

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN M. COLTON,

Defendant-Appellant.

UNPUBLISHED
October 24, 1997

No. 193861
Recorder's Court
LC No. 95-006741

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of attempted breaking and entering a building, MCL 750.110; MSA 28.305 and MCL 750.92; MSA 28.287. He was sentenced to three years' probation. He appeals as of right. We affirm.

Defendant argues there was insufficient evidence to support his conviction for attempted breaking and entering a building. When reviewing a claim for insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997). Questions of credibility should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Here, viewing the evidence in a light most favorable to the prosecution, a reasonable trier of fact could conclude that the essential elements of attempted breaking and entering were proven beyond a reasonable doubt. Defendant was at the scene of the crime at approximately 4:30 a.m. exhibiting furtive behavior. There were no other people or vehicles in the area. Upon seeing a police officer, defendant walked back to his car, without ever looking up, and climbed into the back seat to hide. Upon being questioned by the police officer, he responded that he had nothing to do with the store, without ever having been prompted to answer questions about the store. In approximately the same time-frame, the investigating officer received information that an alarm was activated at the store, a location only ten yards from where defendant was initially observed by the police officer. There was also evidence that a tracking dog began tracking at the handle of the door where entry was gained to the store, and followed

a path that led to a hammer that appeared to be the instrument used to break the hole into the door window, and from there continued on a path that led directly to defendant at his car. The path followed by the tracking dog was the same one that the police officer observed defendant take.

Defendant advances three bases upon which he claims that there was insufficient evidence to support the conviction. Defendant first contends that two unidentified fingerprints taken from the crime scene preclude a finding that he was the perpetrator and that the trial court ignored this evidence. To the contrary, the trial court acknowledged, but did not discuss, the fingerprint evidence. However, we believe that this evidence does not necessarily negate the possibility that defendant was the perpetrator.

Second, defendant argues the trial court's finding of fact with respect to the time the alarm was activated and when the police officer first saw defendant is contrary to the evidence. This Court will not reverse a finding of fact unless it is clearly erroneous. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). After reviewing the evidence in this regard, we conclude that although there was conflicting testimony regarding the timing of the events, the trial court's finding of fact on this testimony was not clearly erroneous.

Finally, defendant argues that the dog-tracking evidence only linked him to the handle of the door and not inside the store, despite evidence that suggested that the perpetrator had entered the building. We note, however, that defendant was charged and convicted of *attempted* breaking and entering a building. Entering of the building is not a necessary element of attempted breaking and entering. *People v Combs*, 69 Mich App 711, 714; 245 NW2d 338 (1976). Therefore, the evidence linking defendant to the outside of the store was sufficient to support defendant's conviction.

Affirmed.

/s/ Maura D. Corrigan

/s/ Richard A. Griffin

/s/ Joel P. Hoekstra