STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2012
v	No. 307983 Berrien Circuit Court
SHAWN LYNN DODGE, Defendant-Appellant.	LC No. 2011-002394-FH

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of malicious destruction of a building valued at $1,000 or more but less than $20,000, MCL 750.380(3)(a), and larceny less than $200, MCL 750.356(5). He appeals by right and argues that there was insufficient evidence presented to support his conviction. We affirm.

"When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Application of this standard requires the reviewing court to "draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id*. at 400.

On the morning of June 8, 2011, Sukhjinder Singh was in the process of opening Eagle's Party Store, which was owned by his father. He heard a noise from above and went outside to investigate. He came upon defendant, whom he recognized as a regular customer. Defendant was holding a large wooden ladder and told Singh that he had gone up to the roof in an attempt to recover a bag of marijuana that was blown up there by the wind. Singh asked defendant for use of the ladder to climb up himself, but defendant refused, threw the ladder into a nearby ditch, and walked away. Singh climbed onto the roof using a different ladder and observed that extensive damage had been done to several of the building's cooling units with what appeared to be Freon still leaking from broken pipes. Neighborhood resident Frank Speck, who was also familiar with defendant, was standing outside and saw defendant run toward the nearby house where he lived.

Singh called the police, and Officer Bruce Modigell responded. He saw Speck standing on his porch, spoke to him, and then went to defendant's home. When defendant came to see

Modigell at the front door, defendant immediately began professing his innocence. Modigell then instructed defendant to get in the back seat of his squad car. Meanwhile, Speck had left his house, and while driving past Eagle's Party Store, noticed a condenser unit lying in a ditch near the road. He stopped, and when Modigell returned to the store, Speck pointed out not only the condenser to Modigell, but also the ladder and some copper tubing that was lying nearby. Officer Steve Morrow arrived at the store to back up Modigell and climbed onto the roof to photograph the damage. Morrow also testified that he saw what he thought to be Freon leaking from the broken cooling units on the roof.

Chad White, the owner of a heating and cooling business, estimated the damage to the roof-top equipment. White's written estimate of $18,944 to fix everything was entered into evidence. White also testified that the damage could have been done in a couple of hours; the items seen in the ditch had come from the roof, and that it would take at most 25 minutes for the Freon to fully leak from the system once punctured. At trial, White and Modigell each gave estimates for the market price of scrap copper that ranged from $2.70 to $3.60 per pound.

To be convicted of malicious destruction of a building, $1,000 or more but less than $20,000, MCL 750.380(3)(a), "a defendant must have intended to injure or destroy the property in question." *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). Because of the difficulty of proving a state of mind, minimal circumstantial evidence is sufficient to establish the defendant's intent, which can be inferred from all the evidence. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). The amount of the damage to a building may be established by showing the reasonable cost to repair or restore the property. *People v LaBelle*, 231 Mich App 37, 38; 585 NW2d 756 (1998). Although establishing that the defendant is the perpetrator is an essential element of any criminal prosecution, it may be shown by either direct or circumstantial evidence. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

Singh saw defendant with a ladder in his hands; defendant told Singh that he had just been up to the roof. Modigell testified that the components discovered in the ditch were not covered in dew like the surrounding grass, and White testified that the system's Freon would fully dissipate within 25 minutes when opened. Sukhjinder and Morrow testified that Freon was still leaking from the system when they went up to the roof. Together, this evidence permits an inference that damage was done within minutes of when defendant indicated to Sukhjinder that he had been on the roof. Defendant also fled when Sukhjinder confronted him and tossed the ladder he was holding in the same area of the same ditch where components from the roof were found. Then, he immediately began professing his innocence when he first saw Modigell, before he had been accused or questioned. Viewed in the light most favorable to the prosecution, sufficient circumstantial evidence established defendant's identity as the perpetrator beyond a reasonable doubt. *Nowack*, 462 Mich at 399-400; *Kern*, 6 Mich App at 409-410.

With respect to the other elements, the fact that the building and its attached cooling equipment did not belong to defendant is not at issue. Moreover, White's testimony and his estimate of $18,944 to repair or restore the property was sufficient to permit a rational fact finder to conclude that defendant caused between $1,000 and $20,000 damage to the building. Finally, there was sufficient evidence of defendant's intent. The process for dismantling the cooling units required a couple of hours to complete, evidencing a deliberate course of conduct to injure the property and remove items that could be sold for scrap. See *Kanaan*, 278 Mich App at 622.

The elements of larceny are: (1) an actual or constructive taking of property, (2) without the consent of the owner or other authorized person, (3) the property was moved or carried away; (4) the defendant intended to steal or permanently deprive the owner of the property, and (5) the property had some value less than $200. CJI2d 23.1; MCL 750.356(5); *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999).

White's testimony showed that components of the store's cooling system were actually moved to the ditch across the street. Sukhjinder's testimony proved that the property did not belong to defendant and that this taking and moving the property was without the owner's consent. Additionally, the testimony of Modigell and White established that the parts taken from the roof and put in the ditch had some scrap market value that likely motivated defendant's felonious intent to steal the Singh family's property without their consent. Evidence of intent to steal combined with the slightest movement of the items—here from the roof to the ditch—proves the element of asportation. See *People v McFarland*, 165 Mich App 779, 782; 419 NW2d 68 (1988). Viewing the evidence in the light most favorable to the prosecution, we conclude a rational trier of fact could have found that all essential elements of the offenses for which defendant was convicted were proven beyond a reasonable doubt. *Nowack*, 462 Mich at 399-400.

We affirm.

/s/ Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan