

STATE OF MICHIGAN
COURT OF APPEALS

In re JEFFREY BRIAN SISCHO, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

JEFFREY BRIAN SISCHO,

Respondent-Appellant.

UNPUBLISHED

January 24, 1997

No. 191560

Kent Juvenile Court

LC No. 92-002284

Before: Bandstra, P.J., and Hoekstra, and S.F. Cox,* JJ.

PER CURIAM.

Respondent, a juvenile, was convicted of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Respondent now appeals as of right his convictions. We affirm.

Respondent argues that the trial court improperly excluded the testimony of Maria Pagan, a co-defendant, who had pleaded guilty in a prior proceeding, but who had invoked the Fifth Amendment right against self-incrimination at respondent's trial. We disagree. Respondent has failed to provide any evidence and the lower court record is devoid of any evidence showing that Pagan had already been sentenced for committing the crime for which she pleaded guilty or that Pagan had not appealed her conviction. The privilege against self-incrimination still applies where an appeal is pending after conviction on a charge to which the incriminating testimony would relate, *People v Robertson*, 87 Mich App 109, 114; 273 NW2d 501 (1978), or where the witness has not been sentenced, *People v Smith*, 34 Mich App 205, 211; 191 NW2d 392 (1971), *aff'd* 396 Mich 362; 240 NW2d 245 (1976). Thus, respondent has failed to show that Pagan's guilty plea constituted an absolute waiver to her right against self-incrimination.

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

In any event, respondent has failed to show that he was prejudiced by the trial court's exclusion of Pagan's testimony, thereby necessitating a new trial. Although respondent argues on appeal that Pagan's testimony would have established that respondent was not involved in the armed robbery, respondent failed to make an offer of proof at trial as to what Pagan's testimony would show. Furthermore, the evidence against respondent was overwhelming in light of the testimony from witnesses Van Ocker and Barnes that respondent was one of the people involved in robbing the store. Witness VanderWeit testified that he also thought respondent was one of the individuals who had robbed the store. The trial court found VanderWeit's testimony to be "extremely credible" and the testimony of Van Ocker and Barnes to be "very, very definite." Based on the testimony, there was no doubt in the trial judge's mind that respondent's guilt had been proven beyond a reasonable doubt. We give special deference to the trial court's findings where they are based on the credibility of witnesses. *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990). Thus, even if the trial court did abuse its discretion in excluding Pagan's testimony, any error was harmless in light of the overwhelming evidence against respondent. *People v Peterson*, 450 Mich 349, 353; 537 NW2d 857 (1995), amended 450 Mich 1212; 548 NW2d 625 (1995).

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Sean F. Cox