typically used for the sale of marijuana and cocaine, and a large quantity of ammunition. However, defendant subsequently provided a written statement limited solely to the cars, and he testified that he told the officer where the gun was because it was not his, so he did not think he would get in trouble for it. Defendant testified that he did not put anything regarding the guns in his written statement because the police never asked him to.

The prosecutor's questions were very relevant when viewed in the context of defendant's denials that he possessed the firearms or that he even lived in the house. *Thomas, supra* at 454. Defendant's statements demonstrate that he was concerned about protecting himself from a family drug war, which is at least one reason why defendant would possess a firearm. "[T]he prosecutor is permitted, as an advocate, to make fair comments on the evidence, including arguing the credibility of witnesses to the jury when there is conflicting testimony and the question of defendant's guilt or innocence turns on which witness is believed." *People v Flanagan*, 129 Mich App 786, 796; 342 NW2d 609 (1983). The court sustained objections pertaining to narcotics, but the court properly found defendant's explanation of why he had the gun to be relevant. Finally, the court instructed the jury that the prosecutor's opening statement and closing argument was not evidence, and the jury alone was the finder of facts and the determiner of witness credibility. Absent an indication that the jury could not or would not follow these instructions, any possible error was dispelled and would not have affected the outcome of the trial. *Bahoda, supra* at 281. Defendant was not deprived of a fair trial by the prosecutor's remarks or line of questioning.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto