STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 7, 2002
v	No. 232251 Wayne Circuit Court
RAYMONE KNOX, Defendant-Appellant.	LC No. 00-003986

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

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3), for which he was sentenced to two to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

I. Basic Facts and Procedural History

On March 13, 2000, Cheryl Fleming's home was broken into and her personal affects thrown about. Upon further investigation, authorities were able to ascertain that such things as money and jewelry were missing from the complainant's home. Testimony adduced at trial established that the perpetrator(s) removed an outside screen from the complainant's bedroom window, broke the window and entered the home.

The complainant's father, Tom Fleming, resides approximately four houses south of the complainant on the same side of the street and defendant resides approximately two houses south of Fleming also on the same side of the street. In the back of these homes, there is an alley way.

At trial, Fleming testified that he was outside in his backyard when the sound of dogs barking caused him to turn and look in the direction of his daughter's residence. Upon doing so, Fleming indicated that he observed two men near the complainant's home. One of the men was standing at the corner of the house near the window and one came around the corner of the home whereupon both proceeded to run across the complainant's backyard, jump the fence, and run in a southerly direction right past Fleming and into defendant's home. Fleming testified that he has known defendant from the neighborhood and for the better part of defendant's life and positively identified defendant as one of the perpetrators. However, Fleming was not familiar with the other individual that he observed fleeing across the complainant's back yard.

After he observed defendant and the other unidentified male enter defendant's home, Fleming proceeded to the back yard of the complainant's residence whereupon he discovered the broken bedroom window. Additionally, Fleming testified that when he peered into the home, he noted that the bedroom was in complete disarray. At that time, Fleming left the premises and his wife contacted the police.

On the day that the incident took place, there was a light dusting of snow on the ground. In some areas there were patches of snow and in other areas there were patches where the grass wore through revealing the soft earth. When the police arrived, they observed a set of footprints in the snow directly underneath the broken window. One of the officers followed the trail from underneath the window, southwest across the yard, over the fence and into the alley, southerly through the alley and to the open gate leading to defendant's residence. The prosecutor did not introduce any physical evidence placing defendant inside of the complainant's home.

At the end of the prosecution's case in chief, defendant made a motion for a directed verdict arguing that the prosecution failed to put forth sufficient evidence to create a question for the jury. Based on the circumstantial evidence presented by the prosecution, the trial court disagreed and thus denied defendant's motion. The jury found defendant guilty of home invasion second degree as either the principle or an aider and abettor. Defendant appeals the conviction.

II. Directed Verdict

First, defendant argues that the trial court erred by denying his motion for a directed verdict of acquittal citing the prosecution's failure to come forth with any physical evidence to place defendant inside of the complainant's home or otherwise participating in a home invasion. We disagree.

We review de novo a trial court's decision relative to a motion for directed verdict. *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999). When presented with a motion for directed verdict, the trial court must consider all of the evidence presented by the prosecution, in a light most favorable to the prosecution up to the time that the defendant makes the motion, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). That the trial court finds certain witness incredible is inapposite. A trial court may not determine credibility issues when passing upon a motion for a directed verdict. *Id*. We apply the same standard when reviewing a trial court's decision on a motion for a directed verdict. *Id*.

Incumbent therefore upon this Court, is to take the evidence, presented in a light most favorable to the prosecution, and determine whether there was any evidence upon which a rational trier of fact could predicate a finding of guilty of second-degree home invasion.

The elements comprising home invasion include either (1) the breaking and entering a dwelling with the intent to commit a felony or larceny therein or (2) entering a dwelling without permission with the intent to commit a felony or larceny therein. *People v Warren*, 228 Mich App 336, 347-348; 578 NW2d 692 (1998), aff'd in part rev'd in part on other grounds in *People v Warren*, 462 Mich 415; 615 NW2d 691 (2000). In this case, the prosecution also advanced an

aiding and abetting theory. In Michigan, there is no distinction between principles and accessories for purposes of establishing culpability. *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). Thus, one who "counsels, aids, or abets in the commission of an offense may be tried and convicted as if he had directly committed the offense." *People v Smielewski*, 235 Mich App 196, 203; 596 NW2d 636 (1999). For purposes of a motion for a directed verdict, circumstantial evidence and reasonable inference drawn therefrom will suffice to establish the essential elements of a crime. *Schultz, supra* at 702.

In the case at bar, the prosecution put forth sufficient circumstantial evidence that considered in its totality was sufficient to find defendant guilty either as a principal or aider and abettor beyond a reasonable doubt. First, Fleming, whose view was entirely unobstructed, observed two individuals run from the back of complainant's house from the area of the bedroom window, travel across the back yard, jump the fence into the alley, continue to run south and into defendant's residence. Almost immediately thereafter, Fleming discovered that the complainant's house was broken into. Second, evidence presented indicated that the complainant's home had an alarm system and that the only window not connected to the system was the bedroom window; the point of entry into the complainant's home. A reasonable inference from this evidence is that the perpetrator or perpetrators were familiar with her home; perhaps someone residing in the very same neighborhood Third, the items taken from the complainant's home were small items of value such as jewelry and money which the perpetrator(s) could remove quickly and easily carry on their person. Fourth, the number of items moved in the complainant's home suggested that the perpetrator(s) had time to look and assemble various items for removal. Fifth, the evidence further suggested that the selection and consolidation process, i.e. searching the various rooms, removing items, unplugging the television and the VCR, stacking compact discs and videotapes would have taken more than a few minutes to complete. A rational inference is that the perpertrator(s) entered shortly after the complainant left for work further reinforcing the possibility that the perpetrator(s) were from the same neighborhood and thus familiar with the time that the complainant left her home on a daily basis. Finally, there were a set of footprints underneath the bedroom window in the snow that one of the police officers at the scene tracked southwest across the complainants back yard, into and through the alley and ending at the open gate leading to defendant's residence.

That the prosecutor did not present any direct evidence placing defendant in the complainant's home is of no great moment. Upon review of the record, we find that the prosecutor came forth with sufficient circumstantial evidence upon which a rational trier of fact could have found that defendant either broke into a dwelling or aided and abetted another in perpetrating that offense beyond a reasonable doubt. Accordingly, we find that the trial court did not err by denying defendant's motion for a directed verdict.

II. Sufficiency of the Evidence

Defendant also contends that the evidence presented was insufficient to convict defendant of second-degree home invasion. We disagree.

This Court reviews de novo claims pertaining to the sufficiency of the evidence. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). In a criminal case, the test for determining the sufficiency of evidence is "whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable

doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). For the identical reasons set forth above, we find that the prosecutor presented sufficient circumstantial evidence on all essential elements of the charged offense to warrant a reasonable juror in finding defendant guilty beyond a reasonable doubt.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly