

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY TRAUGHBER,

Defendant-Appellant.

UNPUBLISHED
October 18, 1996

No. 182151
LC No. 94-004823

Before: Gribbs, P.J., and Saad and J. P. Adair,* JJ

PER CURIAM.

Defendant appeals as of right his convictions for felonious assault, MCL 750.82; MSA 28.277, assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, malicious destruction of property over \$100, MCL 750.377a; MSA 28.609(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of two to four years for the felonious assault conviction, three to ten years for the assault with intent conviction, and two to four years for the malicious destruction of property conviction, to be served consecutively to the mandatory two-year term for the felony-firearm conviction. We affirm.

Defendant was charged following a shooting at his home. Prosecution witnesses testified that Michael Brown went to defendant's home to discuss rumors which defendant was allegedly circulating. Brown knocked on the door and asked for defendant. Defendant appeared, brandishing a .22 caliber rifle and fired at Brown, hitting him a total of five times. Nevertheless, Brown was able to flee to a vehicle where a friend was waiting, and they drove off.

Defendant's first issue involves the sufficiency of the evidence with respect to his self-defense claim. In reviewing a sufficiency of the evidence claim, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440

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

Mich 508, 515; 489 NW2d 748 (1992). With respect to a self-defense claim, once a defendant provides evidence to support his assertion, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993).

Defendant points to the testimony of defense witnesses indicating that Brown attempted to force his way into defendant's home and defendant fired in self-defense. While this evidence may have been sufficient to shift the burden to the prosecutor on this issue, it does not disprove the contrary testimony of the prosecution witnesses. The credibility of witnesses is a matter for the trier of fact to decide, and will not be resolved anew on appeal. *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989). Viewed in the light most favorable to the prosecution, the testimony of the prosecution witnesses supported the jury's conclusion that defendant did not act in self-defense.

Defendant also argues that he was denied effective assistance of counsel when his trial attorney failed to move for a new trial based on the great weight of the evidence. To establish that counsel's assistance was so defective as to require reversal, defendant must establish: (1) that counsel's performance was deficient, i.e., that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment; and (2) that the deficient performance prejudiced the defense, i.e., that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable, and may have affected the outcome. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995).

Defendant's argument fails because he cannot demonstrate that the motion for a new trial would have been granted had his attorney brought such a motion. Again, defendant provided no objective evidence to refute the credibility of the prosecution witnesses and, therefore, had no basis to argue that the verdict was against the overwhelming weight of the evidence or somehow "perverse". See, *People v Herbert*, 444 Mich 466, 475-477; 511 NW2d 654 (1993). Therefore, there is no indication that the outcome would have been different but for the alleged error, and thus defendant was not denied effective assistance of counsel. *LaVearn, supra* at 213.

Affirmed.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ James P. Adair

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