

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN C. COOPER,

Defendant-Appellant.

UNPUBLISHED

February 8, 2005

No. 250690

Wayne Circuit Court

LC No. 97-004984-01

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

PER CURIAM.

Defendant appeals as of right from a nonjury conviction of false pretenses over \$100, MCL 750.218, for which he was sentenced to three years' probation. We affirm.

Defendant first contends that the evidence was insufficient to sustain the verdict. No special action is necessary to preserve this issue. *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987).

A challenge to the sufficiency of the evidence in a bench trial requires us to review the evidence de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of the crime are: "(1) the defendant must have used a pretense or made a false statement relating to either past or then existing facts and circumstances, (2) at the time the pretense was used the defendant must have known it to be false, (3) at the time the pretense was used the defendant must have intended to defraud someone, (4) the accuser must have relied on the false pretense made by the defendant, (5) because of this reliance that person must have suffered the loss of some money or other valuable thing, and (6) the property obtained by the defendant must have had a fair market value of over \$100 at the time of the crime." *People v Lueth*, 253 Mich App 670, 680-681; 660 NW2d 322 (2002). The defendant's "knowledge and

intent can be inferred from the entire evidence.” *People v Reigle*, 223 Mich App 34, 39; 566 NW2d 21 (1997).

Defendant represented that he had a single three-bedroom house available for rent. Based on that representation, Richard Forman gave him an \$800 deposit plus an additional \$200. Apart from the question whether defendant had authority to act as a rental agent, the fact remains that he represented the house to Forman as a single-family home whose occupants were in the process of moving out. In fact, it was a duplex, one unit of which was occupied by Edwina Thomas and one unit of which was occupied by defendant. Thomas clearly was not in the process of moving out, having resisted defendant’s attempt to evict her, and defendant still resided there several months after the incident. Given that defendant knew the nature of the dwelling and that neither he nor Thomas was in the process of moving out, it can be inferred that he made the representation to Forman with an intent to defraud. The evidence was thus sufficient to sustain the verdict.

Defendant next contends that the verdict was against the great weight of the evidence. The issue has not been preserved for appeal because defendant failed to file a timely motion for a new trial below. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). Because the issue has not been preserved for appeal, review is precluded unless the defendant demonstrates plain error that affected defendant’s substantial rights. *Id.* On review of the record we find that defendant has failed to meet this burden.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper