

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SUEZETTE MAUREEN BUSH,

Defendant-Appellant.

UNPUBLISHED

October 9, 2012

No. 305682

Wayne Circuit Court

LC No. 10-000184-FH

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of larceny of property valued at \$1,000 or more but less than \$20,000, MCL 750.356(3)(a). She was sentenced to two years' probation. Defendant appeals by right, and we affirm.

Defendant's conviction arises from her actions while a board member of the condominium association where she lived. According to the association's bylaws, members of the board served on a volunteer basis and were not paid for the time and effort on behalf of the association. Defendant assumed many responsibilities, and a board member testified that she was a convenient contact person because she worked from home. However, board members testified that defendant did not raise the issue of payment for services and did not receive board approval for payment. Additionally, the attorney for the association testified that he had frequent contact with defendant wherein she complained of the amount of work performed and the lack of compensation. The attorney advised defendant to notify the board of her intention to quit performing services or obtain board approval to perform bookkeeping work, present the board with invoices, and have the board issue the checks. There was no evidence at trial that defendant complied with the attorney's advice. The checks written to defendant's companies were signed by defendant, not the authorized board members. Although defendant did not testify at trial, she did cooperate with police during an interview. Defendant represented to police that she had a contract for payment for her services. She told police that the association attorney had the contract and also provided names of individuals to contact to verify her story. The police never found evidence of a contract or confirmation that defendant had permission to receive payment for her services. The trial court found that the evidence submitted by the prosecutor, including the evidence offered by the association attorney regarding the steps necessary to obtain legitimate payment, was credible and found defendant guilty as charged. The trial court expressly rejected defendant's claim of right defense.

On appeal, defendant contends that the verdict was against the great weight of the evidence because the “credible” trial testimony weighed more heavily in defendant’s favor and the association attorney did not testify that defendant was required to get formal board approval to be paid as the property manager. We disagree. The trial court’s decision regarding a motion for new trial¹ on the ground that the verdict was against the great weight of the evidence is reviewed for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). “The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Horn*, 279 Mich App 31, 41 n 4; 755 NW2d 212 (2008).

The elements of larceny are: “(1) an actual or constructive taking of goods or property, (2) carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner.” *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999) quoting *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967). The specific intent required to commit larceny is “the intent to steal another person’s property.” *Cain*, 238 Mich App at 120. MCL 750.356 distinguishes the types of larceny based on the value of the property stolen. In the present case, defendant was charged with the felony for theft of property valued between \$1,000 and \$20,000, MCL 750.356(3)(a).

When a defendant disputes whether felonious intent existed at the time of the taking, a claim of right defense is raised. *Cain*, 238 Mich App at 118-119. “According to this defense, if a defendant had a good-faith belief that the defendant had a legal right to take the property at issue, then the defendant cannot be convicted because the defendant did not intend to deprive another person of property.” *Id.* at 119. This claim of right defense may be raised even if the belief is mistaken or unreasonable. *Id.* When the evidence demonstrates that a defendant did not have a bona fide claim, it negates the existence of good faith necessary for the claim of right. *People v Karasek*, 63 Mich App 706, 713; 234 NW2d 761 (1975). The honesty of belief necessary to support the claim of right defense will not secure an acquittal unless the trier of fact believes the defense. *Cain*, 238 Mich App at 119. The question of honesty of belief involves the weighing of evidence and assessment of the credibility of the witnesses, an issue for the trier of fact. *Id.*

When the resolution of the issue involves the credibility of two diametrically opposed versions of events, the test of credibility lies where statute, case law, common law, and the constitution have reposed it, with the trier of fact. *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998). The question of intent presents an issue for resolution by the trier of fact. *People v Whittaker*, 187 Mich App 122, 128; 466 NW2d 364 (1991). “[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

¹ Defense counsel moved for a new trial at sentencing, and the trial court denied the motion.

NW2d 57 (2008). “A factfinder can infer a defendant’s intent from his words or from the act, means or the manner employed to commit the offense.” *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

A review of the record reveals that defendant is not entitled to appellate relief. Although the defense contests the “credible” evidence offered by the prosecution, the credibility of the witnesses presented an issue for the trial court in this bench trial, and the judge rejected the assertion that defendant had an honest belief of a right to payment. *Cain*, 238 Mich App at 119. Moreover, irrespective of the attorney’s testimony, the board members testified that the bylaws did not provide for compensation for members and defendant did not raise the issue of payment before the board and obtain board approval. Accordingly, the trial court’s ruling on the motion for new trial did not constitute an abuse of discretion. *Unger*, 278 Mich App at 232.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro