

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICKY THOMPSON,

Defendant-Appellant.

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UNPUBLISHED

January 26, 2001

No. 218211

Wayne Circuit Court

LC No. 98-009765

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of bank robbery, MCL 750.531; MSA 28.799, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Prior to trial, defendant moved to suppress photographs taken with bank surveillance equipment on the ground that the prosecution failed to produce the photographs as required by a discovery order. The prosecution stated that it had received the photographs only that morning, and indicated that it would not object to an adjournment. The trial court took the motion under advisement, but gave defendant and his counsel an opportunity to review the photographs.

At trial, two bank employees, including the teller whose window was robbed, identified defendant as the perpetrator. Defense counsel did not object to the admission of various photographs, including the surveillance photographs. In finding defendant guilty as charged, the trial court noted that the victim's statement to the police contained some discrepancies, but concluded that her identification testimony was credible.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's performance resulted in prejudice. To demonstrate prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that he was denied the effective assistance of counsel at trial for the reason that counsel failed to object to admission of the surveillance photographs. We disagree and affirm defendant's conviction. When the prosecution indicated that it would seek to admit the surveillance photographs into evidence, defense counsel objected and noted that the photographs had not been produced as required by the discovery order. MCR 6.201(A)(5). Defendant does not suggest that the prosecution misrepresented the facts when it stated that it had received the photographs only that morning. The trial court exercised its discretion to fashion a remedy for the discovery violation by granting defendant and his counsel time to review the photographs. MCR 6.201(J). Defendant's assertion that had the photographs not been admitted into evidence the results of the trial likely would have been different is without merit. Prior to viewing the photographs, the victim identified defendant as the person who robbed her window. The trial court, as finder of fact, was entitled to believe this testimony. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Defendant has failed to show that he was prejudiced by any deficient performance from counsel. *Toma, supra*; see also *People v Newton (After Remand)*, 179 Mich App 484, 493; 446 NW2d 487 (1989).

Affirmed.

/s/ Jeffrey G. Collins  
/s/ Martin M. Doctoroff  
/s/ Helene N. White