

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY JODETTE AUGUST,

Defendant-Appellant.

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UNPUBLISHED

May 28, 1996

No. 176672

LC No. 93-64277-FH

Before: Holbrook, Jr., P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant was convicted of first-degree retail fraud, MCL 750.356c(2); MSA 28.588(3)(2), and was sentenced to serve eighteen months on probation. She appeals as of right, and we affirm.

Defendant first argues that insufficient evidence was presented to support her conviction because the prosecutor failed to present evidence on two elements of the offense—that the store was open to the public when the offense occurred and that the property taken was store merchandise. See CJI2d 23.23. We find no merit to this argument because testimony was in fact given by prosecution witnesses Jason Horrigan and Brenda Brower that defendant took a bottle of liquor that belonged to the complainant’s store while it was open to the public.

Defendant next argues that then 61<sup>st</sup> District Court Judge Joel P. Hoekstra, acting as a Kent County Circuit Court judge, was without jurisdiction to preside over defendant’s felony retail fraud trial. In rejecting defendant’s claim, we take judicial notice of Assignment Nos. 9321328 and 9420434, approved by the State Court Administrative Office, authorizing Judge Hoekstra to serve as an acting circuit court judge during the time period when defendant’s jury trial was conducted.<sup>1</sup> See MRE 201. Each assignment was designated as a “blanket assist [of] non-disqualification matters,” and therefore authorized Judge Hoekstra to preside over defendant’s felony retail fraud matter.

Defendant next asserts that the trial court failed to investigate properly a report of alleged juror misconduct. We disagree. In *People v Nick*, 360 Mich 219, 230; 103 NW2d 435 (1960), our

Supreme Court stated the standard of review to be applied in cases where there is an allegation of juror misconduct:

[I]t is well-established that not every instance of misconduct in a juror will require a new trial. The general principle underlying the cases is that the misconduct must be such as to affect the impartiality of the jury or disqualify them from exercising the powers of reason and judgment. A new trial will not be granted for misconduct of the jury if no substantial harm was done thereby to the party seeking a new trial, even though the misconduct is such as to merit rebuke from the trial court if brought to its notice.

Here, the record indicates that the court brought the allegation of juror misconduct to the attention of the parties while the jury was still assembled and defendant chose not to pursue the issue. At the motion for new trial before the trial court and now on appeal, defendant makes no specific claim of prejudice to her case as a result of the alleged unauthorized juror view of complainant's store.. Thus, there is no basis for us to conclude that the trial court abdicated its responsibility to ensure defendant a fair trial, and, in the absence of some showing of prejudice, the trial court did not abuse its discretion in denying defendant's motion for new trial. See *People v Markham*, 19 Mich App 616, 626-627; 173 NW2d 307 (1969).

Contrary to defendant's claim, the record of her plea to the "supplemental complaint" indicates that the court complied with the requirements of MCR 6.302(B) and that defendant's plea was made knowingly and voluntarily.

Because we have concluded that none of defendant's arguments on appeal have merit, defendant's claim that she was denied effective assistance of counsel must also fail. See *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Richard A. Bandstra

<sup>1</sup> Copies of Assignment Nos. 9321328 and 9420434 are on file with this Court, or are available from the State Court Administrative Office.