

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER TERRANCE THOMAS,

Defendant-Appellant.

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UNPUBLISHED

July 16, 1996

No. 178312

LC No. 93-012637

Before: Wahls, P.J., and Murphy and C.D. Corwin,\* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, for the beating death of Pamela Floors. In a subsequent bench trial, defendant was convicted of being a habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to life in prison. Defendant now appeals as of right. We affirm.

Defendant first argues that his waiver of his right to be tried by a jury was invalid. We disagree. Defendant's jury waiver was knowingly and voluntarily made. MCR 6.402; *People v Gist*, 188 Mich App 610, 611-612; 470 NW2d 475 (1991). There is no requirement that defendant be informed by the court that the right to trial by jury is a constitutional right. *Gist, supra* at 611.

Defendant next argues that the trial court's finding that the victim did nothing to provoke defendant was clearly erroneous. We disagree. Both Michelle Smith and Mark Rutherford testified that the victim struck defendant in the face. Miltonia Favors testified that she never saw the victim strike defendant. The trial judge specifically noted that he did not believe the testimony given by Mark Rutherford, and that he found Miltonia Favors to be a credible witness. This Court must give deference to a trial court's determination of factual issues, especially when such a determination involves the credibility of witnesses whose testimony conflicts. *People v Crowell*, 186 Mich App 505, 507-508; 465 NW2d 10 (1990). The trial court's finding was not clearly erroneous.

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

Defendant next argues that the trial court's findings of fact were inadequate because they did not address the issue of the missing witness, Dorothy Neal. Factual findings are sufficient if it appears that the trial court was aware of the factual issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The sufficiency of factual findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence. *People v Porter*, 169 Mich App 190; 425 NW2d 514 (1988). The factual issues in this case concerned whether defendant was provoked and whether defendant was intoxicated at the time he committed the murder. It is evident from the trial court's findings of fact that the court was aware of these issues and correctly applied the law. Therefore, the trial court's factual findings were sufficient.

Finally, defendant argues that the trial court misunderstood the psychiatric report of defense expert witness, Dr. Van Horn, and that, as a result, the trial court's findings of fact regarding the relationship of defendant's intoxication to his insanity defense were clearly erroneous. However, the trial court's findings of fact indicate that the trial judge understood and considered the report of Dr. Van Horn, but that he found the report lacked credibility. The trier of fact is the sole judge of the credibility of an expert witness and the weight to be given that witness' testimony. *People v Renno*, 392 Mich 45, 60; 219 NW2d 422 (1974). A trier of fact may disregard expert testimony if it feels the testimony was not credible. *Renno, supra* at 60. Since the trial court rejected Dr. Van Horn's report, there was no evidence on which the trial court could find that defendant was legally insane at the time of the murder. Accordingly, the trial court's finding that defendant was not insane when he committed the murder was not clearly erroneous.

Affirmed.

/s/ Myron H. Wahls  
/s/ William B. Murphy  
/s/ Charles D. Corwin