

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Annunziata and Overton
Argued at Norfolk, Virginia

PAUL N. CARRITHERS

v. Record No. 1506-96-1

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
MAY 6, 1997

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
Robert W. Curran, Judge

Ronald L. Smith for appellant.

Eugene Murphy, Assistant Attorney General
(James S. Gilmore, III, Attorney General, on
brief), for appellee.

Paul N. Carrithers was convicted of embezzlement in violation of Code § 18.2-111. He appeals, contending that the evidence is insufficient to support his conviction. We disagree, and we affirm.

The parties are fully conversant with the record in the cause, and because this memorandum opinion carries no precedential value, no recitation of the facts is necessary.

On appeal, the evidence must be viewed in a light most favorable to the Commonwealth. See Higginbotham v. Commonwealth, 216 Va. 349, 352, 218 S.E.2d 534, 537 (1975). A judgment will not be disturbed on appeal unless it is plainly wrong or without evidence to support it. See Traverso v. Commonwealth, 6 Va. App.

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

172, 176, 366 S.E.2d 719, 721 (1988).

"To establish the crime of embezzlement under Code § 18.2-111, the Commonwealth must prove that the accused wrongfully appropriated to his or her own use or benefit, with the intent to deprive the owner thereof, the property entrusted or delivered to the accused." Zoretic v. Commonwealth, 13 Va. App. 241, 243, 409 S.E.2d 832, 833-34 (1991). The Commonwealth need not prove the existence of a formal fiduciary relationship, but merely "prove that the defendant was entrusted with the property of another." Chiang v. Commonwealth, 6 Va. App. 13, 17, 365 S.E.2d 778, 780 (1988).

The evidence presented at trial supports the conviction. Carrithers, the defendant in this case, had entered into a contract by which he had agreed to pay the indebtedness of the victims. The victims entrusted monies to the defendant for that purpose. Evidence was presented, through testimony of the victims' attorney and correspondence from Carrithers personally, that entitled the fact finder to believe that Carrithers did receive the monies. Rather than using the monies for the purpose for which they were intended, however, Carrithers appropriated them for some other purpose.

All of the elements of embezzlement having been proven, we affirm the conviction.

Affirmed.