

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARMEN J. MCLAURIN,

Defendant-Appellant.

UNPUBLISHED

February 4, 1997

No. 183820

LC No. 93-129016

Before: Reilly, P.J., and Wahls and N.O. Holowka,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of use of a financial transaction device without consent, MCL 750.157n(1); MSA 28.354(14)(1). She was sentenced to one year probation. Defendant now appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to support her conviction because there was no evidence that she specifically intended to defraud Montgomery Ward or Jeffrey Watters. She argues that the evidence presented at best indicates that defendant was mistakenly given the wrong account number when she applied for credit, and she charged purchases to that account without knowing that it was not hers. We disagree.

In reviewing the sufficiency of the evidence, this Court must consider the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that the elements of the crime were established beyond a reasonable doubt. *People v McCrady*, 213 Mich App 474, 484; 540 NW2d 718 (1995). A trier of fact may make reasonable inferences from the facts, if the inferences are supported by direct or circumstantial evidence. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). Intent may be inferred from all the facts and circumstances of the case. *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991). This Court may not interfere with the jury's role of determining the weight and credibility of the evidence. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993).

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

MCL 750.157n(1); MSA 28.354(14)(1) provides:

A person who steals, knowingly takes, or knowingly removes a financial transaction device from the person or possession of a deviceholder, or who knowingly retains, knowingly possesses, knowingly secretes, or knowingly uses a financial transaction device without the consent of the deviceholder, is guilty of a felony.

A financial transaction device includes a credit card. MCL 750.157m(f)(ii); MSA 28.354(13)(f)(ii). A “deviceholder” means either of the following:

(i) The person or organization who requests a financial transaction device and to whom or for whose benefit a financial transaction device is subsequently issued.

(ii) The person or organization to whom a financial transaction device was issued and who used or accepted a financial transaction device, whether the issuance of the financial transaction device was requested or not. [MCL 750.157m(d); MSA 28.354(13)(d).]

The crime of stealing or retaining a financial transaction device is a specific intent crime, because knowledge is an essential element of the crime. *People v Ainsworth*, 197 Mich App 321, 325; 495 NW2d 177 (1992). Intent to defraud in most instances is not provable by direct testimony, but, by its nature, must be inferred from other facts. *People v Kimble*, 60 Mich App 690, 694; 233 NW2d 26 (1975).

In this case, we find that there was sufficient evidence presented from which the jury could have inferred that defendant had the specific intent to defraud Montgomery Ward or Jeffrey Watters by using Watters’ credit account to purchase merchandise at the store. Evidence was presented that defendant applied for instant credit and was denied, and then applied again twenty one minutes later, giving a different address, telephone number and social security number. Michael David, a sales representative at Montgomery Ward, testified that he showed defendant the computer screen which indicated that the account belonged to Watters, and showed defendant a copy of the receipt on which was printed Watters’ name before she signed the receipt. The jury also heard evidence that defendant purchased three VCRs, two stereos, and over \$200 worth of clothing on credit while she was unemployed and had no income. Viewing the evidence in a light most favorable to the prosecution, the jury could reasonably have inferred from the facts presented that defendant specifically intended to defraud Montgomery Ward and Watters. Therefore, there was sufficient evidence to support her conviction.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Myron H. Wahls

/s/ Nick O. Holowka