

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBIN YVONNE JEPSEN,

Defendant-Appellant.

UNPUBLISHED

May 8, 2008

No. 277739

Charlevoix Circuit Court

LC No. 06-020810-FH

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of embezzlement by an agent/trustee, MCL 750.174(4)(a) (property embezzled valued at \$1,000 or more, but less than \$20,000). Defendant was found not guilty of a second count of embezzlement and one count of attempt to obtain by false pretenses \$1,000 or more but less than \$20,000, MCL 750.218(4)(a). Defendant was sentenced to 24 months probation and 11 months in jail, holding five months in abeyance and granting nine days sentence credit. Defendant appeals as of right. We affirm. We decide this case without oral argument under MCR 7.214(E).

I. FACTS

Defendant was employed as a sales representative at Kiss Carpet. She received cash or credit payments from customers and was the only employee in the store a majority of the time. On March 24, 2006, defendant received \$1000 in cash from a customer, Mr. Johnecheck, to be applied towards his \$1,267 account balance. Defendant provided Mr. Johnecheck with a receipt. Shortly thereafter, defendant's supervisor received a call from Cindy Johnecheck, a distant relative of Mr. Johnecheck, inquiring about a \$1,267 credit card charge for a Kiss Carpet purchase she did not make. Defendant's supervisor reviewed the paperwork associated with the transaction, including a credit card reconciliation sheet completed by defendant showing that the customer used a credit card for his purchase. The credit account on the reconciliation sheet belonged to Cindy Johnecheck, although her name appeared nowhere on the transaction. The supervisor called Mr. Johnecheck, who produced his receipt to confirm that he had paid cash. However, a cash deposit was never made for the \$1,000. Defendant testified at trial that she received Mr. Johnecheck's cash payment and placed the funds in the store's safe. Defendant denied stealing the funds or having any knowledge of what happened to the funds after she placed them in the safe. Defendant suggested that a fellow employee or a member of the public could have taken the funds because the safe did not operate properly.

Defendant's sole argument on appeal is that insufficient evidence was adduced at trial to support her embezzlement conviction beyond a reasonable doubt. We disagree.

II. STANDARD OF REVIEW

This Court reviews challenges to sufficiency of the evidence *de novo*. *People v Osantowski*, 274 Mich App 593, 612-613; 736 NW2d 289 (2007). In doing so, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *Id.* at 613. In making this assessment, “[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

III. ANALYSIS

The elements of embezzlement by an agent 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. [*People v Lueth*, 253 Mich App 670, 683; 660 NW2d 322 (2002).]

When viewed in the light most favorable to the prosecution, the evidence adduced below is sufficient to convict defendant of embezzlement. Defendant was employed by complainant in its Boyne City store as a sales representative responsible for taking customers' money and depositing it in the bank. On March 24, 2006, Harold Johnecheck went to the complainant's Boyne City store location and gave to defendant, who was then the only employee in the store, \$1,000 in cash for carpeting he had previously purchased in one of complainant's other locations. No deposit was ever made for Mr. Johnecheck's money. Instead, complainant's office manager received from defendant a credit card reconciliation sheet for Mr. Johnecheck's order, the account number of which was not Mr. Johnecheck's but another individual's who has the same last name as Mr. Johnecheck and who had an account at complainant's store.

Defendant's argument is based on testimony indicating that the money could have disappeared under several other circumstances. However, the prosecution is not required to refute every reasonable explanation supporting defendant's innocence. *Hardiman, supra* at 423-424. Rather, the prosecution “need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *Id.* at 424.

Finally, defendant argues that the fact that she was found not guilty of two other counts supports the conclusion that her conviction stands on insufficient evidence. Defendant

characterizes this as the rendering of inconsistent, and hence irreconcilable verdicts. However, the verdicts here are easily reconcilable in that the other embezzlement charge involved a different customer and a different transaction, and the false pretenses charge was related to an alleged alteration of a bid by a paint contractor to paint the Boyne City store.

Viewing the evidence in the light most favorable to the prosecution, we believe that sufficient evidence was adduced to support defendant's embezzlement conviction.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Donald S. Owens

/s/ Bill Schuette