

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MOSHEN AHMEDISMAIL ABDALIA,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 224301

Oakland Circuit Court

LC No. 99-164719-FH

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of larceny in a building, MCL 750.360, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to one year's probation. We affirm.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of larceny in a building are (1) the actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the goods or property must be the personal property of another, (5) the taking must be without the consent and against the will of the owner, and (6) the taking must occur within the confines of a building. *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998). Defendant challenges the sufficiency of the evidence regarding ownership of the property. He contends that because the victim accidentally left her wallet in defendant's restaurant, ownership transferred to the restaurant, yet the prosecutor failed to prove that the restaurant was the owner and that defendant intended to permanently deprive it of the wallet.

“Larceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has rightful possession and control of the property.” *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995). Thus the owner can be the actual owner or another person in rightful possession whose consent was required before the property could be taken. CJI2d 22.2; *People v Hatch*, 156 Mich App 265, 267-268; 401 NW2d 344 (1986). However, there is a distinction “between possession and mere custody of property in larceny cases.” *People v Jones*, 106 Mich App 429, 432; 308 NW2d 243 (1981). The victim testified that she owned the wallet. Although she left it behind, thus giving the restaurant temporary physical custody of the wallet, there was no evidence that she intended to give the restaurant a possessory interest in it or control over it. Accordingly, we find no merit to defendant’s contention that the victim lost or ceded her right to ownership of the property.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin