

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RIYADH M. SHAYA,

Defendant-Appellant.

UNPUBLISHED

November 22, 1996

No. 185062

LC Nos. 94-136454

94-136455

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of malicious destruction of personal property over \$100, MCL 750.377a; MSA 28.609(1), and habitual offender, second offense, MCL 769.10; MSA 28.1082. Defendant was sentenced to two years' probation with the first year to be served in Oakland County Jail. Defendant now appeals as of right. We affirm.

On appeal, defendant argues that the prosecution failed to prove the fair market value of the destroyed property exceeded \$100. In reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court will consider the evidence presented in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

While there are no malicious destruction of property cases which set forth how to determine the value of the destroyed property, the crimes of larceny and receiving stolen property, which also make the distinction between a felony and a misdemeanor based on the value of the item stolen, offer guidance. The value of the stolen item has been determined to be the fair market value. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). Generally, value is determined by reference to the time and place of the offense, and is interpreted as the price that the item would bring on an open market between a willing buyer and seller. *Id.* The value of an item is to be determined by

* Circuit judge, sitting on the Court of Appeals by assignment.

the trier of fact, after considering all the testimony that has been presented in the case and applying its judgment to that testimony. *People v Toodle*, 155 Mich App 539, 553; 400 NW2d 670 (1986).

Specifically, defendant contends that it was inappropriate to use the replacement cost to establish fair market value. Defendant claims that his conviction should be reduced to the misdemeanor of malicious destruction of property under \$100. Viewed in a light most favorable to the prosecution, we find that there was sufficient evidence for the trial court to determine that the fair market value of the destroyed property exceeded \$100. Charles Pappas testified that his tires were slashed on a number of occasions over a three-month period prior to observing defendant slash the tires on November 24, 1994 and December 4, 1994. The cuts in the tires were three to four inches in depth, which precluded patching the tires, and Pappas replaced the tires each time they were slashed. He testified that he had put on four new tires a week prior to the November 24 incident. Pappas further testified that he had purchased new tires again to replace the slashed tires following the November 24 and December 4 incidents. The replacement cost of the tires following the November 24 incident was \$108 per tire and the replacement cost following the December 4 incident was \$115 per tire. Thus, there was sufficient evidence to conclude that the tires that were destroyed on November 24 and December 4 were new tires, and the use of replacement cost to establish the fair market value of the tires was appropriate.

Affirmed.

/s/ Joel P. Hoekstra

/s/ David H. Sawyer

/s/ Timothy P. Pickard