

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EARL ANDERSON,

Defendant-Appellant.

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UNPUBLISHED

April 25, 1997

No. 191617

Berrien Circuit

LC No. 94-4297 FH G

Before: Doctoroff, P.J., and Michael J. Kelly and Young, JJ.

PER CURIAM.

Defendant was convicted of breaking or entering a vehicle with intent to steal property over \$5.00, MCL 750.356a; MSA 28.588(1). He was sentenced to 2 to 10 years' imprisonment, and now appeals as of right. We affirm.

Defendant first argues that the prosecutor failed to prove beyond a reasonable doubt that defendant committed the crime charged. Specifically, he argues that the identification of his fingerprint inside the car indicates at most that he was present, but fails to prove that he was responsible for the theft of property from the car. We disagree.

Defendant properly preserved this issue by moving for a directed verdict. In reviewing a trial court's ruling on a motion for directed verdict, this Court tests the validity of the motion by the same standard as the trial court. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992). We must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

The only element at issue was the identity of the perpetrator. It has long been held by this Court that fingerprint evidence alone is sufficient to establish identity where the fingerprint is "found at the scene of the crime under such circumstances that [it] 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); see also

*People v Himmelein*, 177 Mich App 365, 375; 442 NW2d 667 (1989). Such circumstances were shown in this case where evidence was presented that there was a break-in of a locked car, the victim testified that she had never met and did not know defendant, and defendant's fingerprint was found on the inside window of the car at the time of the break-in with no other reasonable explanation for his fingerprint being inside the car.

Therefore, we conclude that the evidence presented, when viewed in the light most favorable to the prosecution, was sufficient to prove beyond a reasonable doubt that defendant committed the breaking and entering with the intent to steal property.

Defendant next argues that the prosecutor improperly shifted the burden of proof by stating in closing argument that defendant failed to explain the presence of his fingerprint in the complainant's car, and that the trial court abused its discretion in denying defendant's motion for a mistrial. Again, we disagree.

This Court has held that where a prosecutor forces a defendant to explain damaging evidence, there may be a shifting of the burden which would constitute error. *People v Guenther*, 188 Mich App 174, 177; 469 NW2d 59 (1991). However, our Supreme Court reasoned in *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995):

[W]here a defendant testified at trial or advances, either explicitly or implicitly, an alternate theory of the case that, if true, would exonerate the defendant, comment on the validity of the alternate theory cannot be said to shift the burden of proving innocence to the defendant. Although a defendant has no burden to produce any evidence, once the defendant advances evidence or a theory, argument on the inferences created does not shift the burden of proof.

In the present case, defendant did not explicitly assert a defense, but instead relied on the prosecution's failure to prove the essential elements of its case. The prosecution introduced evidence of a prior statement by defendant that he was not at the scene and had not been anywhere near a car of the same make as the one involved in this incident. Defendant's statement, if true, would provide an alibi; however, it does not comport with the evidence offered that defendant's fingerprint was found on the inside of the car at the scene of the crime.

When reviewing the prosecutor's comment in context, it is clear that the prosecution was making reference to defendant's implicit defense of mistaken identification. Therefore, there was no error in the prosecution's comment, and the trial court did not abuse its discretion in denying defendant's motion for a mistrial based on prosecutorial misconduct.

Affirmed.

/s/ Martin D. Doctoroff  
/s/ Michael J. Kelly  
/s/ Robert P. Young

