

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERESA ANN CHAHINE,

Defendant-Appellant.

UNPUBLISHED

June 16, 2009

No. 283057

Wayne Circuit Court

LC No. 06-013845-FH

Before: Murphy, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of larceny by conversion over \$20,000, MCL 750.362; MCL 750.356(2)(a). She was sentenced to five years' probation and ordered to pay restitution of \$57,300. She appeals as of right. We affirm.

I. Sufficiency of the Evidence

Defendant first argues that the evidence was insufficient to support her conviction for larceny by conversion. In reviewing a verdict reached in a bench trial, this Court reviews the trial court's factual findings for clear error and its conclusions of law de novo. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A "larceny by conversion occurs 'where a person obtains possession of another's property with lawful intent, but subsequently converts the other's property to his own use.'" *People v Mason*, 247 Mich App 64, 72; 634 NW2d 382 (2001), quoting *People v Christenson*, 412 Mich 81, 86; 312 NW2d 618 (1981). The elements of the offense as charged are (1) that the owner of property voluntarily transferred it to the defendant, (2) that the property had a fair market value of \$20,000 or more, (3) that the defendant hid the property or converted it to his or her own use, (4) that the defendant intended to defraud or cheat the owner out of the property permanently, and (5) that the defendant acted without the owner's consent. *Mason, supra*; *People v Scott*, 72 Mich App 16, 19; 248 NW2d 693 (1976); CJI2d 23.10. A larceny by conversion is established where the owner gives the defendant money for a particular purpose,

such as a down payment on the purchase of property, and the defendant then keeps the money without completing the transaction. *Mason, supra* at 73-79.

The evidence showed that Louay Hazimeh voluntarily gave defendant thousands of dollars toward the purchase of various HUD homes. Hazimeh documented 24 purchase agreements and testified that he gave defendant at least \$34,000 in cash for the deposits and other fees. Defendant led Hazimeh to believe that she was facilitating purchases of properties owned by HUD, but she did not use the appropriate HUD forms, she provided the name of a non-existent HUD representative, she did not turn the funds or the purchase agreements over to her broker, and she never returned the money to Hazimeh despite his requests. This evidence, if believed, was sufficient to establish the elements of the crime beyond a reasonable doubt.

Defendant argues that the evidence was insufficient because Hazimeh's bank records did not directly prove that any funds were transferred to her. However, Hazimeh testified that he paid defendant in cash. Thus, bank records would not show whether there was any transfer of funds to defendant. To the extent defendant argues that the bank records did not corroborate Hazimeh's testimony regarding the amount of money he withdrew from his accounts to give to defendant, that goes only to the weight, not the sufficiency, of the evidence. Further, defendant signed a document in which she acknowledged that Hazimeh had paid "at least" \$57,300 in deposits and other fees and Hazimeh's bank statements showed withdrawals of approximately \$58,000 over just a few months. Therefore, the trial court did not clearly err in finding that Hazimeh had given defendant over \$20,000.

Defendant also argues that a voicemail message that she left for Hazimeh was not sufficient to establish her guilt beyond a reasonable doubt. However, the message was not the only evidence offered against defendant; it was but one piece of the case proven through the testimony of the witnesses and documentary evidence, which, as explained previously, as a whole was sufficient to prove that defendant committed the crime charged.

Defendant also argues that the trial court erred in relying on the voicemail message to find that she admitted owing Hazimeh \$57,000. Defendant contends that the message constituted a "confession," and could not be "given credence" unless it was "supported by extrinsic corroborating evidence." This is apparently a reference to the corpus delicti rule, which precludes the admission of a defendant's inculpatory statement until the corpus delicti is first proven. *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996). Here, however, defendant stipulated to the admission of the voicemail message, thereby waiving any claim that it was improperly admitted or considered by the trial court. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

II. Restitution

Defendant also argues that the trial court erred in ordering her to pay \$57,300 in restitution without holding an evidentiary hearing. This Court reviews a restitution order for an abuse of discretion. *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006). Generally, an appellate court defers to the trial court's judgment, and if the trial court's decision is within the range of principled outcomes, it has not abused its discretion. *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006).

When a court imposes a sentence, it shall order “that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate.” MCL 769.1a(2); MCL 780.766(2). In determining the amount of restitution to be ordered, the court may direct the probation department to obtain information about the extent of the victim’s loss, which information is to be included in the presentence report. MCL 780.767. The recommended restitution amount is presumed accurate unless the defendant effectively challenges the accuracy of the factual information in the presentence report. *People v Gahan*, 456 Mich 264, 276-277 n 17; 571 NW2d 503 (1997). “Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence.” The prosecutor bears the burden of proving the amount of the loss sustained. MCL 780.767(4). A defendant may be entitled to an evidentiary hearing when the amount of restitution is contested, *Gahan, supra* at 276, but “[o]nly an actual dispute, properly raised at the sentencing hearing in respect to the type or amount of restitution, triggers the need to resolve the dispute by a preponderance of the evidence.” *People v Grant*, 455 Mich 221, 243; 565 NW2d 389 (1997). See also *Swickard v Wayne Co Medical Examiner*, 184 Mich App 662, 668; 459 NW2d 92 (1990), *aff’d* 438 Mich 536 (1991) (noting that the purpose of an evidentiary hearing is to resolve a disputed issue of fact).

Defendant objected to the restitution amount recommended by the presentence report and stated an ostensibly valid basis for her objection – that not all of Hazimeh’s payments to her were documented and thus the total amount he actually lost was unknown. However, the evidence at trial showed that defendant specifically acknowledged that Hazimeh had paid at least \$57,300 in deposits and other fees and that she later referenced “fifty-seven” in a conversation about borrowing money to repay Hazimeh. Defendant did not assert below, and has not asserted on appeal, that she has any evidence to support a finding that Hazimeh gave her less than \$57,300, and in *People v Walker*, 428 Mich 261, 267-268; 407 NW2d 367 (1987), abrogated in part on other grounds by *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997), the Court held that in resolving a controverted issue of fact relevant to sentencing, a court may rely on information in the presentence report that is corroborated by the evidence presented at trial. Given defendant’s own statements admitting that Hazimeh had paid at least \$57,300, the trial court did not err in ordering restitution in that amount and in determining that an evidentiary hearing was not necessary.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray