

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD M. ADKINS,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 181354

LC No. 94-131789

Before: McDonald, P.J., and White and P. J. Conlin*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering an occupied dwelling with the intent to commit larceny, MCL 750.110; MSA 28.305. Defendant subsequently pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082, and was sentenced to 24 to 270 months' imprisonment. Defendant appeals as of right, and we affirm.

Defendant argues that the evidence was insufficient to support his conviction. In reviewing the sufficiency of the evidence, this Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The elements of the crime of breaking and entering an occupied dwelling with the intent to commit larceny are: 1) the breaking of an occupied dwelling; 2) an entering of an occupied dwelling; and 3) an intent to commit larceny. *People v Frost*, 148 Mich App 773, 776; 384 NW2d 790 (1985).

Defendant contends that the evidence did not establish that he actually broke and entered into the complainant's trailer. However, the evidence indicates that a larceny was committed. Items of value, including a credit card and several hundred dollars in change, were missing from the complainant's bedroom. A witness observed defendant standing at the door to the trailer. Defendant

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

had a small tool in his hand and was trying to pry open the door. The witness identified defendant from a photographic lineup, at the preliminary examination, and at trial. Moreover, a screwdriver was discovered in defendant's car a few days after the larceny occurred. The tool had a white substance on its tip that was consistent with scratches on the door of the trailer. Two witnesses saw defendant's car outside the trailer on the day of the break-in, and one of them identified defendant's car in a police parking lot filled with approximately forty to fifty civilian and unmarked cars.

Defendant argues that these witnesses were young and unreliable and asserts that four defense witnesses claimed defendant was with them during the hours the break-in occurred. Two of the defense witnesses admitted in court to prior convictions of breaking and entering, and a third admitted to a prior conviction of forgery of a licensed document. The fourth defense witness was aged sixteen. A rational jury could have chosen to believe the prosecution witnesses over the defense witnesses.

Finally, defendant claims that the trial court failed to caution the jury "as to the inherent unreliability of the eyewitness testimony." Defendant did not request such an instruction from the trial court and therefore has not preserved this issue for appeal. Moreover, the trial judge should have refused to give such an instruction even if properly requested. The credibility of witnesses should be left to the trier of fact, which was in this case the jury. *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974). Furthermore, defendant failed to support this issue by authority, and the issue is therefore considered abandoned. *People v Fowler*, 193 Mich App 358, 361; 483 NW2d 626 (1992).

Affirmed.

/s/ Gary R. McDonald
/s/ Helene N. White
/s/ Patrick J. Conlin