STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES FREDERICK SANFORD,

Defendant-Appellant.

UNPUBLISHED
January 16, 1998

No. 200233
St. Clair Circuit Court
LC No. 95-000694-FH

Before: Fitzgerald, P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, and was sentenced as an habitual offender, MCL 769.12; MSA 28.2084, to concurrent prison terms of six to twenty-five years for each of the convictions. Defendant appeals as of right. We affirm.

Defendant's convictions stem from the breaking and entering of a mall and the breaking and entering of the mall manager's office within the mall. Defendant first argues that the two B & E convictions violate the protection against double jeopardy because the convictions are based upon a single breaking and entering. We disagree. Defendant's argument ignores the plain language of the statute that defendant was convicted of violating. MCL 750.110; MSA 28.305 proscribes, in pertinent part, breaking and entering "an office" *or* "other building" with larcenous intent. Accordingly, the mall and the mall manager's office inside the mall constituted separate "buildings" for purpose of § 750.110. One B & E conviction was based on defendant's breaking and entering of the mall. Thus, this first B & E was complete when defendant entered the mall with larcenous intent. *People v Patterson*, 212 Mich App 393, 395; 538 NW2d 29 (1995). Any crime committed by defendant once inside the mall was a separate act. *People v Lugo*, 214 Mich App 699, 708; 542 NW2d 921 (1995). The second B & E conviction was based on defendant's breaking and entering of the mall manager's office after he had already entered the mall. Hence, the two convictions, based on two separate breaking and enterings of two separate buildings, do not constitute a double jeopardy violation even if there was only one overall larcenous intent underlying both B & E's. *Patterson, supra*.

Defendant also contends that he was denied a fair trial when the trial court declined to immediately replay a portion of the testimony of one witness that the jurors had asked to hear. Defendant failed to preserve this nonconstitutional issue below. *People v Grant*, 445 Mich 535, 548-549; 520 NW2d 123 (1994). In any event, no error was committed by the trial court in requesting the jury to deliberate further before the testimony would be replayed. See *People v Davis*, 216 Mich App 47, 56-57; 549 NW2d 1 (1996).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ William C. Whitbeck