STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHAD WAYNE PEEK,

Defendant-Appellant.

UNPUBLISHED
May 24, 1996

No. 180406
LC No. 94-004125

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of assault with intent to murder, MCL 750.83; MSA 29.278. He was sentenced to six to thirty years' imprisonment. He appeals as of right, and we affirm.

I

Defendant first argues that the trial judge erred in failing to consider defendant's claim of self-defense or accidental killing. In a non-jury criminal case, the trial court's findings of fact will not be reversed unless this Court finds them to be clearly erroneous. MCR 2.613. Factual findings are sufficient as long as it appears that the trial court was aware of the issue in the case and correctly applied the law. The court need not make specific findings of fact regarding each element of the crime. A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue and that it resolved the issue. *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992). The trial court, in its findings of fact, relied on the testimony of a witness who essentially stated that defendant had instigated the altercation between defendant and the complainant. This Court gives great deference to the ability of the trial court, as the trier of fact, to assess the credibility of witnesses. *People v Martin*, 199 Mich App 124, 135; 501 NW2d 198 (1993); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Ultimately, the trial court found that

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

defendant intended to kill the complainant, and, therefore, it implicitly rejected any self-defense or accident theory. We agree. Self-defense was not applicable to defendant in this case, since the evidence produced at trial indicates that defendant was not in imminent danger of great bodily harm or death. See CJI2d 7.15; *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985). Rather, defendant testified that he did not see the complainant with a weapon. Accord *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). Therefore, we find that the trial court's findings of fact were both sufficient and proper, and the trial court did not clearly err in its failure to address defendant's self-defense or accident claim.

II

Defendant also argues that his waiver of the right to a jury trial was invalid, since it was not made voluntarily or intelligently. We disagree. As argued, this issue presents a question of law, which we review de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995); *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993). According to MCR 6.402(B), the trial court must advise the defendant in open court of the constitutional right to a jury. The trial court must also ascertain that the defendant understands the right to jury and that the defendant voluntarily chooses to give up that right. At the waiver hearing in this case, the following colloquy took place:

> *The Court*: You know what a trial by jury is, right?
>
> *The Defendant*: Yes, sir.
>
> *The Court*: That's where twelve people from the community come in and decide a case. You understand that?
>
> *The Defendant*: Yes, sir.
>
> *The Court*: You know what a trial by judge is?
>
> *The Defendant*: Yes.
>
> *The Court*: That's when the judge decides the case.
>
> *The Defendant*: Yes, sir.
>
> *The Court*: And so as I understand it, you want to have a trial by judge instead of trial by jury; is that right?
>
> *The Defendant*: Yes, sir.

We find that the trial court properly ascertained that defendant understood his right to a jury trial, and that defendant wished to waive that right. Moreover, the definitions of a jury trial and a bench trial were given to defendant. Consequently, we find that defendant's waiver of a jury trial was knowingly and voluntarily made, and therefore, no reversal is mandated by this issue. Accord *People v Reddick*, 187 Mich App 547, 550; 468 NW2d 278 (1991).

III

Defendant next argues that the trial judge improperly relied on medical records which included inadmissible opinion testimony. However, defendant failed to timely object to the admission of the medical records at trial or at sentencing. In fact, defendant stipulated to their admission at trial. Therefore, this issue is not preserved for appellate review. *People v Furman*, 158 Mich App 302, 329-330; 404 NW2d 246 (1987).

IV

Defendant argues that defense counsel's numerous deficient acts deprived him of effective assistance of counsel. To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel was not functioning as an attorney guaranteed by the Sixth Amendment to the United States Constitution. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). Defendant alleges that defense counsel: 1) improperly advised him to waive his right to a jury trial; 2) did not adequately present claims of self-defense or accidental wounding and 3) failed to make a closing argument. However, each of these allegations can best be characterized as trial strategy. Trial counsel's strategy will not be second-guessed unless the defendant was denied a substantial defense. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). In addition, the fact that a strategy did not work does not constitute ineffective assistance of counsel. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Defendant presents no support that a jury would have better served his interests. Moreover, defense counsel presented a lack of intent defense, rather than relying on a theory of self-defense or accidental wounding. Furthermore, we note that defense counsel did present a rebuttal to the prosecution's closing argument. Therefore, defendant's allegations do not amount to ineffective assistance of counsel, since defense counsel's actions were the product of trial strategy.

Finally, defendant argues that defense counsel's failure to object to the trial judge's reliance on medical records constituted ineffective assistance of counsel. Claims of ineffective assistance of counsel based on defense counsel's failure to object or make motions which could not have affected defendant's chances for acquittal are without merit. *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 676 (1986). Because there was ample evidence to support defendant's conviction, the failure to object did not impinge upon defendant's chances of acquittal. As such, defense counsel's failure to object did not constitute ineffective assistance of counsel.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard