

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 25, 2014

v

DOMINIC SANFORD,

No. 317377
Macomb Circuit Court
LC No. 2012-003904-FH

Defendant-Appellant.

Before: O'CONNELL, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals of right his convictions after a jury trial of first-degree home invasion, MCL 750.110a(2), and resisting or obstructing a police officer, MCL 750.81d(1). We affirm.

I. FACTUAL BACKGROUND

On October 29, 2012, Lynn Upchurch was at home alone, talking on the phone with her mother and sister, when she heard someone knocking on her front door. She glanced out a window, but did not recognize the man. She watched from a window as the man moved to a second door and began to knock on it. The man then moved to the garage and stooped down by the garage door. Upchurch became concerned and her sister called 911. Upchurch testified that she continued to watch the man as he moved behind the garage and into the backyard. She said that the man knocked on several windows and on a back door. Upchurch then heard the doorframe and the glass on the door being broken. She testified that she heard the man stick his hand through the broken glass on the door frame and turn the dead bolt on the door, which could only be turned from the inside. When Upchurch heard the dead bolt unlock, she left through the front door of the house and ran to a neighbor's house.

The police arrived within minutes. One of the officers saw the back door was ajar and its frame and glass was broken. The officer also observed defendant leaving through a window, so he ordered him to stop and get down on the ground. Defendant looked at the officer and then retreated inside the house. The police officer ran toward the window, yelling for defendant to stop. Defendant locked the window. The police officer broke the window and entered the house. He ordered defendant to stop and get down onto the ground, but defendant ignored him and ran through the house. When defendant tried to exit through a side door, he ran into another police officer who grabbed defendant's arm and ordered him to the ground. Defendant attempted to pull away and continued to run, so the officer grabbed his legs and took him to the

ground. He then ordered defendant to place his hands behind his back, but defendant kept his hands under his body and resisted efforts to restrain him. With the help of other officers, the officer was able to secure defendant's hands behind his back. Upchurch testified that when she returned to her house, her daughter's jewelry box was broken and her jewelry was scattered all over the floor.

Defendant, who testified on his own behalf, testified that he was merely walking by Upchurch's house when the police officers approached him and ordered him onto the ground. He testified that the police officer told him to "start resisting" and then the officers assaulted him.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence to support his convictions. We disagree.

Claims of insufficient evidence are reviewed de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). "We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime to have been proven beyond a reasonable doubt." *Id.* "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

The elements of first-degree home invasion are: (1) the defendant either "breaks and enters a dwelling" or "enters a dwelling without permission;" (2) the defendant either "intends when entering to commit a felony, larceny, or assault in the dwelling" or "at any time while entering, present in, or exiting the dwelling commits a felony, larceny, or assault;" and (3) the defendant "is armed with a dangerous weapon" or "another person is lawfully present in the dwelling." *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010); MCL 750.110a(2). Furthermore, "identity is an element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Defendant first asserts there was insufficient evidence of identity. We disagree. Upchurch's testimony established that someone broke the frame and glass on the back door and turned the deadbolt, which could only be done from the inside. Further, she testified that her daughter's jewelry box was broken and the jewelry was scattered. Additionally, the testimony from the police officers established that defendant was leaving the house, leaning out of a window, when he was first spotted by the police. Then, after a chase through the house, he was apprehended coming out of a side door of the house. Accordingly, viewed in a light most favorable to the prosecution, the evidence produced at trial established defendant's identity. *Meissner*, 294 Mich App at 452.

Defendant next argues that there was insufficient evidence that he either broke and entered the home or entered without permission. We disagree. The evidence showed that Upchurch did not give defendant permission to enter her home. Instead, she did not answer the various doors that he knocked on, had her sister call 911 when he persisted in knocking, and fled her home to wait for the police when defendant broke the glass in a door in order to gain entry

into the house. Further, the evidence also showed that defendant broke a door frame and glass in order to turn the deadbolt on the back door. Viewed in a light most favorable to the prosecution, there was sufficient evidence to support the jury's findings on the first element under either theory.

Defendant next argues that there was insufficient evidence that defendant intended to or actually committed a felony in Upchurch's home. We disagree. "Intent may be inferred from all the facts and circumstances." *People v Cameron*, 291 Mich App 599, 615; 806 NW2d 371 (2011). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Here, the evidence showed that in the morning, when the house was typically empty, defendant knocked on various doors and windows and walked the perimeter of Upchurch's house. He then forcibly entered the home. He was wearing dark clothing. After he was apprehended while trying to flee the scene, Upchurch returned to her home and discovered that her daughter's jewelry box was broken and the jewelry was scattered. Based on this evidence, a jury could infer that defendant entered the home with the intent to commit a larceny.

Finally, defendant argues that there was insufficient evidence to establish that he was either armed with a dangerous weapon or that another person was lawfully present in the home. We disagree. The evidence showed that Upchurch was inside the home when defendant started knocking on the doors and windows. She was in the home when he broke the frame and glass on the back door. She was in the home when he reached his hand through the glass and turned the deadbolt. Further, one of the police officers was also lawfully present in the house while he pursued defendant through the house from the window to the side door. Thus, viewed in the light most favorable to the prosecution, a jury could reasonably conclude that another person was lawfully present in the home.

Defendant also challenges the sufficiency of the evidence supporting his conviction for resisting or obstructing a police officer. To prove that crime, the prosecution must establish:

(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties. [*People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010); MCL 750.81d(1).]

" 'Obstruct' includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a). Here, the testimony established that defendant was ordered to stop and get down on the ground multiple times, but did not comply. Instead, he climbed through a window, locked it, and then fled through Upchurch's house to a side door. When he was grabbed by another police officer, he continued to resist arrest by continuing to pull away and run after he was grabbed, by ignoring orders to put his hands behind his back after he was tackled to the ground, and by keeping his hands under his body when the police officer was trying to handcuff his hands behind his back. Because of

defendant's efforts, multiple police officers were required to successfully handcuff him. Finally, defendant testified that he knew the people apprehending him were police officers. Accordingly, when viewed in the light most favorable to the prosecution, there was sufficient evidence for the jury to convict him of resisting or obstructing a police officer.

III. MRE 609

Defendant next argues that the trial court erred in admitting evidence of a prior conviction under MRE 609. We disagree.

“This Court reviews for an abuse of discretion a trial court’s determination whether a prior conviction involving a theft component may be used to impeach a defendant.” *People v Meshell*, 265 Mich App 616, 634; 696 NW2d 754 (2005). “A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.” *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). “The determination whether the probative value of evidence is substantially outweighed by its prejudicial effect is best left to a contemporaneous assessment of the presentation, credibility, and effect of the testimony.” *People v Waclawski*, 286 Mich App 634, 670; 780 NW2d 321 (2009).

Pursuant to MRE 609, a witness’s credibility may be impeached with evidence of a prior conviction under certain circumstances. MRE 609 provides, in relevant part:

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross-examination, and

(1) the crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

(b) Determining Probative Value and Prejudicial Effect. For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record, the analysis of each factor.

The prior conviction at issue is defendant's August 20, 2009, conviction of receiving and concealing a stolen motor vehicle. Because receiving and concealing a stolen motor vehicle contains an element of theft, MRE 609(a)(2) was applicable. However, defendant argues that the conviction was inadmissible under MRE 609(a)(2)(B) because the trial court's findings were deficient, the conviction did not have significant probative value, and the conviction was highly prejudicial to his right to a fair trial. We disagree.

Whether to admit evidence of the receiving and concealing conviction in this case was a close question, and the trial court's decision to admit the evidence did not fall outside the range of reasonable and principled outcomes. *Orr*, 275 Mich App at 588-589; see also *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000) (“[T]he trial court’s decision on a close evidentiary question . . . ordinarily cannot be an abuse of discretion.”). In deciding to admit the evidence of the receiving and concealing conviction, the trial court noted that defendant intended to testify and that his credibility would be at issue. Further, the trial court followed the instruction in MRE 609(b) concerning the determination of probative value and prejudicial effect. The trial court recognized that the receiving and concealing conviction was less than four years old and reasoned that, as a crime of theft or dishonesty, the conviction had significant probative value on the issue of credibility. Further, the court found that the crime was sufficiently distinct from the home invasion charge for which defendant was on trial and that there was no reason to conclude that admission of the conviction would unduly affect defendant's decision on whether he would testify. Therefore, on these facts, we hold that the trial court did not abuse its discretion by admitting evidence of defendant's prior receiving and concealing conviction for impeachment purposes.

In any event, even if the trial court erred in admitting the prior conviction, defendant is not entitled to a new trial. “[A] preserved, nonconstitutional error is not a ground for reversal unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (quotation marks omitted). Here, there was overwhelming evidence supporting defendant's convictions. Again, Upchurch testified she was home alone when she saw and heard someone knocking on various doors and windows in her home. Concerned, she had her sister (who she was talking to on the phone) call 911. Shortly after that, defendant broke the frame and glass on a door in the back of the house. He pushed his hand through the glass and turned the deadbolt, which could only be turned from the inside. Upchurch fled, and the police arrived and set up a perimeter. One of the officers saw defendant leaving Upchurch's house through a window. He ordered defendant to stop and get on the ground. Defendant went back inside, locking the window behind him. He was then apprehended while trying to escape through a side door. Defendant has not shown that the admission of the evidence of his prior conviction affected the outcome of the trial.

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood