STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICIA EDMONDS,

Defendant-Appellant.

UNPUBLISHED
March 15, 2002

No. 225647
Grand Traverse Circuit Court
LC No. 99-007998-FH

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of receiving or concealing stolen property over $100, MCL 750.535,[1] and sentenced to one year imprisonment and five years' probation. Defendant was also ordered to pay $50,000 in restitution. We affirm.

Defendant first argues that the evidence was insufficient to support her conviction because the prosecution failed to present direct evidence that she took her employer's property with the intent to convert it for her own use. We disagree. This Court reviews issues regarding sufficiency of evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found all the necessary elements of the offense beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of receiving or concealing stolen property over $100 are: (1) the property was stolen or converted; (2) the property had a fair market value over $100; (3) the defendant bought, received, possessed, or concealed the property knowing it was stolen or converted; and (4) the property was identified as being previously stolen. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996), quoting *People v Hooks*, 139 Mich App 92, 96; 360 NW2d 191 (1984); *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993). Conversion is the unauthorized assumption and exercise of ownership rights in goods or personal property belonging to another. *Quinn*, *supra* at 575, quoting Black's Law Dictionary (6th ed), p 332.

[1] We note that since the instant offense was committed, MCL 750.535 has been substantially revised and amended by 1998 PA 311, effective January 1, 1999.

Defendant was employed at Bay Eye Associates (BEA) from August 18, 1997 to November 13, 1998. While defendant concedes that she possessed BEA's property and that the market value of the property exceeded $100, she asserts that there was insufficient evidence to show (1) that she knew that the property was converted because she innocently and accidentally possessed BEA's frames or (2) that she converted the property because she did not intend to keep the property for personal gain. Defendant's arguments are without merit. A defendant's intent may be inferred from circumstantial evidence, such as the defendant's words, acts, means, or manner used to commit the crime. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). Defendant admitted she removed some of BEA's frames on November 6, 1998 and claimed that she accidentally removed other frames from BEA's office on November 12, 1998. These acts violated BEA's policy that prohibited employees from taking frames outside the office. Further, defendant also failed to inform anyone at BEA or the investigating officer – even after defendant was fired on November 13, 1998 – that she had the frames. In fact, she specifically told the investigating officer on November 12, 1998 that she did not have any missing frames. One witness testified that defendant once said she wanted to open her own optical store selling eyewear frames. Viewing the evidence in a light most favorable to the prosecution, *Wolfe, supra*, the jury could have reasonably concluded that defendant knew she possessed BEA's frames without BEA's permission and intended to convert the frames for her own benefit, *Hawkins, supra*.

Defendant next asserts that the trial court abused its discretion when it permitted the prosecution to admit character evidence that went beyond the prosecution's MRE 404(b) notice. Defendant failed to preserve this issue for appeal because she failed to object to this testimony at trial. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). Therefore, we review this issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763, 774; 597 NW2d 130 (1999). Regardless of any error, defendant's substantial rights were not affected because there was other sufficient evidence to support defendant's conviction. Therefore, defendant was not prejudiced by the alleged errors. *Id.* at 763.

Defendant next argues that she was denied effective assistance of counsel because her attorney failed (1) to object to the alleged erroneous admission of character evidence and (2) to call a rebuttal witness to refute several witnesses' testimony that defendant did not accidentally take a box of frames from BEA on November 12, 1998. We review this issue de novo. *People v Pennington*, 240 Mich App 188, 191; 610 NW2d 608 (2000). However, our review is limited to the existing record because defendant failed to develop a testimonial record in support of her claim. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To establish a claim for ineffective assistance of counsel, a defendant must show two things: first, that counsel's performance was deficient, and second, that there is a reasonable probability that but for the deficiency the jury would not have found the defendant guilty. *Snider*, *supra* at 423-424. An attorney is presumed to provide effective assistance of counsel; therefore, a defendant bears a heavy burden of proving otherwise. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121; 115 S Ct 923; 130 L Ed 2d 802 (1995).

Defendant was not denied effective assistance of counsel. Even if defendant's attorney had successfully objected to the testimony, defendant would still have been convicted because there was other evidence sufficient to prove defendant guilty beyond a reasonable doubt.

Furthermore, even if the proffered witness – defendant's boyfriend – would have testified that defendant had accidentally taken a box of frames from BEA on November 12, 1998, the jury would have likely disregarded the testimony because the witness was not present at BEA's office on November 12, 1998 when defendant removed the box of frames. Thus, the testimony would have been, at best, minimally persuasive, and defendant has failed to overcome the presumption that her attorney rendered effective assistance. *Stanaway, supra*.

Finally, defendant argues that the trial court abused its discretion when it ordered her to pay $50,000 in restitution because she was only charged with and convicted of removing approximately $5,000 worth of frames from BEA. We disagree. We review sentencing issues for an abuse of discretion. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). An abuse of discretion exists when an unprejudiced person considering the facts on which the trial court acted would conclude that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

The Michigan Constitution affords a criminal victim the right to restitution. Const 1963, art 1, § 24. The Crime Victim's Rights Act (CVRA), MCL 780.751 *et seq.*, authorizes a sentencing court to order a defendant to pay restitution to any victim of the defendant's "course of conduct." *People v Gahan*, 456 Mich 264, 265; 571 NW2d 503 (1997); MCL 780.766(2). In fact, a sentencing court *must* order full restitution to the defendant's victims. *People v Crigler*, 244 Mich App 420, 423-424; 625 NW2d 424 (2001); MCL 780.766(2); MCL 769.1a(2). "Course of conduct" is construed broadly, and a sentencing court may order a criminal defendant to pay restitution even if those specific losses are not the factual predicate for the defendant's conviction. *Gahan, supra* at 270-271. The prosecution must show by a preponderance of evidence that the defendant caused the alleged loss that entitles a victim to restitution. MCL 780.767(4).

At sentencing, one of BEA's owners testified that BEA's computer program calculated a loss of $65,201. To confirm that figure, an actual physical count of BEA's inventory was performed, and BEA checked the actual physical inventory number with purchase, sale, and remaining inventory records for the time period that defendant was employed at BEA, arriving at a loss of over $65,000. Although defendant was charged with and convicted of converting approximately $5,000 worth of BEA's inventory, the prosecution proved by a preponderance of evidence, MCL 780.767(4), that defendant caused BEA an actual loss of over $65,000. *Gahan, supra* at 270. The trial court based its decision on the evidence and did not abuse its discretion by ordering defendant to pay $50,000 in restitution. *People v Guajardo*, 213 Mich App 198, 201-202; 539 NW2d 570 (1995).

We affirm.

/s/ Patrick M. Meter
/s/ Jane E. Markey
/s/ Donald S. Owens