

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWANNA FAYE CORNELIUS,  
a/k/a DEWANNA JOYCE CORNELIUS,

Defendant-Appellant.

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UNPUBLISHED

July 1, 1997

No. 181071

Berrien Circuit Court

LC No. 94-001605-FH

Before: Jansen, P.J., and Young and R. I. Cooper\*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree retail fraud in violation of MCL 750.356c(2); MSA 28.588(3)(2). She was sentenced to two years probation. She appeals as of right and we affirm.

Defendant claims that there was insufficient evidence to convict her of first-degree retail fraud. Specifically, defendant argues that the prosecution failed to present sufficient evidence that she was previously convicted of one of the offenses enumerated in MCL 750.356c(2); MSA 28.588(3)(2), which elevate second-degree retail fraud to first-degree retail fraud. We disagree.

When reviewing a sufficiency of the evidence claim, this Court must consider the evidence, in the light most favorable to the prosecution, to determine whether a rational trier of fact could find that the prosecution has proven the essential elements of the charged crime beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). Circumstantial evidence and reasonable inferences which arise from the evidence may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). This Court in *People v Eilola*, 179 Mich App 313; 445 NW2d 490 (1989), held:

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

Under the retail-fraud statute, first-degree retail fraud is a substantive offense and the “recidivist” element contained in subsection 2 is but one alternate way of committing first-degree retail fraud. Additionally, although an offender can come under the recidivist provisions of first-degree retail fraud based upon a prior conviction for retail fraud, a first-degree retail fraud charge can also be based upon a prior conviction under certain other statutes, namely, false pretenses over \$100, larceny over \$100, and larceny in a building. [*Id.* at 322.]

Here, because a prior conviction for retail fraud was used to establish the substantive offense of first-degree retail fraud, due process compels that the prosecution prove defendant’s previous conviction beyond a reasonable doubt.

During cross-examination, defendant was questioned as to whether she was convicted of retail fraud on October 7, 1992 in Fifth District Court in Berrien County, to which she replied affirmatively. She was then asked whether the previous retail fraud conviction resulted from a shoplifting incident that occurred at the same store involved in the current incident, to which she replied affirmatively. MCL 750.356c; MSA 28.588(3) and MCL 750.356d; MSA 28.588(4) are the only Michigan statutory provisions relating to retail fraud, and both are enumerated in subsection 2; therefore it may be inferred that defendant was convicted of one of the offenses listed in subsection 2. Thus, the prosecution did prove beyond a reasonable doubt that defendant was previously convicted of retail fraud in violation of one of the offenses enumerated in subsection 2 which elevates second-degree retail fraud to first-degree retail fraud.

Affirmed.

/s/ Kathleen Jansen

/s/ Robert P. Young, Jr.

/s/ Richard I. Cooper