

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN NELSON BENNETT,

Defendant-Appellant.

UNPUBLISHED

July 23, 1996

No. 177011

LC No. 93-011915

Before: Cavanagh, P.J., and Hood and J.J. McDonald,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28434(2). Defendant appeals as of right from his convictions. We affirm.

I

Defendant first argues that the trial court's findings of fact and conclusions were erroneous because the findings were contradictory, and because the court failed to properly consider the evidence which supported defendant's defense of diminished capacity. Findings of fact and conclusions of law are sufficient if it appears that the trial court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

Defendant asserts that the findings were inconsistent because the trial court initially stated that defendant's codefendant, Dwayne Dolin, had the gun but subsequently stated that defendant had the gun. We disagree. As the trial court made numerous references to the fact that defendant possessed the gun, it appears that it simply misspoke when it initially stated that Dolin had the gun. The testimony of the gas station attendant and the officers at the scene indicate that defendant had the gun. Remand is not required where it is manifest that further explication would not facilitate appellate review. *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

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

In addition, defendant claims that the trial court failed to consider evidence presented by defendant on the issue of diminished capacity. The defense of diminished capacity or intoxication is only available where it is shown that a defendant's impairment rendered him unable to formulate the specific intent to commit the charged crime. *People v Savoie*, 419 Mich 118, 134; 349 NW2d 139 (1984). After reviewing the transcript, we conclude that trial court illustrated an understanding of defendant's defense and the applicable law. The trial court noted that defendant presented experts who stated that he suffered from diminished capacity and stated that he had evaluated their credibility. The determination of credibility of a witness is for the trier of fact to decide. See *People v Berry (On Remand)*, 198 Mich App 123, 129; 497 NW2d 202 (1993). The trial court offered a reasoned basis for rejecting the opinion of defendant's experts and concluding that defendant's conduct was deliberate and purposeful. Accordingly, we find no error.

Defendant also argues that a finding that defendant did not suffer from diminished capacity was inconsistent with the court's decision to exclude defendant's verbal statement to police on the basis that defendant was too intoxicated to knowingly, intentionally, and voluntarily waive his *Miranda*ⁱ rights. We disagree. The waiver of *Miranda* rights and the negation of specific intent because of diminished capacity do not require identical levels of cognition. A defendant has the capacity to waive his *Miranda* rights when he is cognizant of the state's intention to use his statements against him and that he can remain silent and request a lawyer. See *People v Garwood*, 205 Mich App 553, 558; 517 NW2d 843 (1994). Where a defendant was so intoxicated that he was unable to form the specific intent to commit armed robbery, the intent element of the crime is negated. See *Savoie, supra*. The trial court's determination that defendant was not too intoxicated to possess the requisite intent for the offense of armed robbery was not inconsistent with its finding that defendant was too intoxicated to knowingly waive his *Miranda* rights.

II

Defendant next contends that the verdict was contrary to the great weight of the evidence because defendant presented overwhelming evidence to support his defense of diminished capacity. It is within the trial court's discretion whether to grant or deny a motion for a new trial on the basis that the verdict is against the great weight of the evidence. *People v Herbert*, 444 Mich 466, 475, 476; 511 NW2d 654 (1993). As noted above, there was sufficient evidence presented on the record for the trial court to determine that defendant did not suffer from diminished capacity. Accordingly, we find that the trial court did not abuse its discretion by denying defendant's motion for a new trial.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald

ⁱ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).