

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT ALLEN HUDGINS,

Defendant-Appellant.

UNPUBLISHED

August 17, 2004

No. 246808

Wayne Circuit Court

LC No. 02-008973-01

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for receiving and concealing stolen property with a value over \$20,000, MCL 750.535(2)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first claims he was denied the effective assistance of counsel where his attorney failed to move to suppress evidence obtained as a result of a traffic stop. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298, 308-309; 521 NW2d 797 (1994). Where no evidentiary hearing was held, this Court's review is "limited to mistakes apparent on the record." *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

There is no indication that a motion to suppress would have been successful or that the admission of the evidence undermined the reliability of the verdict. Officers observed the vehicle defendant was driving leaving a closed business in the early hours of the morning. They made an investigative stop based on reasonable suspicion. *People v LoCicero (After Remand)*, 453 Mich 496, 501; 556 NW2d 498 (1996). The LEIN report indicating that the vehicle was reported stolen was not the product of the stop. Counsel was not constitutionally deficient for failing to file a motion that lacked merit.

Defendant next asserts that there was insufficient evidence to support the conviction. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether

any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

To obtain a conviction for receiving and concealing stolen property, the prosecution was required to prove: (1) that the property was stolen; (2) the value of the property; (3) the receiving, possession, or concealment of the property; (4) the identity of the property as being that previously stolen; and (5) the guilty constructive or actual knowledge of the defendant that the property had been stolen. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). The surrounding circumstances may justify the inference that the defendant had guilty knowledge that the property was stolen. *People v Brown*, 126 Mich App 282, 287; 336 NW2d 908 (1983).

Defendant was apprehended in a vehicle containing a number of items of stolen property. He gave police a false exculpatory statement, claiming that the items were his, and his wife had loaned him the vehicle. From the circumstances and defendant’s false statement, the trier of fact could reasonably conclude that defendant was aware that the vehicle was stolen.

Finally, defendant asserts that the court erred in denying him sentence credit for time served. A parolee who commits a crime while on parole is liable, when arrested, to serve out the unexpired portion of his or her maximum imprisonment. MCL 791.238(2). A sentence imposed for the crime committed while on parole does not begin to run until the expiration of the remaining portion of the sentence imposed for the previous offense. MCL 768.7a(2). Time served in jail after an arrest for a parole violation is to be credited against the original sentence for which defendant was on parole, not the sentence imposed for the crime committed while on parole. *People v Watts*, 186 Mich App 686, 687-689; 464 NW2d 715 (1991). Defendant failed to present any evidence indicating that he was not required to serve additional time on his parole violation.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly