

## *Embezzlement*

UNITED STATES V. TAMMIE C.

EMBEZZLEMENT IS ONE OF THE MOST COMMON white-collar crimes. The FBI defines embezzlement as the “unlawful misappropriation or misapplication by an offender to his/her own use or purpose of money, property, or some other thing of value entrusted to his/her care, custody, or control” (FBI, 2001). In other words, embezzlement occurs when employees steal money or property from employers.

Businesses are plagued by employee theft—whether they know it or not, and whether they admit it or not. A precise estimate of loss due to embezzlement is difficult to calculate. Embezzlement is not a separate category in most official databases, which means that these cases are included in the larger category of larceny. Further complicating a financial tally is the fact that some businesses are reluctant to report the crime. Business owners often choose to handle the theft in-house out of fear that publicly acknowledging weak controls would reflect poorly on the business (NWCCC, 2016).

Despite these challenges, a 2013 study by the Association of Certified Fraud Examiners (ACFE) estimated global losses from embezzlement at \$3.7 trillion (ACFE, 2014). This makes employee theft two to three times more costly than all other Part I index crimes combined, which includes murder, robbery, assault, burglary, and other serious and violent offenses. And that doesn’t include the collateral costs to employers who are victims, including legal and accounting expenses, time away from the business to deal with an investigation, higher insurance premiums, and the lost opportunities to invest profits in expanding a company.

In his seminal work on fraud, Donald Cressey theorized that there were three factors commonly seen in these cases, forming what he called the Fraud Triangle (Cressey, 1953). “Trusted persons become trust violators,” Cressey

observed, “when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property” (p. 30).

*Pressure* is what first motivates the crime. The individual has some financial problem that they are unable to solve through legitimate means, so they begin to consider committing an illegal act. The person must also have an *opportunity* to abuse a position of trust in order to solve this financial problem with low perceived risk of getting caught. And, as most offenders in these crimes are first-time offenders, they must be able to *rationalize* their conduct in a way that makes it acceptable or justifiable. For example, an employee might justify theft by telling herself that she is only “borrowing” the money and will repay it later, or that she deserves the money because she is underpaid by her employer.

A global study of occupational fraud and abuse by the Association of Certified Fraud Examiners noted that smaller organizations tended to suffer disproportionately larger losses, which may be a function of small businesses having fewer prevention programs in place (ACFE, 2014). As an example, organizations with tip lines and other antifraud controls saw reduced losses to fraud and tended to catch the financial misuse earlier.

Of the three classifications of occupational fraud that ACFE looked at—asset misappropriation, corruption, and financial statement fraud—the theft of assets was the most common, occurring in 85 percent of the cases studied. The median loss in that category was \$130,000. More than three-quarters of frauds studied were committed by workers in accounting, operations, sales, executive or upper management, customer service, purchasing, and finance. And most of the offenders had no criminal record that would have tipped off an employer; only 5 percent had prior convictions for fraud. More than 80 percent of offenders had not been previously punished or terminated by an employer for fraud-related conduct.

As you read the following case, consider how the embezzlement at Obermiller Construction Services mirrors the findings of these studies. Note, too, how Cressey’s Fraud Triangle might apply in this case. This case also illustrates the many collateral harms caused when a trusted employee commits embezzlement against a small business.

## THE CRIME

In 2000, Obermiller Construction Services experienced the kind of good fortune that nearly all small business owners hope for. After several years of middling returns, the Missouri-based commercial paving company landed a big client. In fact, the biggest: Walmart.

The contract came about after owner Cheryl Obermiller hit a pothole in a Walmart parking lot and blew out a tire. When she called to complain, she also mentioned that her company, located a short drive away, could have prevented that problem. Within weeks, the corporation agreed, hiring Cheryl's company to patch the pavement for that store and others in the region. Suddenly, the family-run business needed to buy new trucks, hire crews, and expand in ways that Cheryl couldn't have imagined (Obermiller, 2019).

Cheryl's savior arrived in the form of Tammie C., a bookkeeper who came with excellent references and a track record of helping businesses just like Obermiller Construction. She was easy to get along with and had a sharp mind. Best of all, she had good, enthusiastic references from trusted professionals. Cheryl welcomed Tammie aboard in August 2001, and soon the bookkeeper was handling all of the company's finances, including reconciling the bank accounts, paying taxes and insurance, and maintaining the accounts receivable and payable. Tammie proved to be an excellent employee—reliable and with a great recall of facts and figures. Bills were promptly paid and Tammie always provided thorough reports on the company's accounts. Obermiller Construction grew by huge leaps over the next few years. Cheryl was busier than ever, but she had faith that Tammie was handling the finances because there had been no problems.

One wintry day in January 2010, a snowstorm kept Tammie from coming into the office, and Cheryl got the mail, which was usually Tammie's job. Among the mail, Cheryl found a certified letter from the IRS about past-due tax payments. The tone was alarming. The IRS threatened to seize the company's bank accounts because Obermiller Construction had ignored the agency's letters for six months. Cheryl called Tammie, but her trusted bookkeeper assured her that it was a misunderstanding and she had been working to resolve it. Tammie promised to take care of it when she came to work the next day.

But Cheryl wasn't willing to wait. She called the IRS and learned that the company hadn't paid payroll taxes for the first quarter of 2009. In the second quarter of 2009, the company had filed a return, but had not submitted the

payment. But in the third quarter, filings and payments had returned to normal. Cheryl was convinced this was a glitch and her money had been credited to the wrong account. The IRS put the case on hold for a month so Cheryl could provide documents to prove it was a mistake.

When she called Tammie back to give her the update, her accountant's demeanor was changed. Tammie's once-precise recall of facts and figures gave way to vague, stumbling responses to even basic questions. The call made Cheryl uncomfortable and she knew something was wrong.

"I got off the phone and went through her computer," she said (C. Obermiller, personal communication, September 4, 2018). "I looked through Tammie's desk drawer and found blank checks, some that she had signed. Then I found the tax notices and I knew that she was lying. She knew the taxes weren't paid."

In the back of Tammie's desk drawer, Cheryl found a folder containing six months of IRS letters demanding payment. The letters were neatly organized with the envelopes stapled to them and dated in Tammie's handwriting. The government wanted the money—a lot of it—that Obermiller Construction hadn't paid.

Cheryl's immediate instinct was to lock down anything financial until she had more information. She called her bank and instructed it not to put through any checks unless it cleared them with her. Before she left for the day, Cheryl told her sons, who worked at Obermiller Construction's office, "If Tammie comes in early, don't let her go back to her office."

While Cheryl was on her way to the office the next morning, the bank called to say that two checks had come in overnight. One was a normal utility payment. The other was a check to Tammie for \$3,760, signed by Cheryl—only Cheryl had not signed the check. The signature had been forged. The bank pulled every check from Obermiller accounts from the previous few months for Cheryl to review and ordered copies of archived checks to compare signatures. That afternoon, the bank manager came to Cheryl's office, and the two identified \$27,000 in forged checks—and that was only from the past few months.

"I was in such complete shell shock. It was unbelievable," Cheryl said.

That was when she called the police.

## THE INVESTIGATION

Initially, Cheryl worked with her bank and a local police detective to uncover the full extent of the fraud. Eventually, the police and local district attorney

referred the criminal investigation to the Federal Bureau of Investigation. The FBI agent asked a lot of routine questions about Tammie and her role in the office. Did she get the mail? Did she answer the phones? Did she have access to checks? Did she pay the bills? Did she balance the checkbook? (Obermiller, 2019). The answer was yes to all of these questions.

The investigation uncovered both simple and complicated methods of fraud perpetrated by Cheryl's accountant. With the help of a forensic accountant and her bank manager, Cheryl went over a decade's worth of checks, debit card expenditures, and account statements. The first forged check was from December 2001, about four months after Tammie was hired. From that point, it appeared, Tammie had gradually become more confident that no one would uncover the misuse of company funds.

Tammie used a debit card that had been assigned to a former employee. Rather than closing it when the employee left the company, Tammie made internal transfers to fund the account and used the money for herself. The company had paid for airline tickets, amusement parks entry fees, and hotel rooms for vacations. Cheryl's business had filled the fuel tanks of Tammie's family cars twice a week for years, and had paid for Tammie's craft supplies, donations to a local school, and many meals. Most infuriating, one year, Tammie had charged expensive Christmas gifts for Cheryl and her husband—gifts that Cheryl had insisted were too extravagant (Obermiller, 2019).

Tammie also wrote checks to herself and signed Cheryl's name, cashing the checks at her own bank, across the state line in Kansas (Plea Agreement, 2011). In addition, Tammie had manipulated the payroll system so that she didn't pay her share of the health insurance premiums for herself and her family.

The most serious financial impropriety was the failure to pay the two quarters of payroll taxes in 2009. At the time, Obermiller Construction had had the money to pay the IRS. Cheryl recalled that she had met with Tammie about the company's financial status to determine if it could buy a new, \$55,000 truck. Tammie had assured her that the company did have the cash on hand to invest in the new equipment, so the purchase went forward. That money should have gone toward the tax payment before making any new investment in the company's expansion.

Not long after the missed payment, the IRS began sending letters. But because Tammie retrieved and opened all the mail, no one else saw the increasingly urgent warnings that the company was in arrears with the US government. The financial sleight of hand was also kept hidden in detailed

reports that Tammie prepared for Cheryl that showed where every dollar went. Cheryl wouldn't know for years that those reports were fiction. It didn't occur to her that she hadn't seen the source documents for any of the figures.

Between the unpaid taxes and subsequent interest and penalties, the forged checks, and the diverted funds, Cheryl estimated that she lost over \$1 million through the embezzlement. And there were other indirect costs. The business had turned down work that would've required an investment of capital that it did not have. That could have resulted in profits and additional growth, though it is difficult to quantify that type of loss. After the embezzlement, Obermiller Construction kept personnel to a minimum and cut expenses to the bone in order to survive. Cheryl and her husband had personally guaranteed the company's debt and had the most at risk. But employees and their families were also affected by the company's finances. Instead of keeping people working on maintenance tasks during the off-season, Cheryl had to let people go. Previously scheduled raises had to be delayed. The company also made fewer purchases and had to negotiate with suppliers to pay their bills late.

There was an emotional cost to embezzlement as well. The day Cheryl discovered the IRS notice, she went home in a state of shock. "The rest of that day, and many others after, I operated in kind of a fog. I was so stunned that I could barely breathe. I remember listening to the banker and the detective discussing what they saw, what else to look for and how to proceed, but I just sat there in a complete daze" (Obermiller, 2019, p. 28). It was unfathomable that Tammie was stealing. She was the most trusted employee in the company.

## THE PROSECUTION

Federal law enforcement doesn't always get involved with embezzlement cases, but in the Obermiller Construction case, the loss amount was high and the US government had jurisdiction because of the interstate transfer of the stolen money. As part of the scheme to defraud her employer, Tammie forged checks from Obermiller Construction drawn on a bank in Missouri, and deposited them in her bank, located in Kansas (18 U.S.C. § 1344, Bank Fraud; see sidebar 1.1).

In 2011, Tammie C. was named in a single-count information that charged her with bank fraud, a violation of 18 U.S.C. § 1344 (Information, 2011). The