

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EDMAR MOUNT, Minor

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDMAR MOUNT,

Defendant-Appellant.

UNPUBLISHED

November 24, 1998

No. 206192

Wayne Juvenile Court

LC No. 96-340967

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

PER CURIAM.

Following a bench trial before a juvenile division referee, defendant was adjudicated guilty of possession of a device designed to explode upon impact with intent to use unlawfully, MCL 750.211a; MSA 28.408(1), burning of real property, MCL 750.73; MSA 28.268, and malicious destruction of real property over \$100, MCL 750.380; MSA 28.612. The charges arose from the burning of a garage. Defendant was placed on probation and was ordered to pay \$550 as restitution. He appeals as of right. We affirm.

Defendant argues that the trial court erred in disregarding his alibi defense. Specifically, defendant argues that, since the court made no specific finding of fact that the alibi testimony was not credible, but rather simply stated that “[w]hether or not [defendant] remained in the house and [sic] left is unclear, anything’s possible,” the alibi defense raised a reasonable doubt as to his presence at the crime scene. We disagree.

When reviewing a trial court’s finding of fact, we must give deference to the trial court’s ability to view the evidence and the demeanor of the witnesses. MCR 2.613(C); *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). A trial court’s finding of fact will not be disturbed on appeal unless it was clearly erroneous. MCR 2.613(C); *Johnson, supra*, 202 Mich App 288. A

court's finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997).

It is strictly within the province of the trier of fact to resolve all issues of credibility, including the credibility of any witness whose testimony tends to establish an alibi. *People v Diaz*, 98 Mich App 675, 682; 296 NW2d 337 (1980); *People v Smalls*, 61 Mich App 53, 57; 232 NW2d 298 (1975). Here, the trial court found that the alibi testimony given by defendant's cousin, uncle, and mother, was not persuasive. The prosecution presented uncontroverted evidence that the fire was started at approximately 11:00 p.m. However, the only fact that the alibi testimony tended to establish was that defendant was dropped off at home, one block away from the crime scene, sometime between 9:00 p.m. and 11:00 p.m. Although defendant's mother testified that she would have heard her dogs barking if defendant had left the house that night, the trial court was not required to accept her testimony. Under these circumstances, we cannot conclude that the trial court clearly erred in finding that the alibi testimony was not persuasive.

Furthermore, we find that Fields' testimony was sufficient to establish defendant's presence at the scene of the crime, and that the trial court did not clearly err in finding that her testimony was credible.

Affirmed.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff