

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH A. VAUGHN,

Defendant-Appellant.

UNPUBLISHED

March 15, 2002

No. 231243

Wayne Circuit Court

LC No. 99-010945

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of armed robbery, MCL 750.529, and felonious assault, MCL 750.82, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Barbara Smith testified that defendant approached her, pointed a gun at her, and took her purse. She followed him in her car, but lost sight of him. Smith and her boyfriend, Bart Bee, searched for defendant. Bee pursued defendant on foot and apprehended him, but a passer-by assisted defendant in escaping. Smith managed to grab defendant's back pocket, causing the pocket to rip and defendant's wallet to fall to the ground. Bee identified defendant as the man he pursued, and stated that defendant pointed a gun at him. Bee saw defendant discard the gun near a junkyard. Officer Barry testified that neither Smith's purse nor the gun was recovered. Defendant testified that he was at a junkyard looking for a windshield when a man tackled him. A passer-by helped him escape from the man.

The trial court acquitted defendant of possession of a firearm during the commission of a felony, MCL 750.227b, on the ground that the gun defendant carried might not have been real, but convicted him of armed robbery and felonious assault. The court found the testimony of Smith and Bee more credible than that given by defendant.

Defendant argues that insufficient evidence was produced to support his convictions. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences

completely unsupported by any direct or circumstantial evidence. *Id.* at 275; *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* by equal division 462 Mich 71; 611 NW2d 783 (2000).

The elements of armed robbery are: (1) an assault; (2) a felonious taking of property from the victim's presence or person; (3) while the defendant is armed with a weapon described in the statute. MCL 750.529; *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Armed robbery does not require the use of an actual weapon. If the perpetrator is not armed with a dangerous weapon, he must be armed with an article that is used or fashioned in a manner that leads the victim to reasonably believe that the article is a dangerous weapon. *People v Banks*, 454 Mich 469, 472-473; 563 NW2d 200 (1997).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery, or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

In arguing that insufficient evidence was produced to support his convictions, defendant asserts that the in-court identifications made by Smith and Bee were tainted, and that the trial court's finding that he carried a gun, or an article that Smith and Bee reasonably believed was a gun, was clearly erroneous. We disagree. Smith and Bee did not participate in any pre-trial identification procedure; thus, no question existed as to whether their in-court identifications of defendant were tainted by an improper prior procedure. See, e.g., *People v Gray*, 457 Mich 107, 115; 577 NW2d 92 (1998). The trial court was entitled to find that the identification testimony was credible. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Similarly, the trial court was entitled to find the testimony that Smith and Bee saw defendant carrying what they believed was a gun was credible. *Id.* Smith's reasonable belief that defendant was armed with a gun was sufficient to support the conviction of armed robbery. *Banks, supra*. In addition, the operability of a gun is not an element of felonious assault. *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998). Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions. *Petrella, supra*.

We affirm.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray