

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL OTIS SLONE,

Defendant-Appellant.

UNPUBLISHED

September 16, 2008

No. 279015

Wayne Circuit Court

LC No. 07-004893-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of larceny \$1,000 or more but less than \$20,000, MCL 750.356(3)(a). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 27 months to 15 years' imprisonment. We affirm.

Defendant's argues, solely, that there was insufficient evidence to support his conviction for larceny. We disagree. This Court reviews a claim of insufficient evidence by undertaking a de novo review of the lower court record. *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999). The Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999) ("*Johnson I*").

Specifically, defendant contends that there was insufficient evidence to support a finding that the property in question, which consisted of two full spools of wire, one partial spool, and a coil of Romax cable, exceeded the \$1,000 minimum required by statute. Defendant claims that the trial judge's finding with regard to property value was flawed because it relied only on the testimony of James Gillis, the property owner, who admitted that the values he offered were only "guesstimates." Further, the price list used both to impeach Gillis and as substantive evidence was dated April 2007, when the crime occurred in January 2007. Accordingly, defendant argues that the trial court's value determination was not based on objective evidence, and is, therefore, insufficient to support defendant's felony conviction. We disagree.

As this Court explained in *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999), the elements of larceny are:

(1) an actual or constructive taking of goods or property, (2) carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner.

The statute for the form of larceny charged in this case further requires that the property must be worth more than \$1,000 but less than \$20,000. MCL 750.356(3)(a). Defendant does not contest the trial court's finding that he committed larceny, limiting his appeal to the question of whether the property or goods satisfied the statutory property value requirement.

The burden rests with the prosecutor to prove the fair market value of stolen property at the time and place of the larceny, where such a value exists. *People v Pratt*, 254 Mich App 425, 428-429; 656 NW2d 866 (2002). The market value of a piece of property is recognized as the price that the goods would bring in the open market between a willing buyer and seller. *Id.* at 429. An owner of property is permitted to testify regarding the value of his property unless that valuation is based on personal or sentimental value. *Pratt, supra* at 429. Personal value is subjective to the owner, and cannot be objectively defined or proven. *Id.* There was no evidence presented to suggest that Gillis's testimony was based on personal or sentimental value. This Court finds that Gillis, with 30 years' experience in the electrical contracting field, was qualified to testify regarding the value of the stolen property.

Defendant contends that the prosecution's offer of a price sheet instead of a purchase order as documentary evidence renders that evidence insufficient. A prosecutor, however, is not required to use the evidence that a defendant desires, but rather, is entitled to use the relevant evidence he chooses. *Pratt, supra* at 429. The retail price of an item, which would be reflected on a price sheet, is relevant to the fair market value of that item. *People v Johnson*, 133 Mich App 150, 154; 348 NW2d 716 (1984).

Defendant's arguments regarding the reliability and accuracy of Gillis's testimony are relevant to the question of the witness's credibility, and not to the sufficiency of the evidence itself. As the trier of fact, able to see and hear the testimony in person, the trial court was in the best position to assess that credibility. *Johnson I, supra* at 731 n 7. Gillis's testimony regarding value must be viewed in the light most favorable to the prosecutor to determine whether the property in question was worth more than \$1,000. That the two full spools of wire were valued between \$400 and \$500 by Gillis, and were further listed on the price list for \$515, supported Gillis's testimony that the April price list would be accurate for January within a few dollars. Further, Gillis testified that the Romax cable was worth between \$150 and \$200. The final piece of property, the partial spool, was identified by Gillis as the same material on the full spools, and Gillis testified that it was between one sixteenth and one half full, which would place its value between \$30 and \$250. Viewed in the light most favorable to the prosecutor, the two full spools alone could be enough to surpass the \$1,000 requirement, with the additional values for the Romax cable and the partial spool placing the materials well over that minimum.

Gillis's testimony that he could not offer an actual price for the material in January 2007, and his statement that the value he offered was a "guesstimate" conflict with his previous and subsequent testimony regarding value, and with his assertion of the accuracy of the price list. In reviewing evidence in the light most favorable to the prosecutor, all matters involving conflicting evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531,

562; 679 NW2d 127 (2004). A rational fact-finder could conclude that the materials in question were worth more than \$1,000.

We affirm.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio