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# ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

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CR-18-0115

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Paula P. Robertson

v.

State of Alabama

Appeal from Blount Circuit Court  
(CC-16-145)

PER CURIAM.

Paula P. Robertson appeals her conviction for first-degree theft of property, a violation of § 13A-8-3, Ala. Code 1975, and her resulting sentence of 30 months' imprisonment. Her sentence was suspended, and she was ordered to serve five

CR-18-0115

years on supervised probation. Robertson was also ordered to pay a \$250 fine, a \$50 Alabama Crime Victims Compensation Assessment, and \$17,419.18 in restitution to the Summit Volunteer Fire and Rescue Department ("the SVFD"). This appeal follows.

### Facts and Procedural History

In May 2016, the Blount County grand jury returned an indictment charging Robertson with one count of first-degree theft of property. The indictment read as follows:

"The GRAND JURY of said county charge that, before the finding of this INDICTMENT, PAULA P ROBERTSON, whose name to the Grand Jury is otherwise unknown, did knowingly obtain or exert unauthorized control over US CURRENCY, a further description of which to the Grand Jury is otherwise unknown, from the person of STATE OF ALABAMA, with the intent to deprive the owner of said property, in violation of Section 13A-8-3 of the Code of Alabama (1975), as last amended, against the peace and dignity of the State of Alabama."

(C. 48.) (Capitalization in original.)

The following evidence was presented at trial:

Chris Latta, an executive at Peoples Bank, identified bank records for Robertson's personal bank account that showed deposits made to Robertson's account, as well as monthly bank statements for Robertson's account from 2013 through 2016.

CR-18-0115

Latta also identified bank records from two separate bank accounts belonging to the SVFD, which included records showing the deposits made to the SVFD accounts and the monthly bank statements from 2013 through 2016. Copies of those records were entered into evidence.

Kelly Stanton, the secretary-treasurer of the SVFD, testified that when she became the treasurer of the SVFD, Robertson was the chief of the SVFD. Stanton stated that Robertson also had the financial records for the SVFD at that time. According to Stanton, when she became treasurer, Robertson did not deliver the books to Stanton despite Stanton's repeated attempts to get them. Instead, Stanton went to Peoples Bank to obtain the bank statements for the SVFD accounts. Stanton testified that the SVFD had two bank accounts -- a general account and a restricted account. Stanton claimed that the general account was for "any day-to-day business" that the SVFD needed and that the restricted account "held funds that could only be used for certain things." (R. 45.) The restricted account contained money obtained from other organizations, such as the Blount County Commission and the Forestry Association, and the money

CR-18-0115

received from those organizations was earmarked for certain respective uses. When Stanton reviewed the bank statements for the SVFD accounts, she noticed overdraft fees on the restricted account on the statements, which totaled \$215.

Stanton also testified that she and her husband had purchased a car from SVFD some time between 2014 and 2016 and that she paid for the car using cash. The cash for the purchase of the car in the amount of \$550 was given to Robertson; however, when Stanton reviewed the bank records, she was unable to find a record indicating that the money had been deposited into either of the SVFD's accounts. Additionally, Stanton discovered other "irregularities" with the account, such as checks written from the accounts for large amounts of money to Robertson and to "Brooksville Food Mart," "Lucky's Food Mart," and "Wal-Mart," which were all expenditures Stanton was not aware of. (R. 52.) Stanton stated that while she was serving as treasurer, she was unaware of any reason Robertson would have needed to make expenditures on behalf of the SVFD to Lucky's Food Mart or Wal-Mart discount store, with a few exceptions when the SVFD needed to buy spray paint and other items from Wal-Mart or to buy sandwich

ingredients for the SVFD from Lucky's Food Mart; however, when those purchases were made, Stanton was aware of them. Stanton testified that, during the time she served as secretary-treasurer for SVFD from 2014 to 2016, no one was authorized to make cash withdrawals from either the general or the restricted account. She also testified that no one was authorized to use SVFD funds to pay their utility bills or their household expenditures through either of the SVFD bank accounts. Stanton testified that no members of the SVFD were paid for their services. Stanton claimed that the only wage to be paid from the SVFD was to the chief in the amount of \$25 per month for a fuel allowance for SVFD business done using the chief's personal vehicle. Stanton acknowledged that Robertson was authorized to make some purchases for expenditures for fundraisers, but testified that she was concerned only with the expenditures made by Robertson that were not authorized by SVFD, including the checks that were made out to Robertson or the cash that was deposited into Robertson's personal account.

Douglas Smith testified that he was retired from the Alabama Forestry Commission and the Blount County Emergency

CR-18-0115

Management Agency. Smith testified that the Blount County Fire and EMS Association ("the Association") received money from the County Commission, which is then distributed to the fire departments in the county, including SVFD. Smith stated that the fire departments also receive funds from the Alabama Forestry Commission and the Health Care Authority. Smith explained that "the Forestry Commission money cannot be spent on food or entertainment," and that the "Health Care Authority money can only be spent on items for medical care or support of the [fire department] in different ways as far as electronic and equipment purchases." (R. 68.) Smith stated that the money that goes to the fire departments from the County Commission, which is obtained from "landfill money or sales tax money" (C. 68), does not have any limitations that are set by the Association; however, Smith claimed, based on his knowledge of the Association, the funds were not to be used for personal expenses. Smith further explained that the "Fuel-Man program was instigated by the County Commission to support the fire departments" and that each fire department has a "Fuel-Man credit card that they are allowed to make purchases for fuel or gasoline only for each of their

CR-18-0115

department vehicles." (R. 69.) The department vehicles can include fire trucks, the chief's officer car, tankers or brush-trucks, or other rescue vehicles used for EMS calls. On cross-examination, Smith stated that the fuel purchases are not required to be made on the Fuel-Man card and that the Fuel-Man card could also be used to purchase gas to support the fire department, such as for use in a lawnmower to mow around the station.

Patrick Crockett, a law-enforcement officer with the Department of Insurance State Fire Marshal's Office for the State of Alabama, testified that he met Robertson in March 2016 after he began investigating the SVFD regarding moneys being taken from the SVFD. As part of his investigation, Crockett obtained the bank records from Peoples Bank for both of the SVFD's accounts and Robertson's personal account. He stated:

"[Crockett:] When I first received the [SVFD] records, both the accounts -- in each one of the records I could see checks being written out to Paula Robertson and checks being written out to cash. Once I got a list of the checks that were written out to cash and to Paula Robertson -- once I started looking at Paula Robertson's personal bank accounts, I could see money being deposited from the [SVFD] into Paula Robertson's personal bank account."

CR-18-0115

(R. 77.) Crockett testified that the total value of the checks that were written and deposited into Robertson's personal account from the SVFD general and restrictive accounts was \$1,770 and \$1,985, respectively. Crockett claimed that he was unable to find a record of any payments from Robertson to the SVFD, except one payment of \$175 to the SVFD from "Robertson Quick Book." (R. 86.) During his investigation, Crockett read Robertson a copy of her Miranda<sup>1</sup> rights, which she waived, and he interviewed Robertson. A copy of Crockett's interview of Robertson was played for the jury.

The State rested its case. Robertson made a motion for a judgment of acquittal, alleging 1) that the State had failed to prove that Robertson exerted control of U.S. currency that belonged to the State of Alabama; 2) that the State failed to prove that she "took money from the person of anyone"; and 3) that the indictment alleged that she had committed first-degree theft of property by taking U.S. currency "from the person of the State of Alabama" and did not allege that she had taken money over \$2,500, and "a reasonable person reading the indictment could not be expected to prepare for any

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<sup>1</sup>Miranda v. Arizona, 384 U.S. 436 (1966).



CR-18-0115

certain amounts of money." (R. 90-93.) The court denied Robertson's motion for a judgment of acquittal. The defense then rested, and following closing arguments by counsel for each party, the jury returned a verdict finding Robertson guilty of first-degree theft of property.

#### Discussion

On appeal, Robertson argues that the circuit court erred in denying her motion for a judgment of acquittal because, she says, the State failed to prove that Robertson took U.S. currency from someone's person and because "no jury could reasonably find that [she] obtained or exerted unauthorized control of money from the State of Alabama." (Robertson's brief, at 4.) Robertson also claims that her conviction is due to be reversed because, she says, there was a fatal variance between the charge in the indictment and the charge proven at trial.

In the present case, the indictment alleged that Robertson committed first-degree theft of property by exerting unauthorized control "over US CURRENCY, a further description of which to the Grand Jury is otherwise unknown, from the

person of STATE OF ALABAMA, with the intent to deprive the owner of said property." (C. 48.) (Emphasis added.)

First, Robertson argues that her conviction is due to be reversed because, she says, the State failed to prove that Robertson took U.S. currency from someone's person. Specifically, she alleges that "[t]he State put on absolutely no evidence that [she] took money from the person of anyone." (Robertson's brief, at 18.) (Emphasis in original.)

This Court has held:

"In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution." Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). "The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt." Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v. State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). "When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and, in such a case, this court will not disturb the trial court's decision." Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990).

'The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury.' Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978).

"The trial court's denial of a motion for judgment of acquittal must be reviewed by determining whether there was legal evidence before the jury at the time the motion was made from which the jury by fair inference could find the defendant guilty. Thomas v. State, 363 So. 2d 1020 (Ala. Crim. App. 1978). In applying this standard, this court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt. Willis v. State, 447 So. 2d 199 (Ala. Crim. App. 1983). When the evidence raises questions of fact for the jury and such evidence, if believed, is sufficient to sustain a conviction, the denial of a motion for judgment of acquittal does not constitute error. McConnell v. State, 429 So. 2d 662 (Ala. Cr. App. 1983)."

Gavin v. State, 891 So. 2d 907, 974 (Ala. Crim. App. 2003), cert. denied, 891 So. 2d 998 (Ala. 2004) (quoting Ward v. State, 610 So. 2d 1190, 1191 (Ala. Crim. App. 1992)).

In the present case, Robertson was charged with committing first-degree theft of property. Section 13A-8-3(a), Ala. Code 1975, defines first-degree theft of property as "[t]he theft of property which exceeds two thousand five hundred dollars (\$2,500) in value, or property of any value

taken from the person of another."<sup>2</sup> (Emphasis added.) Section 13A-8-2(a)(1), Ala. Code 1975, provides that "[a] person commits the crime of theft of property if he or she ... knowingly obtains or exerts unauthorized control over the property of another, with intent to deprive the owner of his or her property."

Section 13A-1-2(11), Ala. Code 1975, defines a person as "[a] human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental instrumentality." However, in Willis v. State, 480 So. 2d 56 (Ala. Crim. App. 1985), this Court addressed the meaning of the phrase "from the person of another" as it relates to the theft-of-property statutes. In Willis, this Court stated:

"The facts show that the bank issued Willis a check to replace a Christmas Club check which Willis reported he had not received. Willis almost immediately cashed the replacement check. The next day the original check arrived in the mail, and Willis cashed that 'due to financial problems.' The circuit judge found that Willis had the intent to steal and found him guilty of theft II. (R. 45.)

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<sup>2</sup>We note that § 13A-8-3(b) and (c), Ala. Code 1975, also offer other methods of committing first-degree theft of property.

"Willis argues that he was not guilty of theft II because that offense is defined by Alabama Code 1975, § 13A-8-4(a) as '[t]he theft of property which exceeds \$100.00 in value but does not exceed \$1,000.00 in value, and which is not taken from the person of another.' (Emphasis added.)

"He argues that the money was taken from the person of another because the Winn-Dixie cashier handed him the money when he cashed the check.

"This position is untenable. Property is 'taken from the person of another' when the taking, 'involves either an element of danger or is committed by professional pickpockets or pursesnatchers.' Alabama Code 1975, § 13A-8-2 through 13A-8-5 Commentary. The element of danger justifies the imposition of a more serious punishment under theft I (§ 13A-8-3). Id. Since Willis' actions in cashing the check at Winn-Dixie clearly did not involve an element of danger, the taking was not 'from the person of another.' Therefore, his conviction for theft II under § 13A-8-4 was proper."

480 So. 2d at 58.

At trial, the State established that Robertson was using money from the SVFD's bank accounts for unauthorized expenditures, including writing herself checks and depositing the money into her personal checking account in excess of \$2,500. Like the defendant in Willis, Robertson's actions of improperly using money from the SVFD's bank accounts and writing checks to herself clearly did not involve an element of danger and it was not a situation that involved a

CR-18-0115

pickpocket or purse-snatcher scenario. Accordingly, the taking was not "from the person of another" under the meaning of the phrase in the theft-of-property statute. See Willis, 480 So. 2d at 58.

Consequently, because there was no legal evidence before the jury at the time the motion was made from which the jury by fair inference could find the defendant guilty of the charged offense, we conclude that the trial court erred when it denied Robertson's motion for a judgment of acquittal. Based on our holding, we pretermitt any discussion of the other issues raised on appeal.

Based on the foregoing, we reverse the judgment of the trial court and render a judgment of acquittal in favor of Robertson.

REVERSED AND JUDGMENT RENDERED.

Windom, P.J., and Kellum, McCool, Cole, and Minor, JJ., concur.