

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY GRANVILLE SMITH,

Defendant-Appellant.

UNPUBLISHED

August 9, 1996

No. 183572

LC No. 94-67207 FH

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

Defendant was found guilty after a bench trial of first-degree retail fraud, MCL 750.356c; MSA 28.588(3). On that same day, he pleaded guilty to habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced to twelve months in the county jail and twenty-four months' probation. He appeals as of right and we affirm.

Defendant worked at a Lansing area Source Club store handing out frozen food samples. On November 28, 1993, while off duty, defendant entered the store, told the store greeter he needed to get his coat, and then proceeded into the clothing section of the store. Store detective Terry Reuther testified that she watched defendant take a leather coat from a rack and start to leave the clothing area. Another employee, with whom defendant stopped to talk, also saw defendant carrying the coat on its hanger. Reuther began following defendant. She testified that he went to the front of the store without approaching a cash register, waved at the store's greeter, ran out the front entrance, and jumped into a car that immediately drove away. Defendant was arrested several days later on a charge of first-degree retail fraud.

Defendant presented an alibi defense. When questioned by the police, he stated that he had been in Flint at his father's church on the day and at the time in question. To bolster that assertion, he produced two pamphlets from a Flint church. The pamphlets, however, referenced services held on October 28, 1993, rather than the day in question. At trial, defendant's mother and other witnesses testified that they saw defendant at the church on the day in question.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant claims on appeal that there was insufficient evidence, given the alibi testimony, to establish beyond a reasonable doubt that he committed the crime. When reviewing a claim concerning sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified on other grounds 441 Mich 1201 (1992). The credibility of alibi witnesses is a question for the trier of fact. *People v Boyton*, 46 Mich App 748, 749; 208 NW2d 523 (1973). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra*, at p 514. The trier of fact is free to believe the prosecution's witnesses and reject the testimony of a defendant and his alibi witnesses or conclude that they were mistaken as to the element of time. *People v Likely*, 2 Mich App 458, 460; 140 NW2d 529 (1966).

In this case, defendant was positively identified by three witnesses who were acquainted with him and saw him at the Source Club on November 28, 1993. Two of these three witnesses, including the security guard who was trained to watch for theft, saw the stolen coat in defendant's possession. Further, there was sufficient evidence that defendant intended to steal the leather coat; he proceeded down an empty aisle with it, appeared from the empty aisle with the coat draped over his arm without its hanger, and ran out of the door without paying for the coat. Finally, the testimony of defendant's alibi witnesses was sketchy and uncertain as to whether defendant was at the church at the time of the theft. As this Court stated in *People v Amos*, 10 Mich App 533, 536; 159 NW2d 855 (1968):

The testimony of an alibi witness is to be given weight relative to its context, and it is not always sufficient to create doubt where other substantial evidence is present, *e.g.*, as in this case, complainant's definite identification of defendant. Where, as in the present case, the identification of defendant was made by the complainant and it is not clearly shown by the defense that the identification was vague, doubtful, or uncertain, then we cannot hold that any alibi evidence, no matter how scant, is sufficient to create a reasonable doubt as to the identity of the defendant.

Given the facts and circumstances of this case, and viewing the evidence in a light most favorable to the prosecution, we find there was sufficient evidence to support defendant's conviction. *Wolfe, supra*.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo