

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LIONEL ERIC TURNER,

Defendant-Appellant.

UNPUBLISHED

December 19, 2000

No. 217597

Wayne Circuit Court

LC No. 98-006615

Before: Bandstra, C.J., and Fitzgerald and D.B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for assault with intent to commit great bodily harm, MCL 750.84; MSA 28.279. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that he was denied the effective assistance of trial counsel where counsel failed to investigate and present a potential witness. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Defendant has failed to present any evidence that the missing witness would have testified favorably, or that testimony would have affected the outcome of the case.

Defendant also claims that the trial court erred in admitting rebuttal testimony. The decision to admit rebuttal evidence rests within the sound discretion of the trial court. If evidence is improperly admitted during rebuttal, reversal is required only if the error was so egregious as to result in a miscarriage of justice. *People v Bell*, 169 Mich App 306, 310; 425 NW2d 537 (1988). Rebuttal is limited to the refutation of relevant and material evidence presented by the defense. *People v Vasher*, 449 Mich 494, 505, n 3; 537 NW2d 168 (1995).

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

The rebuttal testimony was properly admitted to refute defendant's testimony. Even if the evidence was improperly presented as rebuttal, there is no showing that it resulted in a miscarriage of justice.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber