

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 26, 2011

v

MARVIN PHARROAH GEARY,
Defendant-Appellant.

No. 296940
Wayne Circuit Court
LC No. 06-013591-FH

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant Marvin Pharroah Geary appeals as of right his bench convictions of larceny of personal property valued at \$1,000 or more, but less than \$20,000, MCL 750.356(3)(a), and malicious destruction of personal property valued at \$200 or more, but less than \$1,000, MCL 750.377a(1)(c)(i). The trial court sentenced him to serve concurrent terms of 1-1/2 to five years in prison for the larceny conviction and six months in jail for the malicious destruction of personal property conviction. Because we conclude that there were no errors warranting relief, we affirm.

On appeal, Geary argues that the evidence was insufficient to support his larceny conviction. “In challenges to the sufficiency of the evidence, this Court reviews the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [trier of fact’s] verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of larceny are:

“(1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner.” [*People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999), quoting *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967).]

Testimony established that police officers went to an enclosed auto repair lot at around 3:30 in the morning. The officers saw a three-foot hole in the fence. When the officers confronted Geary and two codefendants, who were in the lot, they ran and hid behind and underneath cars in an effort to evade capture. After arresting Geary, the officers found a pair of wire cutters in his pocket. The officers also found loose tools and a bag containing tool batteries, handheld battery-operated saws, a flashlight, extra saw blades, and other assorted power tools and accessories within a short distance from Geary, near the opening in the fence. The officers further testified that handheld saws were directly next to or partially underneath three different vehicles. The three vehicles had “fresh” tool marks on their exhaust pipes to indicate a recent sawing, the exhaust pipes were partially sawed off, and the undersides of the vehicles were damaged. Later that morning, the owner of the lot conducted a full inspection and found that a total of five cars had been damaged. In addition to the three cars with the damaged exhaust systems that the officers had observed, two other vehicles had their catalytic converters “sawed right off” and the catalytic converters were no longer on the premises. The owner testified that when he left his lot the previous day, the vehicles did not have any unibody panel damage, and the catalytic converters were intact.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that Geary and his associates removed and carried away, with the intent to steal, the two missing catalytic converters without the owner’s consent. This conclusion is strengthened by the fact that Geary and his associates appeared to be in the process of simultaneously removing the catalytic converters from three other damaged vehicles when they were interrupted by the police. Although Geary suggests alternative ways of viewing the evidence, the trier-of-fact was free to draw its own conclusions. *Roper*, 286 Mich App at 88 (noting that a trier-of-fact is free to draw its own conclusions and may reject the defendant’s preferred inferences). And, viewing the evidence in the light most favorable to the prosecution, there was clearly sufficient evidence to establish that Geary and his associates removed the missing catalytic converters with the requisite felonious intent. *Id.* at 83.

We also disagree with Geary’s claim that the prosecution had to present expert testimony and receipts to establish the value of the stolen property. MCL 750.356 distinguishes the types of larceny based on the value of the property stolen. The value of stolen property must meet the statutory requirement. *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002). Contrary to what Geary argues, however, the owner of property is qualified to testify concerning the property’s value as long as the owner’s valuation is not based on personal or sentimental value. *Id.* at 429. Here, the owner testified that he had 24 years of experience in car repairs and sales and was very knowledgeable of the prices of the parts in question because he had regularly

purchased them for his customers. His testimony was sufficient to enable the trier of fact to find that the value of the property stolen was between \$1,000 and \$20,000.

We also disagree with Geary's suggestion that the prosecutor abused his discretion by charging him under the larceny statute. Because he did not raise this claim below, this Court must review this issue for plain error affecting Geary's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). "[T]he decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor." *People v Venticinque*, 459 Mich 90, 100; 586 NW2d 732 (1998). The prosecutor has broad discretion to bring any charge supported by the evidence. *People v Nichols*, 262 Mich App 408, 415; 686 NW2d 502 (2004). A prosecutor abuses his discretion only if his or her choice is premised on reasons that are unconstitutional, illegal, or ultra vires. *People v Barksdale*, 219 Mich App 484, 488; 556 NW2d 521 (1996).

Although Geary suggests that he should have been charged, at most, with trespassing, see MCL 750.552, the facts summarized above supports the prosecutor's decision to charge him with larceny. *Cain*, 238 Mich App at 120; MCL 750.356(3). Geary does not offer any evidence or arguments suggesting that the charge was brought for an unconstitutional, illegal, or other improper reason. Accordingly, we reject this claim of error.

There were no errors warranting relief.

Affirmed.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly