

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID PATTILLO,

Defendant-Appellant.

UNPUBLISHED
October 12, 1999

No. 209551
Wayne Circuit Court
Criminal Division
LC No. 97-502788

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of first-degree retail fraud, MCL 750.356c; MSA 28.588(3), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084, entered after a bench trial. We affirm.

Defendant was charged with first-degree retail fraud in connection with the theft of a video game from a Meijer store. The evidence showed that on two occasions defendant was prevented from leaving the store with a video game for which he had no receipt. The game was attached to a card containing a barcode. The barcode, when scanned, identified the game as a Meijer item and specified the price at \$149.99. After attempting unsuccessfully to obtain a refund at the service center, defendant left the store without stopping to pay for the game. Defendant was detained in the parking lot by store security personnel.

The court found defendant guilty as charged. Defendant was sentenced to five years' probation, with the first year in jail.

In reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented 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. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences

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

completely unsupported by any direct or circumstantial evidence. *People v*

Petrella, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

A person is guilty of first-degree retail fraud if: (1) while a store is open to the public, he alters, transfers, removes and replaces, conceals, or misrepresents the price at which property is offered for sale, with the intent not to pay for it or to pay less for it, if the resulting price difference is more than \$100; (2) while a store is open to the public, he steals property of the store which is offered for sale at a price of more than \$100; or (3) with the intent to defraud, he obtains or attempts to obtain money or property from the store as a refund or exchange for property which was not paid for and belongs to the store, if the amount of money or the value of the property is more than \$100. MCL 750.356c; MSA 28.588(3); *People v Ramsey*, 218 Mich App 191, 193; 553 NW2d 360 (1996).

Defendant argues that insufficient evidence was presented to support his conviction of first-degree retail fraud. We disagree and affirm. During a period in which the store was open to the public, defendant was observed by store personnel carrying a video game attached to which was a barcode identifying and pricing the item. The evidence showed that had the item been purchased, the card would have been removed. After attempting unsuccessfully to obtain a refund for the game, defendant left the store without stopping to pay for the game. Defendant took property offered by the store for sale, and moved it out of the store without stopping to pay for it. A showing of the slightest movement of the property was sufficient. CJI2d 23.13(3). Retail fraud is a specific intent crime. Intent can be inferred from the facts and circumstances surrounding the incident. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). The evidence showed that shortly after defendant was apprehended, a check of inventory revealed that one copy of the game was missing from the stack on top of the display shelves. From that piece of evidence, as well as from the evidence that the copy of the game found in defendant's possession had not been purchased, the trier of fact could infer that the copy found in defendant's possession had been taken from the top of the display shelves. Viewed in a light most favorable to the prosecution, the evidence produced was sufficient to support defendant's conviction of first-degree retail fraud. *Petrella, supra*; *Vaughn, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich