

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 22, 2012

v

LARRY CHARLES BROWN,
Defendant-Appellant.

No. 303459
Wayne Circuit Court
LC No. 10-012218-FC

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction for assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to consecutive sentences of 42 months to 8 years' imprisonment for the conviction of assault with intent to rob while armed and two years' imprisonment for the felony-firearm conviction. For the reasons set forth below, we affirm.

Defendant claims his counsel was ineffective for failing to conduct a meaningful examination of him. Because defendant failed to preserve this claim by moving for a new trial or requesting an evidentiary hearing before the trial court, we limit our review of this claim to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002) (citation omitted). To demonstrate ineffective assistance of counsel, a defendant must "show that (1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable." *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). The defendant must overcome a strong presumption that defense counsel provided effective assistance and that counsel's actions might be considered sound trial strategy. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Unger*, 278 Mich App 210, 242-243; 749 NW2d 272 (2008). Trial counsel's decisions about trial strategy are afforded wide discretion; a reviewing court "will not second-guess matters of strategy." *Odom*, 276 Mich App at 415. "The questioning of witnesses is presumed to be a matter of trial strategy." *People v Petri*, 279 Mich App 407, 413; 760 NW2d 882 (2008) (citation omitted).

We find no support for defendant's argument that trial counsel's limited questioning of defendant was objectively deficient. Though defendant claims he "should have been permitted

to counter the prosecution witnesses' claim that he was armed," the record provides no indication of how defendant could have done so. There is also no record evidence of what defendant's testimony would have been if his lawyer had questioned him further, and nothing in the record indicates that defendant expressed any desire to provide additional testimony. Accordingly, defendant has failed to establish the factual predicate for his claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Moreover, defendant cannot overcome the strong presumption that counsel's decision to limit his direct examination of defendant was a matter of trial strategy. The record demonstrates that counsel did subject the prosecution's case to meaningful challenge. Counsel specifically challenged evidence that defendant was armed by introducing evidence that the victim did not mention a gun in her statement to the officer in charge of the investigation and showing that the victim previously stated that it was her boyfriend, not defendant, who hid the gun in the home before officers arrived. Counsel also sought to impeach the testimony of the victim and her boyfriend, the only two testifying witnesses to the assault, by, among other things, eliciting testimony that the victim took Vicodin on the night before the incident, highlighting her conflicting descriptions of the gun, and eliciting testimony about a discrepancy between the testimony of the victim's boyfriend and the statement that the boyfriend gave to police after the incident.

During his examination of defendant, defense counsel asked whether, on the date of the incident, defendant "put a weapon to [the complainant] to make her give [defendant] money." Defendant's negative response to that question supported counsel's argument, in closing, that a gun was not involved. Given the deference we afford to counsel's decisions regarding trial strategy, the absence of any evidence as to what defendant's additional testimony might have been, and defendant's failure to identify any other viable defense theory, it is not apparent on the record that counsel's performance fell below an objective standard of reasonableness. *Odom*, 276 Mich App at 415.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Henry William Saad

/s/ Stephen L. Borrello