

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARLAN HERBERT HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED

April 23, 2009

No. 283384

Allegan Circuit Court

LC No. 07-015338-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant Harlan Holloway appeals as of right his jury trial convictions for second-degree home invasion, MCL 750.110a(3), and breaking and entering a motor vehicle, MCL 750.356a(2)(a). Because we conclude that there were no errors warranting relief, we affirm.

Defendant argues that the evidence was insufficient to support his conviction for second-degree home invasion because he did not commit the “breaking,” and the police failed to properly link him to the crime of second-degree home invasion. We review the sufficiency of the evidence by viewing the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could find that all of the elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985). “And circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

MCL 750.110a(3) defines second-degree home invasion as follows:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

According to the statute, the crime requires *either* a “breaking” *or* an “entering without permission.” MCL 750.110a(3). Thus, we dismiss defendant’s claim that he could not be

convicted if he entered the home after others broke into it. Moreover, any amount of force used, however slight, to enter the building or an interior portion of the building constitutes a “breaking.” *People v Clark*, 88 Mich App 88, 91-92; 276 NW2d 527 (1979). Here, the evidence clearly supported that defendant committed a “breaking.” Defendant admitted to Detective O’Reilly, at the scene and in an interview, that he used a cement gnome to break the door window in order to enter the house. Even if defendant’s initial confession, in which he stated that his two friends committed the breaking and he only entered the residence after they left, is credited, the evidence is still sufficient to support the conviction because defendant did not have permission to enter the home. The victims knew they would be away and arranged for certain individuals such as their in-laws and members of the Allegan County Sheriff’s Department to check on their pets and property on a regular basis. Defendant was not one of the individuals the victims authorized to enter their home. Defendant was a neighbor. Defendant testified that he had never been inside the victims’ residence before and had only been inside their garage once before the night at issue. From this evidence, a rational jury could infer that defendant did not have permission to enter the residence.

Although at trial defendant denied all involvement in the incident and testified that his earlier confessions to the police were untrue, it is the jury’s responsibility to determine the weight and credibility of the evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). “Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony.” *Id.* at 515, quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). This Court will not interfere in that role.

Further, we note that circumstantial evidence corroborated defendant’s confession to Detective O’Reilly. Defendant’s cane was found in the victims’ living room. The keys to the victims’ Durango were found in defendant’s pocket. Tire marks were observed leading from the victims’ property to defendant’s backyard where the Durango was found. Numerous items of the victims’ property were found inside the vehicle. Blood found inside the Durango was consistent with defendant’s arm injury, which Detective O’Reilly testified was partially open and bleeding at the time of defendant’s arrest, and defendant’s red flannel shirt was found inside the vehicle.

Viewing the evidence in the light most favorable to the prosecution, a rational jury could conclude that the evidence proved beyond a reasonable doubt that defendant committed second-degree home invasion.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly