

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS ROBERT BARR,

Defendant-Appellant.

UNPUBLISHED

August 14, 2001

No. 222391

Iosco Circuit Court

LC No. 99-003851-FH

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of embezzlement by an agent, MCL 750.174, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecution contended that in 1998 defendant embezzled \$6,000 during the course of his employment for Michigan Sun Rooms, Inc. (MSR), a company formed by Lawrence La Voie. Evidence presented by the prosecution showed that defendant told a customer that the bank would not accept a check made payable to him and MSR, and requested that the customer write a second check in the amount of \$6,000 made payable to him alone. The customer did so. This check was not deposited in the MSR bank account. La Voie testified that defendant was an agent of MSR and had full authority to bind MSR to contracts, but that he was not a signatory on the corporate bank account, could not disburse funds on behalf of MSR, and could not advance funds to himself. La Voie indicated that when he learned that the customer had written a check made payable to defendant only, he demanded that defendant return the funds. Defendant did not do so. Defendant testified that he did not consider himself to be an employee or an agent of MSR; rather, he and La Voie functioned as partners. Defendant asserted that he kept the \$6,000 from the check made payable to him as an advance, and that he did not intend to defraud the company.

The trial court denied defendant's motion for a directed verdict. The jury convicted defendant as noted above.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v*

Wolfe, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). When ruling on a motion for directed verdict, the trial court must consider the evidence presented by the prosecution and determine whether a rational trier of fact could find that the elements of the charged offense were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997). Questions regarding the credibility of witnesses are to be left to the trier of fact. *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified in part on other gds 457 Mich 885; 586 NW2d 925 (1998). We review a trial court's ruling on a motion for directed verdict de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

The elements of embezzlement by an agent are: (1) the money in question must belong to the principal; (2) the defendant must have a relationship of trust with the principal as an agent; (3) the money must come into the defendant's possession because of the relationship of trust; (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money; (5) the act must be without the consent of the principal; (6) at the time of the conversion, the defendant intended to defraud or cheat the principal; and (7) that over \$100 was embezzled. CJI2d 27.1; *People v Collins*, 239 Mich App 125, 131; 607 NW2d 760 (1999).¹

Defendant argues that insufficient evidence was presented to support his conviction of embezzlement, and that the trial court erred by failing to grant his motion for directed verdict. We disagree and affirm. La Voie's testimony, which the jury was entitled to believe, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), established that defendant was an agent of MSR, and that as a result of his position, he obtained \$6,000 in the form of a check made payable to him and written by a customer of MSR. Those funds were not deposited into the MSR bank account. From this evidence the jury was entitled to infer that defendant converted the funds. La Voie testified that defendant did not have the authority to take corporate funds as an advance. From the evidence that defendant took funds without permission and then failed to turn them over to the company, the jury could infer that defendant acted without the consent of La Voie and intended to cheat MSR. *Vaughn, supra*. The trial court did not err by denying defendant's motion for directed verdict, *Vincent, supra*, and the evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of embezzlement. *Wolfe, supra*.

¹ 1998 PA 312, effective January 1, 1999, amended MCL 750.174, to provide for graduated penalties based on the value of the property embezzled and the existence of prior convictions under the section. The action which resulted in the charge against defendant occurred in 1998.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin