

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENEE ANNETTE GOOSBY,

Defendant-Appellant.

UNPUBLISHED

February 3, 2005

No. 250591

Oakland Circuit Court

LC No. 03-188401-FH

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right from her jury trial conviction of first-degree retail fraud, MCL 750.356c. We affirm.

The prosecution's theory was that defendant removed four coats from a retail store without paying for them, and was apprehended after a foot pursuit through the mall. Store employees identified defendant as the person they pursued through the mall and as the person who discarded a bag containing coats offered for sale by the store. The employees denied that they lost sight of defendant at any time; however, a security guard testified that one employee indicated she lost sight of defendant during the chase.

During closing argument the prosecutor asked the jury to consider why defendant fled if she was not guilty. The trial court instructed the jury that evidence that defendant ran away after the alleged crime did not prove guilt, that a person could run either for innocent reasons or due to a consciousness of guilt, and that the jury was to decide if the evidence of flight was true, and if so, whether it showed that defendant had a guilty state of mind.¹ Defense counsel did not object to the prosecutor's argument, and responded in the affirmative when the court inquired if it had instructed the jury as it said it would.²

¹ CJI2d 4.4.

² Defense counsel was not asked if he approved the instructions as read. We conclude that the issue raised in this appeal was forfeited rather than waived. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Absent plain error affecting defendant's substantial rights, defendant is not entitled to relief. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. *Id.* We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

Contrary to defendant's assertion, the trial court's instruction did not reflect only the prosecution's theory that the evidence of flight indicated that she had a guilty conscience. The instruction informed the jury that evidence of flight did not prove guilt, that a person could flee for innocent reasons or due to a guilty conscience, and that the jury was required to determine if the evidence of flight was true and if so, whether it showed that defendant had a guilty conscience. The trial court's instruction was proper. See *People v Goodin*, 257 Mich App 425, 432; 668 NW2d 392 (2003). No plain error occurred. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper