

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL HORACEK a/k/a GORDON D.  
ERCKMAN,

Defendant-Appellant.

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UNPUBLISHED

June 4, 1996

No. 179755

LC No. 94-132385

Before: Taylor, P.J., and Murphy and E.J. Grant,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. He subsequently pleaded no contest to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, and was sentenced to four to twenty years' imprisonment. Defendant appeals as of right and we affirm.

Defendant argues that the trial court erred in denying his motion for a directed verdict because the evidence presented was insufficient to establish that he was the individual who broke into and entered the salon. When ruling on a motion for a directed verdict, the trial court must consider the evidence presented by the prosecutor, up to the time the motion was made, and determine whether any rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1991). This Court applies the same standard on review of a ruling on such a motion.. *Id.* To be convicted of breaking and entering a building with the intent to commit larceny, the prosecutor must prove beyond a reasonable doubt that: (1) defendant broke into a building, (2) defendant entered the building, and (3) at the time of the breaking and entering, defendant intended to commit a larceny or felony therein. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

We find that the circumstantial evidence presented at trial, and the reasonable inferences drawn therefrom, were sufficient to allow a reasonable jury to determine beyond a reasonable doubt that defendant broke into and entered the Ultimate Hair Salon with the intent to commit larceny. Of the seven fingerprints lifted off of the outside of the salon's window, six belonged to defendant. The crime lab specialists testified that those fingerprints were smudged, indicating that pressure was applied such as would be to slide the window open. When asked to explain how his fingerprints were found at the salon, defendant told the police that he went with his girl friend to buy hairspray.<sup>1</sup> However, the area where the hairspray was sold is in a different room from the window where his fingerprints were found. Moreover, although defendant's girl friend, Kimberly Dobson, initially told the police she was with defendant at the salon, she later denied that she was and testified that she lied in her statement to the police. Dobson also found the salon's log book in her car, which was being used by defendant at the time the salon was broken into. Dobson testified that defendant was attempting to pay off a drug debt around the time of the break in and that he asked her to help him create a false alibi. Finally, defendant claimed that he went to a tax office on the second floor of the strip mall where the salon was located and spoke with a female receptionist about getting his taxes done. However, the only office on the second floor of the strip mall was an insurance agency, and the sole female employee denied that she ever saw defendant.

Defendant claims that fingerprint evidence alone is not sufficient to establish guilt, unless the prosecutor can prove beyond a reasonable doubt that the fingerprints could only have been placed during the commission of the charged offense. Fingerprint evidence alone is sufficient to establish identity if the prints are found at the scene of the crime under such circumstances that they could have only been made at the time of the commission of the crime. *People v Himmelein*, 177 Mich App 365, 375; 442 NW2d 667 (1989). However, there is ample other evidence aside from defendant's fingerprints which establishes that defendant was the person who broke into and entered the salon, including a log book found in the car.

Defendant also argues that the trial court erred by refusing to give the instruction of voluntary intoxication to the jury. When a jury instruction is requested on any theories or defenses and is supported by the evidence, it must be given to the jury by the trial judge. *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). Inasmuch as the offense of breaking and entering with intent to commit a felony is a specific intent crime, voluntary intoxication may negate the element of specific intent. *People v Cannoy*, 136 Mich App 451, 453-454; 357 NW2d 67 (1984). Defendant did not present any evidence that he was using drugs or was intoxicated on the day of the breaking and entering of the Ultimate Hair Salon. Therefore, the trial court properly denied defendant's request that the voluntary intoxication instruction be read to the jury.

Affirmed.

/s/ Clifford W. Taylor  
/s/ William B. Murphy  
/s/ Edward J. Grant

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<sup>1</sup> Although defendant argues that fingerprint evidence alone is not sufficient to establish guilt, unless the prosecutor can prove beyond a reasonable doubt that the fingerprints could only have been placed during the commission of the charged offense, there was ample other evidence from which to convict defendant of breaking and entering.