

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 11, 2012

v

SHERRY LYNN KRESS,
Defendant-Appellant.

No. 303838
Oakland Circuit Court
LC No. 2008-221504-FH

Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of embezzlement of a value of more than \$1,000 but less than \$20,000, MCL 750.174(4)(a). She was sentenced to two years' probation with the first 30 days in jail. Defendant appeals by right. We affirm.

Defendant contends that the prosecution presented insufficient identity evidence to convict defendant of embezzlement beyond a reasonable doubt. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When reviewing a claim of insufficient evidence, this Court reviews the record in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). Appellate review of a challenge to the sufficiency of the evidence is deferential. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The reviewing court must draw all reasonable inferences and examine credibility issues in support of the verdict. *Id.* When assessing a challenge to the sufficiency of the evidence, the trier of fact, not the appellate court, determines what inferences may be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). This Court must not interfere with the trier of fact's role as the sole judge of the facts when reviewing the evidence. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

To prove embezzlement, the prosecution must prove beyond a reasonable doubt that:

(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 or employee, (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, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal. [*People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002).]

Additionally, in this case, the prosecution was required to show that “[t]he money or personal property embezzled has a value of \$1,000.00 or more but less than \$20,000.00.” MCL 750.174(4)(a). Lastly, identity is always an “essential element” of any crime, which must be proven beyond a reasonable doubt. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976).

Defendant only argues that the prosecution lacked sufficient evidence to prove the element of identity beyond a reasonable doubt. However, the prosecution presented sufficient evidence to prove beyond a reasonable doubt defendant was the perpetrator of the embezzlement.

The prosecution based its case on circumstantial evidence. “Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove all the elements of an offense beyond a reasonable doubt.” *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). “The credibility of witnesses and the weight accorded to evidence are questions for the jury, and any conflict in the evidence must be resolved in the prosecutor's favor.” *Id.*

Sufficient evidence existed to lead a rational jury to conclude that defendant committed embezzlement. The prosecution presented evidence that on January 27, 2005, April 21, 2005, November 8, 2005, December 10, 2005, December 15, 2005, and December 22, 2005, an employee accepted cash from customers and entered the cash payments into the computer system either as credit card or check payments to prevent the officer manager from discovering that cash was missing. In each of these instances, defendant was one of the only workers present at the time the fraudulent changes were entered into the system.

The events of January 27, 2005, are demonstrative of the type of evidence the prosecution repeatedly offered at trial for the other dates mentioned above. On January 27, 2005, fraudulent alterations were made to two customer accounts to express that check payments were received from two customers rather than the cash payments that were actually received. The alterations to these accounts were entered into the computer system on January 27, 2005, at 7:17 p.m., and according to employee time sheets, defendant worked until 7:30 p.m. The only other employees present at the time the fraudulent alterations occurred were an optometric technician and an optician, and neither had any involvement in processing payments in the computer system. Thus, the prosecution provided sufficient evidence for a rational jury to conclude that defendant embezzled the cash on January 27, 2005.

Similarly, on November 8, 2005, fraudulent changes were entered for a cash payment that was converted to a credit card payment in the computer system. The changes were entered into the system at 5:53 p.m. Only two employees were present at this time: defendant and Jean Litfin, the office manager, who admitted on the stand that she does not personally know how to run the office computers at Walton Becker. Thus, defendant was the only employee present at the time changes were made who knew how to enter the changes. A rational jury, viewing this

evidence in the light most favorable to the prosecution, could have found that defendant embezzled on November 8, 2005. Furthermore, because the prosecution presented nearly identical evidence for six separate dates discussed above, a rational jury could conclude that defendant embezzled the money from Walton Becker on those dates, as well.

The prosecution also submitted evidence to the jury that on December 15, 2005, after committing a very similar fraudulent scheme in the computer system as discussed above, defendant closed the front desk. As the closer for that evening, the prosecution presented evidence that defendant should have been aware of the fact that \$225.80 was missing from the cash envelope at the end of the day. If money was missing, defendant should have “[c]alled [Nancy Walton], called the office manager [Litfin], talked to one of the doctors, something.” Defendant did not call anyone regarding the missing money on December 15, 2005. Thus a rational jury could conclude that defendant’s failure to call when more than \$225.80 was missing was clear evidence that defendant was the party embezzling the cash from Walton Becker.

Furthermore, the prosecution offered evidence that on December 10, 2005, defendant’s handwriting appeared at the bottom of a receipt for a \$163 cash transaction. From this evidence, a rational jury could have concluded that defendant had knowledge that \$163 in cash was received by Walton Becker. At the close of business, only defendant and Litfin worked. At the end of the day, the \$163 cash payment was converted into a credit card purchase in the computer system. Because defendant had personal knowledge that \$163 cash came into the office, and because no evidence was proffered that defendant notified her employers of the missing cash, a rational jury could have concluded that defendant committed embezzlement.

Similarly, on December 22, 2005, defendant, after collecting cash for Walton Becker, initialed a sheet signifying that she collected the cash. However, at the end of the business day, when that money was missing, defendant did not notify any person at Walton Becker that the cash was gone. A rational jury could have concluded that a person who acknowledged receiving cash should be aware of cash missing at the end of the day. This evidence, although circumstantial, when viewed in the light most favorable to the prosecution, was sufficient to establish the elements of embezzlement and that defendant was the perpetrator.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Christopher M. Murray