STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMIAH BROWN, JR.,

Defendant-Appellant.

UNPUBLISHED
January 16, 1998

No. 198980
Oakland Circuit Court
LC No. 96-145085-FH

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of embezzlement of property valued over $100, MCL 750.174; MSA 28.371 (a felony), and embezzlement of property valued at $100 or less, MCL 750.174; MSA 28.371 (a misdemeanor). He subsequently pleaded guilty to fourth habitual offender, MCL 769.12; MSA 28.1084. He was sentenced as a fourth habitual offender to two to twenty years' imprisonment[1] and to ninety days' imprisonment for the conviction of the misdemeanor embezzlement. Defendant appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence to support his conviction of embezzlement over $100. When reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

Defendant's conviction was based on evidence that he aided and abetted his girlfriend in embezzling five cartons of cigarettes from the store where she worked as a cashier. In order to convict defendant as an aider and abettor, the prosecution must prove beyond a reasonable doubt that defendant had the specific intent to embezzle or assist his girlfriend in embezzling. See *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993). It was undisputed that defendant carried a bag containing five cartons of cigarettes that had not been paid for out of the store. Further, the parties stipulated that the cigarettes were worth $109. The only question is whether defendant knew that the cigarettes he carried out of the store were stolen. We find that there was sufficient evidence

produced at trial to justify a rational finder of fact to infer that defendant knew the cigarettes were not paid for when he took the bag out of the store.

An aider and abettor's state of mind can be inferred from all the facts and circumstances. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). In the present case, the prosecution presented testimony from two different witnesses that defendant was clearly waiting for his girlfriend to give him a bag. One witness testified that, before receiving the bag of cigarettes, defendant seemed to be waiting for his girlfriend to finish up because he was facing her lane, rather than the lane where he was paying. He waited for the bag, and then motioned his girlfriend to hand it to him. This exchange was recorded by the store video surveillance cameras. A second witness, a loss prevention officer at the store, viewed the tape and concluded that defendant was clearly waiting for the cashier to hand him the bag.

Intent may also be shown by a close association between the defendant and the principal. *Id.* at 569. On the night of the arrest, defendant's girlfriend, the principal, signed a statement acknowledging that defendant knew the cigarettes were not paid for. The loss prevention officer testified that she also told him that stealing the cigarettes was defendant's idea and that he was the one who had put her up to it. Because the principal and defendant were dating at the time of the incident, and were still friends at the time of trial, the trial court could reasonably infer an intent to aid and abet.

Moreover, the prosecution produced evidence that defendant confessed. The loss prevention officer's testimony indicates that, when first questioned, defendant admitted that he knew the cigarettes were not paid for. Defendant then specifically asked what the charge would be. It was only after defendant knew he would be charged with a felony that he claimed he did not know the cigarettes were not paid for. A second loss prevention officer also testified that defendant stated that he knew the cigarettes were not paid for and that defendant changed his story *after* he discovered that he would be charged with a felony. We find that the testimony was sufficient to justify a rational trier of fact to determine that defendant knew the cigarettes were not paid for when he took the bag out of the store. Accordingly, we find that the evidence was sufficient to support defendant's conviction of embezzlement over $100.

Defendant's second argument is that the trial court abused its discretion in admitting evidence of other bad acts to impeach defendant's testimony. Specifically, defendant objects to the prosecutor's use of his prior criminal record to impeach him, that he was improperly cross-examined concerning his parole status, and that evidence concerning drug paraphernalia found in defendant's car was improperly admitted.

With respect to the prior convictions, the trial court specifically ruled that it would not consider defendant's prison escape conviction, but that it would allow impeachment with the prior convictions of first-degree retail fraud. There was no abuse of discretion regarding the use of the first-degree retail fraud convictions to impeach defendant's credibility. MRE 609(a). With respect to the drug paraphernalia, the trial court stated on the record that it would not utilize this information for any substantive purpose, but only for impeachment purposes; therefore, we find no error requiring reversal. See *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). Finally, with respect to the

evidence of defendant's parole status, that evidence was used by the trial court in its findings only to indicate that defendant changed his story about knowing whether the cigarettes were stolen when he discovered that he would be charged with a felony. Given the fact this was a bench trial and in reviewing the trial court's findings, we believe the evidence had no effect on the verdict. Therefore, any error in the admission of the evidence was harmless because it was not prejudicial and does not require reversal. *People v Belanger*, 454 Mich 571, 576; 563 NW2d 665 (1997).

Affirmed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ Jane E. Markey

[1] The sentence for the fourth habitual offender conviction was to run consecutively to a parole violation sentence.