

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NICOLE ISHAN BLYTHE,

Defendant-Appellee.

UNPUBLISHED

January 30, 2001

No. 224353

Oakland Circuit Court

LC No. 99-167251-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to quash the information charging her with one count of embezzlement by an agent. MCL 750.174; MSA 28.371. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court's review of the circuit court's analysis of the bindover process is de novo. This Court must redetermine if the magistrate committed an abuse of discretion in finding probable cause to believe that the defendant committed the offenses charged. This Court decides whether the evidence presented to the magistrate was sufficient to establish, as a matter of law, that the offenses charged had probably been committed by the defendant. There must be evidence of each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994).

Two distinct forms of embezzlement are proscribed by statute. "The first occurs when an individual fraudulently disposes of or converts to his own use money or personal property of his principal. The second occurs when an individual conceals with intent to convert to his own use money or personal property without the consent of the principal." *People v Artman*, 218 Mich App 236, 241; 553 NW2d 673 (1996). Defendant is charged with the first type: fraudulently disposing of her employer's property. The elements of the crime are: (1) the property at issue must belong to the principal, (2) the defendant must have a relationship of trust with the principal because she was an employee, (3) the property must come into the defendant's possession or under her charge or control because of that trust relationship, (4) the defendant dishonestly disposed of the property, (5) at the time the defendant did this, she intended to defraud or cheat

the principal of the property, and (6) the property had a fair market value of \$1,000 or more but less than \$20,000. MCL 750.174(1), (4)(a); MSA 28.371(1), (4)(a); CJI2d 27.1; *People v Wood*, 182 Mich App 50, 53-54; 451 NW2d 563 (1990). The defendant's intent may be inferred from her conduct and statements as well as from the facts and circumstances of the case. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

The evidence showed that DOC owned the eyeglass frames which had a value of five to six thousand dollars. Defendant, as DOC's employee, had a relationship of trust with DOC and because of that relationship, the eyeglass frames came into her possession or under her charge or control. The only issue is whether there was probable cause to believe that defendant fraudulently disposed of the frames with the intent to defraud or cheat her employer. A reasonable interpretation of the evidence presented is that defendant intentionally made the frames available for her friends to steal. Defendant lied about the reason for her friends' visit, took three or four frames out in violation of company policy and kept them out for several minutes while her friends busied themselves until the security guard had left the floor, then let her friends take the frames and tried to cover up her involvement by falsely claiming that they'd twisted her arm. Because the evidence presented supported an inference that defendant disposed of the property dishonestly with an intent to defraud, the magistrate properly bound defendant over for trial. *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995). Therefore, the circuit court erred in granting the motion to quash.

Reversed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White