STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE DELANO KENNEBREW,
a/k/a BRUCE DELANA KENNEBREW,

Defendant-Appellant.

UNPUBLISHED
December 9, 1997

No. 198675
Kent Circuit Court
LC No. 96-002415 FH

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). He was subsequently sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to fifteen to thirty-five years' imprisonment. Defendant appeals as of right. We affirm.

Trial testimony established that defendant, Romell Parker, and his brother Arnold Parker were in a car that stopped in front of the victim's house. Defendant got out of the car, kicked down the front door of the house, went in, came out carrying a television, and got back in the car. The men then sold the television for $20. Defendant, an acquaintance of the victim's son, admitted that he had been in the victim's house earlier in the day, but denied returning and burglarizing the residence.

Defendant first argues that the trial court erred in permitting the prosecutor to call Romell Parker, who asserted the Fifth Amendment privilege in the jury's presence, where the prosecution had prior knowledge that the witness planned to assert the privilege. Defendant did not object at trial to the decision to call the witness or to the court requiring him to testify. The issue is therefore not properly preserved for appellate review. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). In any event, the claim is without merit. It is inherently prejudicial to place a witness on the stand who is intimately related to the criminal episode, when the judge and the prosecutor know that he will assert the Fifth Amendment privilege. *People v Poma*, 96 Mich App 726, 733; 294 NW2d 221 (1980). Here, however, the record does not support defendant's argument that the prosecutor knew Parker would

assert the privilege, especially in light of the fact that Parker's reluctance to testify was based on concern for his personal safety rather than self-incrimination. Moreover, defendant has no standing to dispute the court's ruling on the validity of Parker's privilege. *Poma, supra,* p 730. Because the jury was not left to erroneously infer defendant's guilt from Parker's assertion of the Fifth Amendment privilege – Parker's eventual testimony directly implicated defendant – we find no error requiring reversal.

Next, defendant argues that the trial court abused its discretion by permitting defendant to be impeached with his prior convictions. Specifically, defendant argues that the probative value of his prior convictions for attempted unarmed robbery and larceny in a building did not outweigh their potential for undue prejudice because of their remoteness in time and similarity to the charged offense. MRE 609(a)(2); *People v Allen,* 429 Mich 558, 595-596, 606; 420 NW2d 499 (1988). We find no abuse of discretion. Defendant's 1987 conviction for attempted unarmed robbery includes an element of theft and is sufficiently dissimilar from the charged offense of home invasion. While the vintage of the conviction minimizes its probative value, it nevertheless occurred within the ten-year period set forth at MRE 609(c). Likewise, defendant's 1988 conviction for larceny in a building is not so similar to the crime of home invasion to preclude its use for impeachment purposes, and, while the conviction was relatively old, the trial court did not abuse its discretion in determining that its probative value outweighed its prejudicial effect. This is especially true given the overwhelming evidence of guilt in this case. See *People v Bartlett,* 197 Mich App 15, 19; 494 NW2d 776 (1992). We cannot say that there was no justification or excuse for the court's ruling to allow defendant to be impeached with his prior convictions and therefore find no abuse of discretion.

Defendant next argues that the court erred by not suppressing his confession. According to defendant, his waiver of his *Miranda* rights [*Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)] before he gave his statement was not voluntary because he was intoxicated and because he was promised leniency by the interviewing officer in the form of a personal recognizance bond.

When reviewing a trial court's determination of the voluntariness of a statement, the trial court's findings will not be reversed unless they are clearly erroneous. *People v Haywood,* 209 Mich App 217, 225-226; 530 NW2d 497 (1995). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *People v Kvam,* 160 Mich App 189, 196; 408 NW2d 71 (1987). Here, in finding the statement voluntary at defendant's *Walker* hearing [*People v Walker*, 374 Mich 331; 132 NW2d 87 (1965)], the trial court obviously believed the interviewing officer's testimony that defendant did not appear intoxicated and that the officer did not promise defendant a personal recognizance bond. This Court ordinarily defers to a trial court's assessment of the credibility of witnesses or the weight of the evidence. *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996). Under the totality of the circumstances in this case, we are not left with a definite and firm conviction that the court clearly erred in admitting defendant's statement.

Affirmed.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie
/s/ Janet T. Neff