STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2003
v	No. 245322 Delta Circuit Court
MICHAEL ANTHONY DESHAMBO, Defendant-Appellant.	LC No. 02-006814-FH

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of three counts of larceny by conversion, MCL 750.362. We affirm.

I. Facts

Defendant Michael Anthony Deshambo served as the manager of Marc Blanc Jewelers in Escanaba, Michigan. Defendant was employed at Marc Blanc for fifteen months before resigning in February 2001. Prior to his resignation, there had been several problems with the store's finances.

Jonah Behrend, Joe Muehlhaus, and Ken Stichman, all entered into separate agreements with defendant to sell their engagement ring sets at Marc Blanc by consignment. Marc Blanc Jewelers had an unwritten policy of no consignments.

On January 8, 2000, Behrend took his engagement ring set to Marc Blanc and asked if defendant would sell the set under consignment. Defendant agreed but asked Behrend not to mention the transaction to anyone. The set was never returned to Behrend and Behrend never received any money. Defendant testified that he never sold Behrend's set and did not know what happened to it.

The second transaction occurred on January 15, 2000, when Muehlhaus took his engagement ring set to Marc Blanc and asked defendant to sell the set under consignment. Like Behrend, defendant discussed the agreement privately with Muehlhaus. Also like Behrend, Muehlhaus never received the set back or any money from the defendant. When Muehlhaus approached defendant about the set, defendant told him that he didn't know what happened to it. However, Muehlhaus later testified that he sold the Muehlhaus set and deposited the funds in the

store account because of "cash flow problems." Defendant also stated that he intended to contact Muehlhaus, "when we could pay him."

The third transaction occurred in November 2000, when Stichman asked defendant if he could sell an engagement ring set under consignment. Defendant told Stichman that he was not allowed to take consignments, but would do so in this case because Stichman was a good customer. Like the other victims, Stichman never received the set back or any money from the defendant. When questioned about the rings, defendant also told Stichman that he did not know what happened to the set. However, Stichman was paid $2,500 for the set by Al Brandt, the owner of Marc Blanc, because Stichman originally purchased the ring there. Defendant later testified that he sold part of the Stichman ring set and deposited the money into the store account because of "cash flow problems," similar to how he handled the Muehlhaus set.

Defendant stated that he never intended to keep the money received for the Muehlhaus or Stichman sets and that he never intended to cheat either of the men. However, defendant never told Brandt about any of the transactions, nor did he tell Brandt that the money he deposited in the store account should be paid to any of the victims. In addition, Brandt stated that Marc Blanc Jewelers' "cash flow problems" had been hidden from him.

Defendant was charged with three counts of larceny by conversion. At trial, defendant attributed his behavior and bad decisions regarding the consignments to mental illness. The jury convicted defendant of all three counts of larceny by conversion. This appeal ensued.

II. Lack of Intent to Permanently Deprive of Property

A. Standard of Review

In reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). In addition, this Court "must consider the evidence presented by the prosecution to the time the motion is made and in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003).

B. Analysis

Defendant first argues that there was insufficient evidence to prove beyond a reasonable doubt that he had the intent to permanently deprive the owners of their property. We disagree.

In this case, defendant worked as the manager of a jewelry store and agreed to sell the victims' engagement ring sets on consignment. Defendant never returned any of the rings or paid the victims any proceeds. At trial, defendant claimed he lost one ring and sold the other two, depositing the proceeds in the store account. Defendant contends that because no one testified that he intended to defraud or cheat the victims, there was insufficient evidence of his criminal intent.

But the jury was not required to believe defendant's explanation of events. Rather, "a jury may justly conclude that 'actions speak louder than words.'" *People v Franz*, 321 Mich

379, 386; 32 NW2d 533 (1948). Since defendant took the victims' property and neither returned nor paid value for it, the jury could reasonably infer that defendant intended to convert the victims' property to his own use and permanently deprive them of it. The fact that defendant told the victims that he did not know what happened to their rings when he now admits he sold at least two of the ring sets strengthened the inference. Therefore, we reject defendant's argument that there was insufficient evidence to establish his criminal intent.

III. Title Obtained Through Consignment Agreements

A. Standard of Review

This Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

B. Analysis

Defendant next argues that he could not have converted the victims' rings because he obtained title to the rings through the consignment agreements. We disagree. Defendant relies upon *Nauman v First Nat'l Bank of Allen Park*, 50 Mich App 41; 212 NW2d 760 (1973), for the proposition that a consignment transfers title to the consignee unless the agreement is intended as security. But *Nauman* not applicable here because it deals with the rights of the consignor as against third-party buyers, not against the consignee. *Nauman*, *supra* at 42. *Nauman* does not hold that a consignor passes title to the consignee in a consignment transaction.

A consignment is a form of bailment unless it is a disguised sale. 8 Am Jur 2d, Bailments, § 5, p 469; *Henry Bill Pub Co v Durgin*, 101 Mich 458, 464-465; 59 NW 812 (1894). Defendant does not argue that the victims sold him the ring sets, but concedes that the agreements were for consignment. As a result, the law regarding bailment controls whether defendant received title to the ring sets through the consignment.

Black's Law Dictionary (7th ed), p 137, states that "a bailment involves a change in possession but not in title." So a bailee does not obtain title to a bailor's property, but mere possession or custody of it. 8 Am Jur 2d, Bailments, § 2, p 466. Since a bailee does not obtain title, it is well settled that a bailee can convert a bailor's property. 8 Am Jur 2d, Bailments, § 69, p 529; Perkins & Boyce, Criminal Law (3d ed), p 358. Therefore, we reject defendant's argument that he received title to the rings because it is contrary to the established law regarding bailments.

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Bill Schuette