STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 19, 2013
v	No. 312254 Wayne Circuit Court
DAVID ALLEN MITCHELL, Defendant-Appellant.	LC No. 12-004241-FH

Before: JANSEN, P.J., and O'CONNELL and M.J. KELLY, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of entering without breaking with intent to commit a larceny, MCL 750.111, and larceny in a building, MCL 750.360. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of 2 to 15 years' imprisonment for each offense. Defendant appeals by right. We affirm.

Defendant's convictions arose from the theft of floor-cleaning equipment out of the Highland Park Career Academy building. At the time of the theft, the school district was not using the Career Academy building as a school. Defendant argues that the prosecution did not offer sufficient evidence to convict him of either of the charged crimes because the Career Academy was not a "building" within the meaning of MCL 750.111 or MCL 750.360.[1] Defendant concedes that the prosecution presented sufficient evidence to establish all other elements of each offense, i.e., that defendant entered the academy and stole property from within. Thus, the only issue for this Court to decide is whether the academy is a "building" within the meaning of each statute.

We review de novo defendant's challenge to the sufficiency of the evidence. *People v Lanzo Const Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). "When ascertaining

[1] MCL 750.360 specifically lists "school" among the structures included in the offense, which could provide an alternative ground for defendant's conviction under that statute. However, neither party has addressed the statutory term "school" on appeal. Given this Court's disposition of the case, we need not discuss whether the Career Academy was a "school" within the meaning of MCL 750.360.

whether sufficient evidence was presented in a bench trial to support a conviction, 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 proven beyond a reasonable doubt." *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). When a ruling involves an interpretation of the law or the application of law to uncontested facts, appellate review is de novo. *People v Lewis*, 302 Mich App 338, 341; ___ NW2d ___ (2013) (citing *People v Elliott*, 494 Mich 292, 300-301; 833 NW2d 284 (2013)).

MCL 750.111 provides:

> Any person who, without breaking, enters any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, shipping container, railroad car or structure used or kept for public or private use, or any private apartment therein, with intent to commit a felony or any larceny therein, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $2,500.00.

MCL 750.360 provides:

> Any person who shall commit the crime of larceny by stealing in any dwelling house, house trailer, office, store, gasoline service station, shop, warehouse, mill, factory, hotel, school, barn, granary, ship, boat, vessel, church, house of worship, locker room or any building used by the public shall be guilty of a felony.

"[I]f a statute specifically defines a term, the statutory definition is controlling." *People v Williams*, 298 Mich App 121, 126; 825 NW2d 671 (2012). However, if a statute does not provide a definition, the plain and ordinary meaning of the term controls, unless the term is technical or has acquired a peculiar meaning in the law. MCL 8.3a; *People v Thompson*, 477 Mich 146, 151-152; 730 NW2d 708 (2007). The Michigan Penal Code is interpreted "'according to the fair import of [the] terms, to promote justice and to effect the objects of the law.'" *People v Flick*, 487 Mich 1, 10; 790 NW2d 295 (2010) (quoting MCL 750.2). "When a term is not defined in a statute, the dictionary definition of the term may be consulted or examined." *Lewis*, 302 Mich App at 342 (citing *People v Perkins*, 473 Mich 626, 639; 703 NW2d 448 (2005)). "The court's reliance on dictionary definitions assists the goal of construing undefined terms in accordance with their ordinary and generally accepted meanings." *Id*. (citing *People v Morey*, 461 Mich 325, 330-331; 603 NW2d 250 (1999)).

Defendant acknowledges that the evidence presented at trial supports a finding that defendant entered the academy. Thus, so long as the academy was a "building" for purposes of MCL 750.111 and a "building used by the public" for purposes of MCL 750.360, sufficient evidence exists to support each conviction.

Defendant relies upon *People v Matusik*, 63 Mich App 347; 234 NW2d 517 (1975), for the definition that a building is a structure "used 'as a habitation or for the purpose of trade, manufacture, or ornament . . . .'" *Matusik*, 63 Mich App at 350 n 2 (quoting *People v Williams*, 368 Mich 494, 497-498; 118 NW2d 391 (1962)). Extrapolating from this definition, defendant argues that the academy was no longer a building at the time of his entry because the academy was not in use for purposes of habitation, trade, manufacture, or ornament. Instead, defendant

argues that the academy was vacant and abandoned and, therefore, not a building within the meaning of the statutes. Although defendant accurately quotes the language of *Matusik*, our Supreme Court's opinion in *Williams*, upon which the *Matusik* opinion draws, provides a more complete definition of the term "building." The *Williams* Court approved of the following definition: "'an erection intended for use and occupation as a habitation or for some purpose of trade, manufacture, ornament or *use*, constituting a fabric or edifice, such as a house, a store, a church, a shed.'" *Williams*, 368 Mich at 497-498 (quoting *Truesdell v Gay*, 79 Mass (13 Gray) 311, 312 (1859)) (emphasis added).

The academy is well within this definition of the term "building." At trial, the Highland Park Superintendent of Schools testified that considerable equipment was stored within the academy, including several pieces of floor-cleaning equipment. She added that the school district had an electric alarm system for the academy, and that she went to the academy monthly to allow the power company to read the electrical meters. Under these circumstances, we conclude that the school district used the academy as a building within the meaning of the applicable statutes.

Defendant argues that the academy cannot be deemed a building within the meaning of the statute, on the ground that the trial court noted the academy was not habitable for its intended use. However, the trial court's statement does not indicate that the academy had no use. Rather, the court indicated that the academy was no longer used as a school. Neither MCL 750.111 nor MCL 750.360 provides that a structure must be used as originally intended if that structure is to be considered a building. This Court "'may not read into the law a requirement that the lawmaking body has seen fit to omit.'" *Mich Basic Prop Ins Ass'n v Office of Fin and Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010), lv gtd 488 Mich 1034 (2011), app dis, 811 NW2d 497 (2012) (quoting *In re Hurd-Marvin Drain*, 331 Mich 504, 509; 50 NW2d 143 (1951)).

Other definitions support the conclusion that the academy was a building at the time defendant entered. This Court has defined a building as "'a structure which has the capacity to contain, and is designed for the habitation of, man or animals, or the sheltering of property, even though it is unfinished.'" *People v Adams*, 75 Mich App 736, 738; 255 NW2d 752 (1977) (quoting 2 Wharton, Criminal Law & Procedure, §428, pp 49-50).[2] The academy was most certainly designed for the habitation of man and sheltering of property and, at the time of defendant's entry, had the capacity to shelter property, as evidenced by the school district's use of the academy as a storage facility. Similarly, *Random House Webster's Unabridged Dictionary* (1998) defines a building as "[a] relatively permanent enclosed construction over a plot of land, having a roof and usually windows . . . used for any of a wide variety of activities . . . ." In this case, there appears to be no dispute that the building had walls, a roof, and was permanently affixed to the land.

[2] The defendant in *Adams* appealed his conviction under MCL 750.110, the breaking and entering statute.

As he did at trial, defendant argues on appeal that, at most, he violated MCL 750.359. MCL 750.359 provides:

> Any person or persons who shall steal or unlawfully remove or in any manner damage any fixture, attachment or other property *belonging to, connected with or used in the construction of* any vacant structure or building, whether built or in the process of construction or who shall break into any vacant structure or building with the intention of unlawfully removing, taking therefrom or in any manner damaging any fixture, attachment or other property *belonging to, connected with or used in the construction of* such vacant structure or building whether built or in the process of construction, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail of not more than one (1) year or by a fine of not more than $1,000.00.

"[MCL 750.359] seeks to protect construction sites . . . ." *People v McClain*, 105 Mich App 323, 327; 306 NW2d 497 (1981).[3] "[T]he stealing, removing, or damaging of construction property must be intended in order to violate [MCL 750.359]." *Id.* Defendant did not enter a construction site or intend to remove construction property; in fact, defendant's arguments indicate that quite the opposite of construction was occurring at the academy. Further, the trial court was correct not to consider MCL 750.359 because the academy was not vacant. As previously discussed, the school district used the academy for storage.

Under MCL 750.111, it is a felony to "enter[] any . . . building . . . with the intent to commit . . . any larceny therein . . . ." As discussed, the Highland Park Career Academy was a building within the meaning of this statute. Given that defendant conceded that sufficient evidence was presented at trial to support a finding that he entered the academy with the intent to commit a larceny, sufficient evidence was presented at trial to support defendant's conviction under MCL 750.111. Under MCL 750.360, it is a felony to "commit the crime of larceny by stealing in any . . . building used by the public." Having determined that the academy was a building and was in use by the school district, and given defendant's concession that sufficient evidence was presented at trial to support a finding that defendant committed a larceny within the academy, the prosecution presented sufficient evidence to support defendant's conviction under MCL 750.360.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Kelly

[3] *McClain* involved the interpretation of a prior version of MCL 750.359, which was revised by 2002 PA 672. However, the revision left the relevant portion of the statute unchanged.