STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD J. MCDONALD,

Defendant-Appellant.

UNPUBLISHED
October 9, 1998

No. 202253
Oakland Circuit Court
LC No. 96-146749 FH

Before: Gage, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree retail fraud. MCL 750.356c(1)(b); MSA 28.588(3)(1)(b). He was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to one to fifteen years' imprisonment with no credit for time served. He appeals his conviction and sentence as of right. We affirm.

Defendant argues that the sentencing court should not have denied him jail credit on the sentence imposed for the offense committed in this case. Defendant contends that our Supreme Court's decision in *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569; 548 NW2d 900 (1996), entitles him to jail credit on his present sentence because he had already served his minimum term on his prior conviction. However, defendant's reliance on this authority is misplaced because our Supreme Court did not resolve how a reoffending parolee's jail credit should be applied but when a reoffending parolee's second sentence should begin.

In *Wayne County*, *supra* at 575, our Supreme Court reversed this Court's holding that a person imprisoned for a felony committed while on parole is required to serve the maximum of the original sentence before beginning to serve the sentence for the new crime. In reaching its holding, the Court interpreted the phrase "remaining portion" in MCL 768.7a(2); MSA 28.1030(1)(2), which states in pertinent part as follows:

> If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

The Court held that "remaining portion" meant that an offender was required to serve at least the combined minimums of the sentences plus whatever time the Parole Board required the offender to serve because of a parole violation. *Id.* at 572, 584.

This Court has addressed the specific issue raised by defendant. In both *People v Watts*, 186 Mich App 686, 687-691; 464 NW2d 715 (1991), and *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990), this Court held that a reoffending parolee is not entitled to credit against a new sentence for time served; rather, any credit for time served while awaiting trial on the new charge should be applied against the original sentence. Therefore, the court in this case did not err in denying defendant credit for time served on the sentence imposed for the offense committed in this case.

Defendant also argues that the evidence presented at trial was insufficient to support a conviction of first-degree retail fraud. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecutor 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, modified on other grounds 441 Mich 1201 (1992). Defendant was convicted of violating MCL 750.356c(1)(b); MSA 28.588(3)(1)(b), which prohibits any person in "a store or in its immediate vicinity" from stealing "property of the store that is offered for sale at a price of more than $100.00."

Defendant contends that the testimony of the prosecution's witnesses did not establish that he stole items from the store nor did it contradict that he purchased the items elsewhere before entering the store. However, the prosecution is not required to proffer evidence that refutes a defendant's version of events; rather, the prosecution is only required to prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996). Moreover, it is well established that the prosecution may prove the elements of a crime through circumstantial evidence and the reasonable inferences that arise from it. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

Here, the prosecution's case against defendant included testimony that defendant was observed putting items from the store shelves into a shopping cart and covering them, that defendant did not pay for any of the merchandise, and that defendant attempted to flee once outside of the store. Further testimony established that when defendant was apprehended, store items for which he had no receipt fell from his coat. Last, the store manager testified that all of the items stolen were items his store carried. We decline defendant's request to assess the credibility of these witnesses. Appellate courts are not juries, and even when reviewing the sufficiency of the evidence, must not interfere with the jury's

role and decide the weight and credibility of testimony. *Wolfe, supra* at 514-515. When viewed in the light most favorable to the prosecutor, the evidence was sufficient for the jury to find that defendant committed first-degree retail fraud beyond a reasonable doubt.

Affirmed.

/s/ Hilda R. Gage
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra