

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY MARCH FRANKLIN,

Defendant-Appellant.

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UNPUBLISHED

June 15, 2004

No. 245326

Saginaw Circuit Court

LC No. 02-021823-FH

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of 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).

Two police officers stopped defendant's vehicle at the request of defendant's parole officer to question defendant in regard to alleged narcotics transactions. The officers were working in plain clothes and wearing badges around their necks when they approached defendant's vehicle. As they approached, defendant drove his vehicle forward and toward one of the officers. The officer moved to the side, but the vehicle brushed his left leg. After defendant was removed from the vehicle, he attempted to avoid being handcuffed. Defendant testified that he drove his vehicle forward, but denied that he attempted to strike the officer or that he resisted arrest.

The trial court found defendant guilty of felonious assault and two counts of resisting arrest, MCL 750.479. The trial court stated that it was unclear whether defendant's actual striking of the officer was intentional, but concluded that defendant intentionally drove the vehicle toward the officer. In addition, the trial court found that defendant resisted the efforts of the officers to arrest him. The trial court sentenced defendant as a fourth habitual offender to concurrent terms of four to fifteen years for felonious assault and three years, ten months to fifteen years for resisting arrest.

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 direct or circumstantial

evidence in the record. *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 court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that 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).

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 that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). Criminal intent may be proven indirectly by inference from the conduct of the defendant and the surrounding circumstances. The defendant's intent to place the victim in fear can be inferred from the circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992).

Defendant argues that the evidence was insufficient to support his conviction of felonious assault, and contends that because that conviction cannot be sustained, he is entitled to be resentenced on his convictions of resisting arrest. We disagree and affirm defendant's conviction of felonious assault. The officer in whose direction defendant drove testified that he and defendant made eye contact, and opined that defendant made no effort to avoid striking him. The officer testified that he was required to move to the side quickly in order to avoid being struck on both legs. The trial court was entitled to accept this testimony as credible. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The trial court was not required to find that defendant intentionally struck the officer with the vehicle in order to convict him of felonious assault. The trial court's finding that defendant intentionally drove the vehicle in the direction of the officer, coupled with the permissible inference that by his action defendant intended to place the officer in fear of receiving an immediate battery, was sufficient to support the conviction of felonious assault. *Davis, supra*; *Grant, supra*; *Lawton, supra*.

Defendant's conviction of felonious assault was supported by sufficient evidence, *Petrella, supra*, and was properly used to score the sentencing guidelines for his convictions of resisting arrest. MCL 777.57. Defendant is not entitled to resentencing.

Affirmed.

/s/ Janet T. Neff  
/s/ Brian K. Zahra  
/s/ Christopher M. Murray