

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 16, 2012

v

PETER WINTHROP FOX,

Defendant-Appellant.

No. 305200
Eaton Circuit Court
LC No. 08-020081-FH

Before: TALBOT, P.J., AND WILDER AND RIORDAN, JJ.

PER CURIAM.

Defendant, Peter Winthrop Fox, appeals as of right his jury trial conviction of larceny by conversion of property with a value of \$1,000 or more but less than \$20,000. MCL 750.362; MCL 750.356(3)(a). Defendant was sentenced to 10 days in jail and 60 months on probation. We affirm.

I. FACTUAL BACKGROUND

David Kreis, an experienced builder, decided to build an adult foster care home. To this end, Kreis met with defendant who represented himself as a real estate investor and builder. Defendant indicated that he could help Kreis obtain financing for the project. After this initial meeting, defendant contacted Kreis and requested \$10,000 as a deposit toward obtaining investors and a mortgage. Kreis met with defendant to give him the \$10,000 and defendant indicated that everything was going well, he had investors, and he was working on the mortgage money.

Defendant presented Kreis with a document indicating that defendant would obtain financing and perform other tasks in exchange for a six percent commission of the building price. Kreis refused to sign the document because he only wanted defendant to obtain financing, not perform other functions. Defendant subsequently prepared tax forms, contacted loan companies, and filed articles of incorporation. Defendant also obtained a bid from a lumber company, but Kreis reiterated that he only wanted defendant to locate financing.

Kreis and defendant met for a third time when defendant said they “were good to go,” they could “get started,” they had the build money, and defendant was working with two banks for the best interest rate. Based on these statements, Kreis signed a contract with a building company to begin construction on the home. Then one day during construction, defendant

appeared at the property and requested another \$5,000 as a deposit for his work, which Kreis paid. Kreis mentioned construction bills that amounted to \$46,000, and defendant instructed Kreis to send the bills to him for payment, which Kreis did. Defendant also contacted a representative of the construction company regarding concerns about the design, although defendant never followed through. Kreis unsuccessfully attempted to contact defendant numerous times and only managed to receive a fax from defendant regarding the bills. Since Kreis never received any financing from defendant, he ultimately obtained alternate funds to complete the project. Defendant never returned the \$15,000 that Kreis gave him. Defendant was convicted of larceny by conversion and now appeals.

II. STANDARD OF REVIEW

“We review de novo a challenge on appeal to the sufficiency of the evidence.” *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal quotations and citations omitted).

III. ANALYSIS

“Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt.” *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). Therefore, the prosecution in this case was required to prove the elements of larceny by conversion beyond a reasonable doubt. “[L]arceny by conversion occurs where a person obtains possession of another’s property with lawful intent, but subsequently converts the other’s property to his own use,” *People v Mason*, 247 Mich App 64, 72; 634 NW2d 382 (2001) (internal quotations and citations omitted). The elements of larceny by conversion are:

(1) the property at issue must have some value, (2) the property belonged to someone other than the defendant, (3) someone delivered the property to the defendant, irrespective of whether that delivery was by legal or illegal means, (4) the defendant embezzled, converted to his own use, or hid the property with the intent to embezzle or fraudulently use it, and (5) at the time the property was embezzled, converted, or hidden, the defendant intended to defraud or cheat the owner permanently of that property. [*Mason*, 247 Mich App at 72 (internal quotations and citations omitted).]

The first three elements are undisputed. The money had value, it originally belonged to Kreis, and Kreis delivered it to defendant. In regard to whether defendant converted the property or hid it with the intent to fraudulently use it, Kreis gave the money to defendant so that defendant could secure financing for the project. Defendant never obtained any financing for the project. Despite this, defendant represented to Kreis that he had obtained the building money and he never told Kreis that there was no financing. Defendant also failed to return the money to Kreis. Thus, the evidence presented was sufficient to establish that defendant converted the money for his own use.

Defendant, however, insists that he earned the money because he performed many tasks for Kreis such as contacting a potential investor, composing necessary documents, and soliciting a competing bid for the construction project. Yet, Kreis repeatedly told defendant that the money was only a deposit to be used to secure financing, not for these other services. In fact, Kreis refused to sign a contract regarding additional services defendant was willing to perform, making it even clearer to defendant that the money was given to him solely to facilitate the obtainment of financing. Having failed to perform the task required of him and lying to Kreis about the failure, defendant was not entitled to keep the money simply because he had provided minimal additional work that Kreis expressly stated was not part of the agreement.

Lastly, there was also sufficient evidence presented that defendant intended to defraud Kreis when he was converting or hiding the money. “Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). During the third meeting, defendant specifically misrepresented to Kreis that they were “good to go,” they had the building money, and that two banks were willing to provide financing for the project. Based on defendant’s misrepresentation, Kreis entered into construction contract. Defendant knew about the construction, as he visited the construction site when he requested an additional \$5,000, despite not having obtained financing. He also told Kreis to forward the bills to defendant, even though defendant had not obtained any financing from which he could pay these bills. Kreis then was unable to contact defendant, despite repeated attempts, and did not receive the money back from defendant. Thus, based on defendant’s explicit misrepresentations and deceptive behavior, there was sufficient evidence establishing that defendant intended to defraud Kreis.

IV. CONCLUSION

The evidence was sufficient for the jury to find beyond a reasonable doubt that defendant committed larceny by conversion because defendant received and kept \$15,000 from Kreis, did not perform the work he agreed to perform, fraudulently represented the extent of his performance to Kreis, and abandoned the endeavor without returning the money to Kreis.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan