

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EARL THOMAS,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 188819

Recorder's Court

LC No. 95-000694-FH

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted in a bench trial of larceny over \$100, MCL 750.356; MSA 28.588. He was sentenced to two years probation with jail confinement for the last six months and later sentenced to six months jail confinement for violation of probation. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

The elements of larceny are: (1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the subject matter must be the goods or personal property of another, and (5) the taking must be without the consent of and against the will of the owner. *People v Jones*, 106 Mich App 429, 432; 308 NW2d 243 (1981).

In the case at bar, defendant had resided in the basement of a home owned by Troy Lawson until shortly before the larceny occurred. When Lawson asked defendant to move out, defendant failed to leave his key to Lawson's home and told Lawson, "I'll get back at you for this." On the date of the larceny, a witness saw defendant's van parked in Lawson's driveway for approximately two hours in the afternoon. At one point, the front door of the house was open, and there were three large garbage

bags that appeared to be filled inside defendant's van. No one had a key to Lawson's house other than defendant, and when Lawson returned home from work, there were no signs of forcible entry, and several items were missing, including jewelry, cash, a VCR, clothes, and guns. When considered in the light most favorable to the prosecution, the evidence in this case is sufficient for the trier of fact to rationally conclude that defendant had committed the elements of the offense beyond a reasonable doubt.

Defendant further argues that the prosecution was required to negate every reasonable theory consistent with his innocence. We disagree. Before 1990, there existed a conflict among panels of this Court as to this issue. Compare *People v Davenport*, 39 Mich App 252, 256; 197 NW2d 521 (1972), with *People v Daniels*, 163 Mich App 703, 707; 415 NW2d 282 (1987). Pursuant to Administrative Order 1996-4, a published decision of this Court issued on or after November 1, 1990 becomes controlling authority for subsequent panels of this Court. The pre-1990 conflict in the instant case was resolved by *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991), which held that it is unnecessary for the prosecutor to negate every reasonable theory consistent with the defendant's innocence. Defendant's argument must therefore fail.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh