

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT TENNER,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 203710

Recorder's Court

LC No. 96-000343

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial convictions for second-degree murder, MCL 750.317; MSA 28.549, and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that his due process rights were violated by a defective waiver of the right to jury trial. He asserts that the court failed to obtain the consent of the prosecutor to the waiver, and failed to approve the waiver as required by MCR 6.401.

The prosecutor's consent to a defendant's waiver of a jury trial may be implied by the absence of any objection. *People v Gist*, 188 Mich App 610, 612; 470 NW2d 475 (1991). Where there was no evidence that the prosecutor ever sought a jury trial, consent is properly implied in this case. *People v St Andre*, 225 Mich 187, 194; 570 NW2d 154 (1997). The court acknowledged on the record that defendant made an intelligent, voluntary waiver of his constitutional right to trial by jury. The court accepted defendant's election, and proceeded with a bench trial. The court fully complied with MCR 6.401, and did not violate defendant's due process rights.

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski

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