STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN CRAWFORD,

Defendant-Appellant.

UNPUBLISHED
May 6, 1997

No. 187866
Oakland Circuit Court
LC No. 95-137396

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of embezzlement by an agent or servant over $100, MCL 750.174; MSA 28.371, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to three to ten years' imprisonment, which was vacated, and then three to twenty years' imprisonment. Defendant now appeals as of right. We affirm.

Defendant was an employee of Globe Furniture Rental in Ferndale. While installing some shelves in a store room, a coworker of defendant's noticed that two VCRs were missing. He later saw defendant walk out of the building toward the parking lot carrying what appeared to be two VCR boxes. Ferndale police arrested defendant and searched his car, including the trunk, where they found two boxes of VCRs of the same type as those stored by Globe.

Defendant argues that the evidence was not sufficient to support his conviction of embezzlement. 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). 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). The elements of embezzlement are: (1) the money or personal property in question must

belong to the principal; (2) the defendant must have had a relationship of trust with the principal because he was an agent, servant, employee, trustee, bailee or custodian of the property; (3) the money or personal property must have come into the defendant's possession or control because of that relationship; (4) the money or personal property must have been disposed of or converted to the defendant's own use, or taken or secreted with intent to convert to his own use without the consent of his principal; (5) this act must have been done without the consent of his principal; and (6) at the time of the conversion or appropriation for his own use, the defendant must have intended to defraud or cheat the principal of some property. *People v Wood*, 182 Mich App 50, 53; 451 NW2d 563 (1990).

Defendant first argues that the evidence was insufficient to convict him for embezzlement by an agent over $100 because the prosecution failed to prove beyond a reasonable doubt that he came into possession of the VCRs through a special relationship with Globe Furniture Rental. He argues that the language from MCL 750.174; MSA 28.371 requires an interpretation that the relationship of trust between the defendant and the principal must be more than a simple employer-employee relationship. We disagree.

When the language of a statute is clear, the Legislature is presumed to have intended the meaning plainly expressed in the statute, and judicial interpretation is unnecessary. *People v Evans*, 213 Mich App 671, 674; 540 NW2d 489 (1995). Courts may not speculate regarding the probable intent of the Legislature when the statutory language is clear and unambiguous. *Id.* The plain language of MCL 750.174; MSA 28.371 provides that an agent, servant or employee of another who appropriates property of his principal that came into his possession by virtue of his being such agent, servant, employee is guilty of embezzlement. Therefore, the plain meaning of the statute provides that any employee who converts the property of his employer which comes into his possession by virtue of his employment is guilty of embezzlement.

Furthermore, this Court has held that whether or not the employee was legally authorized to possess the property is not controlling. If a defendant came into possession of property by virtue of his status and thereafter appropriates it for his own use, he is estopped to claim he was not legally in possession of the property. *People v Mulder*, 167 Mich App 141, 144-145; 421 NW2d 605 (1988). Therefore, defendant's argument that MCL 750.174; MSA 28.371 requires a relationship of trust that is greater than a simple employer-employee relationship is without merit.

Defendant next argues that the prosecution did not prove beyond a reasonable doubt that the VCRs found in defendant's car were the property of his employer, Globe Furniture Rental. We disagree.

An essential element of the crime of embezzlement is that the property converted by the agent or employee belonged to his principal. *People v Kurrle*, 335 Mich 180; 55 NW2d 787 (1952). In this case, the prosecution presented evidence that defendant's coworker noticed two VCRs missing from the storeroom where he and defendant were working, and later saw defendant walking toward the parking lot with two boxes that appeared to be VCR boxes. Later the same day, police found two VCRs in the trunk of defendant's car which were the same make and model as those stocked by

Globe. Philip McGowan, the distribution manager for Globe, identified the VCRs in court as property of Globe based on the fact that they were the same model as those stocked by Globe, although he admitted that he did not have any record of inventory or serial numbers. While this evidence does not positively identify the VCRs found in defendant's trunk as the property of Globe, a rational trier of fact could have determined beyond a reasonable doubt that they were the same VCRs missing from Globe's store room. See *People v McDonald*, 163 Mich 552, 554-555; 128 NW 737 (1910).

Defendant next argues that the prosecution did not present sufficient evidence to support a finding that the VCRs were worth more than $100. Defendant claims that the prosecution presented invoices that indicated that the VCRs cost Globe $182, but did not present evidence regarding the condition of the VCRs, other than that they were in their boxes.

When used to differentiate between a felony and a misdemeanor, the value of the item stolen is an essential element of the crime charged. *People v Johnson*, 133 Mich App 150, 153; 348 NW2d 716 (1984). This value is to be determined by the jury by considering all the testimony that has been presented in the case, and applying its judgment to that testimony to determine the value. *People v Toodle*, 155 Mich App 539, 553; 400 NW2d 670 (1986). Where the prosecutor fails to prove that the value of the goods is over the statutory minimum for a felony, the defendant must be convicted of only a misdemeanor. *Id.* at 553.

In the present case, the prosecution admitted evidence that Globe purchased the VCRs new for $182 each, and the VCRs were in their boxes at the time they were stolen. Furthermore, the VCRs themselves were admitted into evidence, and the jury was could have inspected them to determine their condition. Considering all the evidence and testimony presented, a reasonable trier of fact could have inferred that the two VCRs were worth more than $100. Therefore, defendant's argument has no merit.

Defendant next argues that the trial court erred by admitting testimony and evidence that were the fruit of an illegal search and seizure. We disagree.

The Fourth Amendment guarantees protection against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Generally, a search conducted without a warrant is unreasonable unless there exist both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Mayes (After Remand)*, 202 Mich App 181, 184; 508 NW2d 161 (1993). The prosecution bears the burden of demonstrating that a warrantless search is justified by a recognized exception to the warrant requirement. *Id.* The automobile exception to the warrant requirement permits police to search an automobile without a warrant when there is probable cause to believe that contraband or evidence of a crime may be found. *United States v Ross*, 456 US 798, 809, 102 S Ct 1257, 72 L Ed 2d 572 (1982); *Mayes, supra* at 185. If probable cause justifies the search of an automobile, it justifies the search of every part of the automobile and its contents that may conceal the object of the search. *People v Martinez*, 187 Mich App 160, 169; 466 NW2d 380 (1991). Probable cause exists when the facts and circumstances would warrant a person of reasonable prudence to believe that the evidence of a crime or contraband sought is in the stated place. *Id.* at 170.

In this case, Ferndale police officer Keith Thibodeau testified that police were notified to be on the lookout for a 1990 Pontiac Bonneville, and were given the license plate number and the name Norman Crawford. They were told that Crawford had placed VCRs in the trunk. When Thibodeau arrived at the Globe parking lot, he observed a white Bonneville with the engine running. He placed defendant under arrest. Prior to searching the automobile, Thibodeau observed footprints in the snow leading from the door of Globe's building to the trunk of defendant's car, and a hand print in the snow on the trunk of the car. Thibodeau's observations, in addition to the information he had received regarding the stolen VCRs in the trunk of a white Pontiac Bonneville, would warrant a person of reasonable prudence to believe that the VCRs would be found in the trunk of defendant's car. Therefore, Thibodeau had probable cause to search defendant's car. Therefore, the search was reasonable pursuant to the automobile exception to the Fourth Amendment warrant requirement. *Martinez*, *supra* at 169-170.

Finally, defendant argues that the prosecution engaged in reversible misconduct by referring in his closing argument to the fact that the VCRs in question were new, because this fact was not supported by the evidence. Because defendant failed to object to the alleged improper statements, appellate review is foreclosed unless the misconduct was so egregious that no curative instruction could have removed the prejudice to defendant or if manifest injustice would result. *People v Paquette,* 214 Mich App 336, 341; 543 NW2d 342 (1995). Had defendant objected, the trial court could have instructed the jury that the evidence did not indicate that the VCRs were new. Furthermore, regardless of whether the VCRs were "new," evidence was presented that the two VCRs were worth more than $100.

Affirmed.

/s/ Myron H. Wahls
/s/ Harold Hood
/s/ Kathleen Jansen