

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD TIMOTHY BEAN,

Defendant-Appellant.

UNPUBLISHED

March 20, 2007

No. 264870

Wexford Circuit Court

LC No. 04-007173-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD TIMOTHY BEAN,

Defendant-Appellant.

No. 264885

Wexford Circuit Court

LC No. 04-007172-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD TIMOTHY BEAN,

Defendant-Appellant.

No. 264886

Wexford Circuit Court

LC No. 04-007171-FH

Before: O’Connell, P.J., and Murray and Davis, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals as of right from his jury trial convictions for two counts of larceny by conversion of \$20,000 or more, MCL 750.356(2)(a), and one count of larceny by conversion of more than \$1,000 but less than \$20,000, MCL 750.356(3)(a).

Defendant also appeals the trial court's departure from the statutory sentencing guidelines. Defendant was originally sentenced to concurrent terms of 42 to 120 months in prison for each of the greater convictions and 18 to 60 months for the lesser conviction, all of which were upward departures from the legislative sentencing guidelines. Defendant was then re-sentenced to 330 days' imprisonment for the lesser conviction, which falls within the statutory guidelines for that offense. We affirm. This case arose when defendant acquired large "loans" of money from three men. He claimed that he was going to invest the money on their behalf. When the investments were not repaid in the time allotted, the men inquired into the disposition of the money and were repeatedly stalled. After the money was long overdue, defendant finally berated one of the men, calling him stupid and telling him that he had been bilking "investors" out of their money for years.

Defendant first argues that he is entitled to a new trial because of remarks made by the prosecutor during closing argument. Defendant first contends that the prosecutor improperly vouched for the credibility of the prosecution's witnesses. We disagree. "Issues of prosecutorial misconduct are decided case by case, with the reviewing court examining the pertinent portion of the record and evaluating the prosecutor's remarks in context." *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). A prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge of their truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). "A prosecutor may, however, argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief." *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). In this case, the prosecutor merely stated, "Consider the attitude and the way they testified; the two young men . . . They responded to a lot of questions, and they responded to each question, and I think they responded very credibly." The prosecutor did not indicate that he had any special knowledge that the witnesses were being truthful. Instead, his comments referred the jury to the testimony and gave reasons that the two men were worthy of belief. Therefore, the prosecutor's comments did not improperly vouch for the credibility of his witnesses.

Defendant also argues that the prosecutor committed misconduct by indicating that the number of witnesses against defendant indicated his guilt. Defendant's arguments stem from the following remark during the prosecutor's closing argument, which we place in context: "I mean you've got to judge the credibility; one witness, [defendant], against the credibility of all the other witnesses. Mere numbers alone is not a reason to do it, it's not a reason not to do it either." We disagree with defendant's characterization of the prosecutor's comments. The prosecutor did not argue that the jury should gauge defendant's credibility by comparing his singular testimony with the prosecution's larger number of witnesses. Instead, the prosecutor properly explained that the number of witnesses alone was not a determinant of credibility, and then clarified that it did not detract from the prosecution witnesses' credibility either. Because the prosecutor did not improperly insinuate that the number of witnesses against defendant undermined defendant's credibility, *People v Morlock*, 233 Mich 284, 287; 206 NW 538 (1925), defendant's argument lacks factual support.

Next, defendant asserts that there was insufficient evidence that when he received the loans he had the required intent to permanently deprive the complainants of the money. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and

determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Furthermore, “the prosecutor need not negate every reasonable theory consistent with innocence,” but is only required to prove the crime’s elements beyond a reasonable doubt. *Id.* Also, minimal circumstantial evidence may suffice to prove an actor’s state of mind. *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998).

In this case, the prosecutor offered evidence that defendant grew cavalier about repaying the “investment” money, and berated one of the victims, telling him that he was stupid, that he had been acquiring money in the same way for years, and that nobody could stop him. This testimony alone could reasonably lead the jury to infer that defendant had the requisite larcenous intent when he took the money from the victims. The prosecution also proffered the testimony of several witnesses and a police detective, who revealed that defendant’s investment scheme was nothing new and went much deeper than the victims in this case. Although defendant correctly asserts that he presented evidence that he planned to pay the victims back, the prosecution was not required to disprove defendant’s theory, it was only required to prove its own theory beyond a reasonable doubt. *Nowack, supra*.

Finally, defendant asserts that the trial court abused its discretion in upwardly departing from the sentencing guidelines. We disagree. A trial court may depart from the legislative sentencing guidelines range if it has a substantial and compelling reason to do so, and the court states on the record its reasons for the departure. MCL 769.34(3). We review for clear error the lower court’s factual determination of the existence of a particular factor. *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003). We review the determination that the factor is objective and verifiable de novo, and review for abuse of discretion the trial court’s determination that the factors constituted substantial and compelling reasons for departure. *Id.* at 265-266. An abuse of discretion exists when the result is not within the range of principled outcomes. *Id.* at 269.

A trial court may, in its discretion, upwardly depart from the sentencing guidelines when the seriousness of the offense greatly exceeds the statutory minimum for conviction and the gravity of the offense is not otherwise accounted for in the guidelines. *People v Lowery*, 258 Mich App 167, 170; 673 NW2d 107 (2003); MCL 769.34(3)(b). For example, in *People v Cain*, 238 Mich App 95, 132; 605 NW2d 28 (1999), we held that the trial court did not abuse its discretion when it sentenced the defendant under the judicial guidelines to double the recommended minimum sentencing range because the amount of money taken, \$250,000, was more than 40 times the amount needed to sustain her conviction. In this case, the trial court correctly reasoned that the legislative guidelines did not account for the enormous amount of money that defendant converted for his own personal use. *Lowery, supra*. The court found that defendant had converted a total of \$170,000, which it aptly characterized as “a tremendous sum of money.” Although the disparity between the statutory threshold and the amount converted by defendant in this case is less glaring than the discrepancy in *Cain*, it still constitutes an objective and verifiable basis for departing from the guidelines. *Babcock, supra* at 257. In light of the deference we give to the trial court’s superior knowledge of the facts and its familiarity with

defendant, we will not disturb the trial court's determination that the amount of money converted was a substantial and compelling reason to depart from the guidelines and impart the greater punishment. *Id.* at 269-270.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Alton T. Davis