

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONNIE SUE FRANZEL,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 191651

St. Clair Circuit Court

LC No. 94-003156 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant appeals by right her jury conviction of conspiracy to commit embezzlement over \$100. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the circuit court erred in denying her motion to quash the information because there was no proof at preliminary examination to establish conspiracy to commit embezzlement. Defendant contends that the evidence showed at most conspiracy to commit larceny or perhaps retail fraud. The elements of embezzlement under MCL 750.174; MSA 28.371 are (1) the money or personal property in question must belong to the principal, here, K-Mart; (2) defendant must have had a relationship of trust with the principal as agent, employee, etc. -- here, the co-conspirator had such relationship when defendant took property through the co-conspirator's register lane without paying for it, and those roles were switched when defendant was cashier; (3) the money or personal property must have come into defendant's possession or under her charge or control because of that relationship of trust with the principal; (4) the money or personal property must have been dishonestly disposed of or converted to defendant's own use or taken or secreted with intent to convert to her own use without consent of the principal; (5) the act must have been done without the consent of the principal; and (6) at the time of conversion or appropriation, defendant must have intended to defraud or cheat the principal of some property. There are two types of embezzlement, one occurring when an individual fraudulently disposes of or converts to his own use money or personal property of his principal, and the second when an individual conceals with intent to convert to his or her own use money or personal property without the consent of the principal. *People v Wood*, 182 Mich App 50, 53; 451 NW2d 563 (1990); *People v Artman*, 218 Mich App 236, 241; 553 NW2d 673 (1996).

Here, the conspirator functioning as cashier participated in the fraudulent disposition of the employer's property. Possession of the property at the time of such fraudulent disposal was in the hands of the conspirator pretending to be a retail purchaser, who, although not then functioning as employee or agent, may have her possession attributed constructively to the cashier. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). There was, therefore, evidence supporting each element of conspiracy to commit embezzlement, and the trial court did not err in denying defendant's motion to quash the information.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad