

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PIERRE BRINTLEY,

Defendant-Appellant.

UNPUBLISHED

April 13, 2006

No. 259071

Wayne Circuit Court

LC No. 04-006975-01

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of second-degree home invasion, MCL 750.110a(3), larceny in a building, MCL 750.360, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 2 to 15 years' imprisonment for the second-degree home invasion conviction, one to four years' imprisonment for the larceny in a building conviction, and two years' imprisonment for the felony-firearm conviction. He appeals as of right, and we affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to prove the elements of second-degree home invasion, larceny in a building, and felony-firearm beyond a reasonable doubt. We disagree. We review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

The elements of second-degree home invasion are: (1) that the defendant entered a dwelling, either by a breaking or without permission, (2) with the intent to commit a felony or a larceny in the dwelling. MCL 750.110a(3); *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004). To convict defendant of larceny in a building, the prosecution must prove: (1) the actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the goods or property must be the personal property of another, (5) the taking must be without the consent and against the will of the owner, and (6) the taking must occur within the confines of a building. *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of a crime. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

There are three components to every crime: (1) the occurrence of a specific injury or loss; (2) the cause of the loss is the criminality by a person; and (3) the accused's identity as the perpetrator of the crime. *People v Cotton*, 191 Mich App 377, 386; 478 NW2d 681 (1991). In the present case, review of defendant's brief on appeal reveals that he does not take issue with the individual elements of the home invasion and larceny convictions, but rather the evidence to support his identity as the perpetrator. Review of the record reveals that there was sufficient evidence to support these convictions. When the victim returned home from work, the meter seal was different than when he last saw it before leaving for work that morning. Defendant's fingerprints were found on the glass portion of the electric meter on the home near the point of entry, a basement window located along the same wall as the electric meter. Fingerprint evidence is admissible to prove identity. *People v Les*, 267 Mich 648, 652; 255 NW 407 (1934). Fingerprint evidence alone is sufficient to establish identity if the fingerprints were found at the scene of the crime under such circumstances that they could have been made at the time of the commission of the crime. *People v Willis*, 60 Mich App 154, 158-159; 230 NW2d 353 (1975). Identity based on fingerprint evidence is a proper subject for the consideration of the jury, and the weight to be given such testimony is for the jury to determine. *Les, supra*. Furthermore, it is the role of the trier of fact, not the appellate court, to determine the inferences that may be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The assessment of credibility, when presented by two diametrically opposed versions of events, rests with the trier of fact. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). We do not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant did not dispute that his fingerprints were present on the glass portion of the electric meter. Rather, defendant asserted that there was a valid explanation for his fingerprints to be there. He testified that a football bounced near the victim's home, and when he reached down to retrieve the football, he touched the glass. However, the trial court assessed the credibility of that statement and rejected it. Defendant demonstrated the manner in which he picked up the football. The trial court indicated that his explanation was simply implausible when the football was picked up off the ground and the electric meter was raised several feet off the ground. Rather, the trial court determined that the fingerprint evidence supported the prosecution's theory. Defendant's continued reliance on his trial testimony on appeal does not provide him any relief because the trial court assessed the credibility of the testimony and rejected it. Accordingly, the challenge to identity based on fingerprint evidence is without merit.

Defendant's challenge to the sufficiency of the evidence to support the felony-firearm conviction is also without merit. The victim testified that a rifle was taken from his home during the home invasion. A larceny of a firearm during a residential breaking and entering can be the predicate felony to support a felony-firearm conviction for purposes of a home invasion offense. See *People v Shipley*, 256 Mich App 367, 662 NW2d 856 (2003). Defendant alleges that there could have been constructive possession of the firearm or that defendant aided and abetted another. However, the prosecution is not obligated to disprove every reasonable theory consistent with innocence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Viewing the evidence in the light most favorable to the prosecution, *Sherman-Huffman, supra*, there was sufficient evidence to support defendant's convictions.

Defendant next alleges that the trial court erred in allowing admission of evidence regarding defendant's prior arrests and prior conviction for receiving and concealing stolen property. This challenge is simply without merit. In a bench trial, it is presumed that the trial court follows the law and understands the distinction between admissible and inadmissible evidence. *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). The trial court, unlike a jury, possesses an understanding of the law that allows it to ignore evidentiary errors and to decide a case solely based on the evidence properly admitted at trial. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). Defendant failed to overcome this presumption. Review of the record reveals that the trial court reached its verdict based on the credibility of defendant's explanation for his presence at the victim's residence. Assuming without deciding that the evidence was not properly admitted, it did not serve as the basis for defendant's convictions.

Lastly, defendant alleges that trial counsel was ineffective for failing to object to the admission of the testimony addressing prior arrests and a prior conviction. We disagree. Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). The defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001). To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.* Decisions regarding the evidence to be presented and whether to call or question witnesses are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). We do not substitute our judgment for that of trial counsel when addressing issues of trial strategy, and we do not view counsel's competence with the benefit of hindsight. *Id.* at 76-77. When record evidence of ineffective assistance of counsel is not present, our review is limited to mistakes apparent on the record. *Id.*

On this record, we cannot conclude that trial counsel's failure to object to the admission of evidence was erroneous. The case proceeded before a trial judge who is presumed to know the difference between admissible and inadmissible evidence. *Farmer, supra*. Defense counsel need not raise a meritless objection, and defense counsel may have deemed it unnecessary to object because of the proceeding as a bench trial. Furthermore, the key issue in the case involved how defendant's fingerprints landed on the electric meter in proximity to the point of entry. This presented a credibility assessment, which the trier of fact resolved in favor of the prosecution.

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Patrick M. Meter