

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD D. RUFF,

Defendant-Appellant.

UNPUBLISHED

March 27, 1998

No. 193984

Recorder's Court

LC No. 95-010696

Before: Michael J. Kelly, P.J., and Cavanagh and N. J. Lambros*, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to three to fifteen years in prison for his armed robbery conviction, to be served consecutively to a two-year prison sentence for his felony-firearm conviction. We remand for further findings of fact and conclusions of law.

Michael Krzesowiak and Christopher Valentin were riding Krzesowiak's moped when defendant and another male approached in a car. According to Krzesowiak, defendant got out of the car he was driving, put a gun to Krzesowiak's head and told him to get off of the moped. Defendant also asked for a ring that Krzesowiak had on his finger. The person who accompanied defendant left on the moped, and defendant left in the car. Krzesowiak knew defendant because they at one time lived across the street from each other. They had each visited the other's house, although Krzesowiak said they were not friends. Valentin's testimony concerning the crime was similar to Krzesowiak's, with a few minor differences.

Defendant denied having a gun but admitted that he threatened to hit Krzesowiak. Defendant said that his companion told Krzesowiak to give up the moped and a helmet, and that defendant forced Krzesowiak to give up the ring. Defendant explained that Krzesowiak owed him some money from the purchase of a remote-controlled car. Krzesowiak admitted collecting model cars and owning a remote-controlled car that he was given for Christmas, but denied buying anything from defendant.

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

Defendant contends that the trial court abused its discretion by denying his motion for a new trial because the court did not consider defendant's claim of right defense when making its findings of fact and conclusions of law. The claim of right defense is explained in *People v Karasek*, 63 Mich App 706, 710-712; 234 NW2d 761 (1975). That decision indicates that if property is taken by a creditor in the honest, although mistaken, belief that he has the right to pay himself the debt in this way, there is no felonious intent, and therefore, no armed robbery.

The court did not explicitly address the claim of right defense when it made its findings of fact and conclusions of law.

There doesn't appear to be too much dispute as to the circumstances leading up to this except for whether or not a weapon was used by the defendant, Mr. Ronald Ruff. Mr. Ruff admits that he did take the ring, that he did take the moped, he denies that he used a weapon in doing so. We have testimony from the complainant as well as Mr. Valentin that a weapon was used, that a weapon was placed at the head of the complainant, and the defendant threatened the complainant and took the property from him. That is a classic example of armed robbery.

The Court finds that the prosecutor has proven the necessary elements for that offense. In addition, the Court finds that the elements for the offense of felony firearm also have been proven. The Court finds the defendant guilty of Count II and Count III of the information.

Defendant filed a motion for new trial arguing that the court had failed to consider the claim of right defense. The court denied the motion, explaining its reasoning as follows:

There is a claim here that at the time of the waiver trial that the Court did not properly consider all of the defenses that were put forward. I have some recollection of the trial and have reviewed the transcript to a certain degree.

The main thrust, as I remember it, of Mr. Ruff's defense was that he had a claim of right to take the items from the person that he took them from, and so the Court was very aware of the claim that he was making and the defense that he was raising, and the Court considered that in making the decision that was made regarding the verdict in that case, so that all of those, all of those matters were taken into consideration and the Court did consider the defenses that were raised, so there's no basis for this motion. The motion for a new trial based on that theory is denied.

We conclude that the court did not abuse its discretion by denying defendant's motion for a new trial because a new trial is not an appropriate remedy for inadequate findings. When this Court determines that findings are inadequate, we generally remand for additional findings unless we determine that "additional articulation is unnecessary where it is manifest that the court was aware of the factual issues and resolved them and it would not facilitate appellate review to

require further explication of the path the court followed in reaching the result.” *People v Johnson (on Rehearing)*, 208 Mich App 137, 141; 526 NW2d 617 (1994). A new trial is appropriate when the trier of fact is unavailable to make the supplemental findings. See e.g. *People v Maghzal*, 170 Mich App 340, 348 n 2; 427 NW2d 552 (1988); *Dauer v Zabel*, 381 Mich 555; 164 NW2d 1 (1969).

In the present case, even if the trial court had agreed with defendant that its findings were inadequate, the appropriate remedy would have been to make new findings and conclusions, and if necessary, a new judgment. MCR 2.611(2)(d). Inadequacy of findings does not mandate a new trial when the trial judge is available to supply the additional findings. Thus, we find no abuse of discretion in the court’s denial of a remedy to which defendant was not entitled.

Although we find no abuse of discretion in the denial of the motion for new trial, we conclude that further articulation is warranted in this case. The purpose of articulation is to facilitate appellate review. *Johnson, supra* at 141. As stated previously, the court did not address defendant’s claim of right defense when it made its findings of fact and conclusions of law. In ruling on the motion for new trial, the court stated that it had considered the claim of right defense, but did not explain why the defense was rejected. The court may have rejected the defense because it did not believe defendant’s testimony that he sold a remote-controlled car to the Krzesowiak. The court may have concluded that the defense was legally inapplicable to the circumstances for some reason. Because the rationale for the court’s rejection of the defense has not been revealed, we cannot determine if the court’s factual findings were clearly erroneous or if its legal conclusions were flawed. Accordingly, we remand for further findings of fact and conclusions of law.

Remanded. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros