

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZYGMUNT MOCON,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2003

No. 241044  
Oakland Circuit Court  
LC No. 01-176767-FH

Before: Murray, P.J., and Gage and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of false pretenses over \$1,000 and under \$20,000, MCL 750.218(4)(a), for which he was sentenced to one year's probation with the first six months in jail plus restitution. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant advertised a 1999 Dodge Neon for sale. The purchasers testified that they relied on defendant's representation that the vehicle had never been in an accident in deciding to buy it. It turned out that the vehicle comprised the front half of a 1999 Neon and the back half of a 1996 Neon which had been welded together. Both vehicles had been in accidents. Defendant contends that trial counsel was ineffective for failing to object to the testimony of David Surkovich, the mechanic who discovered the true condition of the vehicle. Because defendant failed to raise this claim 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).

To prevail on a claim of ineffective assistance of counsel, defendant must show that his counsel's performance was objectively unreasonable and the representation was so prejudicial that he was deprived of a fair trial. To demonstrate prejudice, the defendant must show that, but for counsel's error, there was a reasonable probability that the result of the proceedings would have been different. This Court presumes that counsel's conduct fell within a wide range of reasonable professional assistance, and the defendant bears a heavy burden to overcome this presumption. [*People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001), aff'd in part, mod in part on other grounds; 468 Mich 233; 661 NW2d 553 (2003) (citations omitted).]

To prove her case, the prosecutor had to present evidence to show that defendant knowingly made a false representation with an intent to defraud, cheat, or deceive. *People v Shively*, 230 Mich App 626, 631; 584 NW2d 740 (1998); MCL 750.218(1)(c), (4)(a); CJI2d 23.11. The prosecutor was entitled to prove her case by whatever admissible evidence she chose. *People v Pratt*, 254 Mich App 425, 429; 656 NW2d 866 (2002).

Surkovich's testimony was relevant to prove both of the above elements. MRE 401. Surkovich's testimony that the car comprised the halves of two vehicles welded together plus his testimony regarding the condition of the air bags showed that the 1999 vehicle had been in an accident and repaired by replacing the back end with that of another vehicle. The testimony about the covered-over weld seam and the removal of the vehicle identification numbers and other identifying marks showed that defendant tried to prevent discovery about the history of the vehicle and thus acted with an intent to deceive. Therefore, a relevancy objection would have been futile and counsel is not ineffective for failing to raise a meritless objection. *People v Milstead*, 250 Mich App 391, 401; 648 NW2d 648 (2002); *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).

Affirmed.

/s/ Christopher M. Murray  
/s/ Hilda R. Gage  
/s/ Kirsten Frank Kelly