

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY ROGERS,

Defendant-Appellant.

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UNPUBLISHED

November 30, 1999

No. 207950

Recorder's Court

LC No. 97-003020

Before: Jansen, P.J., and Hoekstra and J. R. Cooper\*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assault with intent to rob while armed, MCL 750.89; MSA 28.284, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in an incident involving an attack on complainant Robert Smith. Smith testified that he and Al Bland were walking to his sister's home when defendant accosted them, hit him repeatedly in the head with a blunt object, and demanded his money. Smith did not surrender his money. He escaped and reported the incident to the police, who arrested defendant. Bland recovered defendant's weapon and gave it to the police. Smith's head wound required numerous stitches and staples. The parties waived the testimony of the police officers. The prosecution indicated that Bland had not been located, and admitted that the search for him had not been conducted with due diligence. Defendant testified that two days before the incident with Smith, three men, one of whom was Smith, repeatedly hit, punched, and kicked him. The men took fifty dollars from him. Defendant indicated that two days later, when he encountered Smith and Bland, he acted out of fear and hit Smith. He denied using a weapon. Jeffrey Merriweather, defendant's cousin, testified that two days before the incident of which Smith complained, he saw defendant, Smith, and other individuals involved in a fight.

The trial court found defendant guilty as charged. It found Smith's testimony credible, and rejected defendant's assertion that he acted in self-defense. The court declined to draw an adverse inference from the fact that the prosecution failed to produce Bland to testify.

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

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

The elements of assault with intent to rob while armed are: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. The offense is a specific intent crime. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991).

Defendant argues that the evidence produced at trial was insufficient to sustain his conviction, and that the trial court's findings of fact were clearly erroneous. We disagree and affirm. The trial court was entitled to conclude that Smith's testimony was more credible than that given by defendant. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Smith's testimony that defendant struck him supports a finding that defendant committed an assault. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). His testimony regarding the nature of his head injury and the treatment it required supports a finding that defendant used a weapon to attack him. *Petrella, supra*. That finding is not clearly erroneous. MCR 2.613(C). Introduction of the weapon into evidence was not a prerequisite to a finding that defendant was armed. See, e.g., *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984). Furthermore, the evidence that defendant expressly demanded Smith's paper money supports an inference that defendant specifically intended to rob Smith of the money. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). A showing that defendant actually took the money was not necessary. CJI2d 18.3(4).

Any argument that defendant was prejudiced by the prosecution's failure to produce Bland to testify is waived because defendant failed to move for a new trial on that ground. *People v Dixon*, 217 Mich App 400, 409; 552 NW2d 663 (1996).

Affirmed.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper