

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROMMIE JONES,

Defendant-Appellant.

---

UNPUBLISHED

April 21, 2000

No. 215241

Kent Circuit Court

LC No. 98-000075-FH

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for assault and battery, MCL 750.81; MSA 28.276, entered after a jury trial. We affirm.

Defendant was charged with felonious assault, arising out of a domestic altercation that occurred on December 21, 1997. Linda Beverly asserted that defendant assaulted her with a knife on that date. A neighbor testified that she did not see defendant with a knife, and police who responded to the scene reported that the only person with a knife was one of Beverly's daughters. The jury found defendant guilty of the lesser offense of assault and battery.

Defendant asserts that he was denied the effective assistance of counsel when trial counsel failed to subpoena the tape of the neighbor's 911 call to police to establish an inconsistency in her testimony regarding whether the daughter of the victim had a knife. Defendant also asserts that counsel was ineffective in failing to obtain testimony from one of the police officers to establish the same point.

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard or reasonableness under prevailing professional norms. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. *Id.* 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. *Id.* at 687-688.

There is no showing that the missing evidence would have had an effect on the trial. Defendant asserts that the evidence would serve to raise questions regarding the neighbor's credibility. However, the neighbor's testimony supported the defendant's position that he did not have a knife. It was reasonable trial strategy for counsel to forego an attack on the credibility of a witness who supported part of defendant's position.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski