

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILL DALEVON PETTAWAY,

Defendant-Appellant.

UNPUBLISHED

November 29, 2005

No. 257161

Oakland Circuit Court

LC No. 03-193706-FH

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for embezzlement of between \$1,000 and \$20,000. MCL 750.174(4)(a). Defendant was sentenced to one year probation, \$2,000 restitution, costs and fines. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the prosecution did not present sufficient evidence to support his embezzlement conviction. We disagree.

A challenge to a conviction based on the sufficiency of the evidence is reviewed de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The prosecution must introduce evidence sufficient to justify a rational trier of fact in concluding that all of the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992).

The elements of embezzlement are: (1) the money in question belonged to the principal, (2) defendant had a relationship of trust with the principal as an agent or employee, (3) the money came into defendant's possession due to the relationship of trust, (4) defendant dishonestly converted the money to his own use, (5) the act was without the consent of the principal, and (6) at the time of the conversion, defendant intended to defraud or cheat the principal. *People v Collins*, 239 Mich App 125, 131; 607 NW2d 760 (1999). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757, 597 NW2d 130 (1999). The only issue on appeal is whether sufficient evidence was presented to show defendant actually took \$2,000 from Zora's deposit.

The prosecution presented evidence to show that defendant had possession of \$22,000, and that he took the “missing” \$2,000. First, Besam Zora counted the deposit amount three times, once by machine and twice by hand, before filling out the deposit slip. He determined the deposit amount to be \$22,000. Earl McDonald, who took the deposit to the bank, worked for Zoras for sixteen years, and had established his trustworthiness as an employee. Defendant admitted to having sole control of the deposit after he received it. Thus, sufficient evidence was presented to establish defendant had possession and control over the \$22,000 Zora deposit.

Second, defendant changed the amount of money deposited in the computer from \$22,000 to \$20,000. Defendant did not notify the manager about the \$2,000 shortage, nor did he notify the customer who made the deposit. Defendant then lied to the bank investigator, denying that he entered his manager’s code to change the amounts. At some point, defendant changed his story, and admitted that he used the manager’s code without authorization and in violation of bank policy. These facts, taken together and in the light most favorable to the prosecution, are sufficient to support the inference, beyond a reasonable doubt, that defendant took \$2,000 from the Zora deposit.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello