

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD WEBSTER,

Defendant-Appellant.

UNPUBLISHED
December 23, 1997

No. 193377
Recorder's Court
LC No. 95-006991

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Originally charged with assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), after a bench trial defendant was convicted of assault with intent to commit great bodily harm, MCL 750.84; MSA 28.279 and felony-firearm, and then adjudicated a fourth offender, MCL 769.12; MSA 28.1084. In this appeal as of right, defendant contends that the trial court's verdict is against the great weight of the evidence.

There was no real question at trial but that the victim, William Crenshaw, had been shot. The question was the identity of the perpetrator. Crenshaw identified defendant as the person who shot him. The trial judge, as trier of fact, in announcing his findings, observed that Crenshaw had, by his own admission, lied during some phases of his testimony. Nonetheless, the trial judge concluded that Crenshaw was telling the truth, and that he was accurate in identifying defendant as his assailant.

The trier of fact in a bench trial, like the jury in a jury trial, may accept or reject all or any portion of the testimony of any witness. *People v Jackson*, 390 Mich 621, 625 n 2; 212 NW2d 918 (1973). In a trial of any kind, when the trier of fact concludes that a witness has testified falsely -- and deliberately so -- at a material point in the case, the trier of fact may either disregard the entire testimony of that witness, or accept such portions of that testimony as it deems worthy of belief or which may have been corroborated by other reliable witnesses. *People v Hunter*, 370 Mich 262, 268; 121 NW2d 442 (1963). That is precisely what the trial court did here, and it was clearly in the superior position to judge the credibility of the witnesses and the weight to be given their testimony. The trial judge's

prediction as to what other judges or a jury might have done if presented with an identical record is both speculative and irrelevant; defendant waived trial by a jury, and now must abide the result of that decision. The trial court's findings are neither clearly erroneous nor against the great weight of the evidence.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra