

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERBERT TEAQUE WATERS,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 224024

Kent Circuit Court

LC No. 99-006181-FH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assault with intent to commit criminal sexual conduct (CSC) involving penetration, MCL 750.520g(1), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, complainant testified that at approximately 5:00 p.m. on June 5, 1999, she was entering her apartment when she was pushed through the door. Her assailant shoved her onto the bed, held her down, attempted to kiss her, and told her that he got what he wanted. After complainant kicked her assailant in the groin, he became enraged and tore her denim shorts from her body. Money fell from a pocket in the shorts. The man grabbed the money and left the apartment. Complainant identified defendant as her assailant. Other evidence placed defendant in the building at the time complainant stated that the incident occurred. Defendant acknowledged that he was in the building on that date, but maintained that he was there earlier in the day. The court found defendant guilty as charged.¹

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.

¹ Defendant was also found guilty of unarmed robbery, MCL 750.530; MSA 28.798. He does not challenge that conviction on appeal.

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), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000).

The elements of assault with intent to commit CSC involving penetration are: (1) the defendant either attempted to commit a battery on the complainant or did an illegal act that made the complainant reasonably fear an immediate battery; (2) the defendant intended either to injure the complainant or to make the complainant reasonably fear an immediate battery; (3) the defendant had the ability to commit a battery, appeared to have that ability, or thought he had that ability; and (4) at the time of the assault, the defendant intended to commit a sexual act involving criminal sexual penetration. A showing that a sexual act commenced is not required. A showing of an actual touching or of penetration is not required. CJI2d 20.17. Assault with intent to commit CSC involving penetration is a specific intent crime. *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). Specific intent can be express, or it can be inferred from the facts and circumstances surrounding the incident. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983).

Defendant argues that insufficient evidence was produced to support his conviction of assault with intent to commit CSC involving penetration. Specifically, he contends that no evidence supported a finding either that he demonstrated an intent to accomplish penetration, or that he took any steps to accomplish penetration. We disagree and affirm defendant's conviction. The evidence showed that defendant pushed complainant into her apartment and locked the door. He shoved complainant onto the bed, placed himself on top of her, repeatedly tried to kiss her, and told her that he got what he wanted. From the evidence that defendant forcibly tore complainant's denim shorts from her body, a rational trier of fact could infer that he intended to commit a sexual act involving penetration. *Id.*; *Vaughn, supra*. The prosecution was not required to show that an actual touching or penetration occurred. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of assault with intent to commit CSC involving penetration. *Petrella, supra*.

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy