STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BRANDON WILLIAMS, a Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRANDON WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
July 15, 1997

No. 197940
Wayne Probate Court
LC No. 95-335591

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

Defendant was charged in separate petitions with first, unarmed robbery, MCL 750.530; MSA 28.798, and second, second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), and malicious destruction of real property, MCL 750.380; MSA 28.612. He was convicted as charged following separate bench trials held on the same day in the juvenile court. Defendant was committed to the temporary custody of the Michigan Department of Social Services for referral to "a suitable placement or secure detention facility" to be determined by the Family Independence Agency. Defendant now appeals as of right. We affirm in part, vacate in part and remand for further proceedings.

I

Defendant argues that there was insufficient evidence to sustain each of his convictions. When considering a sufficiency of the evidence challenge following a bench trial, we view the evidence in the 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 Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

First, defendant contends that the prosecution failed to show that he placed complainant Dewayne Smith in fear for the purpose of taking Smith's money. However, Smith testified that he

removed seventeen dollars from his pocket and surrendered it to defendant because he feared that defendant "was going to beat [him] up." This evidence was sufficient to sustain defendant's conviction of unarmed robbery. *People v Johnson*, 206 Mich App 122, 126; 520 NW2d 672 (1994).

Second, defendant contends that the prosecution failed to show by way of direct evidence that he entered complainant Mary Johnson's home and thereby failed to present sufficient evidence to sustain defendant's conviction of second-degree home invasion. MCL 750.110a; MSA 28.305(a) provides in relevant part:

> (3) A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the second degree.

It is a well-established rule that circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Here, two police officers observed defendant lowering another individual from Johnson's dining room window. When one of the officers ordered defendant and his companion to hold their positions, the two fled. Further, Johnson discovered, upon entering her residence, that the dining room window was broken, that glass from the window was "all over the floor," and that her diamond ring and gold bracelet were gone. This evidence, although circumstantial, was sufficient to convict defendant of second-degree home invasion.

Third, defendant contends that the prosecution failed to establish the value element necessary to sustain his felony conviction of malicious destruction of real property over $100. We agree, as the record contains no evidence regarding the value of Johnson's dining room window. Because the prosecution failed to prove that the resultant damage exceeded the statutory minimum to make the offense a felony, defendant must be convicted of only a misdemeanor. See *People v Toodle*, 155 Mich App 539, 551; 400 NW2d 670 (1986). Therefore, we vacate defendant's felony conviction of malicious destruction of real property over $100 and remand for entry of a judgment of conviction of malicious destruction of real property of $100 or less, a misdemeanor. See *People v McFarland*, 14 Mich App 313, 314; 165 NW2d 463 (1968).

II

Defendant next argues that Smith was exposed to an impermissibly suggestive pretrial identification procedure and, concomitantly, that the trial court erred in admitting Smith's in-court identification for want of a basis independent of the impermissibly suggestive procedure. Defendant did not move to suppress the in-court identification, nor did he move for an evidentiary hearing concerning the suggestiveness of the pretrial identification and, therefore, this issue is not preserved for appellate review. *People v Lee*, 391 Mich 618, 626; 218 NW2d 655 (1974); *People v Daniels*, 163 Mich

App 703, 710-711; 415 NW2d 282 (1987). In any event, the record reflects a sufficient independent basis for identification.

III

Lastly, defendant argues that the juvenile court abused its discretion at the dispositional hearing by committing defendant to the temporary custody of the Michigan Department of Social Services for placement and supervision at a suitable facility to be determined by the Family Independence Agency. We disagree. The record from the dispositional hearing reveals that the probation officer who prepared defendant's disposition report recommended commitment because defendant's legal guardian, Patricia Williams, was unwilling to assume sole responsibility for defendant. Moreover, Williams, herself, expressed to the court her reluctance in caring for defendant. In light of this testimony, we find no abuse of discretion.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Janet T. Neff
/s/ Maureen P. Reilly