

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TED ROBERT LABATE,

Defendant-Appellant.

UNPUBLISHED

August 16, 2007

No. 270196

Wayne Circuit Court

LC No. 05-012703-01

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right his conviction of second-degree home invasion, MCL 750.110a(3). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 4 to 20 years' imprisonment for his conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence presented at trial was insufficient to sustain his conviction. We disagree.

When reviewing a claim of insufficiency of the evidence, this Court reviews the record de novo. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). This Court reviews the evidence in the light most favorable to the prosecutor to determine whether each element of the crime was proven beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001) (citing *People v Petrella*, 424 Mich 221, 269; 380 NW2d 11 (1985)).

In order to sustain a conviction for second-degree home invasion, the prosecution must show that: (1) defendant broke into a dwelling or entered without permission; and (2) defendant intended to commit or actually committed a felony or larceny in the dwelling. MCL 750.110a(3); *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004). Circumstantial evidence and reasonable inferences can be sufficient to sustain a conviction. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court has found that possession of stolen property without any other evidence of guilt is not enough to sustain a conviction for home invasion. *People v McDonald*, 13 Mich App 226, 236-237; 163 NW2d 796 (1968). However, “[i]t is well established that the jury may infer that the possessor of recently stolen property was the thief.” *People v Hayden*, 132 Mich App 273, 283; 348 NW2d 672 (1984).

Defendant relies on this Court's decision in *People v Rankin*, 52 Mich App 130, 134-135; 216 NW2d 620 (1974), to support his claim that the evidence presented was insufficient to sustain his conviction. However, *Rankin* can be factually distinguished from the case at bar. This Court in *Rankin* found insufficient evidence of guilt when the defendant was arrested 20 to 30 miles away from the crime for selling the stolen property hours after the crime was committed and where there were no witnesses placing the defendant at the scene of the crime. *Rankin, supra*, pp 134-135. Here, the victim clearly saw defendant just a couple of feet away from the scene of the crime on a stairwell that led exclusively to her apartment. Unlike in *Rankin*, where no evidence placed the defendant nearer than 20 to 30 miles from the scene of the crime, defendant in this case was clearly identified by the victim in close proximity to the scene of the crime. Additionally, at the time defendant was seen near the scene of the crime, he was carrying bags full of DVDs and a camera belonging to the victim. Defendant did not have permission to enter the victim's apartment. Moreover, when the victim told defendant that the property belonged to her and threatened to call the police, defendant fled. While fleeing is not direct evidence of guilt, "[e]vidence of flight may be used to show consciousness of guilt." *McGhee, supra*, p 13.

The evidence was sufficient to sustain defendant's second-degree home invasion conviction, i.e., defendant broke into the victim's home without permission and committed a larceny therein. *Nutt, supra*, p 593. There was direct evidence that defendant had possession of the stolen property and circumstantial evidence that placed him in close proximity to the scene of the crime. The evidence, viewed as a whole and in a light most favorable to the prosecution, was sufficient for a rational fact-finder to conclude that defendant committed second-degree home invasion.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly