STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNARD JEFFERSON,

Defendant-Appellant.

UNPUBLISHED
June 3, 1997

No. 189933
Oakland Circuit Court
LC No. 94-135760

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

Defendant was convicted by jury of first-degree retail fraud, MCL 750.356c(1)(b); MSA 28.588(3)(1)(b), and he subsequently pleaded guilty of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to two to fifteen years in prison. He appeals as of right. We affirm.

This case arises from an incident that occurred on May 5, 1994, at a Handy Andy store. Kenneth Brown, an assistant manager of the store, observed defendant leave the store, pushing a shopping cart containing a Genie wet vac, a wood chisel set, and bags of cement. Defendant was wearing a green vest and hat normally worn by employees of the store. Brown did not recognize defendant as an employee, and defendant did not produce a receipt for the merchandise when requested to do so. Defendant ran into the parking lot with the merchandise and loaded it into a waiting vehicle.

Defendant first argues that the evidence was insufficient to support his conviction of first-degree retail fraud. We disagree. When reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a reasonable jury could find that the 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). First-degree retail fraud involves stealing property worth more than $100 from a store that is open to the public. MCL 750.365c(1)(b); MSA 28.588(3)(1)(b).

Defendant claims that there was insufficient evidence to prove he stole the items from the store. We disagree. Brown testified that he observed defendant leave the store with the merchandise. Defendant did not produce a receipt for the merchandise when asked to do so, nor did Brown observe any stickers on the merchandise indicating that the merchandise had been paid for. Further, evidence of flight is admissible because it is probative of a defendant's guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Defendant pushed the cart quickly into the parking lot, ran through the lot, loaded the merchandise into a waiting vehicle, and sped away. The evidence was sufficient to prove defendant stole the property.

Defendant also contends that there was insufficient evidence to prove the value of the property exceeded $100. We disagree. A store clerk's testimony regarding retail price is sufficient for determining value. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). Brown testified that the price of the Genie wet vac was $99, the price of the wood chisel set was between $49 and $59, and the cement cost $1.99 a bag. This testimony was sufficient to establish the value of the property. Therefore, viewed in the light most favorable to the prosecution, a reasonable jury could conclude the elements of first-degree retail fraud were proven beyond a reasonable doubt.

Defendant also argues that his conviction must be reversed because the trial court failed to instruct the jury to disregard hearsay testimony. Defendant is not entitled to any relief. MCL 768.29; MSA 28.1052. Defendant objected to the prosecution's question to a witness whether he remembered telling the police that he learned that defendant's girlfriend worked at Handy Andy. Although the trial court did not instruct the jury to disregard the hearsay statement, we find that in light of other evidence, this admission was not unduly prejudicial. Where defendant obtained the vest he was wearing was not crucial to the prosecution's case. The important fact is that defendant was wearing the vest, and this fact was supported by unchallenged evidence. Because there is other substantial evidence of defendant's guilt, it is highly probable that the admission of the hearsay statement did not affect the jury's verdict. *People v Mateo*, 453 Mich 203, 206; 551 NW2d 891 (1996).

Affirmed.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Clifford W. Taylor