

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERTO L. WYANNA,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No. 202906

Recorder's Court

LC No. 96-000894

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of entering without breaking, MCL 750.111; MSA 28.306, and subsequently sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to a term of one to six years in prison. Defendant appeals as of right and we affirm.

Defendant's sole argument on appeal is that the trial court's findings were clearly erroneous, contending that there was no evidence of his entry into the building. In a waiver trial, the trial court is required to "find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 6.403. A trial court's findings of fact will not be disturbed by the appellate court unless they are clearly erroneous. MCR 2.613(C); *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

The elements of entering without breaking with intent to commit larceny are: (1) entering without breaking, (2) a building for public or private use, (3) with intent to commit larceny. *People v Jackson*, 71 Mich App 487, 490; 247 NW2d 382 (1976). This Court held in *People v Gillman*, 66 Mich App 419, 429-30; 239 NW2d 396 (1976), that, "where an entering is a necessary element of the offense, it is sufficient if any part of defendant's body is introduced within the house."

Review of the record reveals that circumstantial evidence of entry by defendant was overwhelming. Police officers received a report of a breaking and entering of a business. The report was triggered by the company's motion beam security system. Within ten minutes, the officers arrived on the scene and observed defendant walking away from a damaged window. Defendant was carrying

three aluminum bars stamped with the company name. There were no other bars in the area near the window. Startled by the police, defendant slammed the door of a waiting vehicle, instructed the driver to flee, and dropped the three bars. Later examination of the suspect vehicle revealed the presence of twenty iron bricks in the back seat.

Reasonable inferences from the facts indicate defendant entered the business and removed manufactured bars, setting off the motion alarm. Given the above facts, we cannot say that the trial court's findings were clearly erroneous. The trial court properly convicted defendant of entering without breaking because there was sufficient evidence that defendant entered the building.

Affirmed.

/s/ Kathleen Jansen

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie