STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME KNIGHT,

Defendant-Appellant.

UNPUBLISHED
October 19, 2001

No. 228261
Wayne Circuit Court
LC No. 99-005687

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for breaking and entering a building with intent to commit larceny, MCL 750.110. Defendant was sentenced to a term of eighteen months to ten years' imprisonment. We affirm.

Defendant first claims that the prosecution failed to present sufficient evidence that he intended to commit a larceny when he broke into and entered the building. We disagree. We review claims of insufficient evidence in the light most favorable to the prosecution to determine whether there was sufficient evidence to allow a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998).

The offense of breaking and entering with intent to commit larceny requires proof that, "at the time of the breaking and entering, the defendant intended to commit a larceny therein." *Id*. Intent can be inferred from circumstantial evidence. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). Because it is difficult to prove a defendant's state of mind, minimal circumstantial evidence showing that the defendant intended to steal at the time of the breaking and entering is sufficient to prove intent. *Fetterley*, *supra* at 518, citing *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

The evidence established that the pastor and owner of Unity of Spirit Life Center (the Church) locked the front door prior to the break-in. The police testified that when they arrived the door was freshly damaged, left slightly ajar, and that the lock had been removed by someone prying on it. Moreover, there was a crowbar lying on the ground about a foot inside the door. During a search of the Church, the police officers found defendant inside the Church rifling

through desk drawers and papers in the dark. When the officer approached defendant, defendant hid behind the desk. Additionally, the incident occurred around 1:30 a.m.

As in *People v Wies*, 24 Mich App 294; 180 NW2d 123 (1970), where this Court found sufficient evidence to establish breaking and entering with intent to commit larceny, the Church was locked prior to the break-in, there was evidence of a break-in, defendant was found hiding inside, and the incident occurred early in the morning. Although the police officers were unable to find any items belonging to the Church in defendant's immediate possession, the fact that defendant was interrupted before he was able to actually steal does not mean there was insufficient evidence of intent to steal when he entered the Church. *Bowers, supra* at 298. When viewed in a light most favorable to the prosecution, we find this evidence sufficient to justify a rational trier of fact in finding, beyond a reasonable doubt, that defendant intended to commit a larceny when he broke into and entered the Church.

Defendant next claims that his constitutional right against self-incrimination was violated. We disagree. Because defendant failed to preserve this issue for our review by timely objecting at trial, our review is limited to plain error which affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The Fifth Amendment of the United States Constitution, as well as the Michigan Constitution, provides the accused with a right against self-incrimination. US Const, Am V; Const 1963, art 1, §17. Where a defendant's silence is attributed to the invocation of his right to remain silent or in reliance on the *Miranda*[1] warnings, his silence cannot later be used against him at trial. *People v Dennis*, 464 Mich 567, 573; 628 NW2d 502 (2001); *People v McReavy*, 436 Mich 197, 201; 462 NW2d 1 (1990). However, when a defendant voluntarily speaks after receiving the *Miranda* warnings the use of his statements is permissible. *McReavy, supra* at 217-218, citing *Anderson, Warden v Charles*, 447 US 404, 100 S Ct 2180, 65 L Ed 2d 222 (1980).

Defendant argues that the following question, offered by the prosecution during the direct examination of the arresting officer, improperly revealed his silence upon arrest in violation of his constitutional right to remain silent:

Prosecution:	Did the defendant say anything when he was placed under arrest?
Officer:	Not that I can recall.

However, defendant failed to view the exchange between the officer and the prosecution in its entirety by omitting the questions that immediately followed the officer's response:

Prosecution:	Did you ask him whether he belonged in that location?
Officer:	Yes.

[1] In *Miranda*, the United States Supreme Court established the rule that the police must advise a suspect prior to custodial interrogation of his right to remain silent. *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Prosecution: Did he give you an answer?
Officer: He said no.

When the exchange is reviewed in its entirety, it is clear that defendant did not remain silent at all, but rather, he chose to speak to the officer upon arrest. Further, it is clear that the prosecution's question was not designed to elicit any meaning from defendant's silence. Rather, it is evident that the officer simply could not recall from the prosecution's initial question what defendant said to him when defendant was placed under arrest. Indeed, the prosecution did not reveal testimony regarding defendant's silence or refusal to speak, but rather, elicited testimony regarding a statement defendant made to the arresting officer. The prosecution's question was clearly attempting to elicit defendant's statement and not his silence. Moreover, defendant himself testified on direct examination that he made various statements to the arresting officers upon arrest. As evidenced by defendant's own admission of statements he made to the arresting officers, defendant could not reasonably believe that he had invoked his right to remain silent or relied on the *Miranda*[2] warnings.

The evidence established that defendant voluntarily spoke to police and never expressly refused to answer their questions. Additionally, there was no testimony that defendant invoked his right to remain silent or refused to speak upon arrest. Thus, we find that the brief, inadvertent reference to defendant's silence did not violate his constitutional right to remain silent because defendant voluntarily spoke with the police officers. We find no error in the prosecution's questioning of the arresting officer.

Defendant also argues that questions raised by the prosecution during cross-examination of defendant violated his right to remain silent. However, we find this argument without merit because the prosecution's questions did not address defendant's silence at all, but rather, addressed statements defendant himself admitted making to the arresting officers during defendant's direct examination. Nonetheless, the prosecution's questions failed to influence the trial's outcome because the court, as the trier of fact, did not rely on defendant's silence in reaching its decision. We find no error in the prosecution's questioning of defendant.

Affirmed.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ Donald S. Owens

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[2] The trial record does not indicate whether defendant was advised of his *Miranda* rights at the time of his arrest. If defendant's silence occurred post-*Miranda*, the issue is constitutional. *People v Alexander*, 188 Mich App 96, 104; 469 NW2d 10 (1991). If defendant's silence occurred pre-*Miranda*, the issue is evidentiary. *Id*. Neither defendant nor the prosecution raises an evidentiary argument on appeal and no objections were raised at trial.