STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES THOMAS GRAY,

Defendant-Appellant.

UNPUBLISHED
September 27, 1996

No. 175659
LC No. 93-005889

Before: Jansen, P. J., and Reilly, and M.E. Kobza, *JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of larceny in a building, MCL 750.360; MSA 28.592. Additionally, following a second jury trial, defendant was convicted as a habitual offender, fourth offense, pursuant to MCL 769.12; MSA 28.1084. Defendant was sentenced to five to fifteen years of imprisonment for the habitual offender conviction. We affirm.

Defendant first argues that the evidence was insufficient to support his conviction of larceny in a building. We disagree. In reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution and determines 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, 515-516; 489 NW2d 748 (1992).

The larceny in this case occurred at Old Rome Country Store, which sold reproductions of antiques, candy, cheese and other items. Although antiques were not sold at the store, there were antiques in the store for ambiance. The owner closed the store to the public in November, 1990. Even after it was closed, on occasion, prospective buyers would be allowed into the store accompanied by the owner's son, Lawrence. In the six months before May 3, 1992, Lawrence testified that he showed the property to prospective buyers two or three times. On May 3, 1992, Lawrence received a telephone call from a woman who told him that the store's front doors were open. When Lawrence arrived at the store, it was apparent that the store had been "trashed." Antiques, the cash register,

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

some display cases and pieces of fixtures were missing. Two glass shelves that had been part of a display case were left inside the store. One was standing against a wall, and the other was lying on the counter. Lawrence testified that the value of the missing inventory was $22,700.

The date of the break-in was unknown. Lawrence testified that he had not been in the store for approximately three weeks before the break-in was discovered. He testified he had no idea how long the doors had been standing open before May 3, 1992. A defense witness who lives down the street from the store testified that she saw the store's doors open on May 1, 1992. She reported this information to police after reading about the break-in in the newspaper.

At trial, the prosecution produced evidence of eight latent fingerprint lifts, which had been taken from one of the glass shelves that had been inside of a missing display cabinet. A fingerprint expert positively identified two of the prints on the glass as belonging to defendant.

To explain the presence of defendant's fingerprints on the shelf, the defense presented the testimony of defendant's mother, Connie. She testified that she stayed for a week at defendant's house in Lenawee County on Beebe Highway near Onsted beginning the last week in April and into the beginning of May, 1992. She stated that she arrived on either a Sunday or a Monday, which would have been April 26th or 27th. Five days after she was there, thus either May 1st or 2nd, she and defendant went to Adrian to pick up some cleaning supplies and get breakfast. As they drove past Old Country Rome Store, they saw that the doors were open. They decided on the way back that if "the people" were still there, Connie and defendant would stop and talk to them. When Connie and defendant came back around ten or eleven, the doors were still open. They went inside and looked around as they were waiting for someone in the store "to come out." The store was in disarray. Defendant noticed a piece of glass and told Connie that he thought it would fit on a shelving unit with a broken top that Connie owned. They waited a few minutes, and finding no one there, left the store.

In this case, the only evidence linking defendant to the crime was the presence of his fingerprints on the glass shelf. Fingerprint evidence alone is sufficient to establish identity if the fingerprints are found at the scene of the crime under such circumstances that they could have only been made at the time of the commission of the crime. *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968); *People v Willis*, 60 Mich App 154, 158-159; 230 NW2d 353 (1975); *People v Barnes*, 51 Mich App 735, 736-737; 216 NW2d 464 (1974). This rule of law seems to indicate that the evidence in this case was insufficient because members of the public had been allowed in the store, there was no testimony indicating how long the fingerprints had been on the glass, the date of the break-in was uncertain, and because defendant's mother suggested[1] an alternative explanation for how the defendant's fingerprints came to be on the glass.

However, when viewed in the light most favorable to the prosecution, Connie's testimony was not credible. First, she had to revise her account of her trip with defendant when, during cross-examination, the prosecutor pointed out that Old Rome Country Store is not in the direct path between defendant's home and Adrian. Second, her testimony that while in the store, defendant referred to a

broken shelving unit that Connie owned was called into doubt by her inconsistent testimony concerning when that shelving unit was acquired.

Although this case presents a close question, we conclude that the issue whether the fingerprints could only have been made at the time of the commission of the crime was a question properly left for the jury. *Willis*, at 159. The jury was free to reject the defense's explanation for the presence of defendant's fingerprints, as provided by defendant's mother. The verdict indicates that the jury did not find defendant's mother to be a credible witness. In the context of a sufficiency of the evidence claim, determinations based on the weight and credibility of evidence should not be disturbed on appeal. *People v Martin*, 199 Mich App 124, 135; 501 NW2d 198 (1993). Accordingly, we find that sufficient evidence existed to support defendant's conviction.

Defendant also argues that the court made improper "inferences upon inferences" when it considered the fingerprint evidence in deciding defendant's motion for a directed verdict. We disagree. This case is analogous to *People v McWilson*, 104 Mich App 550, 555; 305 NW2d 536 (1981), in which this Court stated:

> Whatever is meant by the phrase "inference upon inference", the law in Michigan is that guilt may not be based upon such a foundation. However, the fact-finder is not prevented from making more than one inference in reaching its decision. That is, if each inference is independently supported by established fact, any number of inferences may be combined to decide the ultimate question.

In this case, the inferences the jury needed to make to conclude that defendant was guilty were supported by the evidence. First, defendant's fingerprints were clearly on the glass shelf. This showed that defendant touched the shelf at some time. Next, Lawrence testified that before the larceny, the glass shelf was located inside a display cabinet that was missing on May 3, 1992. From Lawrence's testimony, the jury could infer that the shelf was moved by the person that stole the cabinet. The jury could then infer that because defendant's fingerprints were on the shelf, he moved the glass and was therefore the person who stole the cabinet. Thus, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant also argues that his conviction was against the great weight of the evidence. However, in framing this issue, defendant merely cites the test for sufficiency of evidence, rather than providing any support for this argument. Because defendant fails to properly argue the great weight issue on appeal, this issue is deemed abandoned. *People v Sean Jones, (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

Defendant next argues that he was denied a fair and impartial trial when the jury deliberated in a coercive and pressured atmosphere. We disagree. Claims of coerced verdicts are reviewed on a case by case basis. All of the facts and circumstances, as well as the particular language used by the trial

court, must be considered to determine whether the trial court denied the defendant a fair trial. *People v Vettese*, 195 Mich App 235, 244; 489 NW2d 514 (1992).

Defendant's theory that the jurors were placed under coercion or duress in rendering their verdict is mere speculation. The court's decision to allow further deliberations on a Friday afternoon did not create a time restriction on the length of deliberations. The trial judge made it clear that the jurors could come back on Monday to finish deliberations. Finally, defendant fails to present evidence, by affidavit or otherwise, to support his theory that a juror, wishing to go on vacation, improperly influenced the jury to render a quick verdict. Instead, the jurors stated on the record that their verdict was *not* the product of improper influence or coercion. Thus, we find no evidence that the jury was coerced or pressured into rendering their verdict. Accordingly, this issue provides defendant with no basis for reversal.

Defendant also argues that the trial court erred in granting the prosecution an adjournment of the jury trial on defendant's habitual offender charge.[2] We disagree. The power to grant or refuse a continuance or adjournment of a trial is within the sound discretion of the trial judge. *People v Bettistea*, 173 Mich App 106, 124; 434 NW2d 138 (1989). This court reviews the grant or denial of an adjournment or continuance for an abuse of that discretion. *Id.* In this case, the prosecution's motive in requesting an adjournment was purportedly to locate a witness from Florida to identify defendant as having been convicted of other crimes. This Court has held that a trial court has the discretion to grant a continuance in a criminal trial for the purpose of allowing an out-of-state witness to testify. *People v Ramsey*, 89 Mich App 260, 268-269; 280 NW2d 840 (1979). Thus, the prosecution had good cause for a continuance. Moreover, defendant has not cited any authority to support his assertion that he was entitled to dismissal of the charge because the prosecutor was apparently unprepared to proceed at the conclusion of defendant's larceny trial. We find no abuse of discretion in the court's granting of the continuance.

Finally, defendant argues that the trial judge made improper comments to the jury before the trial on the habitual offender charge. Defendant states that the comments constituted a "manifest injustice" and denied him his right to a fair and impartial trial. Defendant's brief does not indicate the basis for his contention that the comments were improper, nor does it cite any legal authority. In any event, we have reviewed the comments and do not find them to be prejudicial so as to deny defendant a fair and impartial trial.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Michael E. Kobza

[1] Connie did not specifically state that defendant touched the glass.

[2] The issue is framed as follows:

> The lower court committed reversible error by granting the Prosecution an adjournment of the Jury Trial of the Defendant/Appellant on the "Supplemental Charges" based upon the Prosecution's claim it would be necessary to bring in a person from Florida to testify relating to the Defendant/Appellant's convictions in Florida, since the Prosecution has a duty to be able to proceed, and the fact that the Prosecution did not have in its possession any admissible evidence at the time it requested the adjournment the same constituted "misconduct" resulting in "manifest injustice" to the Defendant/ Appellant's right to a fair and impartial trial, as did the lower court's conclusions said convictions in Florida were on felony convictions without the introduction of any Florida statutes, and/or without taking judicial notice of the applicable Florida Statutes.

In the argument portion of the brief, defendant only argues that "the supplemental charges should have been dismissed upon the Prosecution's admission it was unable to proceed to Trial on November 19, 1993." Thus, we will treat the argument as being limited to this aspect of the stated issue. Because defendant failed to argue the other aspects of the stated issue, they are deemed abandoned. *Jones*, *supra*.