

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CATHY LYNN CARY,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 275206

Oakland Circuit Court

LC No. 06-209337-FH

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction for larceny in a building, MCL 750.360. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 1 ½ to 15 years' imprisonment for the larceny in a building conviction. We affirm.

Defendant argues on appeal that there was insufficient evidence to convict her of larceny in a building. We disagree. This Court reviews the record de novo when presented with a claim of insufficient evidence. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Considering the evidence in a light most favorable to the prosecution, this Court determines whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). This Court will not interfere with the fact-finder's role in weighing the evidence and judging the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is for the trier of fact to decide what inferences can be fairly drawn from the evidence and to judge the weight it accords to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Conflicts in the evidence are resolved in the prosecution's favor. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

Due process requires the prosecution to introduce evidence sufficient for a trier of fact to conclude that a criminal defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). "The elements of larceny in a building are: 1) an actual or constructive taking, 2) an asportation, 3) with a felonious intent, 4) of someone else's property, 5) without that person's consent, 6) in a building." *People v Cavanaugh*, 127 Mich App 632, 636; 339 NW2d 509 (1983).

Reasonable inferences arising from circumstantial evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130

(1999). Moreover, the trier of fact may infer the element of intent from all the facts and circumstances. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). Minimal circumstantial evidence is sufficient to prove intent because of the difficulty of proving an actor's state of mind. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

Here, the victim, Lorraine Geryan, was shopping at a Farmer Jack grocery store. At the time she first arrived at the aisle where the incident occurred, only one other shopper (not defendant) was present on the far side of the aisle. Defendant appeared and engaged her in conversation, and in doing so, positioned herself near Geryan and her purse. Defendant had neither a shopping basket nor a cart, and her hands were empty. When Geryan stood upright after bending down to reach a jar of fish on a lower shelf, defendant and Geryan's purse had disappeared.

Based upon this evidence, a rational trier of fact could conclude that defendant removed Geryan's purse from the shopping cart and carried it from the building without Geryan's consent. *Cavanaugh, supra* at 636. Also, the jury could properly infer from the evidence that defendant possessed the requisite felonious intent. *McGhee, supra* at 623.

Moreover, in Michigan, the positive identification of a defendant by a single eyewitness may be sufficient evidence to support a criminal conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). There is evidence in this case that Geryan positively identified defendant at the police station. At trial, Geryan testified that she "instantly" identified defendant's photograph out of the array of six as the person she remembered from the incident at Farmer Jack. Detective Flatt confirmed that Geryan made the selection without hesitation.

At trial, Geryan testified that she recognized defendant as, "The lady that took my purse, probably." Viewing this evidence in a light most favorable to the prosecution, Geryan was not using the word "probably" in an equivocal manner; rather, Geryan unequivocally identified defendant at trial as the person who attempted to converse with her at Farmer Jack. Because, resolving the conflict in the evidence in favor of the prosecution, eyewitness Geryan positively identified defendant at both the photographic showup and at trial, there was sufficient evidence to sustain defendant's conviction for larceny in a building. *Davis, supra* at 700.

Accordingly, viewing the evidence in a light most favorable to the prosecution, resolving all conflicts in the evidence in the prosecution's favor, and deferring to the jury's role as fact-finder, there was sufficient evidence with respect to each element necessary to convict defendant of larceny in a building.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski