STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 8, 2008
v	No. 277519 Genesee Circuit Court
KEITH WATKINS, Defendant-Appellant.	LC No. 07-019685-FH

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 290 months to 50 years in prison. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant first argues that there was insufficient evidence to support his conviction because the evidence did not establish that he had an intent to commit a larceny when he entered the home. We disagree. In reviewing the sufficiency of the evidence to support a conviction, the evidence is viewed in a light most favorable to the prosecution to determine if it would warrant a reasonable juror in finding guilt beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003). In this regard, all reasonable inferences are required to be drawn, and credibility choices are required to be made, in support of the jury verdict. *Id*. at 640-641.

In arguing that there was insufficient evidence of an intent to commit a larceny, defendant relies heavily on this Court's opinion in *People v Uhl*, 169 Mich App 217; 425 NW2d 519 (1988). In that case, this Court noted the principle that, "[i]ntent to commit larceny cannot be presumed solely from proof of the breaking and entering." *Id*. at 220. The critical analysis from *Uhl*, *supra*, indicated that a defendant's conduct of trying to forcibly gain access to a house (beyond the enclosed back porch he successfully entered) after repeatedly ringing its doorbells and pounding on its front door was not sufficient to support an inference that the defendant intended to commit a larceny:

> In the present case, the magistrate bound defendant over for trial on the basis of defendant's actions at the house and defendant's rummaging through a dumpster soon afterward. However, defendant's actions at the house showed no more than an intent to commit a breaking and entering. Defendant rang the

> doorbell repeatedly, pounded on the front door glass, rang the back doorbell, walked into the enclosed back porch and pushed or pried the back door. These actions do not support an inference of intent to commit larceny. [*Id*.]

The instant case is similar to *Uhl*, *supra*, in that the prosecution presented evidence that defendant repeatedly rang the doorbell to the house before gaining entry to it. However, unlike in *Uhl*, *supra*, there is additional incriminating evidence regarding defendant's behavior when discovered in the house. Here, the homeowner testified that when she confronted defendant inside the home and asked what he was doing there, he did not respond but rather turned around and headed out the door leading to the garage. A defendant's nonresponsive conduct can be properly seen as evidence of his consciousness of guilt. *People v Solmonson*, 261 Mich App 657, 667; 683 NW2d 761 (2004). If defendant had entered the home for an innocent purpose, such as to seek help, it would seem natural for him to have expressed this when confronted by an occupant rather than failing to respond and leaving immediately.

Defendant also cites *People v Palmer*, 42 Mich App 549; 202 NW2d 536 (1972), and *People v Frost*, 148 Mich App 773; 384 NW2d 790 (1985), in support of his contention that there was insufficient evidence of his larcenous intent. However, those cases are materially distinguishable from the instant case because they did not involve the additional incriminating evidence of the defendant's nonresponsive conduct when confronted about the reason for entering (or attempting to enter) the relevant home. The *Palmer* Court held that there was insufficient evidence of an intent to commit larceny in circumstances in which the defendant and two companions, one of whom was armed with an automobile lug wrench, ran away from the back door stairway of a residence upon seeing police officers. *Palmer*, *supra* at 550-552. The *Frost* Court found insufficient evidence of an intent to commit larceny in circumstances where there was only evidence that the defendants attempted to break into a home but fled after looking in the direction of a police car. *Frost*, *supra* at 775-777. There was no indication of any evidence in these cases of the defendants being confronted about their reasons for attempting to gain entry to the residences. Thus, *Palmer*, *supra*, and *Frost*, *supra*, do not undermine our conclusion that there was sufficient evidence of defendant's larcenous intent in this case.

Defendant also argues that the trial court improperly allowed William Tincoff to offer as lay opinion testimony his comparison of damage he observed to the lock on the back door of his house to damage he observed in alleged breakings and enterings he had investigated when he was an insurance claims adjuster. Defendant asserts that this was actually expert testimony for which the requisite notice had not been provided by plaintiff. We conclude that any error regarding this issue does not warrant relief.

It is more likely than not that defendant would have been convicted of first-degree home invasion without that testimony. See *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007) ("an evidentiary error does not merit reversal unless a substantial right is involved and, looking at the case as a whole, it appears that it is more probable than not that the error was outcome determinative"). Even without the testimony regarding the lock, it is apparent that defendant broke and entered the house by at least opening a door to enter it. See *People v Toole*,

227 Mich App 656, 659; 576 NW2d 441 (1998) ("any amount of force used to open a door or window to enter the building, no matter how slight, is sufficient to constitute a breaking").

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski