

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON COTTIE HONEY,

Defendant-Appellant.

UNPUBLISHED

October 17, 2006

No. 264762

Wayne Circuit Court

LC No. 05-000740-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession of a short-barreled shotgun, MCL 750.224b, and was sentenced to probation for 18 months. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Three police officers observed defendant toss a short-barreled shotgun into a house. One officer immediately entered the house to chase two other suspects while defendant was apprehended outside the home. The officer who entered the house testified at trial that the shotgun that defendant had thrown into the house was lying on the kitchen floor when he first entered the house, but was not there approximately two minutes later. The police eventually found the shotgun in the upstairs portion of the house along with some other weapons.

Defendant first argues that he was denied his right of confrontation when a police officer relied on a hearsay statement of a witness to link defendant to the sawed-off shotgun that was found upstairs in the house. There was testimony at trial that an occupant of the house told a police officer that the gun in question had been taken upstairs. After defendant objected, the trial court agreed to strike the answer. The trial court later asked the officer where he found the gun without referring to the out-of-court statement of the witness.

On appeal, defendant argues that even though the trial court sustained his objection, it improperly relied on the hearsay statement to find him guilty. We disagree. Testimony at trial indicated that the police were able to identify the gun that was eventually located in the upstairs portion of the house as the same weapon they observed defendant holding earlier. The trial court expressly stated that it found this testimony credible. Thus, it is apparent that the trial court did not consider the hearsay evidence in finding defendant guilty. Because this was a bench trial, the trial judge, unlike a jury, is presumed to understand the law and the difference between admissible and inadmissible evidence. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d

747 (1992). Because the trial court's findings indicate that it based its decision solely on admissible evidence, we reject this claim of error. *People v Edward Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988).

Defendant next argues that trial counsel was ineffective for failing to investigate the backgrounds of the police officers who testified at trial and for failing to contact other possible witnesses. Because defendant did not raise this issue in an appropriate motion for a new trial or request for an evidentiary hearing, our review is limited to errors apparent on the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced defendant that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). The burden is on defendant to produce factual support for his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

The failure to conduct a reasonable investigation can constitute ineffective assistance of counsel. *People v McGhee*, 268 Mich App 600, 626; 709 NW2d 595 (2005). It is counsel's duty to make an independent examination of the facts, laws, pleadings and circumstances involved in the matter, and to pursue all leads relevant to the issues. *People v Grant*, 470 Mich 477, 486-487 (Kelly, J.), 498 (Taylor, J.); 684 NW2d 686 (2004). "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

It is not apparent from the existing record that defense counsel did not properly investigate this matter. The record indicates that defense counsel raised the issue of police brutality in an attempt to undermine the credibility of the police officers at trial. There is no indication in the record that counsel failed to investigate the background of the officers involved or talk to relevant witnesses. Although defendant requests this Court to remand this matter for an evidentiary hearing to supplement the record on this issue, he has not supported his request with an appropriate offer of proof. Therefore, remand is not warranted. See *People v Simmons*, 140 Mich App 681, 685-686; 364 NW2d 783 (1985).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens