STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW TERRY LANDRUM,

Defendant-Appellant.

UNPUBLISHED
July 25, 1997

No. 188255
Washtenaw Circuit Court
LC No. 95-003709-FH

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and was sentenced to three to fifteen years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence of his identity as the offender. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hunter*, 209 Mich App 280, 282; 530 NW2d 174 (1995); see also *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Identity is always an essential element in a criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). Circumstantial evidence, and reasonable inferences arising from the evidence, may constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996); *Hunter, supra*, 282.

Here, the victims testified that when they returned to their second-story apartment, they heard noises coming from inside and then saw a man jump from their balcony and limp away. Both victims testified that the person was a black male, wearing a red down or quilted coat, a dark knit cap, and blue jeans. One of the victims called the police and described the burglar's clothing. Minutes later, defendant was stopped by the police in a spot that easily could have been reached from the scene of the break-in. He was limping when the police approached him. He also had a racing heartbeat, was

breathing heavily, and was sweating. The victims identified the cap and coat worn by defendant when he was stopped by police as the same cap and coat worn by the person they saw jump from their balcony.

Viewing this evidence in a light most favorable to the prosecution, a reasonable trier of fact could conclude that defendant was the person who burglarized the victims' apartment. Compare *People v Stanley*, 71 Mich App 56; 246 NW2d 418 (1976), and see *Truong*, *supra*, p 337. Moreover, the court, in reaching its verdict, did not make inferences built upon inferences. On the contrary, the court acted as a rational trier of fact, taking into account all the evidence including that evidence which established defendant's identity, made appropriate findings on the record, and found that the essential elements of the crime were proven beyond a reasonable doubt. We find no error.

Next, defendant argues that the court erred by not adequately informing him of his right to a jury trial, thus rendering his jury trial waiver involuntary. We disagree.

MCR 6.402(B) provides:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

Here, defendant clearly made an in-court waiver of his right to a jury trial without objection, after being fully informed of his rights. Defendant then conferred with his counsel, and the parties signed the waiver of jury trial form.

Defendant further claims that the court digressed from the statutory requirements as construed in *People v Pasley*, 419 Mich 297; 353 NW2d 440 (1984), and *People v James*, 184 Mich App 457; 458 NW2d 911 (1990). However, the Michigan Supreme Court's 1989 Staff Comment to MCR 6.402 provides in pertinent part:

> MCR 6.402 is a new rule. It sets forth a procedure for waiver of jury trial that differs substantially from the requirements adopted in *People v Pasley*, 419 Mich 297 (1984).
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> * * *
>
> The waiver procedure set forth in subrule (B) differs from the statute and the procedure adopted in *Pasley* because it eliminates the written waiver requirement and replaces it with an oral waiver procedure consistent with the waiver procedure applicable at plea proceedings. See 6.302(B)(3). The statutory procedure is superseded by the court rule procedure. See 6.001(E).

Accordingly, we find that the court complied with MCR 6.402(B), accepting a knowing and voluntary waiver of defendant's right to a jury trial.

Finally, defendant argues that the trial court erred by admitting evidence of a hypothetical escape route taken by defendant, including testimony and a videotape depicting this route, because it was speculative and irrelevant. We disagree. This Court reviews decisions whether to admit evidence for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). We will find an abuse of discretion only when an unprejudiced person, considering the facts upon which the trial court acted, would say there was no justification or excuse for the ruling made. *People v Underwood*, 184 Mich App 784, 787; 459 NW2d 106 (1990).

Here, Officer Cervantes testified about a possible escape route available to defendant. This testimony showed that defendant was at a plausible spot, in terms of time, place, and distance, in relation to the crime scene, when the police stopped him. It tended to show that defendant could have committed the offense. Under MRE 401, evidence is relevant if it has any tendency to make the existence of a fact more probable or less probable than it would be without the evidence. Under MRE 403, relevant evidence can be excluded if its probative value is substantially outweighed by its danger for unfair prejudice. See *People v Mills*, 450 Mich 61, 74-75; 537 NW2d 909 (1995). Unfair prejudice exists where there is a tendency that the evidence will be given undue or preemptive weight by the factfinder. *Id.* at 75-76. This was a bench trial. With a judge as the factfinder, it is unlikely that he gave this evidence undue or preemptive weight in reaching his verdict. See *People v Bailey*, 175 Mich App 743, 746; 438 NW2d 344 (1989). The probative value of the testimony, therefore, was not substantially outweighed by its danger for unfair prejudice. *Mills, supra*, 74-75.

The admission of the videotape can be treated as analogous to the admission of photographs. *People v Barker*, 179 Mich App 702, 710; 446 NW2d 549 (1989). Photographs can be used to corroborate a witness' testimony. *Mills, supra*, 76. Here, Officer Cervantes' testimony about the escape route was illustrated by the videotape. Therefore, the videotape in the instant case was relevant under MRE 401, and its probative value is not substantially outweighed by its danger for unfair prejudice. MRE 403. There was no abuse of discretion.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin