IN THE UTAH COURT OF APPEALS

----ooOoo----

State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070740-CA
v.	)	
	)	F I L E D
Mark S. Scott,	)	(December 10, 2009)
	)	2009 UT App 367
Defendant and Appellant.	)	

First District, Logan Department, 071100163
The Honorable Gordon J. Low

Attorneys: David M. Perry, Logan, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City, for Appellee

-----

Before Judges Greenwood, Bench, and McHugh.

GREENWOOD, Presiding Judge:

Defendant Mark S. Scott appeals his convictions for four counts of burglary, two counts of second degree felony theft, and two counts of class B misdemeanor theft. He argues that inherent conflicts in the witnesses' testimonies render the evidence insufficient to support a conviction. In addition, Defendant contends that some of the witnesses were unreliable and not credible. He also argues that his attorney rendered ineffective assistance in failing to move the trial court for an arrest of judgment on the basis that the evidence was insufficient.

However, we decline to consider Defendant's arguments because they are inadequately briefed. Rule 24(a)(9) of the Utah Rules of Appellate Procedure requires that a party's argument include citations to the authorities, statutes, and parts of the record relied on. See Utah R. App. P. 24(a)(9). "Implicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority. We have previously stated that this court is not a depository in which the appealing party may dump the burden of argument and research." State v. Thomas, 961 P.2d 299, 305 (Utah 1998) (internal quotation marks omitted).

Defendant argues that the State failed to prove all the elements of the alleged crimes, but does not specify which elements the State did not prove, or how the State's case was inadequate. Defendant structures the fact section of his brief so that the witnesses' statements are separated as to whether they help or hurt Defendant's case. Then, in the argument section, Defendant cites many cases dealing with sufficiency of evidence. However, Defendant fails to utilize the case law to present a coherent argument informing us in what manner the evidence was insufficient. Defendant's argument merely repeats that the witnesses' statements were inconsistent, but fails to point out which statements were inconsistent or how, and asserts that the evidence was insufficient, but fails to explain how. For example, Defendant broadly argues that "[i]n the present case there is simply no reason for trial counsel not to move the court to arrest the judgment when the evidence against the Defendant was so unreliable," and "[t]he jury should not have found the defendant guilty based upon the lack of credible evidence. . . . The reliability and credibility of the witnesses was so lacking that the trial attorney should have given the [trial c]ourt another opportunity to set aside the jury verdict." Neither of these statements identifies or analyzes the failings of the witnesses' testimonies, nor how the State failed to prove the elements of the crime. The remainder of Defendant's brief is similarly unhelpful. "It is well established that an appellate court will decline to consider an argument that a party has failed to adequately brief." Valcarce v. Fitzgerald, 961 P.2d 305, 313 (Utah 1998).

Rule 24(a)(9) also requires that "[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding." Utah R. App. P. 24(a)(9). This means that a party must "marshal the evidence in support of the findings and then demonstrate that despite this evidence, the [trial] court's findings are so lacking in support as to be against the clear weight of the evidence, thus making them clearly erroneous." In re A.B., 2007 UT App 286, ¶ 13, 168 P.3d 820.

> [T]he marshaling concept does not reflect a desire to merely have pertinent excerpts from the record readily available to a reviewing court. The marshaling process is not unlike becoming the devil's advocate. Counsel must extricate himself or herself from the client's shoes and fully assume the adversary's position. In order to properly discharge the duty of marshaling the

> evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court's finding resting upon the evidence is clearly erroneous.

West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah Ct. App. 1991).

Defendant has not completely disregarded his duty to marshal; indeed, in his brief, he indicates that he believed he had marshaled by setting forth the facts as he did. Although Defendant has methodically organized the fact section, he has not "correlate[d] particular items of evidence with the challenged findings and convince[d] us of the court's missteps in application of the evidence to its findings." Id. Additionally, Defendant failed to include in his marshaling all the evidence that supports his conviction. For example, he omitted evidence that the stolen goods were located in trailers controlled by him. Thus, Defendant has not demonstrated that the facts, as presented, do not support the trial court's findings.

However, even if Defendant had properly briefed or marshaled the evidence, he has not shown that the evidence was in fact insufficient to support his convictions. Indeed, most of his arguments rest on the proposition that the witnesses' testimonies were not credible. However, we "must ordinarily accept the jury's determination of witness credibility," unless the witness's testimony is "inherently improbable," including being "physically impossible" or "apparently false." State v. Robbins, 2009 UT 23, ¶ 16, 210 P.3d 288. This rule does not invite "defendants to challenge witness testimony for generalized concerns about a witness's credibility." Id. ¶ 19 (internal quotation marks omitted). Here, Defendant has not shown that the witnesses' statements were inherently improbable or otherwise unbelievable, nor does our own review of the record reveal such implausibility.

In conclusion, Defendant has neither adequately briefed his arguments nor properly marshaled the evidence to support his position. Accordingly, we do not review his arguments. Even had he made sufficient arguments before us, Defendant has not shown that the witnesses' statements were inherently improbable, or

that the evidence presented was insufficient to support the jury's verdict. We affirm.

____
Pamela T. Greenwood,
Presiding Judge

WE CONCUR:

____
Russell W. Bench, Judge

____
Carolyn B. McHugh, Judge