Order

Michigan Supreme Court
Lansing, Michigan

May 7, 2025

166210

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 166210
COA: 361702
Macomb CC: 2019-001812-FH

CHRISTOPHER ROBERT CLINTON,
Defendant-Appellant.

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On March 12, 2025, the Court heard oral argument on the application for leave to appeal the August 17, 2023 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Macomb Circuit Court for entry of an order of acquittal and discharge.

This appeal involves a contract dispute that resulted in a criminal conviction of larceny by conversion against defendant Christopher Robert Clinton. Complainant Ben Clowers contracted with defendant to do heating, ventilation, and air conditioning (HVAC) work for a residential property carriage house. Defendant estimated that the project would cost $8,500, and Clowers provided him with a $5,500 deposit. This $5,500 payment is central to the prosecutor's case against defendant. Clowers characterized the payment as a "deposit of the job," and he testified that he thought defendant would use the money for "an A/C unit, a furnace, duct work, gas line, and a water line." For his part, defendant referred to the deposit as a "down payment."

After some delays and disputes, Clowers decided that he no longer wanted defendant to complete the job. He asked either for his money back or for the materials purchased with the money. Defendant, who had left some purchased supplies at the job site, refused, insisting that Clowers actually owed him money for work he and an employee had already completed, including installing a temporary HVAC system, digging trenches for a new water line and a new gas line, installing support boards, and drafting building plans. The prosecutor charged defendant with larceny by conversion of property having a value of $1,000 or more but less than $20,000, MCL 750.362; MCL 750.356(3)(a).

Following a bench trial, the trial court convicted defendant. The trial court found, as a factual matter, that the $5,500 deposit was "to be used towards purchasing the equipment and to complete the work contained in the original agreement."[1] The trial court emphasized that "it is undisputed that Clowers did not receive the furnace, air conditioning package, or all of the ductwork despite giving Defendant the deposit." The trial court held that defendant was guilty of larceny by conversion because

> the deposit provided to Defendant had value, Mr. Clowers intended to retain title to the money until he was at least provided with the equipment, and . . . Defendant converted and intended to convert the money for his own use by failing to deliver the equipment or return the deposit despite his text messages stating that the equipment would be delivered.

The Court of Appeals affirmed the trial court's judgment in an unpublished per curiam opinion. *People v Clinton*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 361702). For the reasons set forth in this order, we reverse.

The statute governing larceny by conversion provides that:

> Any person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered, who shall embezzle or fraudulently convert to his own use, or shall secrete with the intent to embezzle, or fraudulently use such goods, money or other property, or any part thereof, shall be deemed by so doing to have committed the crime of larceny . . . . [MCL 750.362.]

"The purpose of the larceny by conversion statute is to cover one of the situations left unaccounted for by common-law larceny, that is, 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 Christenson*, 412 Mich 81, 86 (1981). "As with common-law larceny, larceny by conversion is a crime against possession and not against title; one cannot convert his own funds." *Id*. at 87 (citing cases). Importantly, "if an owner intends to part with title as well as possession, there can be no crime of larceny." *Id*.

When a criminal case involves a contract dispute, the mere fact that a defendant and a complainant had competing interpretations of a contract "does not render [a] defendant criminally liable" for larceny by conversion. *People v Al-Shara*, unpublished per curiam opinion of the Court of Appeals, issued July 23, 2015 (Docket No. 320628), p 4. Were it otherwise, "nearly every party found liable for breach of contract would also be guilty of

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[1] As we discuss later in this order, there is no testimonial or record evidence supporting a finding that the parties ever agreed that the deposit would serve a specific purpose.

larceny by conversion." *Id*. After all, "[t]he party being sued for breach of contract virtually always believes she is entitled to the funds in her possession; the fact that she is later adjudicated to be in breach of the contract does not render her criminally liable." *Id*. Cf. *Leger v Image Data Servs (On Rehearing)*, unpublished per curiam opinion of the Court of Appeals, issued July 5, 2002 (Docket No. 221615), p 7, quoting *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111 (1999):

> In making his case for conversion, plaintiff argues as if to suggest that any time one party is found to have owed another some money following a protracted dispute, the first has converted the amount owed. Such a scenario, however, is far too broad to be encompassed by the tort of conversion. An action for conversion of money cannot be maintained unless there is an obligation on the part of the defendant to "return" specific monies "entrusted" to his care.[2]

This Court's decision in *Christenson* is controlling and dispositive in this matter. The defendant in *Christenson* owned a company that "sold and erected modular or prefabricated homes." *Christenson*, 412 Mich at 85. The complainants entered into sales and construction contracts with the defendant's company. *Id*. The construction contracts required the complainants to make "partial payments not to exceed 60% of the value of the work in place" as the defendant required them. *Id*. During construction, however, the defendant filed for bankruptcy. *Id*. at 85-86. The prosecutor charged the defendant with larceny by conversion "[b]ecause certain progress payments of complainants had . . . been used to pay other debts . . . ." *Id*. at 86. This Court reversed the defendant's conviction of larceny by conversion, *id*. at 90, because there was "no evidence that complainants *intended to retain any title* to the progress payments," *id*. at 88 (emphasis added). The Court therefore concluded "that title and possession of the progress payments passed to defendant and, accordingly, there can be no crime of larceny by conversion on these facts." *Id*.

The lower courts in this case failed to apply *Christenson* correctly. As in *Christenson*, "there was no agreement" here "that defendant apply the *specific* funds he received from complainant[]" in a particular manner.[3] *Christenson*, 412 Mich at 89-90.

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[2] Although *Al-Shara* and *Leger* are unpublished opinions, they are consistent with our established precedent regarding larceny by conversion.

[3] There is no record or testimonial evidence that the parties ever reached an agreement regarding the deposit's purpose. Despite this lack of evidence, the trial court found as a matter of fact that the $5,500 deposit was "to be used towards purchasing the equipment and to complete the work contained in the original agreement." Regardless of whether there was no agreement regarding the deposit or there was an agreement that the deposit

And as in *Christenson*, "[t]here was no requirement that defendant establish a separate trust account . . . in which he would deposit [the] complainant's funds." *Id*. at 90. And, therefore, as in *Christenson*, title passed to defendant upon receiving the funds. See *id*. at 88.

Rather than rely upon *Christenson*, the prosecutor urges us to apply *People v Franz*, 321 Mich 379 (1948), *People v O'Shea*, 149 Mich App 268 (1986), and *People v Mason*, 247 Mich App 64 (2001). We decline to do so.[4]

> *Franz, O'Shea*, and *Mason*:
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> > stand for the proposition that the offense of larceny by conversion may be committed when a defendant fails to use money delivered by a complainant for an agreed-upon *designated purpose* in the context of the complainant's *purchase of goods or property*, with the defendant also failing to refund the money to the complainant. [*People v Spencer*, 320 Mich App 692, 701-702 (2017) (emphasis added).]

Those cases do not control. First, unlike *Christenson* and this case, *Franz*, *O'Shea*, and *Mason* concern neither construction nor general contracting; the disputes did not involve labor or services.[5] Instead, they involved the purchase of specific "goods or property."[6] *Spencer*, 320 Mich App at 702. Second, unlike in *Christenson* or this case, *Franz*, *O'Shea*, and *Mason* involved agreements to apply specific funds received in a particular manner.

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would be "used towards purchasing the equipment and to complete the work contained in the original agreement," our analysis under *Christenson* is the same because this agreement does not specify how the funds are to be used beyond funding the project in general.

[4] The Court received an amicus brief urging us to overturn *O'Shea* and *Mason* as conflicting with *Christenson*. Because *Christenson* controls, we do not address that issue.

[5] Indeed, "[m]ost courts that have confronted the issue have held that a down payment made pursuant to the terms of a construction contract is not held by the contractor as 'property of another.' " *State v Galbreath*, 525 NW2d 424, 426 (Iowa, 1994). See also *State v Kalinowski*, 460 P3d 79, 84 (NM App, 2019) ("A survey of cases from other states considering embezzlement in similar contexts have almost universally found that contractors cannot be convicted of embezzlement of down payment funds upon a failure to complete a project because the deposit money is legally the property of the contractor at the time it is paid.").

[6] *Franz* involved an iron purchase, *Franz*, 321 Mich at 382; *O'Shea* involved a fabric purchase, *O'Shea*, 149 Mich App at 270-271; and *Mason* involved pre-built mobile home purchases, *Mason*, 247 Mich App at 66-69.

See *Franz*, 321 Mich at 387; *O'Shea*, 149 Mich App at 270-271; *Mason*, 247 Mich App at 66-69. Third, although not dispositive, unlike the defendants in *Franz*, *O'Shea*, and *Mason*, it is undisputed that the defendants in this case and in *Christenson* started the jobs for which they were hired. See *Christenson*, 412 Mich at 85. Neither the prosecutor nor the complainant in this case disputes that defendant purchased *some* materials for the job and put in at least *some* labor toward completing the project. And we cannot know whether defendant would have completed the project because defendant stopped working only after the complainant terminated the project. Accordingly, this case is distinguishable from the cases upon which the prosecution relies, and *Christenson* controls.

In sum, the charge against defendant fails because (1) there was no evidence that Clowers intended to retain any title to his deposit because there was no evidence that the parties agreed that the deposit would serve a specific purpose, and (2) unlike *Franz*, *O'Shea*, and *Mason*, this case involved a construction project, rather than the sale of property or specific goods, see *Spencer*, 320 Mich App at 701-702. Therefore, "[a]lthough the facts of this case may support civil actions against defendant by complainant[] . . . , they do not support a conviction of larceny by conversion."[7] *Christenson*, 412 Mich at 90.

Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the Macomb Circuit Court for entry of an order of acquittal and discharge.

We do not retain jurisdiction.

[7] Our holding does not suggest that contractors can *never* be subjected to criminal charges in cases involving financial disputes. But allowing larceny by conversion to apply to all general contracting and construction contract disputes would risk making "nearly every party found liable for breach of contract" in those fields "guilty of larceny by conversion." *Al-Shara*, unpub op at 4.