

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY NELSON HOPP,

Defendant-Appellant.

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UNPUBLISHED

November 21, 1997

No. 193734

Oakland Circuit Court

LC No. 95-139824 FH

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of breaking and entering a place of business with intent to commit larceny, MCL 750.111; MSA 28.306, following which he was adjudicated a fourth offender, MCL 769.12; MSA 28.1084.

Defendant first contends that the evidence was insufficient to sustain his conviction. Viewing the evidence in a light most favorable to the prosecution, however, defendant within a day or so of the crime had expressed a need for almost the precise amount of money which was stolen as a result of the crime. Defendant also knew that the money was regularly kept at the club in an unsecured location within the premises. Contemporaneously with the breaking and entering into the social club, the manager/owner noted that a window screen, previously intact, had been removed from the rear window, where fingerprints of defendant were found. The manager testified that the screen had previously always been in place over the window, thus negating the possibility that the fingerprints of defendant or anyone else could have been found in that location. Accordingly, the fingerprint evidence properly leads to an inference that defendant is the person who perpetrated the burglary. *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968). A rational trier of fact could therefore find defendant's guilt of the crime charged proved beyond a reasonable doubt based on the evidence presented. *People v Hampton*, 407 Mich 354; 285 NW2d 284 (1979).

Defendant further contends that the prosecutor deprived him of a fair trial by failing to assist him in identifying two ostensible witnesses, "Ray" and "Dave," who could have provided an innocent explanation for the presence of defendant's fingerprints on the rear window. The prosecutor's only

obligation, however, is to assist the defense, upon request, in locating and serving subpoenas upon witnesses. The prosecutor is not obliged to assist the defense in identifying unknown witnesses. MCL 767.40a(5); MSA 28.980(1). The prosecutor did establish that “Ray” had worked at the club but had left the area without leaving a forwarding address, and there was nothing to suggest that “Ray” could be identified by first and last name so as to be tracked to his current residence.

The manager/owner of the club testified that membership records consist of index cards, on which members may list as little as a first name or an initial, although they are free to provide a residence address. Given the nature of the club, a recreational facility for recovering alcoholics and drug addicts, the owner/manager properly asserted a substantial privacy interest in those records. *NAACP v Alabama ex rel Patterson*, 357 US 449, 462 ff; 78 S Ct 1163; 2 L Ed 2d 1488 (1958). Defendant, however, failed to establish a compelling justification, as a matter of due process, for subordinating the privacy interests of members to his quest for identifying information for a potential witness. *Pennsylvania v Ritchie*, 480 US 39, 59 ff; 107 S Ct 989; 94 L Ed 2d 40 (1987). Defendant failed to inquire whether records existed to identify one or more members named “Dave” who had provided a residence address, and who could be identified as the “Dave” who supposedly participated in the dart tournament and saw defendant place his hands on the back window. Defendant also failed to exhaust other avenues of acquiring this information, such as frequenting the club in the expectation that “Dave” would appear. Defendant sought only unlimited access to the club membership records, instead of limiting his request for information to only that necessary to further reasonable defense interests. The trial court therefore did not abuse its discretion in determining that defendant had failed to make a sufficient showing to warrant judicial assistance in the search for more information.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.