

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KASEY DANCY,

Defendant-Appellant.

UNPUBLISHED

July 19, 2002

No. 230518

Wayne Circuit Court

LC No. 00-002762

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

PER CURIAM.

Defendant appeals as of right his bench trial conviction of one count of larceny in a building, MCL 750.360. Defendant was sentenced as an habitual offender, MCL 769.12, to 2 to 8 years' imprisonment. We affirm.

Defendant first argues the evidence was insufficient to convict him. Specifically, he argues the witness testimony and evidence was conflicting. In reviewing the sufficiency of the evidence in a bench trial, this Court must review the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

In criminal cases, due process requires the prosecutor to produce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Circumstantial evidence and reasonable inferences that arise there from can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence are to be resolved in favor of the prosecution. *Harmon*, *supra* at 524; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of larceny in a building consist of: (1) an actual or constructive taking of goods or property; (2) a carrying away or asportation; (3) the carrying away must be with a felonious intent; (4) the goods or property must be the personal property of another; (5) the taking must be without the consent and against the will of the owner; and (6) the taking must

occur within the confines of the building. *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).

Defendant first alleges many inconsistencies between the testimonies of the eyewitnesses. Although a review of the transcript reveals that the eyewitness testimony may have diverged slightly, any conflicts in the testimony must be resolved in favor of the prosecution. Defendant also claims that cellular phone records indicate that he called complainant's house at the same time he was committing the larceny at the house. Thus, because it was impossible for him to have called the house at the same time he was committing the larceny, the evidence was insufficient to convict him. This argument has no merit. Although the evidence is somewhat conflicting regarding who had possession of defendant's cellular phone at the time the larceny was committed, it is for the trier of fact to resolve any credibility issues and all conflicts on appeal are to be resolved in favor of the prosecution. Further, even if defendant did have possession of the phone at the time he was committing the larceny, it would not have been impossible for him to have called the house at the same time he was committing the larceny; in fact, it is conceivable that he would have done so to cover his own tracks.

The evidence established that defendant was driving a blue Ford Tempo on the morning of the incident and had possession of a key to complainant's house. The car was seen by an eyewitness at the house with two individuals taking items out of the house and putting them into the car. Another eyewitness identified defendant as the driver of the car and observed items in the back seat of the car. There was no evidence that defendant had permission to take any of the missing items from the house. In viewing the evidence in the light most favorable to the prosecution, it was sufficient to convict defendant.

Defendant next argues he should be granted a new trial because the verdict was against the great weight of the evidence. Although defendant did not file a motion for new trial below, this issue may still be considered if the failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). This Court reviews a claim that the verdict is against the great weight of the evidence to determine whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24; 592 NW2d 75 (1998).

In determining whether the verdict is against the great weight of the evidence, this Court must review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds in *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). The credibility of the witnesses is an issue for the trial judge when sitting without a jury. *Id.* at 642-643. Conflicting testimony and questions regarding the credibility of witnesses are not sufficient grounds for granting a new trial. *Id.* at 643.

In arguing that the verdict was against the great weight of the evidence, defendant takes issue with the testimony of many of the witnesses, including most specifically the complainant's daughter. Defendant argues that the inconsistencies in the testimony raised serious doubt about the credibility of the testimony and the integrity of the verdict. In rendering its verdict, the trial court made specific findings regarding credibility, specifically the testimony of complainant's

daughter. Because conflicting testimony and questions regarding the credibility of witnesses are not sufficient grounds for granting a new trial, defendant cannot prevail on this issue.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder