STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 20, 2006
v	No. 260814 Oakland Circuit Court
JOSEPH CAMPBELL, Defendant-Appellant.	LC No. 2004-198093-FH

Before: Neff, P.J., and Bandstra and Zahra, 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 1 to 20 years in prison. 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, 622; 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*. at 428. 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* at 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 issue on appeal is whether defendant intended to commit larceny when he entered the home, or alternatively, whether he actually committed larceny "at any time" while he was entering, present in, or exiting the home.

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 correctly concluded that defendant broke into and entered Timothy Kozub's home, without permission, and took clothes, a wallet, and keys, while Kozub was lawfully present. The evidence shows that Kozub was awakened on the night of the incident by a sound in the garage, found several items missing from his home, and discovered his car door open with his belongings inside. Kozub's girlfriend's mother's information was in the stolen wallet, and she received a strange phone call at her home in Florida from defendant's cousin's phone. Thinking the call might be related to the break-in, she called Kozub and told him about the call. Kozub's girlfriend called the number and talked to two different people. Based on those conversations, she told Kozub somebody would be returning his things, and he contacted the police again. They returned to the complex to investigate. The police saw defendant place a plastic bag and a pair of shoes on top of a mailbox, and defendant made incriminating comments to the officer. After being arrested and waiving his *Miranda*[1] rights, he admitted to entering the home, watching Kozub sleep, taking the belongings, making the phone call to Florida, and trying to return the items. He even included a statement that he "knew that people in Farmington Hills felt that they were safe and don't lock their doors."

Defendant's argument focuses on the accuracy and credibility of the statements made to the police and the detective. He argues that because they were not recorded, there is a possibility that the officers' interpretation of what defendant said is imprecise. Additionally, Kozub never saw who was in his house that night. Defendant also argues that the police and detective should have corroborated defendant's statements with other evidence, such as fingerprints from the home and an investigation of defendant's cousin. However, the detective testified that defendant had no problems communicating with her, there was no doubt regarding his statement, and he had actual knowledge of the scene of the incident. Defendant never made any indication that someone else had stolen the items and he was just returning them for another person. It was unnecessary to analyze fingerprints or investigate others where the evidence was wholly weighted against defendant. It was reasonable for the trial court to conclude that defendant did everything he said. A rational factfinder could have concluded that the prosecution proved all elements of first-degree home invasion beyond a reasonable doubt.

Finally, the trial court did not err in refusing to consider the offense of receiving and concealing stolen property, MCL 750.535. Contrary to defendant's contention, this is not a necessarily included lesser offense of first-degree home invasion because it is not an offense that must be committed as part of the greater offense. *People v Cornell*, 466 Mich 335, 357-359; 646 NW2d 127 (2002). Receiving and concealing stolen property has several elements that are not required for first-degree home invasion. See *People v Wilson*, 257 Mich App 337; 668 NW2d

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

371 (2003), vacated in part 469 Mich 1018 (2004); MCL 750.535. Because this offense shares some common elements with and is of the same class as home invasion, it may be a cognate lesser offense. *People v Perry*, 460 Mich 55, 61; 594 NW2d 477 (1999). However, under *Cornell*, consideration of a cognate lesser offense is not permitted. *Cornell*, *supra* at 359.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra