

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM FREDERICK LANKFORD,

Defendant-Appellant.

UNPUBLISHED

June 22, 2006

No. 260808

Wayne Circuit Court

LC No. 04-010635-01

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for first-degree home invasion, MCL 750.110a(2). Defendant was sentenced to 51 to 76 months. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the prosecution did not present sufficient evidence to prove beyond a reasonable doubt that defendant entered the home with the specific intent to commit a felony inside. We disagree. A sufficiency of the evidence claim is reviewed de novo to determine whether a rational factfinder could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v McGhee*, 268 Mich App 600, 612; 709 NW2d 595 (2005). Direct and circumstantial evidence is viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *Id.* The trial court is in a better position to determine the credibility of witnesses and weight of the evidence, so its factual conclusions are given deference. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *Wolfe, supra*, pp 514-515.

The offense of first-degree home invasion requires the prosecution to prove that defendant either broke and entered a dwelling or entered without permission, with the intent to commit a felony, larceny, or assault in the dwelling, or that he actually committed a felony, larceny, or assault while entering, present in, or exiting the dwelling, and that defendant was either armed or another person was lawfully present in the dwelling. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); MCL 750.110a(2). The trial court correctly concluded that defendant broke into and entered the apartment, intended to commit theft at the time of the

breaking, committed the theft, and that another person was lawfully present at the time defendant entered, was present, and was leaving the apartment.

Defendant does not contest that he committed a breaking and entering of Andria Coil's apartment, or, at a minimum, that he entered without permission. He also does not contest that others were lawfully present in the apartment at the time of the incident. The issue on appeal is whether defendant intended to commit larceny when he entered the apartment, or alternatively, whether he actually committed larceny "at any time" while he was entering, present in, or exiting the apartment. MCL 750.110a(2). The wording of the statute indicates that either having the intent at the time of entry or committing the act at some point during the incident satisfies the requirement. "[F]irst-degree home invasion is not necessarily completed at the time of entry into a dwelling, but rather can be completed by commission of the final element of the crime while the person is present in (or leaving) the dwelling." *People v Shipley*, 256 Mich App 367, 377; 662 NW2d 856 (2003).

The trial court concluded that defendant both had the intent to commit larceny at the time of entry and performed the act. Defendant has consistently denied that he stole anything or intended to steal and has insisted that his only purpose upon entering the apartment was to use the bathroom. Because nobody actually saw him take the ring or throw it to the ground in the basement, the court was entitled to make reasonable inferences based on circumstantial evidence to determine defendant's actions and state of mind. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *McGhee*, *supra*, p 623. Although breaking and entering is not conclusive proof of defendant's intent, it may be "inferred from the nature, time and place of defendant's acts before and during the breaking and entering." *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988), quoting *People v Hughes*, 27 Mich App 221; 183 NW2d 383 (1970).

The police came to the apartment to investigate the break-in. About an hour after they left, Coil noticed her ring was missing. She had placed the ring on top of the refrigerator the night before while doing dishes. Defendant had been living in the common area basement and had several belongings there. After the police returned and arrested defendant in the basement and took him into custody, Coil found her ring on the basement floor. The trial judge found the testimony relating to the ring credible and believed defendant intended to enter the apartment and "take what he could get" until Joseph Born, Coil's live-in boyfriend, caught him. The trial judge was in the best position to weigh the evidence and assess the credibility of the witnesses. His conclusion was reasonable taking into consideration the circumstantial evidence presented. We hold, therefore, that there was sufficient evidence to convict defendant of first-degree home invasion.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Patrick M. Meter