

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLAN GRAY BUDLEMAN,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 248744
Wayne Circuit Court
LC No. 03-001190-01

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of embezzlement, MCL 750.174. The trial court sentenced defendant to two years, six months to ten years' imprisonment for his conviction. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to support defendant's conviction for embezzlement. We disagree. This Court reviews claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

MCL 750.174(1) provides:

A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity or who as the trustee, bailee, or custodian of the property of another person, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that has come to that person's possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement.

Defendant argues that there was insufficient evidence presented that he had the intent to defraud or cheat Superior Communications (Superior). However, “[a]n actor’s intent may be inferred from all of the facts and circumstances” and “because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

The testimony at trial showed that on January 6, 2003, equipment and checks belonging to Superior were found at defendant’s residence. Defendant had been previously terminated several weeks prior to that date. Superior’s general manager testified that employees were not authorized to keep large amounts of equipment at home and were never allowed to keep equipment after being fired. In addition, defendant was given the opportunity to return any equipment he still possessed, but failed to do so. Viewed in a light most favorable to the prosecution, there was sufficient evidence presented to convict defendant of embezzlement.

Defendant next argues that the trial court abused its discretion when it failed to permit testimony regarding the company’s policy regarding missing property. A trial court’s decision whether to admit evidence is reviewed for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

Generally, all relevant evidence is admissible. MRE 402. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401.

The testimony defendant was attempting to admit concerning Superior’s policy regarding missing property was irrelevant and did not demonstrate bias or prejudice on behalf of the witness. Therefore, the trial court did not abuse its discretion by refusing to allow the testimony.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski