

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAL T. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

April 6, 2001

No. 220557

Wayne Circuit Court

LC No. 98-008683

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for armed robbery, MCL 750.529; MSA 28.797. We affirm.

Defendant argues that he was denied the effective assistance of counsel where trial counsel failed to move to suppress the identification evidence. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. *Id.* 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. *Id.* at 302-303; see also *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

There is no prejudice where defendant has failed to show that the identification evidence would have been suppressed had counsel filed the appropriate motion. A prompt on-scene identification by police without the presence of counsel is reasonable and does not violate a defendant's right to counsel. *People v Winters*, 225 Mich App 718, 727-728; 571 NW2d 764 (1997).

The identification procedure did not taint the subsequent line-up and in-court identifications. An identification must be reviewed under the totality of the circumstances. *People v McElhaney*, 215 Mich App 269, 287; 545 NW2d 18 (1996). Complainant observed defendant directly at close range, and gave an accurate description of him. She sought him out

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

and identified him prior to any police involvement. When she returned to the area, she ruled out another subject. She identified defendant in a line-up, at the preliminary examination, and at trial. The identification was proper and counsel was not ineffective in failing to move to suppress the evidence.

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard