

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JAMES LARSEN,

Defendant-Appellant.

UNPUBLISHED

October 1, 1999

No. 209271

Kent Circuit Court

LC No. 96-013850 FH

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and possession with the intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). Defendant was sentenced as a second felony offender, MCL 769.10; MSA 28.1082, to two to 22-1/2 years' imprisonment for the home invasion conviction, and a concurrent sentence of one to six years' imprisonment for the possession with intent to deliver marijuana conviction. We affirm.

Defendant contends that the trial court failed to properly determine the legitimacy of a witness' asserted Fifth Amendment privilege. We disagree. Under the holding of *People v Poma*, 96 Mich App 726; 294 NW2d 221 (1980), when a potential witness who is intimately connected with the criminal episode intends to assert the Fifth Amendment privilege, the court must determine the legitimacy of the asserted privilege outside the presence of the jury. The rationale for this rule is to prevent the adverse inference that the jury may draw against the defendant from the witness' claim of privilege rather than testifying. *People v Paasche*, 207 Mich App 698, 709; 525 NW2d 914 (1994). In this instance, the record demonstrates that the lower court met with the witness' attorney, defense counsel and the prosecutor in chambers. The court explained the situation to the proposed witness, questioned his attorney regarding the privilege, and then recognized the witness' right to assert the Fifth Amendment. We conclude the trial court did not err.

Defendant argues that he is entitled to a new trial because certain testimony or evidence was not transcribed: (1) a videotaped interview defendant introduced as evidence to impeach a witness' credibility, and (2) a pretrial hearing involving witness Jenny Julien. We disagree. This Court has held

that a defendant's constitutional right to appeal is satisfied if the surviving record is sufficient to allow an evaluation of the issues on appeal. *Elazier v Detroit Non-Profit Housing Corp*, 158 Mich App 247, 249; 404 NW2d 233 (1987). Defendant does not allege any specific prejudice with regard to the videotape and its evidentiary purpose was collateral to the question of defendant's guilt. As in *People v Perry*, 115 Mich App 533; 321 NW2d 719 (1982), remanded on other grounds 417 Mich 908; 330 NW2d 852 (1983) and 422 Mich 882; 367 NW2d 68 (1985), where we decided an issue nearly identical to this one, we find that the failure to transcribe the videotape does not necessitate a new trial for defendant.

We also find defendant's argument without merit with regard to the failure to transcribe the alleged hearing on Julien's initial refusal to testify. Julien fully testified at trial. She detailed the threats against her and the pressure from others to lie in her testimony. These issues were before the trial court when assessing Julien's credibility. The trial court found Julien's testimony credible despite these circumstances. Defendant was not denied a fair trial because the court did not have a transcript of the alleged hearing. Further, the hearing transcript is not essential to evaluate the issues on appeal. These matters go to the issue of Julien's credibility. This Court defers to the trial court's determination of credibility and will not resolve credibility anew on appeal. MCR 2.613(C); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant next contends that the trial court erred when defendant was not allowed to call a previously undisclosed witness to impeach the testimony of a prosecution witness. We disagree. The court considered the defense's purpose for offering the testimony, which apparently was to impeach Julien's testimony regarding defendant unlocking a large garage door with a key. As the court noted, defendant had already testified that the garage door did not open. This issue was relatively minor in the four-day trial. It is well settled that a witness may not be contradicted as to collateral, irrelevant, or immaterial matters. *People v McGillen # 1*, 392 Mich 251, 266-267; 220 NW2d 677 (1974); *People v Wilson*, 119 Mich App 606, 612-613; 326 NW2d 576 (1982). The court did not abuse its discretion in precluding the testimony.

Defendant next asserts that the verdict of not guilty on the charge of conspiracy to commit second-degree home invasion but guilty on a charge of second-degree home invasion was either an impermissible compromise or an improper attempt at leniency in a bench trial. Defendant does not explain how he reaches such a conclusion. A bald assertion without supporting authority precludes appellate examination of the issue. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Therefore, we decline to address this issue.

Last, defendant contends there was insufficient evidence to support the conviction of home invasion, second degree. We find this contention without merit. In reviewing a sufficiency of the evidence claim, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

Defendant does not contend that the prosecution failed to prove the elements of home invasion; rather, on appeal, defendant focuses on the credibility of witnesses and alleged inconsistencies in the

evidence. Defendant contends that Julien had a motive to lie or exaggerate due to threats she received from another witness in this case. While it is true that Julien testified that she had been threatened and was in fear of this person, it is well settled that questions of credibility or the weight to be given to the evidence should be left to the trier of fact to resolve. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997); *Daniels, supra* at 378. The trial court expressly considered the credibility of various witnesses in this case and found Julien's testimony credible.

Further, the court relied on other circumstantial evidence, including evidence that defendant had large sums of cash after the home invasion and apparently had a substantial quantity of marijuana around the same time. Although defendant contends that the court erred in crediting the evidence of the marijuana, the evidence did not pinpoint the date of the marijuana incident; thus, the court did not err in inferring a connection with the offenses charged.

Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Viewing the evidence in a light most favorable to the prosecutor, a rational trier of fact could conclude from the evidence that defendant was guilty beyond a reasonable doubt of home invasion.

Defendant's secondary argument, that the findings were insufficient, is also without merit. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Findings of fact and conclusions regarding contested matters at a bench trial are sufficient if they are brief, definite, and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2), *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). Here, the trial court provided ample discussion of the issues in the case, its analysis of the evidence, and its conclusions.

Affirmed.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ Michael R. Smolenski