

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN CHRISTOPHER KELLY,

Defendant-Appellant.

UNPUBLISHED

November 13, 1998

No. 207647

Kalamazoo Circuit Court

LC No. 96-000498 FH

Before: Whitbeck, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals by leave granted his jury trial conviction of retail fraud, first degree, MCL 750.356c; MSA 28.588(3). The trial court sentenced defendant to two years' probation. We affirm.

I

Defendant first argues that the trial court erred in refusing to reinstruct the jury on mere presence after they asked for additional instructions on aiding and abetting. We review jury instructions in their entirety to determine if there is error requiring reversal. Even if jury instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected a defendant's rights. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998).

Defendant argues that reinstruction on aiding and abetting was misleading without an additional instruction that mere presence does not constitute participation. However, it was not necessary for the court to elaborate or give instructions in addition to those requested. See *People v Panko*, 34 Mich App 297, 300-301; 191 NW2d 75 (1971). The instructions, considered in their entirety, fairly presented the issues to be tried and sufficiently protected defendant's rights. See *Whitney, supra*.

II

Next, defendant argues that there was insufficient evidence to support his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine 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; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

After reviewing the record, we find no error requiring reversal. Defendant himself testified that he and Jackson were friends. The prosecution provided evidence that defendant and Jackson stayed close together as they moved through the aisles. Defendant and Jackson were both bent down over the cart while the latter switched the tags on a \$200 sump pump and a \$7.99 length of piping. Afterward, defendant continued to push the cart through the store. When the pair reached the checkout, defendant handed one of the substituted price tags to the cashier. Several Meijer employees testified that while in the store defendant was looking around nervously. Finally, when apprehended, defendant gave a false name and birth date. This evidence was sufficient for a rational trier of fact to conclude that defendant aided and abetted Credell Jackson in switching price tags. See MCL 767.39; MSA 28.979.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Janet T. Neff