

STATE OF MICHIGAN

COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABDULLAH MALIK,

Defendant-Appellant.

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UNPUBLISHED

September 26, 1997

No. 193430

Recorder's Court

LC No. 95-005375

Before: Markman, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was convicted of shooting a man staying at his girlfriend's house in Detroit and was sentenced to twenty to forty years in prison for the second-degree murder conviction and to two years in prison for the felony-firearm conviction. We affirm.

Defendant first argues that his waiver of his right to a jury trial was invalid. We disagree. A trial court's finding that a defendant voluntarily waived his right to a jury trial is reviewed for clear error. See MCR 2.613(C); *People v James (After Remand)*, 192 Mich App 568, 570; 481 NW2d 715 (1992). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996).

Specifically, defendant argues that his waiver was invalid because the trial court did not make an express finding of voluntariness on the record, and because its inquiry was insufficient to make such a determination of voluntariness. The jury waiver procedure is governed by MCR 6.402, which provides, in part:

Before accepting a waiver, the trial court must advise the defendant in open court of the constitutional right to a trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that

the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. [MCR 6.402(B).]

In order to assure compliance with this procedure, the trial court must “find on the record, from evidence sufficient to warrant such a finding, that the defendant, in open court, voluntarily and understandingly gave up his right to trial by jury.” See *People v Pasley*, 419 Mich 297, 302-303; 353 NW2d 440 (1984), overruled in part by MCR 6.402, as noted in *People v James*, 184 Mich App 457, 464; 458 NW2d 911 (1990), vacated on other grounds 437 Mich 988; 469 NW2d 294 (1991); *James*, *supra* at 461-464. Here, as part of its on-the-record inquiry, the trial court specifically asked whether defendant was waiving his right to a jury trial “freely, willingly, knowingly, voluntarily and understandingly,” to which defendant answered, “Yes.” However, rather than make any express finding of fact on the record regarding defendant’s waiver, the trial court merely announced that the waiver was granted. A trial judge is presumed to know the law. *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). Thus, implicit in a trial court’s on-the-record grant of a waiver request is a finding that the specific legal requirements of waiver have been met. See *People v Reddick*, 187 Mich App 547, 548-550; 468 NW2d 278 (1991) (waiver valid despite apparent absence of explicit findings). Because the trial court granted defendant’s waiver after defendant explicitly communicated to the trial court that his waiver was voluntary, no remand for an express finding of fact is necessary. Cf. *James*, *supra* at 463-464.

As for defendant’s argument that the trial court’s on-the-record inquiry was insufficient to support a finding of voluntariness, in addition to acknowledging that his waiver was made “freely, willingly, knowingly, voluntarily and understandingly,” defendant acknowledged that he had an opportunity to consult with counsel and that he was advised of his constitutional rights. Defendant does not allege that his trial counsel failed to adequately advise him of the difference between a bench trial and a jury trial or of the significance of his selection. Therefore, this evidence was sufficient to support a finding of voluntariness. Cf. *Pasley*, *supra* at 300-301; *People v Gist*, 188 Mich App 610, 611-612; 470 NW2d 475 (1991); *Reddick*, *supra* at 549-550. Accordingly, we hold that the trial court’s finding that defendant voluntarily waived his right to a jury trial was not clearly erroneous. *James*, *supra* at 570.

Defendant next argues that the trial court’s findings of fact were insufficient because they did not specifically address the issue of the credibility of Sheletha Oliver’s testimony identifying defendant as the man who was in her house immediately before the victim was shot. We disagree. Findings of fact are sufficiently clear if it appears from the record that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

In a criminal bench trial, the trial court “must find facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” MCR 6.403. The purpose of the rule is to facilitate appellate review. *People v Shields*, 200 Mich App 554, 559; 504 NW2d 711 (1993). The appropriate remedy where the findings are unclear is to remand for further fact finding, however remand is only necessary if further explication of the path the trial court followed to reach its result would facilitate further appellate review. *People v Jackson*, 390 Mich 621, 627-628; 212 NW2d 918 (1973).

Here, as a factual matter, the trial court specifically found that defendant was present and that he shot and killed the victim. As for the issue of Oliver's identification of defendant, the trial court found that Oliver recognized defendant's voice and saw defendant inside her house on a landing by the back door. Moreover, the trial court reasoned that defendant's testimony regarding his past association with Oliver confirmed its finding that Oliver could recognize defendant's voice. Thus, the trial court specifically addressed both the means of Oliver's identification of defendant and the evidence that established her ability to utilize those means of identification. These findings demonstrate that the trial court was well aware of the issue of Oliver's identification of defendant. See *Legg, supra* at 134.

Although the trial court did not specifically address each of the potential discrepancies in Oliver's testimony, its findings indicate that it chose to resolve the credibility issue in favor of Oliver. Questions of credibility are for the trier of fact rather than an appellate court. See *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). Thus, if the trial court had not resolved the issue of the credibility of Oliver's identification of defendant, neither could this Court. However, because the issue was resolved by the trial court, we hold that no remand is necessary to aid appellate review. See *Jackson, supra* at 627 n 3.

Finally, defendant argues that the trial court failed to sufficiently articulate the basis for the sentence imposed. We disagree. Although the court gave no express explanation for its decision to impose a twenty-year minimum sentence for defendant's second-degree murder conviction, such sentence was at the extreme low end of the minimum sentence range recommended by the sentencing guidelines. We find that the necessary articulation was provided by the remarks of the prosecutor and defense counsel immediately preceding the court's imposition of defendant's sentence, which reflected an unambiguous and explicit understanding that defendant's sentence was based on the sentencing guidelines. It was "inescapably clear that the court was sentencing defendant under the guidelines even though the judge himself did not actually speak those words." *People v Lawson*, 195 Mich App 76, 77-78; 489 NW2d 147 (1992).

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald