

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH THOMAS TORZEWSKI,

Defendant-Appellant.

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UNPUBLISHED  
February 21, 2003

No. 236894  
Monroe Circuit Court  
LC No. 00-030486-FH

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of second-degree home invasion, MCL 750.110a(3). We affirm.

At approximately 4:30 a.m. on December 15, 1999, a security alarm went off at the vacation house of Anita and Ralph Bydlowski. The Bydlowskis were not present in the house at this time. The prosecution's theory was that defendant broke into the house with the intent to commit a larceny and was scared off by the alarm, but not before he destroyed property valued in excess of \$1,000. The defense theory was that defendant heard the alarm from his house, walked to the Bydlowskis' house in order to investigate, and stood by the sliding glass door without entering the premises.

In his first issue, defendant argues that his conviction must be reversed because the prosecutor failed to present legally sufficient evidence that defendant was the person who committed the charged offense or he possessed the requisite intent to commit larceny.

When reviewing a sufficiency of the evidence challenge, this Court reviews the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). The identity of the defendant as the perpetrator of a charged offense is an essential element of any offense that the prosecution must establish beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Circumstantial evidence and reasonable inferences may be sufficient to prove the elements of a crime, *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999), including the identity of the perpetrator. *Kern, supra* at 409-410. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A person who breaks and enters a dwelling with the intent to commit a felony or a larceny therein, or a person who enters a dwelling without permission with the intent to commit a felony or a larceny therein is guilty of second-degree home invasion. MCL 750.110a(3).

In the instant case, contrary to defendant's contention, plaintiff presented sufficient evidence that defendant was the perpetrator. Specifically, defendant's fingerprints were found on the handle and on the inside of the sliding door to the Bydlowskis' house. A certified police-tracking dog tracked defendant's scent from the Bydlowskis' house to defendant's house, and evidence was admitted at trial that footprints leading from the Bydlowskis' house to defendant's house exactly matched the imprint of defendant's shoes.

Defendant argues that under *People v Ware*, 12 Mich App 512; 163 NW2d 250 (1968), his conviction cannot stand. In that case, this Court stated that "[t]o warrant a conviction, the fingerprints corresponding to those of the accused must have been found in the place where the crime was committed under such circumstances that they could only have been impressed at the time when the crime was committed." *Id.* at 515, quoting 28 ALR 2d 1154. Specifically, defendant alleges that it could not be established in this case that defendant's fingerprints were impressed on the door at the time the specific crime was committed and therefore his conviction was unwarranted. However, because *Ware* involved a conviction based on fingerprint evidence alone, and because the instant conviction was based not only on fingerprint evidence but also on other evidence such as footprints and dog tracking evidence, this argument is without merit. When viewed in the light most favorable to the prosecution, the evidence was sufficient to allow the jury to conclude beyond a reasonable doubt that defendant was the perpetrator of the crime.

In regard to the larcenous intent element of the instant offense, the prosecution must prove additional circumstances, beyond proof of a breaking and entering, that reasonably lead to the conclusion that the defendant intended to commit a larceny. *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988). Because of the difficulty in proving an actor's state of mind, circumstantial evidence may be used to establish the element of intent. *People v Perez-DeLeon*, 224 Mich App 43, 59; 568 NW2d 324 (1997). Further, this Court has determined that only minimal circumstantial evidence reasonably leading to the conclusion that defendant entertained the requisite intent is sufficient. *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985). Intent may be reasonably inferred from the nature, time, and place of defendant's acts before and during the breaking and entering. *Uhl, supra* at 220.

The break-in occurred at 4:30 a.m. at a time when the owners of the vacation house were not present. The sliding door was ajar; it had been pried open and the screen had been torn and scratched. A footprint of sand and soil on the leather couch under the area of the motion detector indicated that the perpetrator had climbed onto the couch and removed part of the motion detector, which is part of the security system for the house. From this evidence, defendant's larcenous intent can be reasonably inferred. Therefore, sufficient evidence was presented to sustain defendant's conviction.

In his second issue, defendant argues that even if his conviction for the charged offense is upheld, he should be resentenced because the trial court erroneously assessed him ten points under offense variable (OV) 4 for having caused psychological damage to the complainants.

This Court reviews the trial court's scoring of the guidelines for an abuse of discretion. There is no abuse of discretion, however, if there is evidence on the record to support the score. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000). Under the sentencing guidelines act, a court must impose a sentence in accordance with the appropriate sentence range. MCL 769.34(2), *People v Hegwood*, 465 Mich 432, 438; 636 NW2d 127 (2001). A sentencing court has the discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score. *Leversee, supra* at 349.

Offense variable 4 calls for the assessment of ten points if the accused's conduct caused "serious psychological injury requiring professional treatment" to a victim. MCL 777.34(1). Further, according to the statute, points can be assessed "if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive." MCL 777.34(2).

Although Mr. and Mrs. Bydlowski did not testify regarding "serious psychological injury" during trial, Anita Bydlowski's impact statement was filed and attached to the sentencing information report filed with the court. In her statement, Mrs. Bydlowski stated that she had not felt safe at the house since the break-in occurred and she felt "personally violated." She also stated that she spoke "numerous times to my family physician about stress and feeling uncomfortable about being at the house and wondering if it will be broke into again and when." The trial court had a copy of this report, specifically referenced it at sentencing, and based on the foregoing statements of Mrs. Bydlowski, scored OV 4 at ten points.

Based on this evidence, we conclude that the trial court's scoring of OV 4 was not an abuse of discretion. Although the record indicates that the victim has yet to seek psychological treatment, as previously noted, MCL 777.34(2) does not require proof of such treatment. Under the circumstances, the trial court's scoring of OV 4 was clearly supported by the evidence and, therefore, defendant's sentence must be upheld.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens