

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD N. BRYANT,

Defendant-Appellant.

UNPUBLISHED
November 3, 1998

No. 200683
Recorder's Court
LC No. 95-010235

Before: Griffin, P.J., and Gage and R. J. Danhof*, JJ.

MEMORANDUM.

Defendant was convicted in a bench trial of first-degree criminal sexual conduct, MCL 750.520b(1)(c); MSA 28.788(2)(1)(c), kidnapping, MCL 750.349; MSA 28.581, and aggravated stalking, MCL 750.411i(2)(b); MSA 28.643(9)(2)(b). He appeals as of right and we affirm.

Defendant first argues that he was denied effective assistance of counsel at trial because defense counsel failed to contact or otherwise investigate certain potential witnesses. To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's deficient performance, a reasonable probability existed that the outcome of the trial would have been different. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). Having reviewed defendant's claims, we find that counsel's failure to contact or investigate potential witnesses Richard Myles or Sue Wycowski did not deprive defendant of valuable evidence that would have substantially benefited defendant in his bench trial. *People v LaVearn*, 448 Mich 207; 528 NW2d 721 (1995); *People v Caballero*, 184 Mich App 636, 642; 459 NW2d 80 (1990). Accordingly, defendant has not established entitlement to appellate relief on this basis.

Next, defendant asserts that he was denied a fair trial because the prosecutor improperly shifted the burden of proof to him during closing argument. Given that a timely objection was not made to the challenged comments, review is precluded unless failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). After

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

reviewing the prosecutor's closing argument in its entirety, we conclude that the challenged statements were a proper comment on the validity of defendant's defense and lack of corroboration. See *People v Fields*, 450 Mich 94; 538 NW2d 356 (1995).

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Robert J. Danhof