

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALCOLM STOCKARD,

Defendant-Appellant.

UNPUBLISHED

September 21, 2010

No. 292549

Jackson Circuit Court

LC No. 08-004439-FH

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of breaking and entering a building with intent to commit larceny, MCL 750.110. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On May 19, 2008, at approximately 1:16 p.m., three officers responded to 209 Damon Street in Jackson to investigate an anonymous call regarding individuals who were reportedly removing copper from the home. Officer Nat Gross arrived first and saw defendant's brother, Bradford Stockard, who had cobwebs and insulation-like particles on his clothes and yellow gloves in his pocket. After a short conversation, Bradford ran away.

Officers Craig Edmondson and Timothy Black arrived shortly after Officer Gross, and approached the front door. They saw Ardell Young coming down from the front porch. Young opened the closed porch door; the interior door to the home was open. Officers Edmondson and Black arrested Young.

Officer Gross approached the east side door and heard the sound of plastic hitting the ground from inside the door. Officer Gross announced his presence, but did not open the door. Officer Black watched the east door and Officer Edmondson watched the front door while Officer Gross did a sweep around the house.

Officer Black testified that the east door was slightly open and he saw defendant inside through windows alongside the door. The officers arrested defendant, who was covered with cobwebs, dust, dirt, and insulation-like particles. At that time, defendant told the officers that he

had only just come over from the picnic table across the street to see his brother. In a car located across the street, the officers found a white plastic bucket containing frozen fish, breading mix, and beer. However, Officer Edmondson did not see defendant cross the street while he stood at the front door and the video from Officer Gross's vehicle did not show defendant crossing the street.

When the officers entered the home, they saw a white bucket containing tools consistent with copper wire and pipe removal. Insulation, fixtures, wires, pipe, ceiling tiles, and drywall had already been removed from the home, but some copper pipe and wiring was inside a box on the floor. The house contained cobwebs, dust, and dirt.

Nakiya Weatherspoon-Parker owned 209 Damon Street as a rental property. After the last tenant vacated in October 2007, Weatherspoon-Parker secured the property and changed the locks. When she last checked the property in April 2008, she did not see signs of entry or evidence that anything had been removed. She testified that she had not given anyone permission to enter the home or remove anything.

Young pleaded guilty to breaking and entering a building with intent to commit larceny and Bradford pleaded guilty to attempted breaking and entering a building with intent to commit larceny, respectively. Young testified that he had been in the home, without permission, periodically for three or four weeks, and had removed copper pipe and wire from the garage, kitchen, bathroom and basement. Bradford provided tools for the project. Young and Bradford claimed that they acted alone and that defendant did not know about the plan to steal copper. Furthermore, Bradford claimed that defendant could not have operated tools because his hand was injured.

On appeal, defendant argues that the prosecution failed to present sufficient evidence to support his conviction for breaking and entering a building with intent to commit larceny. We disagree. We review a sufficiency of the evidence issue de novo and must view the evidence in the light most favorable to the prosecution to determine whether the evidence presented by the prosecution was sufficient for a rational trier of fact to find that the elements of the criminal offense were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). The issue of witness credibility is for the jury to decide. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

The elements of breaking and entering with intent to commit larceny are “(1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein.” *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998); MCL 750.110. “[A]ny amount of force used to open a door or window to enter the building, no matter how slight, is sufficient to constitute a breaking.” *Id.* at 659. Additionally, “because it can be difficult to prove a defendant’s . . . intent, minimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751

NW2d 57 (2008). Should evidence conflict, the conflict “must be resolved in favor of the prosecution.” *Id.* at 619.

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence that defendant broke into and entered the home at 209 Damon Street with the intent to commit a larceny. The home was secure in April 2008 when Weatherspoon-Parker checked it. However, following the May 19, 2008 arrests, Weatherspoon-Parker observed damage to the frame and screen of the east door. Even though defendant did not have permission to enter the home, Officer Black saw the east door was slightly open and he also saw defendant inside. Records from OmniSource, a scrap metal recycler, demonstrate a consistent history of scrap metal returns by defendant, Bradford, and Young, including a return by Young on May 19, 2008. At the time of his arrest, defendant possessed yellow work gloves and was covered in particles that were consistent with particles found in the home where pipe had been removed. Even though the record demonstrates that defendant’s hand was injured, Bradford testified that defendant helped him fix a car, suggesting that defendant was physically able to help remove copper from 209 Damon Street. In light of this evidence, defendant’s challenge to his conviction fails.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly