STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED October 12, 2010
v	No. 292736 Lapeer Circuit Court
CALLEEN ELAINE TATUM, Defendant-Appellant.	LC No. 08-009583-FH

Before: BORRELLO, P.J., and CAVANAGH and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right her conviction following a bench trial of larceny in a building, MCL 750.360. The circuit court sentenced defendant to 18 months' probation. For the reasons set forth in this opinion, we affirm defendant's conviction and sentence.

Defendant's conviction stems from the disappearance of a pair of iolite dangles, which were meant to be worn as attachments to earrings, from the complainant's jewelry store. At the time the jewelry went missing, defendant was an employee of the store. The complainant store owner testified that the dangles were valued at around $400. Defendant argues on appeal that her conviction is not supported by sufficient evidence and is against the great weight of the evidence.

The elements of larceny in a building are as follows:

> "(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 subject matter must be the goods or 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 be done within the confines of the building." [*People v Mumford*, 171 Mich App 514, 517-518; 430 NW2d 770 (1988), quoting *People v Wilbourne*, 44 Mich App 376, 378; 205 NW2d 250 (1973) (alteration by *Mumford* Court).]

The complainant testified that defendant set out and put away the store's jewelry the day before the complainant noticed that the dangles were missing. Defendant's timecard indicated that she was at work until closing, although the studio manager testified that she filled in the end time for defendant. Defendant stated that she had left the store around 4:00 p.m., but the owner of horse stables where defendant also worked stated that defendant was in the store when she

was there purchasing earrings for her mother sometime between 4:00 and 5:00 p.m. The complainant further testified that once she discovered that the dangles were missing, she looked in the tub where the dangles would have been stored and also "in the showcases," but did not find them. Additional evidence presented to the trier of fact included testimony from the stable owner that defendant had asked her to testify that defendant had been in the barn on the day the dangles went missing, and that defendant had said she could have gotten the earrings the stable owner had purchased for free. The police found no evidence of a break-in at the store, and the complainant testified that only she, her father, the studio manager, and defendant had keys to the store and knew the alarm code at the time the jewelry went missing.

To determine whether defendant's claim that there was insufficient evidence to convict her has merit, "this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). With respect to defendant's challenge to the sufficiency of the evidence of larceny in a building, under, MCL 750.360, the prosecutor relied on the testimony of several witnesses who pieced together sufficient evidence to prove that defendant committed the crime beyond a reasonable doubt. For instance, the testimony of complainant established that defendant set out and put away the store's jewelry the day before complainant noticed that the dangles were missing. Defendant stated that she had left the store around 4:00 p.m., but the owner of the stables where defendant had another job, testified that defendant was in the store when she was there purchasing earrings for her mother sometime between 4:00 and 5:00 p.m. The stable owner also testified that defendant had asked her to give testimony that defendant was at the stables on the day the dangles went missing, and that defendant had said she could have gotten the earrings the stable owner had purchased for free. Additionally, about one month after they spoke, defendant left a message for the stable owner stating that she was going to come over to her house and talk about the statement she made (presumably to the police). The stable owner testified that she "felt threatened" by the message and reported it to authorities. As stated, *supra*, the police found no evidence of a break-in at the store. This evidence, and the reasonable inferences arising therefrom, was sufficient to uphold defendant's conviction. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

Defendant next argues that her conviction should be set aside and she should be granted a new trial because the guilty verdict was against the great weight of the evidence. Defendant argues that her conviction was based on weak circumstantial evidence that was heavily offset by compelling evidence of her innocence. We respectfully disagree.

When a defendant asserts that her conviction is against the weight of the evidence, this Court must 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 McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001) (citation omitted). Considering the evidence outlined *supra*, defendant's great weight challenge similarly fails. In addition to the legal conclusions reached by this Court in rejecting defendant's first claim on appeal, with regard to her second claim on appeal, we note that this Court must defer to the trial court's "special opportunity . . . to judge the credibility of the witnesses," and that the trial court's findings were not clearly erroneous, MCR 2.613(C), that it would not be a miscarriage of justice to let the verdict stand, *McCray*, 245 Mich App at 637.

Affirmed.

/s/ Stephen L. Borrello
/s/ Mark J. Cavanagh
/s/ Donald S. Owens