

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 19, 2012

v

GARTH MARCUS WILLIAMS,
Defendant-Appellant.

No. 305091
Jackson Circuit Court
LC No. 10-006346-FH

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

A jury convicted defendant Garth Marcus Williams of attempted breaking and entering a building with the intent to commit a larceny inside in violation of MCL 750.110.¹ The prosecution presented sufficient evidence to prove defendant's guilt beyond a reasonable doubt. We therefore affirm.

Defendant's sole argument on appeal is that the prosecution failed to present evidence that he intended to commit a larceny inside the subject building. When examining a sufficiency challenge, we review the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the charged offense were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Circumstantial evidence, and the reasonable inferences drawn from it, can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is the jury's sole province to weigh the evidence and adjudge witness credibility and we may not second guess those considerations. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

To convict a defendant of breaking and entering a building with the intent to commit a larceny inside, the prosecution must prove that the defendant broke into a building, entered the building, and, at that time, intended to commit larceny. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). However, a defendant need not actually enter a building to be convicted of attempted breaking and entering. *People v Combs*, 69 Mich App 711, 714; 245

¹ The jury acquitted defendant of one count of completed breaking and entering.

NW2d 338 (1976). The elements of an “attempt” are “(1) an attempt to commit an offense prohibited by law, and (2) an act towards the commission of the intended offense . . . [that] goes beyond mere preparation.” *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). Intent to commit larceny “may be reasonably inferred from the nature, time, and place of [the defendant’s] acts before and during the attempted breaking and entering,” and may be established through minimal circumstantial evidence. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008); *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970). Mere proof of attempted breaking and entering does not alone presumptively establish the intent to commit a larceny. *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985).

The prosecution presented evidence that a resident summoned police after hearing a “forceful noise” at a neighboring vacant home. Jackson police officer Michael Galbreath arrived at the scene and the neighbor informed him that the suspect headed east on West High Street and turned down Maple. At around 3:00 a.m., Galbreath searched the area and found defendant walking along the street, carrying a copper pipe. The officer found a pair of tin snips, a pipe-cutting wrench, and a flashlight in defendant’s pockets. The officer testified that defendant’s conduct was suspicious because there is a high incidence of copper theft in the Jackson area. During the subsequent search of the vacant home, Galbreath noticed only one set of footprints in the snow surrounding the area. Galbreath opined that the footprints matched the tread of defendant’s shoes. The officer also noted that a board used to seal a basement window of the vacant house had been broken and removed. Galbreath believed that the breaking had recently occurred given that no snow covered the boards and no debris had been blown away by the winter wind.

Defendant claimed that he was carrying tools because he had just left a relative’s home where he had completed a plumbing project. He asserted that he was carrying a copper pipe for protection. At the scene of his arrest, defendant told Officer Galbreath that he was heading home and that the crime scene was along his direct route. Defendant later admitted that he was arrested far from his necessary route home and explained that he was taking a long walk.

The jury could certainly determine from this evidence that defendant was the individual who broke the board covering the vacant home’s basement window and at least attempted to enter the building. Defendant was discovered walking near the vacant home in the middle of the night openly carrying a copper pipe and tools used to steal copper pipes and wiring. The jury clearly discounted defendant’s explanation on the stand and we may not interfere with that judgment.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering