

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-KA-00510 COA**

**MARGARET BOONE A/K/A MARGARET J.
BOONE**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	APRIL 12, 1996
TRIAL JUDGE:	HON. ELZY JONATHAN SMITH JR.
COURT FROM WHICH APPEALED:	TUNICA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	THOMAS H. PEARSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	LAWRENCE Y. MELLEN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	EMBEZZLEMENT: SENTENCED TO SERVE A TERM OF 5 YRS IN THE MDOC; THE COURT SUSPENDS SENTENCE FOR A PERIOD OF 3 YRS, THE SUSPENSION OF THIS SENTENCE TO COMMENCE AFTER THE DEFENDANT HAS SERVED 2 YRS IN THE MDOC
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE McMILLIN, P.J., COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Margaret Boone was convicted by a jury in the Circuit Court of Tunica County of embezzlement from the Bally's Casino. Boone appeals, asserting that the State improperly charged her with embezzlement rather than larceny. We find no merit to this claim and affirm.

FACTS

Margaret Boone was employed as a cage cashier at the Bally's Casino in Tunica County, Mississippi. As a cage cashier, Boone redeemed chips and coupons and exchanged money for the customers at the casino. On January 9, 1996, Boone worked an eight-hour day shift. When her shift ended, Boone followed the casino's procedures. The cashier beginning a shift counted and verified the drawer of the cashier whose shift had ended. The new cashier would dictate the total sums, which the previous cashier then wrote on a balance sheet. The cashiers did not count the individual denominations of the currency. Rather, the cashiers accepted that each bundle of a particular denomination of currency contained the correct number of bills and the number of bundles was all that was counted. As time permitted throughout the shift, the new cashier would verify the accuracy of the bundled denominations.

Since there was not a replacement cashier at the end of Boone's shift, another cashier verified Boone's drawer. The cashier noted a six dollar shortage in the drawer. Following this verification, Boone locked her drawer and deposited the key with the casino bank. The next day when another cashier attempted to verify the individual bundles, she discovered that \$2,500 was missing from one of the bundles. The cashier notified the casino officials and the drawer was counted a second time. The officials requested that the surveillance personnel review the videotape from the previous day for any suspicious activity. The tapes showed Boone shifting denominations of currency in her drawer and also paying a customer in an "improper" manner.

Boone was charged and convicted of embezzlement from Bally's Casino.

DISCUSSION

Boone asserts that the State erred in charging her with embezzlement rather than larceny. Boone contends that the evidence established that she had the trespassory intent to convert the funds to her personal use prior to arriving at work that day. Thus, Boone argues that her larcenous intent renders the initial possession trespassory within the definition of larceny, which therefore defeats possible conviction for embezzlement which in her view cannot have this same intent.

The relevant embezzlement statute provides that "[i]f any director, agent, clerk, servant, or officer of any incorporated company . . . shall embezzle or fraudulently secrete, conceal, or convert to his own use . . . any . . . money, or other valuable security . . . which shall have come or been intrusted to his care or possession by virtue of his . . . employment . . . he shall be guilty of embezzlement" **Miss. Code Ann. § 97-23-19 (Rev. 1994).**

Boone relies on case law interpreting a larceny indictment to support her contention that she was guilty only of larceny, not embezzlement. *Mahfouz v. State*, 303 So. 2d 461 (Miss. 1974). In *Mahfouz*, the court concluded that "[w]hen a person--even an agent of the owner--takes possession of property with the unlawful intent to feloniously convert the property to his own use at the time he acquires possession, he is guilty of larceny and not embezzlement." *Id.* at 463-64. Though the facts are never detailed, it appears that Mahfouz was not an employee of the company from whom property was taken, but somebody with whom Mahfouz conspired was a driver and agent for the trucking company that possessed the property. The case then relies on evidence that the conspirators intended "to steal the property before it came into the hands of the truck driver for the freight line."

Id. at 463.

Regardless of what the case holds or does not, Justice Robertson in a subsequent case specifically relied upon *Mafhouz* to reverse the conviction of a public employee for embezzlement under a statute that "tracks our general embezzlement statute." *Pennock v. State*, 550 So. 2d 410, 413 (Miss. 1989). The employee was authorized to sign vouchers for individuals who received certain governmental services. She used this authority to prepare bogus vouchers for payment to named individuals who either did not exist or were not entitled to payment, which she then signed. *Id.* at 411. The supreme court held that since she was only authorized to sign valid vouchers, she never lawfully was in possession of the money acquired through the bogus vouchers. *Id.* at 414. Consequently, Pennock could not be prosecuted under the embezzlement statute. *Id.*

The supreme court has not expressly overruled *Mahfouz*, but it has expressly overruled *Pennock*. *Gerrard v. State*, 619 So. 2d 212, 213 (Miss. 1993) overruling *Pennock v. State*, 550 So. 2d 410, 413-14 (Miss. 1989). The court interpreted *Pennock* to mean "that in order to embezzle one must have come upon the funds without felonious intent." *Gerrard*, 619 So. 2d at 215. That "unduly narrowed the application of the embezzlement statute rendering it meaningless." *Id.* at 213. The new interpretation of the public official embezzlement statute is that the crime is based upon an official's using an official power in order to obtain money; having a felonious intent at the time the power is exercised does not affect the fact that embezzlement is the crime that should be charged. *Id.* at 216. Though *Gerrard* interpreted Section 97-11-25 dealing with public official embezzlement, the *Pennock* court pointed out that the operative language is exactly the same as the general embezzlement statute of Section 97-23-19. *Pennock*, 550 So. 2d at 413. Thus we hold that the same interpretation applies to the statute supporting Boone's indictment. The State presented ample evidence revealing that the casino placed Boone in lawful possession of the cash drawer. The testimony elicited from the witnesses established that the shortage of money in the drawer occurred while Boone was on duty. This testimony in conjunction with the videotape showing Boone shifting the denominations and improperly handing out money is sufficient to allow a jury to conclude that Boone was guilty of embezzlement.

THE JUDGMENT OF THE CIRCUIT COURT OF TUNICA COUNTY OF CONVICTION OF EMBEZZLEMENT AND SENTENCE OF FIVE YEARS WITH THREE YEARS SUSPENDED AFTER THE COMPLETION OF TWO YEARS OF THE SENTENCE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. THE SENTENCE IMPOSED SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO TUNICA COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.