STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 7, 2000
v	No. 212082 Ingham Circuit Court
CHRISTOPHER CHARLES LAVOY, Defendant-Appellant.	LC No. 97-072700 FH

Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by a jury of breaking and entering a building with the intent to commit larceny, MCL 750.110; MSA 28.305. The trial court, applying a fourth-offense habitual offender enhancement under MCL 769.12; MSA 28.1084, sentenced him to ten to twenty-five years in prison. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to support his conviction. In evaluating a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

The elements of breaking and entering a building with the intent to commit larceny are: "(1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein." *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). "Larceny is the taking and carrying away of the property of another, done with felonious intent and without the owner's consent." *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996).

Here, the evidence at trial showed the following: (1) a vending machine company located near a set of railroad tracks in Lansing was broken into and ransacked; (2) money and various items of personal property were missing from the business; (3) many of the missing items, as well as money in similar denominations to that missing from the business, were found in defendant's house; (4) defendant

was away from home on the night the break-in occurred; (5) prior to the incident, defendant asked to borrow a U-Haul truck from his sister-in-law; (6) the truck was taken from defendant's sister-in-law and was later found, abandoned, with items belonging to the vending machine company; (7) two footprints found at the scene of the break-in exactly matched a pair of shoes found in defendant's bedroom; (8) another footprint found at the scene was consistent with an additional pair of shoes found in defendant's bedroom; and (9) defendant told the police that he had broken into a vending machine company located near some railroad tracks in Lansing.

Viewing this evidence in the light most favorable to the prosecution, *Johnson*, *supra* at 722-723, a rational trier of fact could have found, beyond a reasonable doubt, that defendant broke into and entered the vending machine company with the intent to commit larceny. See *Toole, supra* at 658. Although the evidence of defendant's guilt was largely circumstantial, circumstantial evidence and accompanying reasonable inferences may constitute satisfactory proof of the elements of a crime. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Moreover, the police found the stolen property in defendant's house three days after the break-in, and "the possession of recently-stolen property permits an inference that the possessor committed the theft." *People v Miller*, 141 Mich App 637, 641; 367 NW2d 892 (1985). Finally, even though defendant denied telling the police that he committed a break-in at a vending machine company in Lansing, it is up to the jury, not this Court, to weigh credibility conflicts. See *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 478, amended on other grounds 441 Mich 1201 (1992). Accordingly, there was sufficient evidence to support defendant's conviction, and he is not entitled to relief on this issue.

Next, defendant argues that the trial court violated his right to call witnesses on his own behalf when the court refused to grant a continuance so that defendant could call Ohio police officer Alan Word for impeachment purposes. Defendant claimed that Word's testimony at the preliminary examination indicated that Word was unsure whether the break-in about which defendant spoke to the police occurred in Lansing. Defendant believed that Word would reiterate this testimony if called at trial and would thereby contradict the trial testimony of Officer Mark Clark, who testified, without hesitation, that the break-in about which defendant spoke occurred in Lansing.

We review a trial court's ruling on evidentiary matters, including a defendant's request to secure an out-of-state witness, for an abuse of discretion. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996); *People v McFall*, 224 Mich App 403, 409; 569 NW2d 828 (1997). An abuse of discretion exists where an unprejudiced person, considering the facts available to the trial court, could find no justification for the court's ruling. *Ullah, supra* at 673.

We find no abuse of discretion in the trial court's conclusion that Word's testimony would have been cumulative and was therefore unnecessary under MRE 403. During the preliminary examination, Word testified that he "believe[d]" the vending machine company that defendant admitting breaking into was located in Lansing, and he gave no indication that the break-in occurred in a different city. Contrary to defendant's argument, Word's mere use of the word "believe" was insufficient to imply that the break-in occurred in a city other than Lansing. Thus, Word's statement, if introduced at trial, would not have contradicted Clark's testimony that the break-in occurred in Lansing. Instead, the statement would merely have reiterated Clark's testimony, and the trial court therefore did not abuse its discretion

by refusing defendant's request to obtain Word's testimony. See MRE 403. See also *United States v Valenzuela-Bernal*, 458 US 858, 867; 102 S Ct 3440; 73 L Ed 2d 1193 (1982) (a defendant's right to call witnesses on his own behalf is not violated if he fails to demonstrate that the testimony of the desired witness would be material and favorable to his defense).

Affirmed.

/s/ Michael J. Talbot
/s/ Roman S. Gribbs
/s/ Patrick M. Meter