

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JERRY WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

June 14, 2007

No. 270683

Wayne Circuit Court

LC No. 06-001185-01

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of unlawfully opening or attempting to open a coin or depository box, MCL 750.113.<sup>1</sup> We affirm.

This case involves defendant's attempt to steal coins from a coin operated air compressor and vacuum machine. A police officer testified that he and his partner were responding to the scene of a possible shooting when they stopped at a light near a gas station. The officer saw defendant attempting to pry open a coin operated air compressor vacuum machine with a large screwdriver. He also saw a red SUV parked approximately 15 feet from the machine. The officer did not immediately stop, because he was already responding to a call. However, approximately two blocks from the station, he was notified that no shooting had occurred. He returned to the station, and as he arrived, he saw defendant leaving the station in the SUV. The officers stopped the SUV and placed defendant in custody. Inside the SUV, the officers found several tools, prybars, channel locks, and screwdrivers; including a screwdriver that was consistent with the one the officer had seen in defendant's hands. The officers returned to the station and discovered that the vacuum's coin box was damaged, although it had not been completely opened.

The prosecutor introduced six photographs of the vacuum, taken by the officer on the eve of trial. One corner of the coin box had been bent back as if someone had attempted to pry it. The officer testified that this was the damage he had observed right after defendant had

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<sup>1</sup> Defendant was also charged with possession of burglary tools, MCL 750.116. The trial court acquitted defendant of that charge.

attempted to open the box. Defendant also presented photographs of the vacuum. The officer stated that these photographs did not accurately show the damage to the machine.

On appeal, defendant argues that trial counsel rendered ineffective assistance by failing to object to the introduction of the photographs of the vacuum machine because the photographs were taken more than three months after the alleged incident, and the machine was open to the public during that time. This issue is not preserved for appeal because defendant neither moved for a new trial nor a *Ginther*<sup>2</sup> hearing in the trial court. *People v Armendarez*, 188 Mich App 61, 73-74; 468 NW2d 893 (1991). We may review this issue where the record is sufficiently detailed to support defendant's claim; however, our review is limited to the existing record. *Id.* at 75. Ineffective assistance of counsel is a mixed question of law and fact. Any findings of fact are reviewed for clear error, while the ultimate constitutional issue is reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To establish ineffective assistance of counsel, a defendant must show that counsel's performance "fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). A defendant must overcome the strong presumption that counsel's actions constituted sound trial strategy. *Id.* To show prejudice, a defendant must establish a reasonable probability that the result of the proceeding would have been different if not for counsel's errors. *Id.* at 302-303.

Defendant's claim is without merit. "Photographs are admissible if they are pertinent, relevant, competent and material on any issue in the case." *People v Curry*, 175 Mich App 33, 46; 437 NW2d 310 (1989). A photograph is not inadmissible because it depicts information that a witness can orally testify to, and photographs may be used to corroborate a witness' testimony. *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995). Moreover, "[f]or the admission of a photograph, the only foundational requirement is the testimony of an individual, familiar with the scene photographed, that it accurately reflects the scene photographed." *Curry, supra*, citing *People v Lobaito*, 133 Mich App 547, 560; 351 NW2d 233 (1984). See also MRE 901. Here, the officer testified that the photographs adequately reflected the state of the coin box immediately after he observed defendant attempt to enter it. This was a proper foundation for the admission of the photographs. *Id.* Defense counsel did not provide ineffective assistance when she decided not to object to the introduction of the photographs, and instead attempted to cast doubt on the officer's veracity. Because a strategy did not work does not render its use the ineffective assistance of counsel. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001).

Defendant also argues that the prosecutor presented insufficient evidence to support his conviction. He contends that the trial court should not have found the officer credible when two other witnesses testified that the machine was not damaged.

We review a defendant's allegations of insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecutor to determine

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<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we do not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences can be fairly drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant's arguments to the contrary notwithstanding, the trial court was entitled to accept the testimony of the arresting officer. *Hardiman, supra.* Nor did the other witnesses claim that the box had not been damaged. Instead, they testified only that it had not been broken into, or that it remained operational. Actual entry is not a required element of the offense. MCL 750.113. The evidence was sufficient to support defendant's conviction.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell