

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON HARRELL,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 187839

LC No. 94-009801

Before: Taylor, P.J., and Markman and P. J. Clulo,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for breaking and entering an unoccupied dwelling, MCL 750.110; MSA 28.305. Defendant was sentenced to two to ten years in prison. We affirm.

Defendant's sole argument on appeal is that there was insufficient evidence to establish a breaking and entering because there was only a breaking of the fence surrounding the building, and not the building itself. Defendant argues that the breaking of a building element required under the statute is not satisfied because the garage door through which entry was made was open and no force was used to gain entrance. We disagree.

In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Petrello*, 424 Mich 221, 269; 380 NW2d 11 (1985).

Under Michigan law, any person who breaks and enters any building or structure with intent to commit any felony, or any larceny therein, is guilty of breaking and entering. MCL 750.110; MSA 28.305. Pursuant to *People v Jacques*, 215 Mich App 699; 547 NW2d 349 (1996), a fence is considered to be a part of the structure where the fence is used to enclose and protect property and is

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

an integral part of the closed compound. *Id.* at 709. Hence, a breaking of the fence is effectively a breaking of the structure or building.

In this case, the breaking of a structure or building element was established. The record reflects that there was a hole in the fence that was large enough for a person to enter. A cutting of the hole in the fence to gain entry into the property constitutes a breaking of the building. Moreover, it is clear from the property owner's testimony that the metal wire fence surrounding the lumberyard, which was eight feet tall and had barbed wire, was intended to enclose and protect the entire property. The fence was an integral part of the closed compound.

Therefore, viewing the evidence in a light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to establish a breaking and entering of an unoccupied dwelling.

Affirmed.

/s/ Clifford W. Taylor

/s/ Stephen J. Markman

/s/ Paul J. Clulo