

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUTUMN MARIE HOOPER,

Defendant-Appellant.

UNPUBLISHED

May 17, 2007

No. 268773

Grand Traverse Circuit Court

LC No. 05-009808-FH

Before: Schuette, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Following a three-day jury trial, defendant was convicted of embezzlement of more than \$1,000 but less than \$20,000, MCL 750.174(4)(a). Defendant appeals as of right, and we affirm.

Defendant’s former employer testified that she determined that someone had been embezzling funds from her business, a veterinary hospital, from July 2003 through the date of her discovery in October 2004. She discovered the embezzlement by analyzing old deposit slips that had been altered with correction fluid and comparing them with financial records of the amount actually received. The time period and her recognition of defendant’s handwriting on the deposit slips caused the complainant to focus her investigation on defendant.

On appeal, defendant first argues that there was insufficient evidence to convict her of embezzlement because the prosecutor failed to prove that defendant took, converted, or diverted any money or that any money was actually missing at all. See MCL 750.174(1). “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Defendant argues that complainant admitted that she occasionally took money out of the cash box and did not record it and that certain employees were “sloppy” on the computer and sometimes mistakenly entered checks and credit card transactions as cash received. Further, defendant argues that complainant only looked at cash losses and did not consider whether the deposit of checks had balanced the difference and that her accounting practices in general were too lax to ascertain whether any cash was actually missing.

Viewing the evidence in the light most favorable to the prosecution, however, the prosecution presented sufficient evidence to support a finding that defendant took the amount of money that the statute requires for conviction. Complainant testified that the amounts she took from the cash box were small, and indicated that they were used for small expenses. Furthermore, the amounts she withdrew from the cash box did not correspond with the altered deposit slips and computer entries of the daily income receipts. The jury viewed the exhibits and compared the deposit slips written out by defendant to those written by other employees. This evidence suggested that defendant altered certain deposit slips to bring the cash total below the amount actually received by the hospital. Therefore, viewed in the light most favorable to the prosecution, defendant has not shown that a rational jury could not find beyond a reasonable doubt that she took the cash that corresponded with the discrepancies.

Defendant next argues ineffective assistance of trial counsel. According to defendant, her trial counsel should have procured a certified public accountant to testify as an expert witness and explain that the apparent discrepancies between her employer's books, bank statements, and deposit slips were the result of various accounting errors and lax financial habits rather than defendant's embezzlement. However, whether a trial attorney should call a particular witness is generally a matter of trial strategy, and defendant fails to establish any reason to override the presumption of sound strategy in this case. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Moreover, defendant called a witness who held an associates degree in accounting and had previously worked as a bookkeeper. Therefore, defendant has failed to establish that her counsel's failure to procure and call an accountant deprived her of a substantial defense. *Id.*

Affirmed.

/s/ Bill Schuette
/s/ Peter D. O'Connell
/s/ Alton T. Davis