

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 6, 2012

v

ANTIJUAN JIKELO LACY,

Defendant-Appellant.

No. 305034
Oakland Circuit Court
LC No. 2010-233490-FH

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of first-degree retail fraud, MCL 750.356c(1)(b). The trial court sentenced defendant to one year of probation. For the reasons set forth below, we affirm.

Defendant contends that the prosecutor presented insufficient evidence to support his conviction. “The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *Id.* at 400. The first-degree retail fraud statute provides:

A person who does any of the following in a store or in its immediate vicinity is guilty of retail fraud in the first degree . . . (b) While a store is open to the public, steals property of the store that is offered for sale at a price of \$1,000.00 or more. [MCL 750.356c(1)(b).]

The prosecutor also presented an aiding and abetting theory to the jury pursuant to MCL 767.39, which provides:

Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

On July 28, 2010, during business hours, defendant accompanied Tracy Beavers into Diamond Connections, a store in Oak Park. Beavers had been in the store before and had talked to employee Jack Allos about buying a two-carat diamond. Allos testified that he did not think Beavers could afford the two-carat diamond because it would cost about \$15,000, so Allos showed Beavers a less expensive 1.77-carat diamond. Allos placed the 1.77-carat diamond and the two-carat diamond on the shop counter, so Beavers would look at both. Beavers picked up both diamonds in the same hand. Defendant, who was standing behind Beavers, took the two-carat diamond from Beavers's hand, and moved it behind Beavers's back. Because Beavers was in front of defendant, Allos temporarily lost sight of the diamond. Defendant then placed a stone back into Beavers's open hand. Allos testified that he immediately recognized that the stone defendant put in Beavers's hand was not the two-carat diamond, and that he thought defendant had switched the diamond with a synthetic gemstone made of cubic zirconia. Allos also testified that he saw on the store's security camera footage, which was also shown at trial, that defendant and Beavers "threw everything back" on the counter after they saw Allos go to lock the store's front door. Defendant then pushed and shoved in an attempt to leave. Two cubic zirconia stones were later found in Beavers's pockets.

Defendant argues that Beavers was the sole perpetrator and he did not know about Beavers's criminal intent. However, based on Allos's testimony, a reasonable jury could conclude that defendant executed the swap when he picked up the diamond and deposited a different, synthetic stone in Beavers's hand. See *Nowack*, 462 Mich at 399-400. If defendant executed the swap, a reasonable jury could conclude that defendant had the intent to permanently deprive the store of the diamond, or to aid Beavers in doing the same. A defendant's state of mind "can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008); see also *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615, 627-628; 628 NW2d 540 (2001) ("An aider and abettor's state of mind may be inferred from all the facts and circumstances.").

Further, although defendant proclaimed his innocence at trial, it is not this Court's role to weigh the evidence and make credibility determinations. See *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992). Clearly, the jury did not find defendant's testimony credible, and we will not disturb this determination on appeal.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter