

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

V

JILL ELAINE YANCER,

Defendant-Appellant.

UNPUBLISHED

January 27, 2004

No. 243444

Midland Circuit Court

LC No. 02-001063-FH

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of one count of larceny in a building, MCL 750.360. Defendant was sentenced as an habitual offender, MCL 769.10, to ninety days in jail and two years' probation. We affirm.

Defendant first argues that the evidence presented by the prosecutor was not sufficient to support the jury's finding that she was guilty beyond a reasonable doubt of larceny in a building. We disagree. In a criminal case, the test for determining the sufficiency of the evidence is whether the evidence, viewed in the light most favorable to the prosecutor, would warrant a reasonable juror in finding guilt beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003). This Court must draw all reasonable inferences in favor of the prosecutor and make credibility choices that would support the jury's verdict. *Id.* at 640-641.

To establish the crime of larceny in a building, the prosecutor must prove (1) the occurrence of an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) that the carrying away was with felonious intent, (4) that the goods or property were the personal property of another, (5) that the taking was without the consent and against the will of the owner, and (6) that the taking occurred within the confines of a building. MCL 750.360; *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).

Here, defendant contends that the evidence failed to establish that she took money from the victim's room. We disagree. We first reject defendant's argument that because another hotel employee, Joseph Mallott, borrowed defendant's electronic key card around the time of the offense, the evidence did not establish her guilt. The prosecutor presented evidence that Mallott was working at the hotel's front desk at the time the records show defendant's key card was used to enter the victim's hotel room at 5:01 p.m., that Mallott did not borrow defendant's key card until 5:30 p.m., nearly one half hour after the suspicious entry, and that Mallott only had possession of defendant's keys for twenty to twenty-five seconds. When the evidence is viewed

in the light most favorable to the prosecutor, *Gonzalez, supra* at 640, it was sufficient to justify a finding that defendant had exclusive possession of her key card at the time of the offense.

We also reject defendant's contention that there was insufficient evidence that the electronic lock system connected to the victim's hotel room was working properly on the day in question, such that the time entries purporting to establish the use of her electronic key card to enter the victim's room are unreliable. Again, we disagree. The prosecutor presented evidence that preventative maintenance was done on the locks periodically to insure that they were recording proper entry times. Furthermore, "[i]t 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." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Viewing the evidence in the light most favorable to the prosecutor, *Gonzalez, supra*, we find that the evidence was sufficient to support defendant's conviction of larceny in a building.

Defendant next argues that prosecutorial misconduct denied her a fair trial. We disagree. Because defendant did not preserve this issue for review, reversal is required only if defendant demonstrates plain error that was outcome determinative. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). This Court will not find error requiring reversal unless the prejudicial effect of the prosecutor's comments could not have been cured by a timely instruction. *Watson, supra*; *Schutte, supra* at 721.

Defendant first contends that certain remarks by the prosecutor during his closing and rebuttal arguments were an improper attack on defense counsel and distracted the jury's attention from the weaknesses in the prosecutor's case. However, after having reviewed the prosecutor's remarks in context, we find no prejudice and thus no error requiring reversal.

Defendant next argues that certain remarks by the prosecutor improperly shifted the burden of proof to defendant. However, contrary to defendant's assertion on appeal, the prosecutor's statements did not suggest that the defendant must prove an alternate explanation for the missing money in opposition to the prosecutor's case, but merely argued that the circumstantial evidence led to the conclusion that defendant stole the money.

Finally, defendant argues that the cumulative effect of the prosecutor's misconduct denied her a fair trial. Defendant has not demonstrated any errors by the prosecutor, much less errors that were "seriously prejudicial" to her right to a fair trial. *People v Knapp*, 244 Mich App 361, 387-388; 624 NW2d 227 (2001). Therefore, defendant is not entitled to reversal on the basis of prosecutorial misconduct.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray