

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 28, 2014

v

NOLAN JOSEPH KARRUMI,

Defendant-Appellant.

No. 312213
Wayne Circuit Court
LC No. 12-000607-FH

Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of carrying a concealed weapon (CCW) in a vehicle, MCL 750.227(2). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case stems from a traffic stop where Detroit police officers found a gun in the center console of defendant's car. Defendant testified at trial that the gun belonged to his cousin, Valentino Zoma, and that Zoma placed the gun in his car when he drove Zoma to Zoma's place of work, a convenience store. Defendant stayed with Zoma at the store and visited with him. While defendant was inside the store, a thief allegedly broke into defendant's car, and took some of his belongings. Defendant gave chase, going the wrong way down a divided street. After being pulled over by the police, defendant quickly got out of his car and approached the officers, despite the officers' warnings to get back inside the vehicle. The police officer on the scene testified that defendant admitted to having a weapon in his car, which the police officer's partner retrieved. The police detained defendant and he was subsequently charged with CCW.

Defendant elected to have a bench trial, and testified that he had forgotten about the gun's presence in his car after he and Zoma visited at the store. Nonetheless, the trial court found him guilty, stressing the police testimony that stated defendant told the police of the gun's location in the center console of his car. The trial court also noted that defendant's behavior, wherein he ignored the police officers' instruction to stay in the vehicle, and indicated knowledge of the weapon's location.

Defendant raises two issues on appeal: (1) that the prosecution presented insufficient evidence to sustain his CCW conviction; and (2) that his counsel's failure to call Zoma as a

witness constitutes ineffective assistance of counsel, and that he is accordingly entitled to a *Ginther*¹ hearing.

II. ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE²

MCL 750.227(2) bars a person from carrying:

. . . a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license. [MCL 750.227(2)]

Michigan courts have clarified that the elements of CCW in a vehicle are: (1) the presence of a weapon in a vehicle owned or operated by the defendant; (2) that the defendant knew or was aware of its presence; and (3) that defendant was “carrying” the firearm. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999), citing *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). Among other factors, a court determines whether defendant was “carrying” the weapon by looking to: (1) the accessibility or proximity of the gun to the defendant’s person, (2) the defendant’s possession of other items connected to the gun, e.g., ammunition, (3) the defendant’s ownership or operation of the vehicle, and (4) the length of time the defendant drove or occupied the vehicle with the gun inside. See *People v Emery*, 150 Mich App 657, 667; 389 NW2d 472 (1986); *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982); *Nimeth*, 236 Mich App at 622; and *Courier*, 122 Mich App at 90–91. However, the court need not find evidence on each one of these factors. *Emery*, 150 Mich App at 668.

Here, the police found a firearm in a vehicle owned and operated by defendant, in a location that allowed defendant easy access to the weapon. Defendant’s statement to police that the gun was in the center console supported the reasonable conclusion that he knew about the gun while driving. The trial court clearly did not believe defendant’s testimony that he had

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

² A challenge to the sufficiency of the evidence is reviewed de novo on appeal. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). “The evidence in a bench trial is sufficient if, when viewed in the light most favorable to the prosecutor, a rational factfinder could determine that each element of the crime had been proved beyond a reasonable doubt.” *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

forgotten that the weapon was in his car.³ When viewed in the light most favorable to the prosecutor, there was sufficient evidence to sustain the CCW conviction.

B. EFFECTIVE ASSISTANCE OF COUNSEL

Whether a defendant was denied effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). This Court reviews findings of fact for clear error and questions of law de novo. *Id.* Under the *Strickland*⁴ test used to analyze such claims, “counsel is presumed effective, and the defendant has the burden to show both that counsel’s performance fell below objective standards of reasonableness, and that it is reasonably probable that the results of the proceeding would have been different had it not been for counsel’s error.” *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). See also *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012) (holding that effective assistance of counsel is presumed, and a defendant bears a heavy burden of proving otherwise).

Failure to present evidence can constitute ineffective assistance only where the defendant is deprived of a substantial defense. *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009). Defense counsel is given wide latitude in matters of trial strategy, and there is a strong presumption of effective assistance of counsel. *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). Decisions regarding which evidence to present and questioning of witnesses are presumed to be trial strategy. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Ineffective assistance only results from failure to call witnesses if the defendant is deprived of a substantial defense. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004).

Defendant claims that his trial attorney failed to present an adequate defense by, among other things, not calling Zoma as a witness. However, trial counsel interviewed Zoma in advance of trial, and subsequently decided not to use him as a witness. And, in any event, defendant cannot show that this decision, or any other alleged error of his trial counsel, would have changed the outcome of his trial. See *Frazier*, 478 Mich at 243 (defendant must show that it is “reasonably probable that the results of the proceeding would have been different had it not been for counsel’s error”). As noted, the trial court found credible the police testimony that defendant knew the gun’s location in his car, and apparently did not believe defendant’s assertions that he lacked such knowledge—assertions that trial counsel elicited from defendant during trial, and mentioned in his closing arguments.⁵ Zoma would not have been able to testify to the central issue in the case: defendant’s state of mind. Instead, he simply would have restated

³ Witness credibility, weight of the evidence, and inferences to draw from the evidence are determinations that must be made by the trier of fact. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002); *People v Jackson*, 292 Mich App 583, 587; 808 NW2d 541 (2011).

⁴ *Strickland v Washington*, 466 US 668, 104 S Ct 2052, 80 L Ed 2d 674 (1984).

⁵ This exchange and statement by the trial attorney belies defendant’s claim that his trial attorney mistakenly believed CCW to be a strict liability offense.

defendant's assertions that: (1) the gun belonged to Zoma; and (2) that he, Zoma, placed the gun in the center console of defendant's car, and that defendant gave chase after someone who defendant thought stole his personal property. This testimony simply would not change the outcome of this bench trial, as the trial judge correctly opined.

Accordingly, we reject defendant's claim of ineffective assistance of counsel and for a *Ginther* hearing to develop this argument.

Affirmed.

/s/ Henry William Saad
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly