

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD SANDERS,

Defendant-Appellant.

UNPUBLISHED

July 23, 2002

No. 232249

Wayne Circuit Court

LC No. 00-003627

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

Defendant appeals as of right from a conviction of larceny of rental property under \$20,000, MCL 750.362a(3)(a), for which he was sentenced to six months in jail. We affirm.

In reviewing a nonjury criminal case, this Court “is required to review the entire record to determine whether the trial judge clearly erred.” *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985). The trial court’s factual findings are reviewed for clear error. A finding of fact is considered “clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of the crime are (1) that the car was rented to defendant under a written agreement providing for its return to a particular place at a particular time, (2) that the defendant refused or willfully neglected to return the car after expiration of the time stated in a written notice sent by registered or certified mail to his last known address, (3) at the time of the refusal or willful neglect, the defendant intended to defraud the lessor, and (4) that the car had a value of more than \$1,000 but less than \$20,000. MCL 750.362(1), (3)(a); *People v McIntosh*, 103 Mich App 11, 17; 302 NW2d 321 (1981). The defendant’s intent may be inferred from circumstantial evidence such as his words, his conduct, or the manner in which the crime was committed. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

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

Defendant contends that the prosecutor failed to present sufficient evidence to establish the second and third elements. Regarding the second element, the rental company's agent testified that he sent a certified letter to defendant's address of record telling him where to return the car and the time to return it. Although he and his employees attempted to notify defendant by telephone, actual personal contact is not an element that need be proved under the statute. Defendant contends that the letter was insufficient to meet the requirement of written notice because it was returned unclaimed. However, he has failed to brief the merits of the claim or cite any authority to support it and thus is deemed to have abandoned it. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000); *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

The evidence showed that the car was four weeks overdue and defendant admitted to the police that he kept the car without making arrangements with the rental company to do so simply because he still needed it. Defendant contends that he did not fail to return the car on time and thus intend to defraud the rental company because he called the company and obtained an extension of time. The company's agent testified that there was no record of such an arrangement and it would not have been approved in any event because of problems with defendant's credit card. Defendant testified otherwise, but his testimony was contradicted by his statement to the police and his explanation for the discrepancy was somewhat implausible.

The trial court specifically stated that it had observed defendant's demeanor on the stand and found him to be lacking credibility. Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). Therefore, the court did not clearly err in concluding that defendant willfully neglected to return the car after its due date with intent to defraud.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan