

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
October 4, 2011

v

GWENDOLYN MILLER,  
  
Defendant-Appellee.

No. 302012  
Wayne Circuit Court  
LC No. 10-009721-FH

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Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant was charged with embezzlement as a public official of over \$50, MCL 750.175, and embezzlement by an agent or trustee of over \$1,000, but less than \$20,000, MCL 750.174(4)(a). She was bound over for trial on both charges after a preliminary examination, but the circuit court quashed the information and dismissed the charges. The prosecution appeals as of right. We reverse the circuit court's ruling and remand for reinstatement of the charges.

Testimony by several employees at the vocational school where defendant served as principal indicated that a PTAC unit, an electrical unit that fit into the wall and provided heat and air conditioning, was purchased for defendant's home using school funds. Additionally, over the course of two years, defendant accumulated a balance of over \$600 on her running account at the school boutique. It was not until the school's forensic auditor and certified fraud examiner began to investigate the school's financial records almost a year and a half after the installation of the PTAC unit that defendant paid for the furnace and began to pay her account at the school store. Plaintiff argues that the decision to bind over the case for trial was not an abuse of discretion, and that the circuit court should not have dismissed the embezzlement charges. We agree.

A decision to bind over a defendant based on the factual sufficiency of the evidence is reviewed de novo to determine if the district court abused its discretion. *People v Flick*, 487 Mich 1, 8-9; 790 NW2d 295 (2010). This Court only reviews the circuit court's decision to the extent that it is consistent with the district court's exercise of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). To bind over a defendant, proof of each element of a crime beyond a reasonable doubt is not necessary. All that is needed is evidence from which each element of a crime may be inferred. MCL 766.13; see, also, *People v Hamblin*, 224 Mich App 87, 92; 568 NW2d 339 (1997). Reasonable inferences may be drawn from the evidence and

circumstantial evidence may be utilized. *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993).

#### **MCL 750.175**

To be convicted of “embezzlement by a public officer, agent or servant” under MCL 750.175, a public officer or the agent or servant of a public officer must “knowingly and unlawfully” appropriate to his or her own use, or to the use of any other person, money or property received by them in their official capacity or employment, and the value of the appropriated items must equal at least \$50.

In this case, the district court properly found that there was evidence from which to infer each element of embezzlement under MCL 750.175. The evidence included that defendant knowingly used public funds to purchase a furnace for \$804.95 from a school supplier for her personal use at her home. Those funds were not returned to the school for many months and only after an investigation of the school’s financial records had begun. The evidence also showed that, between 2007 and 2009, defendant obtained goods worth \$642.28 from the school’s store on a purported line of credit. That balance remained unpaid until after an investigation of the school’s financial records had begun. With regard to both the furnace and the store goods, reasonable inferences can be drawn from the evidence establishing each element of embezzlement. See *Hamblin*, 224 Mich App at 92; *Woods*, 200 Mich App at 288. Therefore, the bindover of defendant on this charge was not an abuse of discretion.

#### **MCL 750.174**

MCL 750.174(4)(a), which criminalizes embezzlement by an agent, servant, or employee of \$1,000 or more but less than \$20,000, is similar to MCL 750.175. As set forth in *People v Couzens*, 480 Mich 240, 245; 747 NW2d 849 (2008) (quotation marks and citations omitted), the elements of embezzlement based on § 174 are:

(1) the money in question must belong to the principal, (2) the defendant must have a relationship of trust with the principal as an agent or employee, (3) the money must come into the defendant’s possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to his own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of conversion, the defendant intended to defraud or cheat the principal.

“[T]he failure, neglect, or refusal . . . to pay, deliver, or refund to his or her principal the money or property entrusted to his or her care upon demand is prima facie proof of intent to embezzle.” MCL 750.174(10). See, also, *People v Rafalko*, 26 Mich App 565, 569; 182 NW2d 732 (1970). However, there need not be an actual demand for the money and subsequent failure to pay for there to be embezzlement. *People v Jones*, 182 Mich App 668, 673; 453 NW2d 293 (1990). And the ability of a defendant to later repay or return money or property does not protect a defendant from prosecution and conviction. *Rafalko*, 26 Mich App at 570.

Here, defendant was also properly bound over on the embezzlement charge arising under MCL 750.174(4)(a). We note that an inference must arise with regard to both the furnace and

store purchases because the statute requires that the personal property or money embezzled have a value of at least \$1,000. The furnace and store goods must be aggregated to reach the \$1,000 minimum for the charge. The furnace purchase gives rise to adequate inferences on the elements of embezzlement. The funds used to purchase the furnace belonged to the school, defendant had access to the school funds because of her position as an administrator, defendant used the school funds to purchase a furnace for her home, and defendant did not have permission to use school funds for personal purchases. Moreover, fraudulent intent can be inferred from the failure to pay before an investigation was launched.

With regard to the store account, we note that MCL 750.174(1) provides: “the act must be without consent of the principal.” It is undisputed that defendant was allowed to keep a running account at the store. It can be inferred, however, that the lengthy period of time that passed before defendant repaid her debt, and the circumstances under which the debt was finally paid, supports an inference that defendant had the requisite fraudulent intent for the embezzlement charge. In *Rafalko*, 26 Mich App at 570, this Court stated that the later ability to pay does not protect a defendant from conviction. Because the elements of MCL 750.174(4)(a) could be inferred for both the furnace and boutique purchases, the district court did not abuse its discretion in binding defendant over for trial on this charge.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen