

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS COCHARAN, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2001

No. 218916

Wayne Circuit Court

Criminal Division

LC No. 98-004398

Before: Saad, P.J. and Griffin and R. B. Burns\*, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to an enhanced term of two to four years' imprisonment for felonious assault, reflecting his status as a fourth habitual offender. MCL 769.12; MSA 28.1084, and to two years' imprisonment for the felony-firearm conviction. He appeals of right. We affirm defendant's convictions, but remand for resentencing.

Defendant first argues that he is entitled to a resentencing because the trial court failed to provide him the right of allocution during sentencing. We agree.

At sentencing, a trial court must on the record give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing a sentence. MCR 6.425(D)(2)(c); *People v Wells*, 238 Mich App 383, 392; 605 NW2d 374 (1999). The defendant's right of allocution requires strict compliance, and the court must specifically ask the defendant separately if he wishes to address the court. *People v Berry*, 409 Mich 774, 781; 298 NW2d 434 (1980).

Our review of the record reveals that the trial court failed to provide defendant with an opportunity to allocate. We hold, therefore, that because defendant was never afforded an opportunity to speak on his behalf before the trial court delivered his sentence resentencing is mandated. *Wells, supra*, 238 Mich App 392.

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

Defendant next argues that he is entitled to a new trial because the record does not indicate that he waived his right to a jury trial in open court. We disagree.

Defendants in criminal cases may waive their right to a jury trial. *People v Stoeckl*, 347 Mich 1, 12; 78 NW2d 640 (1956). To properly waive this right, a defendant must waive it in open court, orally and by a signed writing, and the waiver must be made a part of the record. MCR 6.402(B), MCL 763.3; MSA 28.856. Our review of the record reveals that defendant waived his right to a jury in writing and orally on the record at an October 23, 1998 hearing.

Defendant also argues that there was insufficient evidence regarding intent to convict him beyond a reasonable doubt of felonious assault. We disagree.

In reviewing the sufficiency of the evidence in an appeal from a bench trial, we must determine whether, when viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

The prosecution must prove beyond a reasonable doubt the following three elements in order to support a conviction of felonious assault: (1) assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). We have held that a complainant's testimony that the defendant pointed a gun at the complainant is sufficient evidence to support a conviction of felonious assault. *Id.*, 506.

The victim in this case testified that defendant pointed a gun at him and that he heard a click and saw defendant's hand jerk. When viewed in a light most favorable to the prosecution, this evidence creates a reasonable inference that defendant intended to either injure or place his victim in reasonable apprehension of an immediate battery. While defendant argues that the complainant's testimony is not worthy of belief because the victim allegedly lied about defendant's having pulled the trigger, the trial court clearly found the complainant's testimony that defendant pointed a gun at the complainant credible. We will not resolve questions of credibility anew on appeal. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). Therefore, we find the evidence was sufficient to support defendant's felonious assault conviction.

Defendant also challenged this conviction as being against the great weight of the evidence. However, because defendant has failed to preserve this issue by raising it in a motion for a new trial, we find the issue waived. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

Finally, defendant contends that the trial court committed error requiring reversal when it permitted someone other than the victim to give a statement to the trial judge at the time of sentencing. Defendant's argument is unsupported in the record. The reference at the sentencing proceeding to "Officer Ryan" is apparently an error in transcription or a misstatement by the prosecutor. The statement made at sentencing clearly indicates that it was made by Detroit police

officer Daniel Bryant and that he was a victim within the meaning of the crime victim's rights act because he suffered threatened physical harm and direct emotional harm as a result of defendant's criminal conduct. MCL 780.752(1)(i); MSA 28.1287(752)(1)(i). As the victim, he was entitled to make a victim impact statement at sentencing. MCL 780.763(1)(f); MSA 28.1287(763)(1)(f). The court did not err in allowing Bryant to make an impact statement.

We affirm defendant's convictions and remand for resentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Richard Allen Griffin

/s/ Robert B. Burns