

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SIMON PETER MELTON,

Defendant-Appellant.

UNPUBLISHED

August 11, 2000

No. 214704

Wayne Circuit Court

Criminal Division

LC No. 98-000081

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of breaking and entering with intent to commit larceny, MCL 750.110; MSA 28.305, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in connection with a break-in at a market. Police officers who responded to the scene testified that defendant was inside the market, and that he jumped through a broken front window and ran from the scene. He was apprehended a short distance from the market. The market owner testified that while a window had been broken, no doors had been disturbed. He responded in the negative when asked if a person could gain entry to the store by any other means. The trial court precluded questions about previous break-ins at the store.

The decision to admit evidence is within the discretion of the trial court. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). Reversible error cannot be predicated on an evidentiary ruling unless a substantial right was affected by the ruling. MCL 769.26; MSA 28.1096; MRE 103(a); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993).

Defendant argues that the trial court denied him due process and the right to present a defense by precluding questions regarding possible points of exit from the store. We disagree. Although the

trial court precluded questions about previous break-ins, evidence regarding other possible points of entry/exit was introduced. On cross-examination, complainant testified that other than going through the doors, a person could enter the market through the windows and possibly through the roof. He responded in the negative when asked if a person could enter by any other means, and denied that a person could gain entry by removing a piece of wood that covered an opening in a wall. The trial court did not abuse its discretion by precluding further questions on this topic, or regarding previous break-ins. Further questions would not have produced relevant evidence. MRE 401; *Crawford, supra*.

Police officers testified that defendant was in the store, and that he exited the store through the window and attempted to escape. The jury was entitled to accept this testimony. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The evidence was sufficient to support defendant's conviction of breaking and entering with intent to commit larceny. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot