

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANA DEPREICE MORTON,
a/k/a DANA DEPRICE MORTON,

Defendant-Appellant.

UNPUBLISHED
February 19, 1999

No. 206392
Kent Circuit Court
LC No. 96-011703 FH

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of larceny over \$100, MCL 750.356; MSA 28.588. He was sentenced as an habitual offender, third offense, MCL 769.11; MSA 28.1083, to three months in jail, thirty-six months' probation, and one hundred hours of community service. Defendant appeals as of right. We affirm.

This case arose out of a police sting targeting bicycle theft, during which the police conducted surveillance of a bicycle they had left unlocked and unattended near a pay phone. An officer testified that he watched as defendant approached the bicycle, looked around, took possession of the bicycle, and walked away with it. Moments later, police arrested defendant as he was crossing the street with the bicycle.

Defendant argues on appeal that the prosecutor did not present evidence sufficient to support his conviction. Specifically, defendant contends that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that the Grand Rapids Police Department rightfully possessed the bicycle, that the police department's interest in the bicycle was greater than \$100, and that defendant had the intent to permanently deprive the rightful owner of the bicycle. When reviewing sufficiency of the evidence questions, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found evidence sufficient to prove the essential elements of the crime beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Fetterly*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Circumstantial evidence and reasonable inferences that arise therefrom can be sufficient to prove the elements of a

crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Truong (After Remand)*, 218 Mich App 325, 337; 533 NW2d 692 (1996).

Larceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has rightful possession and control of the property. *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995). Plaintiff presented evidence that the bicycle used in the sting had been delivered to the Grand Rapids Police Department as lost property and stored in the department's Property Management Unit pursuant to MCL 434.22(4); MSA 18.718(2)(4). Viewing this evidence in the light most favorable to the prosecution, we find that it was sufficient for a rational trier of fact to determine that the Grand Rapids Police Department rightfully possessed and controlled the bike.

Fair market value may be used as the relevant standard for determining the value of stolen property. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). Proof of such value is determined with reference to the time and place of the offense. *Id.* The item's value is the price that the item will bring on an open market between a willing buyer and seller. *Id.*¹ Here, the prosecution presented evidence that the bicycle had been appraised at \$150 by a person in the business of selling bicycles approximately two weeks before the incident in question. Furthermore, evidence was presented that the bike was in essentially the same condition at the time of the incident in question as when it was appraised. Accordingly, we find that the prosecution presented evidence sufficient for a rational trier of fact to conclude that the value of the bicycle in question was over \$100.

Finally, defendant's intent may be inferred from all of the facts and circumstances. *Fetterly, supra* at 517-518. Moreover, given the difficulty of proving an actor's intent, minimal circumstantial evidence is sufficient. *Id.* at 518. The prosecution presented evidence that at approximately 2:00 or 2:30 a.m., defendant approached the pay phone where the bicycle was parked, looked around, took possession of the bicycle, and walked away with it. We find that this evidence was sufficient for a rational trier of fact to infer that defendant intended to permanently deprive the rightful owner of the bicycle.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins

¹ Defendant argues that under *Sheldon, supra* at 337-338, where the interest of a person in rightful possession of property is limited by statute, the value of the property is measured by the value of the interest, not the fair market value. However, we do not find *Sheldon* applicable to the facts of this case.