

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIER C. CHIVERS,

Defendant-Appellant.

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UNPUBLISHED

December 20, 2002

No. 236330

Wayne Circuit Court

LC No. 00-011281-01

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, complainant testified that he and two of his cousins stopped by defendant's home and inquired if defendant could obtain marijuana. At defendant's direction complainant, his cousins, and defendant drove to a house. Complainant testified that after they entered the house defendant and three other persons pointed guns at them and forced them to lie on the floor, and took jewelry, cash, car keys, and shoes. Complainant stated that he and his cousins were ordered out of the house and made to lie down by a fence in an empty lot. Defendant and the other armed men fled from the scene in complainant's rental car. Complainant and his cousins flagged down a police car and reported the incident. Complainant denied that he traded the rental car for crack cocaine.

A police officer testified that he was on patrol when three individuals, one of whom was complainant, flagged down his car and reported that they had been robbed. The three persons were without shoes and looked frantic.

Georgetta Chivers, defendant's mother, testified that complainant visited her home frequently, and that they smoked marijuana together. Chivers testified that on the evening in question defendant agreed to obtain crack cocaine for complainant and two other men. Chivers indicated that defendant had obtained crack cocaine for complainant on a number of occasions. Chivers testified that when defendant returned to the house he did not have a gun, jewelry, cash, or the rental car in his possession.

Defendant testified that complainant came to his home and asked for crack cocaine. Defendant acknowledged that he had obtained crack cocaine for complainant on numerous occasions. Defendant admitted that he purchased crack cocaine from a woman named Latanya with complainant's money, and kept part of the money for himself. Defendant testified that later in the evening complainant traded the rental car to Latanya in exchange for crack cocaine. Defendant denied that he robbed Poindexter.

The trial court convicted defendant of armed robbery and felony-firearm, but acquitted him of carjacking, MCL 750.529a. The court accepted complainant's testimony that defendant directed him to drive to a house and that once there, defendant robbed him of jewelry, cash, credit cards, car keys, and shoes at gunpoint. The court did not find defendant's testimony that he was no longer dealing drugs to be credible in light of defendant's acknowledgment that he agreed to procure drugs for complainant. The court acquitted defendant of carjacking on the ground that no evidence established that defendant drove the car away from the scene.

At sentencing, defendant stated that when he testified at trial he did not relate the entirety of the long history of narcotics transactions between himself and complainant at his counsel's suggestion. Defense counsel stated he believed the information was not germane to the charges, and noted that defendant's mother testified that complainant obtained drugs from defendant on a number of occasions. The court concluded that the decision to omit testimony from defendant regarding his history with complainant was trial strategy.

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. 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. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the trial court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears the trial court was aware of the issues in the case 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). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

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). An assault is an attempt to commit a battery, or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Defendant argues that insufficient evidence was produced to support his conviction of armed robbery. We disagree. Complainant testified that defendant pointed a gun at him and took various items from his person, including cash, credit cards, car keys, and his shoes. Complainant indicated that defendant's actions made him fear for his life. The trial court, as the finder of fact, was entitled to accept Poindexter's testimony and to reject that given by defendant. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Complainant's testimony established all the elements of armed robbery. See *Grant, supra*; *Allen, supra*. No authority requires that a complainant's testimony be corroborated by other testimony or physical evidence. The evidence, considered in a light most favorable to the prosecution, was sufficient to support defendant's conviction of armed robbery and, by extension, his conviction of felony-firearm. See *Petrella, supra*; *Avant, supra*.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20. Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel is presumed to have afforded effective assistance, and a defendant bears the burden of proving otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant argues that his trial counsel rendered ineffective assistance by interfering with his right to testify regarding his history of narcotics transactions with complainant, and that this interference prevented him from placing all relevant facts before the court. We disagree. Counsel indicated, and the trial court found, that counsel's decision to urge defendant from discussing his history of narcotics transactions with complainant was a matter of trial strategy. We do not substitute our judgment for that of counsel on matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). The fact that a strategy may not have worked does not mandate a conclusion that the strategy constituted ineffective assistance of counsel. *People v Stewart (On Remand)*, 219 Mich App 38, 42; 555 NW2d 715 (1996). The trial court was also informed of the history between defendant and complainant via the testimony of Georgetta Chivers. The trial court accepted complainant's testimony regarding defendant's actions and found defendant guilty of armed robbery and felony-firearm. The evidence was sufficient to support those convictions. See *Petrella, supra*. Defendant has not demonstrated that counsel's decision resulted in prejudice. See *Carbin, supra*.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh