

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUNCAN ERIC KNIGHT,

Defendant-Appellant.

UNPUBLISHED
September 2, 1997

No. 192373
Recorder's Court
LC No. 95-006382

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant was convicted by the trial court of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to consecutive terms of two years' imprisonment for the felony-firearm conviction and thirteen to twenty-five years' imprisonment for the assault conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise out of an incident in which defendant fired several shots into the residence of the complainant, defendant's former girlfriend.

Defendant first argues that trial error occurred when the complainant was permitted to testify to prior bad acts committed by defendant. However, we decline to review this issue because defendant failed to object to the admission of the complainant's testimony at trial. MRE 103(a)(1); *People v Considine*, 196 Mich App 160, 162; 492 NW2d 465 (1992).

Next, defendant argues that he was denied the effective assistance of counsel because defense counsel failed to mention defendant's alibi defense during closing argument. Our review of this issue is limited to errors apparent in the record because defendant failed to move for a new trial or an evidentiary hearing on this issue. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). During closing argument in this case, defense counsel focused on attacking the credibility of the eyewitness identifications of defendant as the shooter and arguing that the facts of the case did not establish that the shooter, whoever he was, possessed the intent to murder. Given that the credibility of defendant's alibi defense was rendered somewhat suspect at trial, we conclude that defendant has failed

to overcome the strong presumption that counsel's choice of defense theory during closing argument constituted sound trial strategy. *Id.* The fact that counsel's strategy was unsuccessful does not constitute ineffective assistance of counsel. *Id.* Accordingly, defendant has failed to establish that he was denied the effective assistance of counsel. *Id.* at 41-42.

Finally, defendant argues that the trial court's findings of fact were insufficient because the trial court failed to discuss the evidence of defendant's alibi. We disagree. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1); MCR 6.403. Findings of fact are sufficient if it appears from the record that the trial court was aware of the issues in the case and correctly applied the law. *People v Reeves*, 222 Mich App 32, 34; ___ NW2d ___ (1997). In this case, we agree that the trial court did not make any findings with respect to defendant's alibi evidence. However, as indicated previously, defense counsel likewise did not argue defendant's alibi defense during closing argument, but rather, in part, attacked the eyewitness identifications of defendant as the shooter. In finding defendant guilty in this case, it is clear that the trial court found that defendant was the shooter. We conclude that the trial court was aware of the issues in the case and correctly applied the law.

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage