

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH DAVID WESTON,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 178428

LC No. 93-006827

Before: Reilly P.J., and Michael Kelly, and C.L. Bosman,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278 and was sentenced to six to fifteen years of imprisonment. He appeals as of right, and we affirm.

Defendant contends that the evidence presented did not show that he had the specific intent to commit murder because he was intoxicated at the time the crime was committed. Viewing the evidence in the light most favorable to the prosecution, we believe the court correctly rejected defendant's intoxication defense. Defendant testified at trial and was able to describe his version of the events in detail. He testified that he drove to and from the scene of the crime. He was able to accurately swing the bat at his intended target, the victim's head, and was able to outrun two men chasing him. Defendant's testimony, as well as other evidence presented, does not support defendant's contention that his intoxication prevented him from forming the requisite intent.

Defendant also contends that the court abused its discretion by denying defendant's motion for a new trial based on newly discovered evidence. Defendant must show that the evidence was newly discovered, that it was not cumulative, that the party, using reasonable diligence, could not have discovered and produced the evidence at trial, and that including the new evidence at retrial would probably cause a different result. *People v Sharbnow*, 174 Mich App 94, 104; 435 NW2d (1989). To warrant reversal on appeal, a clear abuse of discretion must be shown. *People v Canter*, 197 Mich App 550, 560; NW2d (1992). In this case, the court that denied defendant's motion had also been

Circuit judge sitting on the Court of Appeals by assignment.

the factfinder in the trial. Therefore, the court was particularly qualified to assess whether the new evidence would probably cause a different result. Considering the strength and the nature of the evidence, we do not find a clear abuse of discretion by the court's denial of the motion.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Michael J. Kelly

/s/ Calvin L. Bosman