

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS SOKOLOSKI,

Defendant-Appellant.

UNPUBLISHED

January 28, 1997

No. 190987

Recorder's Court

LC No. 95-006769

Before: Doctoroff, P.J. and Hood and P. J. Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for malicious destruction of personal property over \$100.00, MCL 750.377a; MSA 28.609(1), for which he was sentenced to six months in prison with credit for 145 days served.. We affirm.

Defendant argues that the evidence presented against him at trial was insufficient to find him guilty beyond a reasonable doubt of malicious destruction of personal property over \$100.00. We disagree.

In assessing whether the evidence was sufficient to convict, we must 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 proved beyond a reasonable doubt. *People v Herbert*, 444 Mich 466, 473; 511 NW2d 654 (1993); *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hunter*, 209 Mich App 280, 282; 530 NW2d 174 (1995). We are not permitted to assess the credibility of the witnesses in making this determination. *Herbert, supra*, 444 Mich 474.

To convict a defendant of malicious destruction of personal property over \$100, the prosecution must prove beyond a reasonable doubt that the defendant maliciously caused over \$100 worth of damage to the personal property of another and that the defendant intended to cause the damage. MCL 750.377a; MSA 28.609(1); *People v Culp*, 108 Mich App 452, 458; 310 NW2d

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

421 (1981); CJI2d 32.2. The test for the extent of damage to personal property is the reasonable and fair market value of repairing the damage at the time and in the place where the damage occurred and such amount may be proven by estimate. CJI2d 32.1; *People v Otlar*, 51 Mich App 256, 260; 214 NW2d 727 (1974).

Defendant argues that the trial court found that the elements of the crime were proven beyond a reasonable based solely upon the inherently incredible testimony of the victim. Defendant contends that an appellate court may assess the credibility of a witness in determining whether the evidence was sufficient to convict when the witness' testimony was inherently incredible. We disagree. The Michigan Supreme Court expressly ruled, without making an exception for "inherently incredible" testimony in *Herbert, supra*, 444 Mich 466 (1993), that the evidence must be viewed in the light most favorable to the prosecution in assessing whether the evidence was sufficient to convict a defendant. *Id.* at 473.

In this case, the victim testified that she knew defendant. They were involved in a relationship at one time. Defendant was convicted of stalking the victim after their relationship ended. Since defendant's prior conviction, the victim reported to the police that she believed defendant vandalized her pick-up truck. The victim further testified that she saw defendant get on a bicycle near her pick-up truck on the date in question and ride down the street with what appeared to be an aerosol can in his hand just before discovering the word "slut" spray-painted on the truck's side. An estimate reflected that the cost to repair the truck at a body shop would be \$300. Based upon this evidence, the trier of fact could have rationally concluded beyond a reasonable doubt that defendant maliciously caused over \$100 damage to the pick-up and that defendant specifically intended to cause the damage. We find all of defendant's arguments totally meritless.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan