

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYLER TERRILL AYERS,

Defendant-Appellant.

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UNPUBLISHED

August 5, 1997

Nos. 188448; 193317

Recorder's Court

LC No. 94-011237-FH

No. 188608

Recorder's Court

LC No. 94-004054-FC

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals as of right in Docket No. 188608 from his bench trial conviction for armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). In Docket Nos. 188448 and 193317, defendant appeals as of right from his bench trial conviction and sentence for carjacking, MCL 750.529a; MSA 28.797(a). We affirm.

In Docket No. 188608, defendant appeals from his convictions arising out of the theft of Dale Lee's automobile on February 13, 1994. Lee was shoveling his walk that morning after starting his car to allow it to warm up. Defendant and another man approached Lee and defendant put a handgun to Lee's face and demanded money. On defendant's instruction, the other man got in Lee's running car and backed out of the driveway. When defendant found that Lee had no money, he jumped in the car and the two men drove off.

I

On appeal, defendant first contends that the trial court erred in denying his motion to suppress Lee's lineup identification of him as fruit of an illegal arrest. We disagree. This Court will only reverse a

trial court's suppression decision if it is clearly erroneous. *People v Martinez*, 192 Mich App 57, 62; 480 NW2d 302 (1991). Here, after obtaining information regarding defendant's involvement in a different carjacking, police officers went to a house where defendant was known to reside. The officers had no arrest warrant for defendant, but knocked on the door and a woman named Janice Webb answered. When the officers asked Webb if they could speak with her, she allowed them into the house. The officers saw defendant and immediately arrested him. The next day, Lee identified defendant at a lineup.

Defendant asserts that the trial court erred in finding that the identification was not fruit of an illegal arrest. Under the protections guaranteed by the Fourth Amendment to the United States Constitution, an arrest inside a private home is improper and unreasonable absent exigent circumstances or consent to enter. *People v Gary*, 150 Mich App 446, 450; 387 NW2d 877 (1986). Consent may be given by the defendant or by a third party who had equal possession or control of the premises. *Id.* Here, defendant does not dispute that Webb consented to the officers' entry into the house. Rather, defendant argues that Webb had no authority to grant entry.

At the hearing on the motion to suppress, testimony showed that the house was the residence of defendant and Webb. Also, there was testimony that Webb told the officers that she was married to defendant. Defendant did not challenge this evidence and it was not otherwise rebutted. Accordingly, we find that the trial court correctly held that Webb had authority to consent to the officers entering the house.

## II

Next, defendant says that the trial court erred in finding defendant guilty on the basis of certain improper bad acts evidence. He is wrong. Defendant objects to the trial court's mention in its findings of fact that defendant was originally arrested for a different carjacking incident. This testimony was elicited by defense counsel and defendant waived appellate review by permitting that information to be admitted. *People v Yarger*, 193 Mich App 532, 539; 485 NW2d 119 (1992).

## III

Defendant also claims unpersuasively that the trial court's findings of fact were insufficient to support its verdict. A trial court's findings of fact are sufficient where they indicate that the court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). There is no necessity that a trial court make specific findings on each element of a crime. *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991).

Here, the sole issue at trial was Lee's identification of defendant. The trial court's findings sufficiently recognized this issue and stated its rationale for finding the identification evidence persuasive. Contrary to defendant's assertion, the trial court did not err by failing to articulate findings on each element of the charged offenses. *Wardlaw, supra*. Hence, defendant's assertion of error is without merit.

#### IV

In Docket Nos. 188448 and 193317, defendant appeals from his conviction for carjacking arising out of the theft of Robert Callaway's automobile. Callaway was filling a water jug in a restroom at Belle Isle when defendant entered the room. As Callaway left, defendant followed him outside where he and three other men beat Callaway. During the beating, defendant tore off Callaway's gold necklace, took the keys to Callaway's car and drove off in the car.

Defendant contends that the trial court erred in relying on evidence of certain incriminating statements he made to police at the time of his arrest. We disagree. During direct examination of the officer who arrested defendant two hours after Callaway's car was stolen, the officer was asked where on defendant's person he found Callaway's gold necklace. The officer responded that he could not remember. Without being asked, the officer further stated that defendant told him that he did not know where he got the necklace. During cross examination, the officer volunteered that defendant told him he had been on Belle Isle earlier in the evening. As part of its recitation of the evidence discussed during its findings of fact, the trial court reiterated these statements and concluded that defendant had stated that he was on Belle Isle that night.

Defendant did not object to the inadvertent admission of his statements to police. Because the prosecutor did not attempt to use any statement by defendant, he did not violate any duty to demonstrate that defendant had been read his *Miranda* rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1996). Because the circumstances surrounding the fairly innocuous statements do not appear to clearly and substantially reflect a question about their voluntary nature or implicate other due process concerns, the trial court had no duty to sua sponte inquire into whether defendant was given his *Miranda* rights before the statements. See *People v Ray*, 431 Mich 260, 271; 430 NW2d 626 (1988). Moreover, because the only issue at trial was identification and there was overwhelming identification evidence, we find that any such error would be harmless. As such, we find defendant's alternative argument that his counsel's failure to object constituted ineffective assistance of counsel to be without merit.

#### V

Finally, defendant alleges that the trial court committed reversible error by relying on evidence outside of the record in making its findings of fact. We disagree. It is well settled that a court in a bench trial may not arrive at its decision based on information not in evidence. *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991). Here, the trial court erred when it stated that the evidence showed that the arresting officer had been called to the scene of an accident involving a car like Callaway's. There was no such evidence presented. However, the court mentioned this nonexistent evidence only once, in connection with its finding on the element that Callaway's automobile was taken without his permission. Whether defendant was found near the scene of an accident involving a car like Callaway's has no bearing on whether he had permission to take the car. The court did not rely on this nonexistent evidence in its findings on identification, though that would be the only issue for which the information would be relevant.

Hence, we find that the court did not commit error requiring reversal in its misstatement regarding the evidence produced at trial.

Affirmed.

/s/ Clifford W. Taylor  
/s/ Richard Allen Griffin  
/s/ Henry William Saad