

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN MARK HAMILTON,

Defendant-Appellant.

UNPUBLISHED

May 28, 1996

No. 184963

LC No. 94-007234-FH

Before: Doctoroff, C.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a building with intent to commit a felony, MCL 750.110; MSA 28.305, and preparation to burn personal property valued over \$50, MCL 750.77; MSA 28.272. He was sentenced to twelve months in jail and five years' probation. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal is that the evidence was insufficient to sustain his convictions. When reviewing a claim of insufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992). Questions of credibility and intent are left to the trier of fact and will not be resolved anew on appeal. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

The elements of breaking and entering a building with the intent to commit a felony are (1) a breaking and entering of (2) a building or unoccupied dwelling with (3) felonious intent. *People v Cook*, 131 Mich App 796, 809; 347 NW2d 720 (1984). The underlying felony charged was malicious destruction of property valued over \$100. To convict a person of malicious destruction of personal property over \$100, the prosecution must prove that (1) the defendant destroyed or injured personal property; (2) the property belonged to someone other than the defendant; (3) the property

was valued at more than \$100; and (4) the defendant had the intent to injure or destroy that property. MCL 750.377a; MSA 28.609(1).

Here, the evidence was sufficient to support a finding that a B & E occurred. On December 12, 1993, Coleman Sawmill was vandalized and diesel fuel tanks stored outside the office building were set on fire. The sheriff's deputies that arrived at the crime scene testified that the outside door leading to the office addition had been kicked in and the doorjamb was broken. The door to a lunchroom inside the office addition had also been kicked in. The evidence also showed that personal property valued at more than \$100 had been maliciously destroyed once the perpetrator gained entry into the office addition. Most of the interior, including the walls, clocks, and floors had been spray painted, the fax machine was broken, fire extinguisher had been sprayed everywhere, and food was strewn about the lunchroom. A witness testified that the damages sustained to personal property inside the office building were more than \$100.

The evidence also showed that defendant was at least one of the perpetrators of the crimes committed. Jamie Kreps testified that the afternoon after the damage was inflicted defendant admitted that he and another individual were responsible for the damage. Steve Coon also testified that defendant admitted that he did the damage. Kreps further testified that defendant was at a party located across the street from the damaged office building on the night the damage occurred, and that, contrary to defendant's statement, she did not give defendant a ride home from the party that night. Despite the lack of direct evidence showing that defendant committed the B & E, a rational trier of fact could have found beyond a reasonable doubt that sufficient circumstantial evidence was adduced to sustain defendant's B & E conviction.

The elements of preparation to burn personal property valued over \$50 are: (1) using, arranging, placing, devising, or distributing any flammable, combustible, or explosive material, liquid, or substance in or about any building or property with (2) the intent to willfully or maliciously set fire to or burn the same. MCL 750.77; MSA 28.272. It is the very nature of arson that it is usually committed surreptitiously, *People v Horowitz*, 37 Mich App 151, 154; 194 NW2d 375 (1971), and thus proofs will normally be circumstantial. *Id.*

Here, two persons arrived at the sawmill to find two diesel fuel tanks on fire. One witness testified that the fuel tanks had to have been started with a flammable or combustible solution and opined that the source of the solution was likely from a thirty-gallon container of transmission grease found near the tanks. Another witness testified that the value of the damage done to the diesel tanks was well over \$50. This evidence, together with defendant's admission of his involvement, was sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of preparation to burn personal property valued at over \$50.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald