

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY ALLEN WHITE,

Defendant-Appellant.

UNPUBLISHED

May 19, 1998

No. 193860

Recorder's Court

LC No. 95-013250

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1). Defendant was sentenced to four months in jail. We affirm.

Defendant first argues that the trial court erred in admitting Ronald Umbenhowar's prior inconsistent statement as substantive evidence of guilt. We agree, but conclude that the error was harmless and does not warrant reversal. MCL 769.26; MSA 28.1096.

At trial, Umbenhowar testified that he never saw defendant with a CB radio. However, Umbenhowar told Officer Sean Pacheco that defendant had called him and asked for a ride home from the Classic Rock Bar; when Umbenhowar arrived, defendant was getting out of the victim's pickup truck with a CB radio in his hand. This prior inconsistent statement was admissible for impeachment purposes only, and not as substantive evidence of guilt. *People v Jenkins*, 450 Mich 249, 259-262; 537 NW2d 828 (1995). While the court erred in admitting the statement as substantive evidence of defendant's guilt, Umbenhowar's statement was not the only evidence introduced at trial, and, based on the trial court's findings of fact, it is clear that the court found other properly admitted testimony to be persuasive of defendant's guilt. See *People v Holliday*, 44 Mich App 210, 213; 205 NW2d 93 (1972). Under these circumstances, we conclude that any error in the admission of Umbenhowar's statement was harmless.

Defendant's next argument on appeal is that there was insufficient evidence to support his conviction. We disagree. In reviewing a sufficiency of the evidence issue, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact

could find the elements of the crime to have been proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). The elements of larceny from a motor vehicle are (1) that the defendant entered or broke into a vehicle, (2) with the intent of stealing or unlawfully removing property, and (3) that the defendant intended to remove property valued at \$5 or more. *People v Nichols*, 69 Mich App 357, 359; 244 NW2d 335 (1976). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *Jolly, supra*.

We conclude that there was sufficient evidence presented at trial to convict defendant of larceny from a motor vehicle. The victim, Henly Bussell, testified that his Ford Ranger pickup truck had been broken into while parked at the Classic Rock Bar, and that a CB radio worth approximately \$50 was taken. Officer Pacheco testified that, while on routine patrol in a fully marked patrol car, he saw defendant in Classic Rock's parking lot running from a pickup truck to a van on the other side of the parking lot. Pacheco did not see anyone else in the parking lot. When Pacheco approached the van, two occupants were seated inside, defendant and the van's driver, Umbenhowar. Found within the van was Bussell's CB radio, laying at defendant's feet, as well as a bag of tools located at defendant's immediate left on the van's front console. This evidence, taken in a light most favorable to the prosecution, was sufficient for a rational trier of fact to reasonably conclude that defendant was guilty of larceny from a motor vehicle.

Affirmed.

/s/ Janet T. Neff

/s/ Peter D. O'Connell

/s/ Robert P. Young, Jr.