

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN DEAN CROSBY RICHARDS,

Defendant-Appellant.

UNPUBLISHED

June 21, 2002

No. 230908

Shiawassee Circuit Court

LC No. 00-004791-FH

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

PER CURIAM.

Defendant was convicted by a jury of one count of second-degree home invasion, MCL 750.110a, and one count of conspiracy to commit second-degree home invasion, MCL 750.157a and MCL 750.110a. He was sentenced 36 months' probation, with the first year to be served in the county jail. He appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence supporting his convictions. Specifically, defendant contends that he did not know that he was taking property that belonged to a third party. Instead, defendant thought that he was assisting Richard Barton in moving Barton's possessions. Thus, defendant contends that he lacked the requisite larcenous intent to support his convictions.

A challenge to the sufficiency of the evidence requires us to determine "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, 399-400; 614 NW2d 78 (2000). Our Supreme Court has ruled that we are "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id.* at 400.

Defendant testified that Barton asked for help moving the contents of a house belonging to Barton's grandfather, which would suggest that he did not have the requisite larcenous intent. However, Barton testified that he was "sure" that defendant knew that the house did not belong to him. Barton further testified that he never told defendant that they had permission to be in the house or remove property. Thus, there is contradictory evidence regarding defendant's larcenous intent. It is well established that "the determination of witness credibility is the function of the jury and not of the reviewing court." *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997); see also *Nowack*, *supra* at 400. Viewing this evidence and all reasonable inferences in a light most favorable to the prosecution, a rational trier of fact could find, beyond a reasonable

doubt, that defendant had the requisite larcenous intent. Consequently, we conclude that there was sufficient evidence supporting defendant's convictions.

Defendant also argues that the trial court erred by allowing a defense witness to be impeached with evidence of a nine-year old conviction for larceny from a motor vehicle. A trial court's decision to allow impeachment by evidence of a prior conviction will not be reversed absent an abuse of discretion. *People v Bartlett*, 197 Mich App 15, 19; 494 NW2d 776 (1992). An abuse of discretion will be found only where "an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

Defendant argues that the prior conviction was not relevant to the witness' veracity because it was nine years old. Admission of a prior conviction for impeachment purposes is only precluded if more than ten years have elapsed since the date of the conviction or release from confinement for that conviction, whichever is later. MRE 609(c). The trial court considered the age of the conviction, but also noted that it contained an element of theft and was probative of the witness's veracity. These findings were necessary because the crime involved elements of theft, rather than elements of dishonesty. MRE 609(a). In light of these findings, and the record, we are not persuaded that the court abused its discretion by allowing the witness to be impeached with the prior conviction. MRE 609(a)(2); *Bartlett*, *supra* at 19.

Affirmed.

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