

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL D. HUGGINS,

Defendant-Appellant.

UNPUBLISHED

November 30, 2001

No. 223291

Ingham Circuit Court

LC No. 99-074536-FH

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a trial, a jury convicted defendant of ten counts of embezzlement over \$100, MCL 750.174.¹ The trial court sentenced him to five years' probation, with the first 365 days in jail subject to work release, and to pay restitution in the total amount of \$162,838.92,² pursuant to a specified schedule of repayment. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to sustain his convictions. We disagree. We “view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). All conflicts with regard to the evidence are resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Further, we will not interfere with the jury's role of determining the weight of the evidence and the credibility of witnesses. *Wolfe, supra*; *Terry, supra*.

¹ Since the time of the charged offenses, the Legislature has amended this section. 1998 PA 312, effective January 1, 1999.

² On June 2, 2000, the trial court entered an order modifying its original order to note that \$132,838.92 of the restitution amount is to be paid to defendant's former employer, and thereafter the remaining \$30,000 of the restitution amount is to be paid to Auto-Owners Insurance Company.

In order to convict a defendant of embezzlement, the prosecution must prove that (1) the money in question belongs to his employer, (2) the defendant had a relationship of trust with his employer as an employee, (3) the defendant obtained possession or control of the money because of this relationship, (4) the defendant converted the money to his own use without his employer's consent, (5) at the time the defendant disposed of the money, he intended to defraud or cheat his employer of some property, and (6) over \$100 was embezzled. MCL 750.174; CJI2d 27.1; see *People v Collins*, 239 Mich App 125, 131; 607 NW2d 760 (1999).

Here, we first note that defendant's brief fails to specifically challenge any particular element(s) of embezzlement. Rather, defendant recites some facts without discussing their relation to the elements of the crime and also attacks an evidentiary ruling. By the use of boldface and italic type, defendant appears to focus on intent to defraud. Defendant concludes, without cogent analysis, that the prosecution failed to prove him guilty beyond a reasonable doubt of all the elements.

This Court has stated that a defendant may not leave it to this Court to search for a factual basis to sustain or reject his position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Nonetheless, we have reviewed the evidence in this case, and we conclude that the evidence, viewed in a light most favorable to the prosecution, was sufficient to support that the essential elements of the charged embezzlements were proven beyond a reasonable doubt.³ There was evidence to support that defendant, an employee who regularly handled the employer's money, took more than \$100 in each charged count and dishonestly disposed of that money. From the amount of money taken, the fact that shortfalls of cash occurred when defendant handled the deposits, and defendant's own cash deposits into his personal account and his purchase of expensive gifts, a jury could properly infer that defendant intended to defraud or cheat his employer. *People v Wood*, 182 Mich App 50, 54; 451 NW2d 563 (1990) (intent may be inferred). Sufficient evidence existed to sustain defendant's convictions.

Defendant next argues that the trial court abused its discretion in denying admission of a financial audit covering the period of September 1 through September 30, 1997.⁴ We review a trial court's admission or exclusion of evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999); *People v Brown*, 239 Mich App 735, 749; 610 NW2d 234 (2000). "An abuse of discretion exists only when an unprejudiced person, considering the facts on which the trial court acted, could find no justification for the ruling." *Brown, supra*.

³ To the extent that defendant asserts that the evidence presented was insufficient to convict him because the trial court excluded a year-end audit report and records of cash advances, his argument is without merit. What evidence defendant *could have presented* is not relevant to a sufficiency of evidence challenge. The prosecution does not have to negate every exculpatory theory presented by a defendant; the prosecution merely has to prove *its own* case beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

⁴ Although defendant refers to the audit covering the period of September 1 through September 30, 1997, it appears from the record that the audit at issue actually covered either the period of the employer's fiscal year or of January 1, 1997, through September 30, 1997.

Only relevant evidence is admissible at trial; evidence that is not relevant is not admissible. MRE 402. Relevant evidence is defined as:

[E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. [MRE 401.]

The determination of relevance is within the discretion of the trial court. *People v Daniels*, 192 Mich App 658, 673; 482 NW2d 176 (1991); *People v Miller*, 78 Mich App 336, 347; 259 NW2d 877 (1977).

Upon review of the evidence we cannot say that the trial court abused its discretion in denying admission of the financial audit where uncontested expert testimony indicated that an audit generally verifies the financial records of an organization by utilizing some tests, but is not a detailed analysis of all the daily financial records of the employer. According to the expert, an auditor does not look at, verify, and recreate every transaction. Thus, the audit lacked any tendency to assist the jury in determining whether defendant's employer was missing money, especially within the specific time periods for which defendant was charged with embezzlement.

Finally, defendant argues that the trial court erred in excluding from evidence defendant's bank statements that showed that he had received cash advances from his line of credit. According to defendant, this evidence reflected cash advances that were the source of the monies that he deposited into his checking accounts and explained how he acquired the monies that he deposited. However, defendant admitted that of the numerous cash advances, only one of them, Exhibit I, occurred during a period covered in the charges. Because the other cash advances did not occur during the periods of the offenses, the trial court did not abuse its discretion in ruling that they were inadmissible. We cannot say that there was no justification for the trial court's ruling. Even if the evidence should have been admitted, reversal is not warranted because defendant has not established that it is more probable than not that such error affected the trial outcome. See *Lukity, supra* at 495-496.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey