

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REINER EDMUND WEDEL,

Defendant-Appellant.

UNPUBLISHED
February 23, 2010

No. 290324
Shiawassee Circuit Court
LC No. 08-006966-FH

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of fraudulent retention or use of building contractor funds, MCL 570.152. He was sentenced to 3-1/2 years' probation, with the first three months to be served in jail. He appeals as of right, challenging the sufficiency of the evidence to support his conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a challenge to the sufficiency of the evidence at a bench trial de novo to determine whether, viewing the evidence in a light most favorable to the prosecution, the trial court could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The credibility of witnesses and the weight to be accorded the evidence are questions for the trier of fact to resolve. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009).

MCL 570.152 provides for both criminal and civil penalties when a contractor or subcontractor engaged in the building construction business, with intent to defraud, retains or uses "the proceeds or any part therefor, of any payment made to him, for any other purpose than to first pay laborers, subcontractors and materialmen, engaged by him to perform labor or furnish material for the specific improvement." The statute is part of an act intended to create a trust under a private construction contract. *People v Whipple*, 202 Mich App 428, 432; 509 NW2d 837 (1993). Although "the design of the act is to prevent contractors from juggling funds between unrelated projects," the essence of the act is to impose a trust on monies paid to a contractor for a particular project. *People v Miller*, 78 Mich App 336, 342; 259 NW2d 877 (1977). Trusteeship of the trust fund is imposed on the contractor, or a subcontractor who is paid the building contract fund, "for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen." MCL 570.151. Where the contractor is a corporation and a corporate employee causes it to act unlawfully, the corporate employee may be held

criminally liable under MCL 570.152. *People v Brown*, 239 Mich App 735, 740; 610 NW2d 234 (2000).

The evidence in this case, viewed in a light most favorable to the prosecution, shows that the construction project was funded by Herbert Hein and Donna Congdon. Hein and Congdon were parties to the contract signed by defendant in both his personal capacity and in his capacity as president of Reiner Wedel Custom Homes, Inc. The contract specified that the investor will pay the “builder” a contract price of \$154,700, through a series of “draws,” and the “builder” would use the funds pursuant to the builders’ trust fund act.¹ Defendant’s sole claim on appeal is that the prosecution failed to prove that he had the requisite intent to defraud with respect to the funds provided as “draws” for the construction project. We disagree.

“[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). In addition, the builders’ trust fund act specifically provides:

The appropriation by a contractor, or any subcontractor, of any moneys paid to him for building operations before the payment by him of all moneys due or so to become due laborers, subcontractors, materialmen or others entitled to payment, shall be evidence of intent to defraud. [MCL 570.153.]

A reasonable inference of “appropriation” arises from “the payment of construction funds to a contractor and the subsequent failure of the contractor to pay laborers, subcontractors, materialmen, and others entitled to payment.” *Whipple, supra* at 435. An intent to defraud means an act to cheat or deceive. *Brown, supra* at 747.

Viewed in a light most favorable to the prosecution, the evidence here establishes that defendant, or his corporation, was paid all of the money necessary to pay subcontractors and middlemen, but failed to do so, despite defendant’s assurances to Hein or Congdon that he would do so. This appropriation is evidence of defendant’s intent to defraud. MCL 570.153. Considered in light of other evidence, including defendant’s explanations to the Owosso police chief regarding how he paid himself for working on the construction project and the evidence that defendant inflated his charges or claimed charges for work that was not authorized by the contract in an attempt to justify his retention of the “draws,” was sufficient to infer defendant’s intent to defraud.

We reach this conclusion regardless of whether defendant was motivated by financial difficulties. Although evidence of motive might be relevant, “motive is never an essential element to be proven in a criminal case.” *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). We note, however, that it was not unreasonable for the trial court to infer from the judicially noticed evidence regarding the 2005 lawsuit and the later foreclosure action that

¹ This is another name for the Building Contract Fund Act, MCL 570.151 *et seq.*

defendant may have been motivated by financial difficulties. Defendant has not shown any clear error in the trial court's findings with respect to his motive or intent. See *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis