

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK BOYCE,

Defendant-Appellant.

UNPUBLISHED

March 3, 1998

No. 194112

Recorder's Court

LC No. 95-007048

Before: Griffin, P.J., and Holbrook and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of larceny from the person, MCL 750.357; MSA 28.589. Defendant was sentenced to one to ten years for the conviction. We affirm.

Defendant's first issue on appeal is that the record is devoid of a voluntary waiver of the right to a jury trial in open court. We disagree. The determination whether defendant's waiver was in compliance with the court rules is a question of law which we review de novo. *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997). A review of the final conference transcript clearly shows that defendant waived his right to a jury trial in open court in compliance with MCR 6.402(B).

Defendant's next argument, that his conviction was based on insufficient evidence, is without merit. In reviewing a claim of sufficiency of the evidence on appeal, we must view the evidence in a light most favorable to the prosecution to determine whether a rational factfinder could have found the elements of the crime proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103; 570 NW2d 146 (1997).

Defendant argues that the victim's identification of defendant was not sufficient. A review of the record shows that when the assailant leaned into the victim's car through the window, the victim saw the assailant's profile. The victim was wearing her contact lenses and there was light from the dashboard of her car. The victim testified that the entire event lasted somewhere between twenty and forty-five seconds. The victim also testified that as the assailant fled, he climbed a wall. An unidentified person yelled for the assailant to "stop," at which point the assailant paused. The victim saw the assailant's entire face when he stopped. The victim was subsequently able to identify defendant as the person who

committed the crime. The victim also testified that she recognized defendant from her neighborhood. The trial court found the victim's testimony to be credible as it convicted defendant on the basis of this testimony. This Court will not question the trial court's determination of credibility as this is a determination for the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

Defendant's final argument on appeal is that he received ineffective assistance from trial counsel. We disagree. Defendant did not move for a new trial or seek an evidentiary hearing before the trial court. Our review is therefore limited to the existing record. *People v Dixon*, 217 Mich App 400, 408; 552 NW2d 663 (1996). Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise. *People v Eloby (After Remand)*, 215 Mich App 472, 476; 547 NW2d 48 (1996).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Defendant claims that he was denied effective assistance of counsel because his trial counsel failed to file a notice of alibi. The trial court nonetheless allowed defendant to present an alibi defense at trial. Therefore, defendant was not prejudiced by this alleged error.

Defendant also argues that his trial counsel did not call a second alibi witness to testify at trial. Our review is limited to the existing record. *Dixon, supra*. Nothing in the record indicates that defendant was deprived of a substantial defense by his trial counsel's failure to call a second alibi witness. The precise nature of this witness' testimony is not apparent from the record. However, as noted above, it is clear that defendant presented an alibi defense through another witness. Since an alibi defense was presented, it cannot be said that defendant was deprived of a substantial defense by the failure to call a second alibi witness. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990).

Defendant's final claim of ineffective assistance of counsel is that trial counsel pressured him into waiving his right to a jury trial. Our review of the existing record reveals that defendant voluntarily waived his right to a jury trial. Defendant responded affirmatively when asked by the trial court if he wished to waive his right to a jury trial. Furthermore, the lower court record contains a waiver of jury trial form signed by defendant. We therefore conclude that defendant received effective assistance of counsel.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff