

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY JEROME WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
November 5, 2009

No. 285692
Wayne Circuit Court
LC No. 08-000779-FC

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of first-degree home invasion, MCL 750.110a(2), armed robbery, MCL 750.529, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced as a third habitual offender, MCL 769.11, to serve concurrent terms of 20 to 40 years for first-degree home invasion and armed robbery and four to eight years for felonious assault, and to a consecutive two-year term for felony-firearm. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the evidence presented at trial was insufficient to support his convictions for armed robbery, felonious assault, and felony-firearm; in the alternative, defendant argues that the trial court's verdict was against the great weight of the evidence. Specifically, defendant argues he did not have a gun during the home invasion and that the key testimony of a victim, a seven year-old girl, was not credible. We disagree.

We review de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). When reviewing the sufficiency of the evidence, "[t]he evidence is viewed in the light most favorable to the prosecution when determining whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *Id.* at 474.

A defendant's motion for a new trial based on the assertion that the verdict was against the great weight of the evidence should be granted only if the evidence preponderates heavily against the verdict and the failure to grant the motion would result in a miscarriage of justice. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). "New trial motions based solely on the weight of evidence regarding witness credibility are not favored." *Id.* at 639.

Defendant admitted to committing the home invasion, but denied having a gun during that time. A prosecutor must present sufficient evidence to establish all elements of a crime beyond reasonable doubt, but is not limited to direct evidence in that endeavor. Circumstantial evidence and reasonable inferences arising therefrom may be used to establish the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). When reviewing the sufficiency of the evidence, any conflict in the evidence must be resolved in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). We defer to a factfinder's determination of the weight of evidence and the credibility of witnesses. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Since the police were unable to recover a gun in their search of the area in which defendant was apprehended, the prosecutor relied on the statements of Brianna Clark, who was seven years old, to establish that defendant possessed a gun during the home invasion. In light of her ability to identify defendant, and the consistency of her testimony, the trial court found Brianna to be a credible witness.

The testimony given by Brianna supported the trial court's findings that defendant possessed a gun during the home invasion, and that he caused Brianna to be frightened by pointing the gun at her. Brianna unequivocally identified defendant as the person who pointed the gun at her. A witness in the area informed the police that two men had been seen carrying a television. The police observed defendant exiting a garage where a television taken from the home was later found. This evidence was sufficient to support the verdict, and the verdict was not against the great weight of the evidence.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens