

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY WHITE, a/k/a ABDULLAH TANZIL,

Defendant-Appellant.

UNPUBLISHED

March 17, 2000

No. 210726

Recorder's Court

LC No. 97-007476

Before: Murphy, P.J., and Hood and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. He was sentenced to three and a half to ten years' imprisonment, and appeals as of right. We affirm.

In February 1995, the Grants lived in a home located on Edison Street in the City of Detroit. A fire caused severe damage to the three-story home, causing a majority of family members to move to another home located down the street. In September 1997, the fire-damaged home was still under repair. However, the roof had been repaired, and gutters had been placed on the home. The windows on the first floor of the home were repaired with the exception of a lower pane of one window, which was boarded up. The doors on the home were kept locked. Two family members lived in the basement. Daniel Grant, the owner's son, testified that he remained in the home temporarily in order to continue repairs as well as to protect the various "valuables" in the home, which included a piano, china cabinet, dining room furniture, desk, refrigerator, stove, washing machine, and other appliances. Items used in the reconstruction of the home, including work tools, drywall, lumber, and joint compound, were kept inside the home.

On September 10, 1997, the Grants learned that an individual was seen at the damaged home. At that time, no one was living in the home, the last family members having left approximately two weeks before the incident. Daniel went to the site, and saw an individual in the home throwing items out the den window. He ordered the person, defendant, to come out. Defendant complied and stated that he was a "worker." When Daniel advised defendant that the home belonged to his parents, implying that he would know any workers on the premises, defendant stated that he was a worker for the city

and believed that the property was abandoned. After the police arrived on the scene and apprehended defendant, who had tools belonging to the Grants on his person, a broken window which permitted access to the basement was discovered. Frank Grant acknowledged that he had discovered items missing on September 9, 1997, but was unable to locate the point of entry because the broken basement window was covered by a tarpaulin.

Defendant first argues that there was insufficient evidence to support his conviction. We disagree. In reviewing the sufficiency of the evidence, we examine the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). The elements of breaking and entering with intent to commit larceny are: (1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). In the present case, defendant challenges the prosecutor's proofs regarding breaking into the Grant home. Circumstantial evidence and reasonable inferences drawn therefrom is sufficient to prove the elements of a crime. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). Frank Grant testified that all doors were locked, and entry was obtained through a broken basement window. Specifically, someone had broken one pane of the two pane window, opened the window and pushed the window out to gain entry. A breaking is established by the slightest force used to push open an already open door. *People v Davenport*, 122 Mich App 159, 161; 332 NW2d 443 (1982). Even assuming that someone else had broken the window prior to defendant's entry, the circumstantial evidence indicated that defendant would have had to push open the already broken window to gain entry. Accordingly, there was sufficient evidence of a breaking to support defendant's conviction. *Davenport, supra*.

Defendant next argues that the trial court erred in failing to instruct the jury regarding defendant's belief that the property was abandoned, which would have negated any intent to commit a larceny. We disagree. Defendant failed to request such an abandonment instruction and failed to object to the instructions given. Accordingly, this issue is unpreserved and forfeited unless defendant demonstrates prejudicial plain error. *People v Mass*, 238 Mich App 333, 338-339; ___ NW2d ___ (1999). A trial court is required to give instructions only if the instructions are supported by the evidence or the facts of the case. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). There was insufficient evidence of defendant's alleged belief that the property was abandoned to warrant any instruction. When confronted by Daniel, defendant stated that he was a "worker." Daniel then advised defendant that he was familiar with the home because it belonged to his parents. Defendant then stated that he was an employee for the city who believed that the property was abandoned. This testimony did not establish defendant's belief, but rather, demonstrated that defendant was searching for an explanation for his presence inside the home. Furthermore, the testimony by the Grants established that the home was not abandoned, but rather contained construction materials and valuables, including virtually every major appliance. Any argument that defendant had a good faith belief that the home was abandoned is speculative and cannot be corroborated by the record. Accordingly, any instruction would not have been

supported by the evidence, *Ho, supra*, and defendant failed to demonstrate prejudice as a result of any omitted instruction. *Mass, supra*.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald