NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 KA 1248

PMc

STATE OF LOUISIANA

VERSUS

KERA MOSELEY

Judgment Rendered: NOV 10 2017

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
No. 126656

Honorable Martin Coady, Judge Presiding

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Warren L. Montgomery
District Attorney
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State of Louisiana Court

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Counsel for Defendant/Appellant
Kera Moseley

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BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

VGW/by PMc Whipple, C.J. concurs.
JMG/by PMc Guidry, J. concurs.

McCLENDON, J.

The defendant, Kera E. Moseley, was charged by bill of information with theft over $1,500.00, a violation of Louisiana Revised Statutes 14:67. She entered a plea of not guilty and, following a bench trial, was found guilty as charged. She filed motions for postverdict judgment of acquittal and for a new trial, both of which were denied. The defendant was then sentenced to two years at hard labor. Her sentence was suspended, and she was placed on supervised probation for a period of two years with conditions, including payment of restitution in the amount of $9,431.05. The defendant now appeals, challenging the sufficiency of the evidence presented by the State in support of her conviction. For the following reasons, we affirm the defendant's conviction and sentence.

FACTS

After receiving a referral from the Washington Parish eligibility office, a fraud investigator with the Department of Children and Family Services ("DCFS") began investigating the defendant's eligibility to receive benefits under the Supplemental Nutritional Assistance Program ("SNAP") and Child Care Assistance Program ("CCAP"). The investigation revealed that although the defendant received benefits from July 2010 through August 2013, she was actually ineligible because her gross income exceeded the maximum allowed under both programs. Had the defendant reported all of her sources of income, specifically, that from the business she owned, Kallisto Research Consultants, LLC ("Kallisto"), she would not have received the benefits. After meeting with the fraud investigator, Louisiana State Police Trooper Raymond Hughes prepared and secured an arrest warrant for the defendant.

SUFFICIENCY OF THE EVIDENCE

In two related assignments of error, the defendant challenges the sufficiency of the evidence presented by the State. In her first assignment of error, the defendant argues that the district court incorrectly computed her income. The defendant contends that "inconsistent and sometimes bizarre agency policy" was used to determine her eligibility "rather than complying with state and federal statutes."

Specifically, the defendant argues that the State failed to deduct business travel expenses from her income.

In the alternative, in her second assignment of error, the defendant argues that even if she did not qualify for benefits, the State failed to prove that she had the specific intent to commit theft. According to the defendant, to have the requisite intent to commit theft, she would had to have denied that she was self-employed. The defendant argues that leaving blank the section of her applications that would have indicated that she was self-employed did not constitute a denial that she was self-employed.

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. LSA-C.Cr.P. art. 821; **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979). When circumstantial evidence is used to prove the commission of the offense, Louisiana Revised Statutes 15:438 provides that, "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." However, Louisiana Revised Statutes 15:438 does not establish a stricter standard of review on appeal than the rational trier of fact reasonable doubt standard. The statute serves as a guide for the trier of fact when considering circumstantial evidence. The **Jackson** standard of review is an objective standard for testing all the evidence, both direct and circumstantial, for reasonable doubt. See **State v. Marcantel**, 00-1629 (La. 4/3/02), 815 So.2d 50, 55-56. The reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. It is not the function of an appellate court to assess credibility or reweigh the evidence. **Marcantel**, 815 So.2d at 56.

Pursuant to Louisiana Revised Statutes 14:67, "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential." Theft is a specific intent crime. See **State v. Odom**, 02-2698 (La.App. 1 Cir. 6/27/03), 861 So.2d 187, 195, writ denied, 03-2142 (La. 10/17/03), 855 So.2d 765. Specific criminal intent is "that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." LSA-R.S. 14:10(1). Specific intent may be inferred from the circumstances of a transaction and from the actions of the accused. Further, specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Henderson**, 99-1945 (La.App. 1 Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 00-2223 (La. 6/15/01), 793 So.2d 1235.

Department of Children and Family Services fraud investigator Julie Miller testified at trial that she began investigating the defendant after receiving a referral from the Washington Parish eligibility office. According to Miller's testimony, in July 2009, the defendant applied for SNAP benefits and reported all of her income, including that from her self-employment with Kallisto. The defendant was subsequently notified by letter that she was denied SNAP benefits because her household's gross income exceeded the income eligibility limit. The letter included an income summary which listed the defendant's income sources as her self-employment and child support assistance payments. Despite being denied SNAP benefits in 2009, the defendant was still eligible for CCAP benefits. Although the defendant was initially denied SNAP benefits, she later received them from July 2010 through August 2013. In connection with her investigation, Miller obtained the defendant's 2010-2013 tax returns from the defendant's attorney and prepared budget worksheets used to determine the defendant's eligibility for the SNAP and CCAP benefits received from July 2010 through August 2013.

In June 2010, the defendant filed a predetermination application seeking continuation of her CCAP benefits. In that application, the defendant reported the income she received from child support assistance and noted that a job she had with the St. Tammany Parish School Board had ended. The defendant failed to report any self-employment income from Kallisto.

On July 1, 2010, the defendant submitted an application for SNAP benefits. Although the application required disclosure of income from self-employment, the defendant failed to report such income. The defendant filled out a second application for CCAP benefits in December 2010. She updated her income on that application and reported that she worked for Aegis Systems. However, the defendant did not report any income from Kallisto.

Nevertheless, the defendant's 2010 tax return indicates that she was the sole proprietor of Kallisto and reported a gross income of $90,265. The defendant claimed business expenses totaling $77,984. According to Miller, for purposes of determining SNAP eligibility, DCFS does not allow the same deductions as those on a federal income tax return. Rather, the department follows budgeting procedures set forth by the Louisiana Department of Social Services. Based on those procedures, the allowable deductions for 2010 totaled $70,515. To calculate the defendant's self-employment income for 2010, Miller subtracted the allowable deductions from the defendant's gross income, which equaled $19,750 a year, or $1,646 a month. Miller then added the $680 in child support assistance received by the defendant and subtracted the standard deduction, which brought the defendant's 2010 monthly income to $2,185. In 2010, the maximum gross income limit to qualify for SNAP benefits for a three-person household was $1,984. Thus, the defendant would not have qualified for benefits in 2010 had she reported income received from Kallisto. According to Miller, the defendant received SNAP benefits from July to December 2010 because the agency was unaware of defendant's income from Kallisto.

The defendant also applied for CCAP benefits in 2010. According to Miller's calculations and based on information obtained from the defendant's 2010 tax return, the defendant's income including that from the St. Tammany Parish School Board, Kallisto, and child support assistance, totaled $4,126 for May 2010. In May 2010, the maximum gross income limit to receive CCAP benefits for a three-person household was $3,158. Miller testified that the defendant received CCAP benefits in May 2010 because she failed to report her income from Kallisto. Miller noted that in some months in 2010, the defendant actually did qualify for CCAP benefits.[1]

The defendant applied for SNAP benefits in 2011 and disclosed that she was employed by Aegis Systems and the St. Tammany Parish School Board, but again did not disclose any income derived from self-employment. The defendant's household size increased to four people, which changed the calculation. Miller used the total income for Kallisto reported in the defendant's 2011 tax return, $65,140, when determining the defendant's eligibility. As for allowable deductions, Miller noted that she gave the defendant credit for all business expenses listed in her tax return except car and truck expenses and travel and entertainment expenses. After subtracting the allowable deductions from the defendant's self-employment income, Miller added the child support assistance payments and subtracted the standard deductions. Miller's calculations revealed that the defendant's income was $3,950 per month. The maximum allowable income for eligibility for SNAP benefits was $2,389. Thus, the defendant received SNAP benefits to which she was not entitled because she failed to report her self-employment income. Miller noted that in August 2011, the fourth household member moved, but household size was the only change from August to December 2011 in terms of the defendant's SNAP benefit eligibility.

The defendant also applied for CCAP benefits in 2011. Based on Miller's calculations, the defendant's income of $4,055 per month exceeded the maximum eligible income of $3,158. Nevertheless, the defendant received benefits from January through June 2011. She did not reapply for benefits in June 2011.

In 2012, the defendant applied for SNAP benefits. She listed her income as that from employment with the St. Tammany Parish School Board and Aegis Systems, but failed to list her self-employment income from Kalisto. However, the defendant's 2012 tax returns indicate that Kallisto earned $79,882 that year. Miller deducted expenses from that amount, but did not deduct car and truck expenses or travel and entertainment expenses, which she testified were not allowable deductions. Her

[1] Specifically, in July 2010, the defendant no longer received income from the St. Tammany Parish School Board, thus her income that month was below the maximum limit to receive CCAP benefits.

calculations revealed that the defendant's income in 2012 totaled $2,408 per month. The income limit for eligibility in 2012 was $2,008. As in prior years, the defendant was not eligible for SNAP benefits, but received them because she failed to report income received from self-employment.

In 2013, the defendant again applied for SNAP benefits by submitting an electronic application on March 12, 2013. The defendant reported employment by Aegis Systems, but failed to report that she was self-employed. The defendant's 2013 tax return reveals that her self-employment income from Kallisto totaled $30,605 in 2013. After adding child support assistance payments to the defendant's self-employment income and subtracting allowable deductions and the standard deduction, the defendant's total monthly income was $2,146. The maximum income level for eligibility was $2,069. Thus, in 2013, the defendant again received benefits that she was ineligible for because she failed to report her self-employment income. Miller concluded that the total benefits received from 2010 through 2013 for which the defendant was ineligible equaled $15,431.05.

The defendant testified at trial. She explained that she has a doctorate in public health from Tulane University and formed her own company, Kallisto. She claimed that prior to Hurricane Katrina, the home she lived in was valued at $900,000, and she and her ex-husband also owned investment property. However, after damage from the storm and her divorce, she was left with $28,000, which she used as a down payment for a new home in Washington Parish. She explained that she supports herself through Kallisto. Her colleague, Zarin Miller, owns Aegis Systems. The defendant testified that she and Miller complete projects together. She claimed that she did extensive driving all over the State for her business and never claimed personal mileage on her tax returns.

According to the defendant's testimony, the DCFS case worker to which she was assigned, Linda Cupp, assisted her in preparing her 2008 application for benefits. She testified that she gave Cupp all of the requested documentation, including her tax return. The defendant testified that Cupp was aware of Kallisto for 2008 through 2010, and she provided tax returns for those years. According to the defendant, in 2009, she did not "check off the box" indicating that she was self-employed because Cupp told her there was "no need" to fill out that section. The defendant further claimed that Cupp told her she did not have to provide tax returns as she did in 2008 through 2010 because "they were able to retrieve those in the future." The defendant maintained that she did not intentionally misrepresent her self-employment status.

On cross-examination, the defendant admitted that she had experience filling out government paperwork and grant writing, but reiterated that she was advised by Cupp not to indicate that she was self-employed on her 2010 application.

The defendant also presented the testimony of Tenisha Dyson Foster, James Star, and Miller. Foster, a social service analyst with DCFS testified that in order to deduct fuel expenses for self-employed individuals, the vehicle would have to be used strictly for business, which it was not. Star, an attorney, testified that he represented the defendant during her divorce proceedings and she never exhibited any deceitful behavior to him. Miller, the owner of Aegis Systems, a management consulting company, testified that she had worked with the defendant for more than twelve years and had never known her to be dishonest.

The State called Cupp as a rebuttal witness. Cupp, who was retired at the time of trial, testified that she did not specifically remember the defendant. However, Cupp vehemently denied telling the defendant that she did not have to disclose her self-employment on future applications. Cupp explained that she would never have advised the defendant not to disclose her self-employment because it was in violation of federal law.

The court heard the testimony that the defendant was self-employed during the time that she received government benefits. The court was further presented with evidence that the defendant applied for government benefits without disclosing her self-employment income. The documentary and testimonial evidence established that if the defendant's self-employment income had been taken into account, the defendant would not have received the benefits she admitted receiving. This evidence, which was obviously believed by the district court, established that the defendant, by fraudulent means, obtained from the State thousands of dollars in SNAP and CCAP benefits to which she was not entitled. Thus, we find the evidence sufficient to support the verdict. Although the defendant contends that had the State deducted the correct business expenses from her self-employment income, she would have qualified for benefits, this argument was presented to, and rejected by the district court. The district court specifically stated that in finding the defendant guilty, it took into account the applicable federal and state law, testimony from witnesses, and the defendant's education level. The court did not explain its exact calculations, but stated that it considered testimony related to the defendant's travel expenses. Moreover, defendant's failure to report self-employment income, despite receiving notification in 2009 that her total income exceeded that required for eligibility, established her intent to fraudulently obtain SNAP and CCAP funds thereafter. Accordingly, these assignments of error are without merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

AFFIRMED.