STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW JAMES BILYEU,

Defendant-Appellant.

UNPUBLISHED
December 10, 1996

No. 188595
LC No. 94-004747 FH

Before: Doctoroff, C.J. and Corrigan and Danhof, JJ.*

PER CURIAM.

Complainant James Martin owned a bar in Hubbard Lake, Michigan. Sometime during the night of November 20 or the early morning of November 21, 1993, a money bag containing $700 was taken from under the bar. Defendant was charged with of larceny in a building, MCL 750.360; MSA 28.592, and was convicted following a jury trial. Defendant also pleaded guilty to a charge of habitual offender, third offense, MCL 769.11; 28.1083. Defendant now appeals his convictions as of right, claiming that the evidence was insufficient to support a verdict of guilty. Defendant also claims error in the admission of evidence and he contends that he was given insufficient notice of the habitual offender charge against him. We affirm.

At trial, the prosecution presented the testimony of Charles Wagner, a patron in the bar on the night of the theft of the money bag. Wagner testified that around 10:30 or 11:00 p.m. on the night in question, he saw defendant enter the bar by himself and he seemed to be looking around. Wagner stated that defendant stuck out because, unlike most of the patrons of the bar, defendant was dressed in "preppie-type" clothes and was not with a group of hunters. Around closing time, defendant was rushing toward the exit when he bumped into Wagner. Defendant had one of his arms "tucked up" against his body as though he was carrying something inside his jacket. Wagner followed defendant to the parking lot and found defendant in a car. Wagner testified that he observed a "money bag" on the passenger seat of defendant's car, but could not give a detailed description of the bag. Defendant drove away, but Wagner wrote down the license plate number. Upon returning to the bar, Wagner informed the bar owner that the establishment may have been robbed. The bar owner looked in a

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

cabinet behind the bar to find that a money bag which contained $700 was missing. The bar owner showed Wagner some empty money bags, and Wagner stated that they were similar to the bag he saw in defendant's car.

Defendant contends that, because there was no evidence that defendant was ever behind the bar where the money bag was kept, Wagner's description of the bag in defendant's car was different than the bar owner's description of the missing bag, and the police never found the missing bag of money, the evidence was insufficient to show that defendant was guilty of larceny in a building. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor 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, amended 441 Mich 1201 (1992). However, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id*. at 514. Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong*, 218 Mich App 325, 337; ___ NW2d ___ (1996).

From the evidence presented by the prosecutor, a rational jury could have found defendant guilty based on the evidence that the bar was missing a full money bag, defendant rushed out of the bar with his arm "tucked up" against his body, and was seen immediately thereafter with a bag on his car's passenger seat which resembled the money bags used by the bar. This circumstantial evidence could lead to the reasonable inference that defendant took the bag of money from the bar. See *Truong*, *supra*. In reviewing the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could find that defendant was guilty beyond a reasonable doubt of larceny in a building. See *Wolfe*, *supra* at 515. Although some of the testimony of the prosecution's witnesses was contradictory, the determinations of the credibility of such witnesses was solely for the jury to decide, and we will not disturb such findings. *Id*. at 514. Accordingly, defendant's claim of insufficient evidence fails.

Defendant next contends that the trial court erred in admitting hearsay testimony. We disagree. When the owner of the bar testified at trial, he testified that Wagner made the following statements to him on the night in question: "You've just been robbed," "Well, you must have a lot of money," "A man just walked out with a bag," and "Don't worry about it. I went and got his license number off his car. . . . Just call the police."

Pursuant to MRE 801(c), "hearsay" is a statement, other than one made by the declarant while testifying at trial, which is offered into evidence to prove the truth of the matter asserted in the statement. After the bar owner testified that Wagner told him "you've just been robbed," defendant objected and the prosecution responded that the testimony was not being offered for the truth of the matter asserted, but rather to show why the bar owner acted as he did. The trial court thus issued a limiting instruction to the jury. Although defendant did not raise the same objection to the bar owner's testimony regarding Wagner's other statements, the context of the statements indicate that the testimony was similarly offered to show why the bar owner began searching for the money bag and called the police. Thus, the

statements were not offered to prove the truth of the matter asserted, and were not hearsay. Accordingly, we find that the trial court did not abuse its discretion in admitting the testimony.

Finally, defendant contends that he did not receive actual notice of the habitual offender charge until he was arraigned on the supplemental information. This argument is without merit. Initially, we note that this Court has held that, "[t]he time of arraignment is unimportant and may occur just prior to the hearing on the charge." *People v Andrews*, 157 Mich App 559, 560; 403 NW2d 186 (1987). In addition, a review of the lower court file indicates that defendant had more than sufficient notice of the charges against him. The supplemental information charging defendant as a habitual offender was filed nearly six months before trial occurred, and defendant's counsel acknowledged that the supplemental information was proper notice of the habitual offender charge. After defendant pleaded guilty to being a habitual offender, the trial court advised him that he was waiving his right to a jury trial on that charge. Defendant stated that he understood. On this record, we find that defendant had sufficient notice of the charge of habitual offender.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Maura D. Corrigan
/s/ Robert J. Danhof