

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALVIN JUNIOR GREER,

Defendant-Appellant.

UNPUBLISHED

June 13, 2006

No. 259749

Allegan Circuit Court

LC No. 04-013767-FC

Before: O’Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.11, to 21 to 37 1/2 years’ imprisonment. Defendant appeals as of right. We affirm.

This cases arises from an armed robbery that occurred on December 18, 2003, at an appliance store. Defendant was apprehended six months later when the victim, the sole witness to the crime, recognized defendant at a fast food restaurant. There was no physical evidence placing the defendant at the scene of the crime.

Defendant argues that there was insufficient evidence to support that he was the robber. We disagree. “A complainant’s eyewitness testimony, if believed by the trier of fact, is sufficient evidence to convict.” *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). Here, there was uncontested, eyewitness testimony from the victim asserting her complete and total confidence that defendant committed this crime. Three additional witnesses testified to seeing someone strongly resembling the defendant in the area shortly before the crime was committed. The culprit specifically asked for the owner by name on the day of the robbery, and both the storeowner and the victim recalled defendant visiting the store a couple of weeks before the robbery. Viewed in a light most favorable to the prosecution and deferring to the jury’s credibility determination, the evidence was sufficient to support defendant’s conviction. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Defendant also argues that his trial counsel was ineffective by failing to call his sister and daughter to testify in support of his alibi. We disagree.

To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient and that counsel’s deficient

performance prejudiced the defense. In order to demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. [*People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003), citations omitted.]

Defendant asserts that his trial counsel was ineffective by failing to timely subpoena the witnesses and call them to testify. On the record before us, however, defendant fails to demonstrate how the delay prejudiced him. Defense counsel, in good faith, believed that defendant would offer a plea the Friday before trial. When defendant refused to plead as anticipated, defense counsel issued subpoenas the following Monday to secure the witnesses for trial and did not expect any difficulty because the witnesses were defendant's sister and daughter. Defense counsel reasonably believed that defendant's relatives would voluntarily testify. Their failure to come forward with two days' notice and intensive police efforts to secure their cooperation indicates that service of process at an earlier date would likely have had little practical effect. Additionally, the failure to call witnesses or present other alibi evidence only constitutes ineffective assistance if defendant can demonstrate that counsel's errors deprived him of a substantial alibi defense notwithstanding defendant's legitimate efforts to further its presentation. *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). The defense is substantial if it had a reasonable likelihood of changing the trial's outcome. *Id.* In this case, defendant's mother indicated that defendant visited his sister and took his daughter shopping about a week before Christmas. Another woman confirmed that she saw defendant at the mall with his daughter around that time. The record indicates that neither alibi witness could pinpoint the exact date of the shopping trip, and defense counsel conceded that he did not expect the missing witnesses' testimony to be more accurate. Therefore, defendant has not offered any evidence that the two additional witnesses would have provided him with a stronger alibi than the jury had already heard, and his claims of prejudice are speculative.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder