STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 4, 2014
v	No. 317697 Wayne Circuit Court
TIMOTHY PATRICK MARCH, Defendant-Appellee.	LC No. 13-003955-FH

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

PER CURIAM.

The prosecution appeals as of right the trial court order granting defendant's motion for dismissal of all charges. Defendant was charged with larceny from a building, MCL 750.360, and buying, receiving, possessing, or concealing stolen property valued at $200 or more but less than $1,000, MCL 750.535(1), (4)(a). For the reasons set forth in this opinion, we reverse and remand this matter to the trial court for further proceedings consistent with this opinion.

This appeal arises from the theft of fixtures from a residence in Westland, Michigan. Defendant's father had previously owned the home, but pursuant to a power of attorney granted defendant on July 29, 2011, he placed his father into an assisted living home and let the Westland home fall into arrears. The home was allowed to go into foreclosure, and eventually put up for sale through the Wayne County sheriff's department.

On August 9, 2012, John Hamood purchased the Westland home, pursuant to a sheriff's sale, for $33,425.80. The home was not redeemed by defendant. On February 10, 2013, Hamood went to the residence and saw that the side door to the attached garage had been kicked in and that the door connecting the garage to the house was unlocked. Once inside the house, Hamood noticed numerous items missing, including a Whirlpool dishwasher, a vent fan for the oven, a Frigidaire refrigerator, a Kenmore washing machine, a plastic laundry tub, oak kitchen cabinets, the kitchen counter top, numerous interior doors, and one bi-fold closet door. Hamood called the police, and the investigation led them to get a search warrant for defendant's home.

Pursuant to the warrant, police searched defendant's home and property in Ecorse, finding a sink and white countertops matching the description of some items missing from the kitchen of the Westland home. Defendant arrived on the scene and was asked about the sink and countertops. Defendant responded that he bought a lot of things on "cragslist," and denied any theft from the Westland home. A continuing search of the home in Ecorse revealed three kitchen

cabinets and interior doors matching the description of those missing from the Westland home. Further, in the basement, police found a furnace, air conditioning unit, hot water tank, and white wash tub which Hamood identified as some of the items missing from the Westland home.

On July 3, 2013, defendant filed an amended motion for dismissal of all charges. The amended motion moved for dismissal on the grounds that defendant and defendant's father still had the right to possession and control of the items in the home during the statutory redemption period following the sheriff's sale, the items taken from the home were properly characterized as fixtures, not "goods or property" as required to support a conviction for larceny, and the prosecution could not establish any "felonious intent" under the circumstances. The trial court, for a third time, denied defendant's motion for dismissal. On July 22, 2013, defendant filed a motion for reconsideration with the trial court. In his motion for reconsideration, defendant cited case law to support his prior contention that he maintained the legal right to possession and control of the premises during the redemption period, the time when the prosecution claimed defendant stole the items. Therefore, defendant argued, he could not have committed a larceny against himself. The trial court granted the motion for reconsideration, and dismissed all charges against defendant. This appeal then ensued.

On appeal, the prosecution argues that the trial court erred in finding that defendant could not be prosecuted for allegedly removing items from his father's home after it had been purchased at a sheriff's sale, but prior to the conclusion of the six-month statutory redemption period, because defendant had title and the right to possess the items.

A trial court's decision on a motion to dismiss is reviewed by this Court for an abuse of discretion. *People v Hartwick*, 303 Mich App 247, 255-256; 842 NW2d 545 (2013), lv gtd 496 Mich 851 (2014). To the extent that the trial court's decision rested on issues of statutory interpretation, this Court reviews those issues de novo. *People v Loper*, 299 Mich App 451, 463-464; 830 NW2d 836 (2013). To the extent the prosecution's argument requires the interpretation of MCL 750.356, MCL 750.360, and MCL 600.3278, this Court's "primary purpose in construing statutes is to discern and give effect to the Legislature's intent." *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006) (internal quotation marks omitted). "The fair and natural import of the provision governs, considering the subject matter of the entire statute." *People v McGraw*, 484 Mich 120, 124; 771 NW2d 655 (2009). The Legislature is presumed to have intended the plainly expressed meaning of the statute, and clear statutory language shall be enforced as it is written. *Loper*, 299 Mich App at 464. "[W]hen statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed." *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004).

MCL 750.360 provides:

> Any person who shall commit the crime of larceny by stealing in any dwelling house, house trailer, office, store, gasoline service station, shop, warehouse, mill, factory, hotel, school, barn, granary, ship, boat, vessel, church, house of worship, locker room or any building used by the public shall be guilty of a felony.

The basic elements of larceny from 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).]

Further, larceny is a specific intent crime, and the prosecution must prove that a defendant specifically intends to steal another person's property. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999). The question of a defendant's specific intent to commit larceny is a matter for the jury to determine. *Id*. at 119. The basis of the dispute below was whether the items that defendant allegedly stole belonged to anyone other than defendant, i.e., element (4), because defendant maintained the right to possession and control of the Westland property during the redemption period. We note that defendant's father, not defendant, allegedly owned the home in Westland, Michigan, prior to the sheriff's sale. However, defendant had full control to the property through his power of attorney over his father's affairs, and therefore, he can be considered the owner of the property. See *People v Pohl*, 202 Mich App 203, 205; 507 NW2d 819 (1993) ("The 'owner' is the person who has rightful possession and control of the property.")

> MCL 750.535(1), (4)(a) provides, in pertinent part:
>
> (1) A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, or having reason to know or reason to believe, that the money, goods, or property is stolen, embezzled, or converted.
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> * * *
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> (4) If any of the following apply, a person who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00 or 3 times the value of the property purchased, received, possessed, or concealed, whichever is greater, or both imprisonment and a fine:
>
> (a) The property purchased, received, possessed, or concealed has a value of $200.00 or more but less than $1,000.00.

To convict a defendant of receiving, possessing, or concealing stolen goods or property, the prosecution is required to prove: "(1) the property was stolen; (2) the value of the property met the statutory requirement; (3) defendant received, possessed, or concealed the property with knowledge that the property was stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty actual or constructive knowledge of the defendant that the property received or concealed was stolen." *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866, 868 (2002). Much of the lower court's discussion at the hearings on defendant's motion centered on the requirements to prove the charge of larceny from a building, not the charge of possessing stolen property. However, because the trial court found that defendant was incapable of

committing a larceny by taking property that he owned, the charge for possessing stolen property failed the requirement that "the property was stolen." *Id*.

In *People v Sheldon*, 208 Mich App 331, 333-334; 527 NW2d 76 (1995), the defendant was charged with larceny for removing two Cadillacs he had just purchased from an impound lot without paying the impound fees. This Court held that "[l]arceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has a rightful possession and control of the property." *Id*. at 334. This Court further held that larceny included an expansive definition of "owner" which could mean "the actual owner of the property [or any other person whose consent was necessary before the property could be taken]." *Id*. at 334-335, quoting CJI2d 22.2 (brackets in original). This Court reversed the trial court's order dismissing the larceny charge against the defendant because a civil statute gave the impound lots the authority to hold the vehicle, and therefore, the impound lots held an interest in the Cadillacs to the extent of their lawful impound fees. *Id*. at 335-336.

Sheldon is analogous to the instant case. Here, the complainant purchased the home of defendant's father pursuant to a sheriff's sale. As this Court recently held in *Fed Nat'l Mtg Ass'n v Lagoons Forest*, 305 Mich App 258, 268-269; 852 NW2d 217 (2014), "a sheriff's deed grants the holder an equitable interest in the foreclosed property," which this Court has described as "equitable title." Further, the complainant's interest in the property is supported by MCL 600.3278(1), which provides, in pertinent part:

> During the period of redemption following a foreclosure sale of property under this chapter, the mortgagor and any other person liable on the mortgage is liable to the purchaser at the sale . . . for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage.

Under this provision, the complainant had the right to a purchased property free of physical injury by defendant. Pursuant to both MCL 600.3278(1), and the complainant's equitable interest or title in the property, Fed *Nat'l Mtg Ass'n*, 305 Mich App at 268-269, it is clear that the complainant meets the definition of "any other person whose consent was necessary before the property could be taken," *Sheldon*, 208 Mich App at 334-335, and therefore, defendant could not simply remove the items from his father's home without the complainant's permission. Thus, the items that defendant allegedly removed from the home were at least partially the "property of another," *Cain*, 238 Mich App at 120, and the trial court abused its discretion in dismissing the larceny and possession of stolen property charges against defendant on that basis, *Hartwick*, 303 Mich App at 255-256.

In his brief on appeal, defendant contends that the trial court's order could be affirmed on the alternative ground that the items allegedly stolen were "fixtures," and therefore, could not support a charge of larceny.[1]

The simple larceny statute, MCL 750.356(1), provides:

> A person who commits larceny by stealing any of the following property of another person is guilty of a crime as provided in this section:
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> (a) Money, goods, or chattels.
>
> (b) A bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order, or certificate.
>
> (c) A book of accounts for or concerning money or goods due, to become due, or to be delivered.
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> (d) A deed or writing containing a conveyance of land or other valuable contract in force.
>
> (e) A receipt, release, or defeasance.
>
> (f) A writ, process, or public record.
>
> (g) Scrap metal.

Based on these delineated types of property found in the simple larceny statute, defendant is correct that this subsection does not list fixtures as property that, once stolen, can form the basis for criminal charges for larceny. However, MCL 750.356(1)(a) does provide that the theft of "[m]oney, goods, or chattels," can support a conviction for larceny. The criminal statute does not define goods or chattels. When an undefined term has a unique legal meaning, it "shall be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a; see also *People v Flick*, 487 Mich 1, 11; 790 NW2d 295 (2010) (stating same). In defining an undefined term of art, it is appropriate for this Court to resort to a legal dictionary. *People v Steele*, 283 Mich App 472, 488; 769 NW2d 256 (2009).

Black's Law Dictionary (9th ed) defines "chattel" as "[m]ovable or transferable property; personal property," and "goods" as "[t]angible or movable personal property other than money." *Black's Law Dictionary* (9th ed) also defines "fixture" as:

> Personal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home. Historically, personal property becomes a fixture when it is physically fastened to

[1] A party is not required to file a cross-appeal to argue alternative bases for affirmance. *People v Brown*, 297 Mich App 670, 678 n 6; 825 NW2d 91 (2012).

> or connected with the land or building and the fastening or connection was done to enhance the utility of the land or building. [Internal citations omitted.]

Defendant is correct that the various items alleged to have been stolen from the Westland home were fixtures prior to the theft. However, once the items were severed from the real property to which they were attached, they resumed their prior character as personal property and their theft falls under the language of the larceny statute. See, 1 Cameron, Michigan Real Property Law (3d ed), § 4.8, p 140 ("[T]here can be what is called severance, or the removal of an article that was once attached to the land for disposal or use elsewhere. When an item is severed, it ceases to be a fixture and resumes its character as an item of personal property.") Therefore, the fact that the items defendant allegedly stole were fixtures *prior to* their alleged severance and theft does not preclude criminal charges for larceny from a building.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens