

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN LEE SALMIO,

Defendant-Appellant.

UNPUBLISHED

December 12, 2000

No. 220418

Marquette Circuit Court

LC No. 98-035172-FH

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Defendant was charged with first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and conspiracy to commit first-degree home invasion, MCL 750.157a; MSA 28.354(1). He was convicted by a jury of the cognate, lesser included offense of receiving, possessing, concealing, or aiding in the concealment of stolen property over \$100, MCL 750.535(1); MSA 28.803(1).¹ Defendant was sentenced to twenty-four months' probation, with the first four months to be served in jail. He appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence supporting his conviction. When deciding a claim of insufficient evidence, this Court must determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). The evidence must be viewed in the light most favorable to the prosecution. *Wolfe, supra* at 515; *Fetterley, supra*. A reviewing court abides by the credibility findings made by the trier of fact. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). The elements of receiving, possessing, concealing, or aiding in the concealment of stolen property include:

(1) [S]ome property must be shown to have been stolen; (2) the defendant must have received, concealed, or aided in the concealment of that property; (3)

¹ Defendant's conviction was under a version of MCL 750.535; MSA 28.803 that has been amended since the time of defendant's offense.

the property must be identified as being the same property which had been previously stolen; (4) the defendant must have known that the property was stolen at some time, either when he received, concealed, or aided in the concealment of the property or at some time when he wrongfully continued to possess the property; and (5) the property at the time it was knowingly received or concealed must have had a fair market which exceeded, that is, was over \$100. [*People v Toodle*, 155 Mich App 539, 550-551; 400 NW2d 670 (1986), citing CJI 26:1:01.]

On appeal, defendant contends that insufficient evidence was presented at trial to support the jury's finding that defendant received, possessed or concealed stolen property, or in the alternative, that the value of any stolen property that he may have received, possessed or concealed exceeded \$100. We disagree. Although the evidence at trial was contradictory, when considered in a light most favorable to the prosecution, the evidence was sufficient to establish defendant's guilt beyond a reasonable doubt. Evidence was introduced at trial that defendant was present with others when a cabinet containing money exceeding the value of \$100 was stolen from the victim's residence. Further, the proofs showed that defendant assisted in moving and ultimately destroying the cabinet and that he was given some of the stolen money. Again, although this testimony was contradicted by other testimony, it was for the jury, rather than this Court, to judge the believability of testimony. *Avant, supra*. The evidence of defendant's involvement, if believed, was sufficient.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra