

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL EVANDER BURKETT,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 189565

Oakland Circuit Court

LC No. 95-139755

Before: Taylor, P.J., and McDonald and C. J. Sindt*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree home invasion, MCL 750.110a; MSA 28.305(a) and pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was initially sentenced to 10 to 20 years' imprisonment for the home invasion conviction and 10 to 40 years' imprisonment for the habitual offender conviction. The home invasion sentence was vacated. Defendant now appeals as of right. We affirm.

On appeal, defendant argues that his motion for a new trial was incorrectly denied because the verdict of the jury was against the great weight of the evidence. In reviewing such a challenge, this Court considers whether the trial court committed an abuse of discretion. *People v Herbert*, 444 Mich 466; 511 NW2d 654 (1993). An abuse of discretion will be found only where the trial court's denial of the motion was manifestly against the clear weight of the evidence. *People v Bradshaw*, 165 Mich App 562; 419 NW2d 33 (1988).

Pursuant to MCL 750.110a; MSA 28.305(a), a person is guilty of first-degree home invasion if he breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling and another person is lawfully present in the dwelling. Generally, intent can be inferred from the nature, time and place of the defendant's acts before and during the breaking and entering. *People v Uhl*, 169 Mich App 217; 425 NW2d 519 (1988).

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

Defendant only contends that there was no evidence that he intended to commit a larceny when he broke into the dwelling. However, the police observed defendant and a girl in the area prior to the break-in, late in the morning when many people were at work. There was valuable entertainment equipment in the room which defendant entered, and defendant had a car in the driveway with which to transport the goods. Defendant did not have a reason to be in the house, and ran away when confronted by an occupant of the house. We agree with the trial court that a logical inference could have been made by the jury that defendant broke into the occupied house, believing that no one was inside and intended to steal the items inside. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ Clifford W. Taylor

/s/ Gary R. McDonald

/s/ Conrad J. Sindt