

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KORAN T. BECKWITH,

Defendant-Appellant.

UNPUBLISHED

April 14, 1998

No. 196472

Recorder's Court

LC No. 95-008168

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for felonious assault, MCL 750.83; MSA 28.277. Defendant was sentenced to two years' probation. We affirm.

Defendant's first issue on appeal is that he was denied the effective assistance of counsel. We disagree. To establish a denial of effective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Leonard*, 224 Mich App 569, 592; 569 NW2d 663 (1997).

In his brief on appeal, defendant alleges numerous examples of ineffective assistance of counsel, including failing to allow defendant to testify, a breakdown of the attorney-client relationship and minimal cross-examination of trial witnesses by defense counsel. Our review of the lower court record does not reveal that defendant notified his trial counsel or the trial court of his desire to testify at trial or that the attorney-client relationship had broken down. Although defendant's trial counsel did very little cross-examining of the witnesses, the witnesses were extensively cross-examined by codefendants' trial counsel. Furthermore, the decision to cross-examine witnesses is a matter of trial strategy which we will not second guess. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

Defendant's second issue on appeal is that his trial should have been severed from the trial of his codefendants. We disagree. Defendant argues for the first time that the defenses of the codefendants were inconsistent. His claim is speculative. Defendant's argument assumes what defendant would have

testified to and then assumes how his codefendants would have testified in response to testimony that was never given. Moreover, severance is not required where, as here, defenses are merely inconsistent. *People v McCray*, 210 Mich App 9, 12; 533 NW2d 359 (1995).

Defendant's final issue on appeal is that the evidence upon which he was convicted was not credible and, therefore, insufficient to support his conviction. We disagree. In reviewing a claim of insufficiency of the evidence on appeal, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational factfinder could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992). In reviewing a claim of sufficiency of the evidence, the reviewing court may not make determinations of credibility because questions about the credibility of witnesses are left to the trier of fact. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997).

Defendant's entire argument on appeal is that the witnesses at trial were not credible and, therefore, defendant was improperly convicted. This Court is not permitted to make credibility determinations on appeal, *Peña, supra*, and, therefore, defendant's argument that he was convicted on the basis of insufficient evidence must fail.

Affirmed.

/s/ Roman S. Gibbs
/s/ Mark J. Cavanagh
/s/ Henry William Saad