

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEISA A. CARTER,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240823

Wayne Circuit Court

LC No. 01-002693-03

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from a nonjury conviction of attempted second-degree home invasion, MCL 750.92; MCL 750.110a(3), for which she was sentenced to two years' probation with the first ninety days in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the evidence was insufficient to support the verdict because there was no evidence that she intended to commit a felony inside the home as opposed to a misdemeanor or no crime at all. At the very least, she should have been convicted of attempted third-degree home invasion.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). 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). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of second-degree home invasion are (1) that the defendant (a) broke and entered a dwelling or (b) entered a dwelling without permission, and (2) that when the defendant broke and entered or entered the dwelling, she intended to commit a felony, larceny, or assault therein. MCL 750.110a(3). The elements of third-degree home invasion are (1) that the

defendant (a) broke and entered a dwelling or (b) entered a dwelling without permission, and (2) that when the defendant broke and entered or entered the dwelling, she intended to commit a misdemeanor therein. MCL 750.110a(4)(a).

An attempt “consists of (1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense.” *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). The defendant must “inten[d] to do an act or to bring about certain consequences which would in law amount to a crime” and must do an act in furtherance of that intent, which act goes beyond mere preparation. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). Such an act “consists of some direct movement toward commission of the crime that would lead immediately to the completion of the crime.” *Id.*

The evidence showed that defendant was one of three people who attempted to break and enter a dwelling, but were unable to gain entry because the lock on the entry door held. The only issue is that of defendant’s intent. The intent to commit a larceny cannot be inferred from the breaking and entering alone. *People v Frost*, 148 Mich App 773, 776-777; 384 NW2d 790 (1985); *People v Palmer*, 42 Mich App 549, 552; 202 NW2d 536 (1972). However, the defendant’s felonious intent may be proved from circumstantial evidence alone. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). It may be inferred from the nature, time, and place of defendant’s acts before and during the breaking and entering. *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970). Where the defendant’s actions are commonplace or equivocal, and are as consistent with innocent activity as with criminal, objective evidence of the defendant’s intent, i.e., evidence beyond inferences drawn from circumstantial evidence, is required. *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993).

The evidence presented included much more than just the fact of the attempted breaking and entering. Defendant and her friends, who were wearing dark clothing, went to an unoccupied home at night. They did not have permission to enter the home and attempted to force their way in. Such action is not commonplace or equivocal or consistent with innocent activity. They had a large vehicle parked nearby with a confederate waiting inside. They also had tools that could be used to force entry into a house and gloves that could be used to avoid leaving fingerprints. There was no evidence of a reasonable alternative explanation for defendant’s actions, e.g., seeking shelter, a medical emergency, rescue of trapped occupants, etc., and she and her companions left immediately when a neighbor intervened. Such evidence was sufficient to enable a rational factfinder to infer that defendant intended to commit a larceny.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello