

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK TAYLOR,

Defendant-Appellant.

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UNPUBLISHED

February 27, 2001

No. 219694

Wayne Circuit Court

LC No. 98-005965

Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his conviction and sentence for felony embezzlement, MCL 750.174; MSA 28.371.<sup>1</sup> The court found him guilty of embezzling \$1,703.26 from his employer. He was sentenced to restitution of that amount, forty hours of community service and one year probation.<sup>2</sup> We affirm.

On March 25, 1998, defendant, whose responsibilities included delivering automobile engines, picking up used engine “cores,” and picking up payment for the delivered engines, delivered an engine to Mileage Masters and received payment of \$1,703.26 cash from its owner. Despite defendant’s claim that he delivered the money to the office manager, defendant’s employer was not able to account for this payment and accused defendant of taking the money.

Defendant first contends that his waiver of a jury trial was not personally, voluntarily, and understandingly made because the trial court did not specifically question him on his ability to understand the English language, his educational background, and whether he was under the influence of drugs or alcohol. We disagree. This Court reviews a trial court’s determination regarding the validity of a jury waiver for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997); *People v James (After Remand)*, 192 Mich App 568, 570; 481 NW2d 715 (1992).

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<sup>1</sup> This statute was amended by 1998 PA 312, which was effective January 1, 1999. The pre-amendment statute governs defendant’s actions on March 25, 1998.

<sup>2</sup> The court indicated that it would terminate defendant’s probation once defendant completed the community service and paid the restitution.

The procedure that a trial court is required to follow in accepting a defendant's waiver of trial by jury is provided by MCR 6.402. This rule states, in part that

[b]efore accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding. [MCR 6.402(B).]

Here, it is evident that the trial court complied with the requirements of MCR 6.402(B). As the trial began, defendant placed on the record his waiver of his right to a trial by jury. The trial court questioned defendant on his age (thirty-eight), and advised him that he had an absolute right to a trial by jury in which twelve people would be required to find him guilty beyond a reasonable doubt before a verdict could be entered against him. Defendant testified that there had been no promises of leniency, that he had not been threatened in any way, and that he wanted the judge to hear and decide the facts, and his guilt or innocence. From his responses it was evident that defendant possesses enough education and understood the English language sufficiently to make an understanding waiver. No specific questions in this regard were required by the circumstances or by MCR 6.402.

In addition, although defendant claims he did not sign a jury trial waiver form, the record contains a waiver form signed by both defendant and his attorney on December 14, 1998, the first day of trial. Based on this record, it is evident that the trial court's finding that defendant personally, voluntarily, and knowingly waived his right to a jury trial was not clearly erroneous. See *People v Shields* 200 Mich App 554, 560; 504 NW2d 711 (1993); *People v Reddick*, 187 Mich App 547, 549-550; 468 NW2d 278 (1991).

Defendant further claims that there was insufficient evidence establishing his intent to embezzle. Again, we disagree. Generally, we review de novo a challenge to the sufficiency of the evidence in a bench trial. The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000); *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW 2d 802 (1999). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the crime, *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998), and because proving a defendant's state of mind is difficult, minimal circumstantial evidence is sufficient, *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

For defendant to be convicted of embezzlement by an agent or employee, MCL 750.174; MSA 28.371, the following elements must have been proven beyond a reasonable doubt: (1) the money in question must have belonged to defendant's employer, (2) defendant must have had a relationship of trust with the employer, (3) the money must have come into defendant's possession based on that relationship of trust, (4) defendant must have dishonestly disposed of or converted the money for his own personal use, (5) the money must have been taken without

consent, and (6) defendant must have intended to defraud his employer at the time he took the money. See *People v Collins*, 239 Mich App 125, 130-131; 607 NW2d 760 (1999).

In the instant case, the first three elements are undisputed. However, there is conflicting evidence with regard to whether defendant dishonestly disposed of the money for his own use, without the consent of his employer, and with the intent to defraud. As stated previously, defendant claimed he delivered the money to his employer's office manager; however, the office manager testified that he did not receive the money. The trial court resolved this factual dispute against defendant and convicted him of felonious embezzlement. This finding is to be given great deference on appeal given the trial court's unique opportunity to evaluate the credibility of the witnesses. MCR 2.613; *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997); *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). Based on this record, it cannot be said that the trial court could not have reasonably found that the elements of embezzlement were proven beyond a reasonable doubt.

Affirmed.

/s/ Helene N. White  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra