

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM E. BEALS, a/k/a WILLIAM BILLS,

Defendant-Appellant.

UNPUBLISHED

June 30, 2000

No. 214111

Wayne Circuit Court

LC No. 97-009305

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent prison terms of seventeen to thirty years for the second-degree murder conviction and two to four years for the felonious assault conviction, and to a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first claims that the evidence was insufficient to establish second-degree murder. We disagree. When reviewing a claim of insufficient evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Viewed in this manner, the credibility of defendant's testimony regarding the circumstances of the shooting was for the trier of fact to decide. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Further, the prosecution presented sufficient evidence to exclude the possibility that defendant acted in self-defense. *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993). We also find no merit to defendant's claim that, at best, only voluntary manslaughter was established. Even if there was some testimony which, if believed, tended to show adequate provocation, the issue was one for the trial court, as the trier of fact, and the court was free to reject that evidence. *People v Townes*, 391 Mich 578, 589; 218 NW2d 136 (1974). Further, neither provocation nor the absence of provocation is an actual element that the prosecution must prove

beyond a reasonable doubt. *People v Darden*, 230 Mich App 597, 604; 585 NW2d 27 (1998); *People v Deason*, 148 Mich App 27, 33; 384 NW2d 72 (1985).

Finally, we disagree with defendant's claim that the trial court abused its discretion by allowing the prosecutor to strike Ernie Cunningham from its witness list. MCL 767.40a(4); MSA 28.980(1)(4); *People v Burwick*, 450 Mich 281, 291; 537 NW2d 813 (1995); cf. *People v Snider*, 239 Mich App 393, 422-423; 608 NW2d 502 (2000), lv pending. Furthermore, defendant's failure to sufficiently argue how he was prejudiced by the prosecution's failure to produce Cunningham precludes appellate relief. Defendant's bare assertion that he was denied an opportunity to present a defense and denied a fair trial is insufficient to establish prejudice. Cf. *People v Bean*, 457 Mich 677, 685 n 13; 580 NW2d 390 (1998) (issue abandoned where defendant did not argue that the failure to locate a witness harmed his defense); see also *People v Griffin*, 235 Mich App 27, 45; 597 NW2d 176 (1999).

Affirmed.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald