

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON LAMAR THOMAS,

Defendant-Appellant.

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UNPUBLISHED

November 16, 2004

No. 249424

Wayne Circuit Court

LC No. 02-013928-01

Before: Cavanagh, P.J., and Kelly and H. Hood\*, JJ.

PER CURIAM.

Defendant appeals as of right his bench convictions for felon in possession of a firearm, MCL 750.224f, possession of a short-barreled shotgun, MCL 750.224b, and felony-firearm, MCL 750.227b. We affirm.

Defendant first argues that his convictions were not supported by sufficient evidence. We disagree. Viewed in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crimes were proven beyond a reasonable doubt. See *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant claims that the police officer testimony identifying him as the person possessing the gun was not credible since the officers did not see him for very long and he was not holding the gun when he was arrested. Both claims merely challenge the weight and credibility of the police testimony and, since these are issues left to the trier of fact in the absence of exceptional circumstances, they are both without merit. See *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

The police testimony included that they responded to a call that men, armed with guns, were arguing outside a four-apartment house on the corner of Rochester and McQuade in Detroit. When the officers arrived, they illuminated defendant with a flashlight and observed him outside the house holding a shotgun. Next, they observed defendant and another suspect enter the house, which the officers then secured to make sure no other people entered or exited. Only minutes later, the officers discovered defendant and another suspect, and no one else, inside the house. Defendant was found in the same apartment as the sawed-off shotgun that the officers saw him holding, and he was wearing the same clothes that they saw him wearing, and his heart

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

was pounding fast. Although at his trial defendant claimed that he was not the person the police saw outside holding the shotgun, it was for the trial court to resolve credibility issues. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions beyond a reasonable doubt. See *Johnson, supra*.

Next, defendant argues that he was denied the effective assistance of counsel because his attorney failed to procure alibi witnesses for his defense at trial. We disagree. Defense counsel's performance did not fall below an objective standard of reasonableness under prevailing professional norms. See *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). The record evidences defense counsel's attempts to secure the alleged alibi witness testimony and the trial was adjourned once for that reason but the witnesses failed to appear. However, even if counsel's performance was deficient with regard to the alleged alibi witnesses, we could not conclude that defendant was deprived of a substantial defense that would have affected the outcome of the proceeding. See *id.* His self-serving affidavit, even if considered, merely restates what he claimed at trial—that some unnamed people saw him intoxicated and helped him to bed on the night of his arrest. His submission on appeal of an unsigned document from a purported alibi witness which claims that she saw two other men outside of the home holding guns, not defendant, does not change our conclusion. We are not persuaded that the outcome of the trial would have been different, i.e., that defendant would have been acquitted, or that the proceedings were fundamentally unfair or unreliable. Thus, defendant has not established his ineffective assistance of counsel claim. See *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996).

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly  
/s/ Harold Hood