

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TEDDY CLARENCE COLLINS,

Defendant-Appellant.

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UNPUBLISHED  
November 4, 1997

No. 193858  
Recorder's Court  
LC No. 95-007354

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of operating a motor vehicle under the influence of intoxicating liquor (OUIL), third offense, and of driving on a suspended license. Defendant appeals as of right and we affirm.

The defense at trial was that defendant was not the driver of the vehicle, but was merely occupying the driver's seat when the arresting officer appeared on the scene. Defendant had supported his version of matters with the testimony of his companion and photographic exhibits, indicating that, given the distance from which the officer made his original observations, the nighttime conditions, minimal lighting, and the velocity of the vehicles, the officer would have been unable to distinguish defendant from his female companion. As the trial court began announcing its findings of fact, defense counsel interjected that the trial judge had not even looked at the photographic exhibits. The court responded that it thought the exhibits unimportant and that the key aspect of the case was the weight and credibility of the conflicting testimony. The court proceeded to find defendant guilty by announcing that it found the police officer's testimony convincing of defendant's guilt beyond a reasonable doubt.

Defendant contends that the trial court deprived him of a fair trial by ignoring his photographic evidence. Had this been a jury trial, the sanctity of jury deliberations would have precluded defendant from directly observing the extent to which the jury gave any attention to the photographic evidence, and an attempt to impeach the verdict on this basis would be precluded by the rule that the conduct of the jury inherent in its verdict is not cognizable as a basis for new trial. *People v Riemersma*, 104 Mich App 773, 784-785; 306 NW2d 340 (1981). No reason appears why the same rule should not apply

to a bench trial, since in a bench trial the trial judge, as trier of fact, may give the evidence admitted, or any part thereof, such weight and credibility as the trier of fact, in its sole discretion, deems appropriate. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973). See also MCR 2.517. As the ultimate findings of the court were based on the evidence and therefore not clearly erroneous, defendant's claim of error must be rejected.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs