

STATE OF MICHIGAN
COURT OF APPEALS

In re MYKAIL WOMACK, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MYKAIL WOMACK,

Respondent-Appellant.

UNPUBLISHED

October 18, 2016

No. 328188

Wayne Circuit Court

Family Division

LC No. 14-518399-DL

Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right an order of disposition, following his adjudication of guilt of one count of larceny in a building, MCL 750.360. The trial court ordered respondent to serve 182 days of intensive probation in the home of his mother. We affirm.

Respondent asserts that there was insufficient evidence to support the adjudication of guilt; specifically, he claims that he did not intend to permanently deprive the victim of her phone and that she consented to his possession of the phone. We disagree.

This Court reviews de novo a claim regarding the sufficiency of the evidence in a bench trial. *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). While reviewing the evidence, this Court examines the record in a light most favorable to the prosecution to determine whether a rational trier of fact could find the elements of the crime proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 420-421; 646 NW2d 158 (2002). Circumstantial evidence and reasonable inferences that emerge from that evidence can establish the elements of a crime. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). This Court resolves any conflicting evidence in favor of the prosecution. *Id.*

The elements of larceny in a building 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 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 the building. [*People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).]

Larceny in a building is a specific intent crime that requires the prosecutor to prove that the defendant intended to permanently deprive the owner of his or her property. *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002). Again, respondent only contends that there was insufficient evidence to prove that he took the phone without consent and that he intended to permanently deprive the victim of her phone.

The record provides sufficient evidence to support a reasonable trier of fact's conclusion that respondent lacked the victim's consent. An owner may grant the defendant consent to possess or have mere custody over the property. *People v Manning*, 38 Mich App 662, 666; 197 NW2d 152 (1972).¹ The distinction between possession and mere custody is important in determining whether the taking is considered larceny. *Id.* If the owner grants a defendant mere custody over the property, the owner still maintains legal possession and, therefore, “ ‘if the wrongdoer makes away with the property with intent to deprive the owner of it permanently his offense is larceny.’ ” *Id.*, quoting *State v Smitherman*, 187 Kan 264, 266-267; 356 P2d 675 (1960). An owner grants a defendant mere custody over property if the defendant is meant to use the property “ ‘for some limited, special or temporary purpose.’ ” *Id.*

The record demonstrates that respondent merely had custody of the victim's phone. Specifically, the victim testified that she gave respondent permission to use her phone in their school cafeteria so that respondent could call his mom. A reasonable trier of fact could find that the purpose for respondent's use of the victim's phone was limited, special or temporary. When respondent ran out of the cafeteria with the phone, he exceeded the confines of this limited special or temporary use, and therefore, there was sufficient evidence that he lacked the victim's consent.

There was also sufficient evidence that respondent intended to permanently deprive the victim of her phone. A prosecutor only needs to provide minimal circumstantial evidence to prove that the defendant had the requisite intent. *People v Johnson-El*, 299 Mich App 648, 653; 831 NW2d 478 (2013). This Court has held that evidence of the defendant fleeing from the scene of the crime supports the inference that the defendant had the requisite intent. *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). Again, the victim testified that, after she gave respondent her phone to make a call, he ran from the cafeteria. The victim called out to respondent to come back and to give her back her phone, but he continued to run. Respondent never returned the phone to the victim and despite respondent's testimony that he gave the victim's phone to someone else to return, the victim never received her phone back. Respondent's flight and failure to return the phone support the minimal circumstantial evidence necessary to prove that he intended to permanently deprive the victim of her phone.

¹ “Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority.” *In re Stillwell Trust*, 299 Mich App 289, 289-299; 829 NW2d 353 (2012).

Respondent asserts that his testimony—that he returned the victim’s phone to a classmate that he thought the victim knew and that he never left the cafeteria with her phone—contradicts the notion that he intended to deprive the victim of her phone. However, the trial court did not find his testimony credible. The trial court decides issues of credibility, and therefore, this issue will not be resolved anew on appeal. *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011).

There was sufficient evidence for a rational trier of fact to adjudicate respondent guilty beyond a reasonable doubt of larceny in a building.

Affirmed.

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens