

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK JOE CARTER, a/k/a JOE FRANK  
CARTER,

Defendant-Appellant.

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UNPUBLISHED

August 29, 1997

No. 192241

Shiawassee Circuit Court

LC No. 95-007302

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted of second-degree home invasion,<sup>1</sup> MCL 750.110a(3); MSA 28.305(a)(3), and of being a fourth habitual offender, MCL 769.12; MSA 28.1084. He was sentenced to ten to thirty years' imprisonment. He appeals as of right. We affirm.

Defendant argues on appeal that the trial court abused its discretion by denying his request for the misdemeanor instruction on receiving and concealing stolen property under \$100. We disagree. In determining whether a requested instruction on a lesser included misdemeanor should be given, the requirement that there be an inherent relationship between the greater and lesser offenses must be met. *People v Hendricks*, 446 Mich 435, 444-445; 521 NW2d 546 (1994). Offenses are inherently related<sup>2</sup> if they both relate to the protection of the same interests and are related in an evidentiary manner such that, generally, proof of the misdemeanor is necessarily presented as part of the proof of the greater offense. *Id.* at 445; *People v Corbiere*, 220 Mich App 260, 263; 559 NW2d 666 (1996). Because defendant's requested misdemeanor instruction on receiving and concealing property under \$100 does not satisfy the inherent relationship requirement, the trial court did not abuse its discretion in denying defendant's request for the instruction.

With regard to the first part of the inherent relationship requirement, the offenses of breaking and entering and receiving and concealing stolen property do not protect the same interests. The breaking and entering statute is aimed at protecting the right of peaceful habitation. *People v Spivey*, 202 Mich App 719, 725; 509 NW2d 908 (1993). Breaking and entering is a crime against the person

and is concerned with the safety and protection of the individual. The receiving and concealing statute is aimed at protecting property because the statute operates to discourage the theft of property. *People v Ainsworth*, 197 Mich App 321, 326; 495 NW2d 177 (1992); *People v Johnson*, 176 Mich App 312, 314; 439 NW2d 345 (1989). Thus, the breaking and entering statute (i.e., home invasion) protects the individual while the receiving and concealing statute protects property.

Further, the two offenses do not meet the second part of the inherent relationship test because they do not relate in a manner that proof of the misdemeanor is necessarily presented as part of the proof of the greater offense. No similar elements exist between the two offenses. The elements of breaking and entering are: (1) breaking, (2) entering, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny or felony therein. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). The elements of receiving and concealing stolen property are: (1) the property was stolen, (2) the receiving, possession, or concealment of such property by the defendant with the knowledge of the defendant that the property had been stolen, and (3) the property had some value (in this case, under \$100). *Id.*

Finally, defendant claims that the trial court abused its discretion in sustaining the prosecutor's hearsay objection to the admittance of testimony by defendant that Harold Foster gave him the stolen coins and other items. However, defendant did not make an offer of proof to provide the trial court with an adequate basis on which to make its ruling and to provide this Court with the information it needs to evaluate the claim of error. MRE 103(a)(2); *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994). Furthermore, even assuming that the testimony in question was not hearsay, we fail to see how a substantial right of defendant's was affected as defendant was allowed to present a defense to the home invasion charge by testifying at a later point that Foster gave him the stolen items from the victims' home. MRE 103(a).

We affirm.

/s/ Richard A. Bandstra  
/s/ Richard Allen Griffin  
/s/ E. Thomas Fitzgerald

<sup>1</sup> The home invasion statute became effective in 1994. 1994 PA 270. Prior to its enactment, the offense of home invasion was part of the breaking and entering statute. See MCL 750.110; MSA 28.305 before and after the 1994 amendment.

<sup>2</sup> In his analysis of this issue, defendant interprets "inherent relationship" to require only a showing that the requested misdemeanor is a cognate lesser included offense. However, the Supreme Court held in *People v Steele*, 429 Mich 13, 22-23; 412 NW2d 206 (1987), that "[a]lthough it may be a useful tool to attempt to categorize a misdemeanor as a necessary or cognate offense in determining the relationship to the charged felony, it is neither necessary nor dispositive."