

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY ALEXANDER HOGAN,

Defendant-Appellant.

UNPUBLISHED
December 1, 2009

No. 286421
Macomb Circuit Court
LC No. 2008-000326-FH

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree home invasion, MCL 750.110a(3). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 48 to 180 months' imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to support his second-degree home invasion conviction. We disagree. When analyzing a claim based on insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 132; 600 NW2d 370 (1999). This Court reviews the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007).

The elements of second-degree home invasion are that the defendant (1) entered a dwelling, either by a breaking and entering or without permission, (2) with the intent to commit a felony or a larceny in the dwelling. *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004). Defendant does not contest that he was in the structure without permission, but argues instead that there was insufficient evidence that the structure at issue was a dwelling and that he had the intent to commit a larceny.

For purposes of the offense of home invasion, a "dwelling" is a structure or shelter, which is used permanently or temporarily as a place of abode. MCL 750.110a(1)(a); *People v Powell*, 278 Mich App 318, 320; 750 NW2d 607 (2008). A structure that is temporarily vacant, but to which the inhabitant intends to return, remains a dwelling. *Id.* at 322. Neither the duration of the absence nor the habitability of the structure precludes the establishment of the structure as a dwelling. *Id.* Thus, this Court concluded in *Powell* that the fact that a house had been damaged by a fire, condemned, and declared not habitable at the time of the offense did not

mean that the house was not a dwelling for purposes of second-degree home invasion, so long as the inhabitant intended to return. *Id.*

In this case, defendant argues that the structure was not a home because Michael Kowalske owned the structure at issue for investment purposes only, never resided in the structure and never intended to reside in the structure. We disagree. That Kowalske never lived or intended to live in the structure, however, does not mean the structure is not a dwelling for purposes of second-degree home invasion. Kowalske bought the house for the purpose of selling it to others to reside in. He renovated the home, and it was in move-in condition. He never intended to use the premises for any other purpose. It is clear that the house is a structure that is to be used permanently, or, at least, temporarily as a place of abode. Like *Powell*, the house at issue is only temporarily vacant until Kowalske sells it. For purposes of second-degree home invasion, the prosecution presented sufficient evidence for a fact finder to determine that the structure at issue is a dwelling within the meaning of MCL 750.110a(3).

The evidence was also sufficient to prove defendant's intent to commit a larceny. To prove the crime of home invasion, the intent to commit a larceny cannot be presumed from proof of the breaking and entering alone. *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988). However, intent may "be inferred from the nature, time, and place of [the] defendant's acts before and during the breaking and entering." *Id.* Circumstantial evidence and reasonable inferences drawn from it may be sufficient to demonstrate the elements of a crime. *People v Bulmer*, 256 Mich App 33, 37-38; 662 NW2d 117 (2003). Moreover, when state of mind is at issue, such as knowledge and intent, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

We disagree with defendant's contention that the only evidence provided by the prosecution to show an intent to commit a larceny was proof of the breaking and entering itself. The prosecution proffered significantly more evidence. Police officer Philip Trysh testified that there was damage to the copper pipes both inside and outside the home that was not there earlier in the day but appeared after defendant's presence in the house. In addition, defendant had a screwdriver on his person and was in possession of a bag of tools that could have been used to commit the damage to the pipes. Moreover, Trysh also testified that copper had a high resale value, which could explain its desirability. Taken together, this circumstantial evidence was sufficient to permit the jury to find beyond a reasonable doubt that defendant had an intent to commit larceny. Therefore, there was sufficient evidence to find beyond a reasonable doubt that defendant committed second-degree home invasion.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder