STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 31, 2008
v	No. 273903 Kalamazoo Circuit Court
ANTHONY OSION OZOMARO, a/k/a AMP OZOMARO, Defendant-Appellant.	LC No. 05-002435-FH

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

After a jury trial, the jury convicted defendant of first-degree home invasion, MCL 750.110a(2), and resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of seven to forty years' imprisonment for the home invasion conviction, and one to four years' imprisonment for the resisting or obstructing conviction. Defendant appeals as of right. We affirm.

The victim testified that around Christmas 2005, he owed defendant about $100 for cocaine defendant had given him. On December 23, 2005, defendant visited the victim's residence in search of repayment. The victim recalled that he offered to give defendant a large fossil worth approximately $130, but that defendant refused and instead, with the victim's consent, took a cable box. According to a statement defendant gave the police and the victim's trial testimony, defendant left the victim a telephone message on the morning of December 24, 2005, which announced his intention to come "over to kick in [the victim's] door." The victim recounted, and defendant admitted in his custodial statement, that around noon on December 24, 2005, defendant kicked in the victim's back door, entered the residence with an accomplice, and left in possession of the victim's fossil, which defendant explained that he took because it "had sentimental value to" the victim. After defendant's arrest, he advised the police that the fossil "was in the chimney" of his residence, and shortly thereafter the police retrieved it from defendant's residence.

Defendant contends that insufficient evidence supported his first-degree home invasion conviction because the prosecutor failed to show that he committed an underlying larceny, as required by MCL 750.110a(2). Defendant specifically contests the adequacy of the proof that he intended to permanently deprive the victim of his property. Defendant also asserts that even assuming the prosecutor could establish his commission of a misdemeanor larceny, only a felony

larceny may support a first-degree home invasion conviction. We review de novo defendant's sufficiency of the evidence claims. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

"(W)hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).[1] "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Id*. at 400 (internal quotation omitted). "Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required." *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

To convict defendant of first-degree home invasion as charged in this case, the prosecution had to prove that he entered a dwelling without permission, that "while entering, present in, or exiting the dwelling" he "commit[ted] a felony, larceny, or assault," and that he did so while another person lawfully occupied the dwelling. MCL 750.110a(2)(b). The elements of a basic larceny include that the defendant (1) actually or constructively took another person's goods or personal property, (2) carried away or asported the property, (3) with a felonious intent, either an intent to steal or a "lack of purpose to return the property with reasonable promptitude and in substantially unimpaired condition," *People v Jones*, 98 Mich App 421, 425-426; 296 NW2d 268 (1980) (internal quotation omitted), and (4) without the owner's consent and against his will. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). The goods or property must have some value. *People v Mason*, 247 Mich App 64, 72; 634 NW2d 382 (2001) (noting that one of the elements for larceny by conversion is that the property has some value).

After reviewing the record, we find that it supports a rational jury's determination beyond a reasonable doubt that defendant intended to permanently deprive the victim of his personal property. The evidence introduced at trial revealed that without permission defendant took the victim's fossil, valued at $130, from his home, and that defendant took the fossil to his residence, where he hid it in the chimney. From this evidence, and the testimony that defendant facilitated the fossil's return only after the police arrested him, the jury reasonably could have inferred that he either intended to steal the fossil, or that he had no intention to return the fossil "with reasonable promptitude and in substantially unimpaired condition." *Jones*, *supra* at 426. No evidence suggested that defendant intended to inform the victim of the fossil's whereabouts or that he would return it when the victim paid his debt. To the extent that the jury discredited the proffered defense that defendant planned on returning the fossil when he received his money, we will not second guess the jury's credibility determination. *People v Passage*, ___ Mich App ___; ___ NW2d ___ (Docket No. 271655, issued November 13, 2007), slip op at 1.

[1] A similar standard governs this Court's review of a trial court's ruling on a motion for directed verdict. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

We also reject defendant's additional argument that the prosecution had to establish a felony larceny, specifically that the value of the property taken from victim's home amounted to $1,000 or more. See MCL 750.356(4) and (5) (categorizing as misdemeanor larceny the stealing of property valued at less than $1,000). The language of MCL 750.110a(2) imposes guilt when an unlawful entrant "commits a felony, larceny, *or* assault." (Emphasis added). The Legislature's placement of commas in the quoted phrase, together with its employment of the disjunctive "or," plainly demonstrate that it intended felonies, larcenies and assaults to constitute distinct means of establishing the underlying crime element in a first-degree home invasion. *People v Waltonen*, 272 Mich App 678, 684-685; 728 NW2d 881 (2006). Furthermore, because the clear and unambiguous language of § 110a(2) does not distinguish between felony and misdemeanor larcenies, any larceny may qualify as the underlying crime identified in § 110a(2). *People v Sands*, 261 Mich App 158, 163; 680 NW2d 500 (2004) (concluding that because the plain language of § 110a(2) does not distinguish between felony and misdemeanor assaults, a misdemeanor assault may support a first-degree home invasion charge); see also *People v Clark*, 274 Mich App 248, 252; 732 NW2d 605 (2007) (noting that this Court will not read into a statute anything not within the Legislature's manifest intention, as derived from the statutory language itself).

In summary, we conclude that because the evidence supports the jury's finding beyond a reasonable doubt that defendant unlawfully entered the victim's house and committed a larceny, sufficient evidence existed to support his first-degree home invasion conviction.

Affirmed.

/s/ Henry William Saad
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher