

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY LEE RITCHIE,

Defendant-Appellant.

UNPUBLISHED

December 28, 1999

No. 212981

Oscoda Circuit Court

LC No. 98-000606 FH

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Defendant appeals by right his conviction for larceny by conversion over \$100, MCL 750.362; MSA 28.594, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was tried on alternative charges of larceny and larceny by conversion, regarding the taking of timber from property owned by Mary McNeely. McNeely contracted with defendant to allow him to remove the trees, and she was to be paid after the trees were harvested. Defendant contracted with a sawmill for the sale of the trees, was paid, and never paid McNeely on the contract. At the conclusion of the prosecutor's case, defendant moved for a directed verdict on both counts. The trial court granted the motion as to the larceny count, but denied the motion as to larceny by conversion. Defendant was convicted of larceny by conversion.

On appeal, defendant argues that the trial court erred in denying his motion for directed verdict where the prosecution failed to present evidence from which a reasonable person could find that the elements of the offense were proven beyond a reasonable doubt.

A directed verdict of acquittal is appropriate only if, considering all the evidence in a light most favorable to the prosecution, no rational finder of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

MCL 750.362; MSA 28.594 provides:

Any person to whom any money, goods, or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny and shall be punished as provided in the first section of this chapter.

The purpose of the statute is to cover one of the situations left unaccounted for in common law larceny, where a person obtains possession of another's property with lawful intent, but subsequently converts the property to his own use. *People v Christenson*, 412 Mich 81; 312 NW2d 618 (1981). There are four basic elements to larceny by conversion: (1) property of another was delivered to defendant; (2) defendant converted the property to his own use; (3) at the time of the conversion, defendant intended to defraud or cheat the owner permanently; and (4) conversion of the property was without the owner's consent. *People v Scott*, 72 Mich App 16; 248 NW2d 693 (1976).

There was sufficient evidence to establish each of these elements beyond a reasonable doubt. McNeely transferred the timber to defendant. Defendant subsequently sold the timber, and received \$40,000. Testimony supported the finding that defendant never intended to pay McNeely, and that he intended to defraud her. Where McNeely clearly anticipated being paid for the timber, the conversion of the timber was without her consent. The trier of fact could conclude from the evidence presented that the elements were established beyond a reasonable doubt, and the trial court did not err in denying the motion for a directed verdict. *Wolfe, supra*.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage