

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BEN CUNNINGHAM, a/k/a BEN WADE,

Defendant-Appellant.

UNPUBLISHED

May 24, 2002

No. 228545

Wayne Circuit Court

LC No. 91-010602

Before: Murphy, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant appeals of right his jury trial conviction for breaking and entering a building with intent to commit larceny, MCL 750.110. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to four to ten years' imprisonment for the breaking and entering conviction. We affirm.

Defendant's single issue on appeal is that the prosecution failed to present sufficient evidence to support his conviction of breaking and entering with intent to commit larceny. We disagree. This Court must view the evidence in the 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The offense of breaking and entering with intent to commit larceny requires proof that the defendant broke and entered into a building with the intent, at the time of the breaking and entering, to commit larceny. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998); *People v Palmer*, 42 Mich App 549, 551; 202 NW2d 536 (1972). Intent may be reasonably inferred from the nature, time, and place of the defendant's actions before and during the breaking and entering. *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988). Minimal circumstantial evidence is sufficient to prove intent. *People v Frost*, 148 Mich App 773, 777; 384 NW2d 790 (1985); *Palmer, supra* at 551-552.

Viewing the evidence in the light most favorable to the prosecution, we find that the prosecution presented sufficient evidence of defendant's intent to commit larceny. Defendant was found hiding in a hot, dirty, tiny crawlspace in a fluorescent lighting warehouse store by police officers responding to a silent alarm run. Before searching the building, the officers observed boxes of fluorescent lighting fixtures being dropped outside the window which had

been broken into. Boxes of fixtures had been removed from the upper floor and placed beside the window. Defendant had been a customer at the store and knew about the valuable fixtures housed within. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant had the intent to commit larceny when he broke and entered into the building.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly