STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 18, 2009
v JEFFREY JAMES GWINN, Defendant-Appellant.	No. 283362 Midland Circuit Court LC No. 07-003305-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v JEFFREY JAMES GWINN, Defendant-Appellant.	No. 283363 Midland Circuit Court LC No. 07-003304-FH

Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

In Docket No. 283362, defendant was convicted by the jury of stealing or retaining a financial transaction device, MCL 750.157n(1), and breaking and entering a motor vehicle to commit larceny of between $200 and $1,000, MCL 750.356a(2)(b)(*i*). Defendant was sentenced to 12 months in jail for each conviction. In Docket No. 283363, defendant was convicted by the jury of larceny from a motor vehicle, MCL 750.356a(1), and breaking and entering a motor vehicle to commit larceny of less than $200, MCL 750.356a(2)(a). Defendant was sentenced to 12 months in jail for the larceny from a motor vehicle conviction, and 93 days in jail for the breaking and entering a motor vehicle conviction. Defendant appeals as of right.[1] We affirm.

[1] Defendant was tried on both cases before a single jury. This Court consolidated the appeals. *People v Gwinn*, unpublished order of the Court of Appeals, entered February 13, 2008 (Docket Nos. 283362 and 283363).

I. Background

Before trial started on January 22, 2008, defendant moved to dismiss pursuant to MCL 780.131 (the 180-day rule) arguing that the prosecutor had received notice that defendant was incarcerated on a parole detainer during the pendency of the case. However, the only written notice produced to the trial court notifying the prosecutor of defendant's incarceration was a letter dated October 16, 2007. Because this was less than 180 days before trial, the trial court denied defendant's motion.

At trial, Nancy Schred-Vossen testified that on June 29, 2007, she left her purse overnight in her minivan, which was parked in her driveway. The next day, she discovered that her purse was missing. It contained less than $5 in cash, her social security card, driver's license, credit cards, wallet, cellular telephone, and "any miscellaneous things that a woman carries in her handbag." She testified that the wallet was worth $25, the purse was worth $25, and that it cost her about "$10 or $15" to replace her driver's license. She did not testify regarding the value of her cellular telephone.

Kathy Brown testified that on the same evening, her truck was parked in her driveway. The next day she discovered multiple items stolen from her truck: her purse, containing her wallet, credit cards, driver's license and makeup; a bag of clothes to be returned to Marshall's department store; and, a bag of clothes to be donated to Goodwill. Brown testified that she thought the value of the items in the Marshall's bag was around $100, that her purse and wallet were worth $60, and the remaining items were valued at an additional $40. In total, she testified that the value of the stolen items was more than $200 and not more than $1,000. An assistant manager from Marshall's testified that the value of the bag of clothes was $81.

Wayne Jenkins testified that on the night of June 29, 2007, he and defendant were at Jenkins's house when they decided to walk around the neighborhood and steal items from parked cars. Jenkins testified that he assisted defendant by acting as a lookout, but that he did not personally take any items.[2] He identified defendant and the items taken that night.

II. Jail Credit

Defendant first argues that he is entitled to credit for jail time served prior to sentence. We disagree. Whether a defendant is entitled to credit for time served and other issues of statutory interpretation are questions of law which this Court reviews de novo. *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006). Underlying factual findings by the trial court are reviewed for clear error. *People v Golba*, 273 Mich App 603, 613; 729 NW2d 916 (2007).

A defendant serving time in jail before sentencing is entitled to credit for that time. MCL 769.11b; *Stead*, *supra* at 551. This credit is based on "time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted . . . ." MCL 769.11b. However, a parolee held pursuant to a parole detainer is not "denied or unable to

[2] In a separate case, Jenkins was convicted for his conduct as the result of a plea agreement. A condition of the agreement was that he testify against defendant.

furnish bond" and is not entitled to credit for the time held in jail.[3] *Stead*, *supra* at 551-552. This Court has recently affirmed that the language of MCL 769.11b excludes the granting of credit for time served to persons held on parole detainer. *People v Filip*, 278 Mich App 635, 640-641; 754 NW2d 660 (2008) ("[T]he plain language of [the statute] is inapplicable under the circumstances where a parolee is held on new charges that constitute a parole violation."). Because defendant was not denied or unable to furnish bond, but was instead held on a parole detainer, he is not entitled to credit for time served. *Id*.; MCL 769.11b.

III. Double Jeopardy

Defendant next argues that his convictions for larceny from a motor vehicle, MCL 750.356a(1), and breaking and entering a motor vehicle to commit larceny of less than $200, MCL 750.356a(2)(a), constitute a violation of his right against double jeopardy. We disagree. We review a double jeopardy issue de novo. *People v Colon*, 250 Mich App 59, 63; 644 NW2d 790 (2002).

Whether punishment for multiple offenses violates double jeopardy is analyzed under the federal *Blockburger*[4] test. *People v Smith*, 478 Mich 292, 315-316; 733 NW2d 351 (2007). Under this test, punishment for multiple offenses is permissible as long as each offense requires proof of an element not required of the other offense. *Id*. at 302-303. Further, even if the offenses contain the same elements, there is no double jeopardy violation if the Legislature clearly intended to impose multiple punishments. *Id.* at 315-316.

MCL 750.356a(1) (larceny from a motor vehicle) provides:

> A person who commits larceny by stealing or unlawfully removing or taking any wheel, tire, air bag, radio, stereo, clock, telephone, computer, or other electronic device in or on any motor vehicle, house trailer, trailer, or semitrailer is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00, or both.

MCL 750.356a(2)(a) (breaking and entering a motor vehicle to commit larceny of less than $200) provides:

> [A] person who enters or breaks into a motor vehicle, house trailer, trailer, or semitrailer to steal or unlawfully remove property from it is guilty of a . . . misdemeanor . . . .

Defendant's argument that there is no "meaningful" difference between the elements of these crimes is without merit.

[3] Rather, the defendant is entitled to credit against the previous, unfinished sentence for which he was paroled. *Stead*, *supra* at 552.

[4] *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932).

MCL 750.356a(1) requires proof of a larceny of specific items "in or on" a motor vehicle. Defendant was convicted for stealing a cell phone from within a minivan. In contrast, MCL 750.356a(2)(a) requires proof that the defendant broke or entered into a motor vehicle in order to commit a larceny. Defendant was convicted for entering into the minivan. Each statute requires an element not required of the other statute. Thus, under the *Blockburger* test, there is no double jeopardy violation.

Defendant contends that legislative intent is the controlling test in a double jeopardy case, arguing that application of the *Blockburger* test creates only a presumption against double jeopardy. On the contrary, our Supreme Court has clearly stated that legislative intent is only relevant where the elements of two offenses do *not* satisfy *Blockburger*. *Smith*, *supra* at 316. In such instances, double jeopardy may still not be violated if the Legislature has clearly demonstrated its intent to impose multiple punishments for the same conduct. *Id*. In other words, the presumption of *Blockburger* works in the opposite direction that defendant argues: Failure to satisfy the *Blockburger* test creates a presumption of invalidity, which may be rebutted by legislative intent. *Id*.

IV. 180-Day Rule

Defendant next argues that the trial court erred in denying his motion to dismiss brought pursuant to MCL 780.131. He argues that the prosecutor had sufficient notice of his confinement on a parole detainer when he was arrested in June, 2007, and that written notice is not required to trigger the 180-day rule. We disagree.

MCL 780.131(1) provides:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

As our Supreme Court noted in *People v Williams*, 475 Mich 245, 256-257 n 4; 716 NW2d 208 (2006), the 180-day period begins on the day after the prosecutor receives notice that the defendant is incarcerated and awaiting trial on pending charges. The Court further clarified that MCL 780.131 expressly requires written notice to the prosecutor to trigger the 180-day rule. *Id*. at 256. In fact, the Court held that an older version of a related court rule, MCR 6.004(D), was invalid because it permitted the 180-day rule to be triggered by constructive notice and, thus, did

not enshrine this express requirement of MCL 780.131. *Id*. at 259. Defendant misreads *Williams*, and his contention that written notice is not required is unfounded.

Here, the prosecutor received written notice of defendant's confinement. The written notice was dated October 16, 2007. Because this was less than 180 days before defendant's trial on January 22, 2008, there was no violation of MCL 780.131.

V. Sufficiency of the Evidence

Defendant finally argues that there was insufficient evidence to support his conviction for breaking and entering a motor vehicle to commit larceny of between $200 and $1,000, MCL 750.356a(2)(b)(i). We disagree. We review claims of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Further, we defer to the fact finder's role in determining the weight of the evidence and the credibility of the witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). "[C]onflicts in the evidence must be resolved in favor of the prosecution." *Id.* at 562. Circumstantial evidence and reasonable inferences arising therefrom may constitute proof of the elements of the crime. *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999).

MCL 750.356a(2)(b)(i) provides: "[A] person who enters or breaks into a motor vehicle, house trailer, trailer, or semitrailer to steal or unlawfully remove property from it [and] [the value of the property is $200 or more but less than $1,000] . . . is guilty of a . . . misdemeanor." Defendant argues that there was insufficient evidence for the jury to conclude that the value of the property stolen from the victim, Kathy Brown's, truck was $200 or more.

Brown testified that defendant stole her purse, containing a wallet and other items, a bag of clothes to donate, and a bag of clothes to return to Marshall's. Brown plainly testified that the value of the items was more than $200 but less than $1,000. She stated that the bag of clothes to be returned to Marshall's was valued at "probably about $100." When pressed, on cross-examination, to justify the $200 figure, she testified that the purse and wallet would have been valued at $60 and there was $40 of "other stuff" in the purse. It was later established that the bag of clothes to return to Marshall's was only worth $81.

While these numbers do not add up to $200, a reasonable jury could have concluded from Brown's initial testimony that the total value of the property was $200 or more. There is no other evidence regarding the total value of the property. There is no evidence whatsoever regarding the value of the bag of clothes to be donated. It would be a reasonable conclusion to draw from Brown's testimony that the $40 figure attributed to "other stuff" was a round number supplied in order to explain Brown's estimate of the overall value, without going into further detail regarding the actual items. It was not unreasonable for the jury to believe Brown's testimony regarding the total value of the property. There was sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly