

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP HUBBARD,

Defendant-Appellant.

UNPUBLISHED
December 8, 2000

No. 215197
Wayne Circuit Court
LC No. 98-002403

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction following a bench trial of larceny over \$100, MCL 750.356; MSA 28.588.¹ The trial court sentenced him to two years' probation and ordered him to pay supervision fees, court costs, \$500 restitution, and fees for his court-appointed lawyer. We affirm defendant's conviction, but remand for a recalculation of restitution.

This case arises out of an incident that occurred during defendant's employment as a food attendant in a Wayne County Airport coffee shop. Defendant's job included making beverages, running the cash register, and collecting money. On the evening in question, defendant was obliged to deposit the money from his drawer, minus a \$200 "bank," into a safe and sign a cash deposit record to reflect the deposit.

After the deposits were collected the next day, an accountant told the manager of the coffee shop that money was missing. The amount of money, \$419.75, was the same amount that defendant was required to deposit the night before, according to the cash register tape reflecting the day's sales. Defendant testified that (1) he did not take the money, (2) he did make the deposit, and (3) he signed the ledger in pencil. To explain the fact that the ledger showed no indication of his signature, defendant maintained that either his name was erased or a new ledger was made by someone who forged the other employees' signatures and did not include his name.

¹ We note that defendant's conviction and sentence occurred before the effective date of the 1998 amendment to MCL 750.256; MSA 28.588, which changed the threshold amount for felonious larceny.

One of defendant's issues listed in the statement of questions presented on appeal concerns the weight of the evidence supporting his conviction, but the body of the argument and the prosecution's response relate not to the weight of the evidence but to the sufficiency of the trial court's findings of fact and law. To properly present an appeal, an appellant must appropriately argue the merits of the issues he identifies. *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). We decline to address the issue that was listed but not argued.

Defendant does properly argue that the trial court failed to make findings of fact and conclusions of law as required and that defendant should therefore be granted a new trial. We disagree with this argument.

A trial court's findings are sufficient if it appears that the trial court was aware of the issues involved and applied the law correctly. *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989). The court need not make specific findings of fact for each element of the crime. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Further, a remand is not required if the court was aware of and resolved the issues involved and additional explication would not help appellate review. *Id.* at 134-135.

Larceny requires a taking and carrying away of the property of another with felonious intent and without the owner's consent. *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (2000); *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996). The trial judge found that (1) defendant did not sign the ledger, (2) defendant had the amount of money involved, (3) the money did not end up in the deposit, and (4) defendant was guilty as charged. These findings indicate that the court was aware of the issues involved and applied the law correctly. See *Armstrong*, *supra* at 185. Indeed, the findings reveal that the judge contemplated a taking and carrying away because the money was not where it belonged. Additionally, there was no dispute that the owner of the money did not consent to the taking of his money. The final element – felonious intent – was also contemplated by the court in that the court (1) set forth the circumstances regarding the missing money, and (2) implicitly expressed disbelief of defendant's explanation for why his signature was not on the ledger.² See *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) ("An actor's intent may be inferred from all of the facts and circumstances, . . . and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient.")

A remand is unnecessary in this case because the court resolved the issues and an additional explication would not help appellate review. *Legg*, *supra*, 134-135.

Defendant also argues that there was insufficient evidence to order restitution of \$500, when the amount of missing money totaled \$419.75. We agree. We review a court's order of restitution for an abuse of discretion. See *People v Tyler*, 188 Mich App 83, 87-90; 468 NW2d

² The court stated, "I do see that the defendant did not sign the ledger there. There was no signature there." Implicit in this statement is the court's rejection of defendant's argument that he *did* sign the ledger, but that someone erased or discarded his signature.

537 (1991). A court abuses its discretion “when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling.” *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Restitution is meant to cover only those losses that are easily ascertained as a result of a defendant’s criminal conduct. *People v Orweller*, 197 Mich App 136, 140; 494 NW2d 753 (1992). The record is clear that the amount in question was \$419.75, and there was no apparent justification for restitution to be set at \$500. Accordingly, we remand for a recalculation of restitution.

We affirm defendant’s conviction but remand for a recalculation of restitution. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Henry William Saad

/s/ Patrick M. Meter