

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES E. MACON,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223011

Wayne Circuit Court

LC No. 99-002309

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from convictions of first-degree home invasion, MCL 750.110a(2), armed robbery, MCL 750.529, and assault with intent to do great bodily harm less than murder, MCL 750.84, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of ten to twenty years, fourteen and a half to twenty-five years, and seven to ten years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a nonjury criminal case, this Court “is required to review the entire record to determine whether the trial judge clearly erred.” *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). This Court must review the record to determine whether there was sufficient evidence to warrant a verdict of guilty beyond a reasonable doubt. *People v Garcia*, 398 Mich 250, 263; 247 NW2d 547 (1976). 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).

Defendant does not challenge the sufficiency of the evidence as it relates to the elements of the crimes. He contends only that the trial court erred in finding he was the person who committed those crimes. “As a general rule, the trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses.” *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court’s resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501

NW2d 198 (1993). The trial court gave a cogent and rational explanation for accepting the victim's identification testimony. That explanation was based on the evidence introduced at trial and thus was not clearly erroneous. The fact that the trial court chose to believe the victim's testimony despite defense counsel's attempts to impeach her does not constitute reversible error. *Snell, supra* at 756.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin