

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 7, 1996

No. 172246

LC No. 93-008389

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree child abuse, MCL 750.136b; MSA 28.331(2), and was sentenced to five to fifteen years in prison. He appeals as of right. We affirm.

Defendant first asserts that the trial court erred in finding that the minor children who testified at trial were competent to testify. Defendant failed to object to the trial court's determination that the children were competent to testify. Therefore, he has waived this issue for appeal. *People v Garland*, 152 Mich App 301, 309; 393 NW2d 896 (1986); *People v Cobb*, 108 Mich App 573, 575; 310 NW2d 798 (1981).

Next, defendant argues that he was denied the effective assistance of counsel at trial because counsel failed to object to the competency of the child witnesses. We disagree. Defendant failed to move for a new trial or a *Ginther*¹ hearing before the trial court. Therefore, unless the appellate record contains sufficient detail to support defendant's claim, he has effectively waived the issue. *People v Marji*, 180 Mich App 525, 533; 447 NW2d 835 (1989). A defendant that claims he has been denied the effective assistance of counsel must establish that (1) the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms and (2) that a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). A defendant must overcome a strong presumption that the assistance of his counsel was sound trial strategy, and he must

* Circuit judge, sitting on the Court of Appeals by assignment.

show that, but for counsel's error, the outcome of the trial would have been different. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

All persons are considered competent to be a witness unless the trial court finds after questioning that the person “ does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably.” MRE 601; *People v Jehnsen*, 183 Mich App 305, 308; 454 NW2d 250 (1990). Where the prospective witness is a child under ten-years-old, the statute provides that the court must examine the witness to “ ascertain to its own satisfaction whether such child has sufficient intelligence and sense of obligation to tell the truth.” MCL 600.2163; MSA 27A.2163. When a trial court determines that such a child is competent to testify, a subsequent showing that the child is unable to testify truthfully is pertinent only to the witness’ credibility, not to their competency. *Jehnsen, supra* at 308.

Here, the court fulfilled these requirements by examining each of the three children and ascertaining that they were competent to testify. We find, based on the record, that the court did not abuse its discretion in finding them competent. Therefore, defendant’s counsel did not commit error in failing to object to the court’s determination. Furthermore, since we find that the trial court did not abuse its discretion, counsel’s failure to object did not affect the outcome of the case. Hence, defendant’s assertion of ineffective assistance of counsel is without merit.

Finally, defendant asserts that there was insufficient evidence to support his conviction of first-degree child abuse. We disagree. Review of a challenge to the sufficiency of the evidence in a bench trial requires this Court to view the evidence in a light most favorable to the prosecution and determine whether the evidence was sufficient to support a conclusion by the trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992); *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990). However, this Court should not interfere with the trier of fact’s role of determining the weight or credibility of the evidence. *Wolfe, supra* at 514-515.

First-degree child abuse is a specific intent crime, defined as the “ knowing or intentional causing of serious physical or mental harm to a child.” MCL 750.136(2); MSA 28.331(2)(2). Taken in a light most favorable to the prosecution, the testimony of the children established that defendant intentionally forced five-year-old Larry McKnight into the scalding water as a form of punishment, thereby causing serious burns to the child. This Court will not interfere with the trial court’s determination of the weight and credibility to assign the witnesses’ testimony. *Wolfe, supra* at 514-515. We conclude that, based on the children’s testimony, there was sufficient evidence to support defendant’s conviction.

Affirmed.

/s/ Peter D. O’Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard

¹ *People v Ginther*, 390 Mich 436, 443, 212 NW2d 922 (1973).