

[Cite as *State v. Frazier*, 2010-Ohio-4440.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-112
Kesha R. Frazier,	:	(C.P.C. No. 08CR-09-6861)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 21, 2010

Richard Cordray, Attorney General, *Shawn P. Napier* and *Claude V. Nicholson*, for appellee.

Brian J. Rigg, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Kesha R. Frazier is appealing from her convictions of felony theft and identity fraud, journalized January 8, 2010. In the case against her, the State alleged that Frazier conspired with her mother, Debra Moore, a paraplegic receiving Medicaid, to establish independent medical provider numbers for two family friends, which Frazier and her mother then used to bill the state of Ohio for medical services purportedly rendered by those family friends. The total amount of these fraudulent Medicaid payouts was \$109,926.60. Frazier and her mother did not dispute the facts, however, their defense

was that the billed services were actually provided, albeit by individuals other than the two whose names the State issued the Medicaid payments to. Two of the individuals alleged to have provided those services were daughters of one of the named providers, one of whom was a minor. The trial court and jury rejected that defense, and convicted Frazier of all but one count in the indictment.

{¶2} Both Frazier and her mother have appealed their convictions, alleging that there was insufficient evidence, their convictions were against the manifest weight of the evidence, and that the trial court erred by permitting a bail bondsman to testify regarding Frazier's use of a Medicaid payment to post her bond in another unrelated case. For the reasons set forth fully in this opinion, we are not swayed by Frazier's defense, or that the trial court abused its discretion in allowing the bondsman's testimony. We therefore affirm the judgment of the trial court.

FACTS

{¶3} As indicated above, the material facts are not in dispute, though they are a bit complex because of the number of individuals involved in the scheme, and their relationships to one another. Kesha Frazier is Debra Moore's daughter. Debra Moore is a quadriplegic,¹ confined to a wheelchair, and her condition requires in-home care seven days a week. Debra Moore's mother is Helen Moore, who is a paraplegic,² also confined to a wheelchair. Helen Moore, who is Frazier's grandmother, also requires in-home care. Both Debra and Helen Moore are Medicaid recipients, and their in-home health services are provided, or at least administered, by the Ohio Department of Job and Family

¹ Paralyzed from the neck down, cannot walk, and has little or no use of the arms and hands.

² Paralysis limited to below the waist.

Services ("ODJFS") through independent, certified Medicaid health providers. Helen Moore was not charged in connection with this scheme, however, she is connected to the case insofar as she was one of the Medicaid recipients for whom Frazier and her mother allegedly billed fraudulent in-home health services.

{¶4} Beverly Squire is a friend/quasi-relative of the family—she married Debra Moore's cousin, and has known the Moores' for more than 20 years. (Tr. 42–43.) Squire had lived near the family, with her two daughters, but after getting evicted from her apartment in 2005, Squire moved to Las Vegas, Nevada, leaving her daughters behind. At the time Squire left Ohio, her daughters, Courtney and Nikki, were 15 and 19 years old, respectively. (Tr. 65.) Frazier and her mother were the younger daughter's de facto guardians while Squire was away. (Tr. 84.) Squire is one of the individuals whom Frazier enlisted as an independent service provider. This involves a sort of certification process where the applicant files numerous forms with the State, and provides fingerprints, which facilitate a background check. Squire had previously been a home health provider through an agency, and although she had provided some care and assistance to Moore, she stated that she did so voluntarily (i.e., not for pay). (Tr. 52, 86.)

{¶5} At trial, Squire was the State's primary witness against Frazier and her mother. She testified that, prior to her leaving for Las Vegas, Moore approached her about becoming an independent provider for ODJFS. (Tr. 43.) Squire was apparently in financial straits, and was interested in the opportunity. She stated that Moore helped her fill out the paperwork to become an independent provider, and that Frazier took her to get fingerprinted, and even paid the fingerprinting fee. (Tr. 43-44, 93-94, 105.) Squire apparently provided Moore with her social security number, but denied signing the

application and tax documents introduced at trial, and she claimed that she had no knowledge that ODJFS had approved her application. (Tr. 46-47, 49.) Squire also testified that one of the reasons she moved to Las Vegas was because she had not heard back from ODJFS, and she needed to find employment immediately. (Tr. 69-70.) Squire claims that she first acquired knowledge that she had become an independent provider after receiving a letter from the IRS, while she was living in Las Vegas, which stated that she owed \$10,000 in federal income tax for unreported wages in Ohio. (Tr. 52.)

{¶6} The State introduced evidence of timesheets submitted in Squire's name, and 14 checks payable to her totaling \$35,184.60, about which Squire denied any knowledge. (Tr. 50-52, 55-58.) Squire further testified that she did not provide any of the care identified in the aforementioned timesheets, that she did not receive any of the corresponding funds, and that neither of her daughters provided the specified in-home health services to Moore. (Tr. 89.)

{¶7} The other individual that Frazier and her mother enlisted as an ODJFS independent Medicaid provider was Jacquelyn Baker. Baker is also a friend/quasi-relative of the family—she is Moore's niece by marriage.³ (Tr. 115.) Like Squire, Baker also had previous experience providing in-home health services. (Tr. 114-15.) Baker's testimony was consistent with that of Squire, except that Baker stated that she did receive a confirmation and a Medicaid provider number from ODJFS. (Tr. 120.) Baker testified, however, that after receiving her Medicaid provider number, Moore told her that her services were not needed. (Tr. 121.) About one-year later, Baker approached Frazier

³ Debra married Harold Moore, Jacquelyn Baker's uncle, however, although Debra and Harold are still married, they have been separated for 20 years.

about providing in-home health services as an independent provider, and Frazier told Baker that she knew of a prospective patient, Territa Nappier. (Tr. 124-25.) Frazier told Baker that she and Baker could both work for this prospective patient using Baker's Medicaid provider number. (Tr. 124-25.) Baker testified that she resubmitted her fingerprints, on more than one occasion, but that she never received confirmation from ODJFS, so she assumed that they denied her re-application. (Tr. 125-26.) Finally, Baker testified that she did not provide any in-home health services to Debra or Helen Moore, nor to Territa Nappier, nor either of the other two individuals for whom she had purportedly submitted timesheets and Medicaid invoices. (Tr. 126-27.) Like Squire, Baker also received a letter from the IRS stating that she owed back taxes. (Tr. 129.) On cross-examination, the defense pursued a theory that Baker had used Frazier's and Moore's bank accounts to hide money from her ex-husband, while the two were amidst divorce proceedings. Baker flatly rejected that theory. (Tr. 149.)

{¶8} The State also presented the testimony of Territa Nappier, William Price, and Peggy Gawalek. Nappier testified that it was Frazier who, in fact, provided in-home health services to her. (Tr. 166-68.) She further stated that Squire never provided any services to her. (Tr. 174.) Price testified that he was responsible for arranging and managing in-home health services for his wife Sandra, a Medicaid recipient since suffering a stroke in 1998. (Tr. 163-64.) Price testified that the only time Baker came to their home was the evening before she was supposed to start, and that after that initial visit she never returned. (Tr. 176, 178-79.) Gawalek is a case manager for Maxine Bahmer, another Medicaid recipient who purportedly received in-home health services from Baker. (Tr. 193.) Gawalek testified that she had email communications regarding

Bahmer's care, with an individual claiming to be "Jackie Baker," but Gawalek stated that the corresponding email address was "Kesha_Frazier26@yahoo.com." (Tr. 195–97.) Upon reviewing her case notes, Gawalek further testified that the care that Bahmer (the patient) did receive was substandard, and that on more than one occasion, the provider had failed to show up. (Tr. 198–202.)

{¶9} Sabrina Long is an investigator in the Ohio Attorney General's Office, Health Care Fraud Section. (Tr. 264–65.) Long was the special agent assigned to investigate the Squire-Baker matter after they had referred it to ODJFS (pursuant to their IRS notifications). (Tr. 267.) As part of her investigation, Long traced each payment that the State issued to Squire and Baker, and she determined that all but four of the checks were cashed or deposited using one of Frazier's bank accounts, or the account of her mother, Moore. (Tr. 304.) Of the other four checks, one was deposited into the bank account of Campbell MacGuire Bail Bonds. *Id.* The remaining three checks were illegible, such that the financial institution that processed them could not be verified, however, Long testified that Frazier or her mother had endorsed all three of them. (Tr. 305.) Long confirmed that 46 separate checks totaling \$57,333.60 were processed through Frazier's bank account(s), and 46 others, totaling \$49,761 were processed through her mother's account. (Tr. 306.) Finally, Long testified about Medicaid policies and procedures, specifically that individuals had to have a Medicaid provider number before they can provide in-home health services to Medicaid recipients, and that individuals were prohibited from using another individual's Medicaid provider number. (Tr. 309–10.)

{¶10} Jeff Thomas also testified for the State. Thomas works for ABC Bail Bonds, which acquired Campbell MacGuire Bail Bonds. (Tr. 251.) Thomas' testimony revolved around a \$10,000 bail bond that Campbell MacGuire posted on behalf of Frazier in an unrelated Cuyahoga County case.⁴ Thomas stated that Campbell MacGuire received a \$600 check payable to, and endorsed by, Beverly Squire, drawn on an account belonging to the state of Ohio, and that the bonding company accepted that check for partial payment of Frazier's bond. (Tr. 255–56.) Thomas also authenticated the check. (Tr. 257–58.) In her bond application, Frazier listed her employer as "Medsource," and listed Squire as a point of contact, in addition to her mother. (Tr. 254–55.)

{¶11} On September 17, 2008, a special grand jury indicted Frazier for theft by deception, a third-degree felony (Count 1 of the indictment), two counts of identity fraud, third-degree felonies (Counts 3 and 4 of the indictment), and one count of identity fraud, a second-degree felony (Count 4 of the indictment), and indicted her mother on four separate counts (Counts 5 through 8 of the indictment). (R. 2-4.) Mother and daughter were tried as co-defendants in a jury trial that began on October 6, 2009, and lasted several days. On October 14, 2009, the jury returned its verdict, finding Frazier guilty of a lesser-included offense for Count 1 of the indictment, and also guilty on Counts 2 and 3 of the indictment. The jury found Frazier not guilty of Count 4 of the indictment (identity fraud, Jacquelyn Baker and Beverly Squire, in an amount over \$100,000). The jury also returned guilty verdicts on all but one count against Frazier's mother. On January 6,

⁴ Frazier was indicted on March 23, 2006 for two counts of robbery. Following two continuances and several pre-trial hearings, on September 13, 2006, the court dismissed the case without prejudice because the victim failed to appear at trial. See *State v. Frazier*, Cuyahoga Cty. C.P. No. CR-06-478651-A. The bond was actually posted by Seneca Insurance Company, Inc., New York, NY. (See State's exhibit No. O.)

2010, the trial court sentenced Frazier to four years' total incarceration, and ordered restitution of \$74,742 to ODJFS.

{¶12} Frazier filed a timely notice of appeal on February 8, 2010, and now assigns three errors for our consideration:

[I.] THE TRIAL COURT ERRED BY PERMITTING A WITNESS FOR THE STATE TO TESTIFY THE APPELLANT WAS INCARCERATED WHICH VIOLATED APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.

{¶13} The second and third assigned errors are interrelated; however, this first assignment of error is not. We will therefore consider it independently of the other two.

{¶14} Appellate courts review a trial court's decision to permit or exclude evidence using an abuse of discretion standard. See generally, *State v. Swann*, 171 Ohio App.3d 304, 2007-Ohio-2010 (citing *State v. Sumlin*, 69 Ohio St.3d 105, 1994-Ohio-508). This is because the trial court is in a much better position than we are to evaluate the authenticity of evidence, and assess the credibility and veracity of witnesses. See, e.g., *State v. Hairston*, 10th Dist. No. 08AP-735, 2009-Ohio-2346. The trial court is, thus, vested with broad discretion in evidentiary matters, and the court of appeals will not disturb the trial court's ruling absent an abuse of discretion. *State v. Brust* (Mar. 28, 2000), 10th Dist. No. 99AP-509, 2000 WL 311921, at *6 (citing *State v. Hymore* (1967), 9 Ohio St.2d 122). An abuse of discretion is more than an error of law or in judgment; rather, it implies that the trial court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶15} Counsel for Frazier is arguing that the trial court violated her constitutional rights by allowing the testimony of Jeff Thomas, the bail bondsman who testified

regarding Frazier's bond in an unrelated Cuyahoga County robbery case. The crux of the first assignment of error is that the bondsman's testimony was unfairly prejudicial because it would lead the jury to conclude that Frazier had previously been incarcerated, and that such evidence was prohibited by Evid.R. 403(A).

{¶16} Under Evid.R. 403(A), the trial court must exclude evidence that may otherwise be relevant if its "probative value is *substantially outweighed* by the danger of unfair prejudice[.]" (Emphasis added.) For better or for worse, this evidentiary rule is peppered with adjectives—substantially and unfair—and is phrased in a manner that gives the trial court extreme latitude in making its determination. See, e.g., *State v. Allen*, 73 Ohio St.3d 626, 632, 1995-Ohio-283; *Eller v. Wendy's Internatl., Inc.* (2000), 142 Ohio App.3d 321, 333; *State v. Jones* (June 29, 2000), 10th Dist. No. 99AP-813, 2000 WL 860361, at *3 (holding that the trial court is vested with broad discretion concerning whether to admit or exclude evidence under Evid.R. 403(A)).

{¶17} But Evid.R. 403 does not exist in a vacuum—it must be construed in conjunction with Evid.R. 105, which provides that evidence may be admissible for one purpose while at the same time being inadmissible for another. See generally *N.L.R.B. v. Dayton Motels, Inc.* (C.A.6, 1973), 474 F.2d 328, 333 ("The doctrine that evidence inadmissible for one purpose can be admitted for another purpose is firmly established in the law.") (quoting 1 Wigmore, *Evidence* (3d ed.1940), Section 13). (Citations omitted.) In circumstances where a trial court allows such evidence, Evid.R. 105 requires the court to provide the jury with a "limiting instruction." See, e.g., *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, ¶109, 111. The limiting instruction tells the jury that they should only consider the particular evidence at issue for a specified purpose, and that they are

prohibited from using that evidence to draw inferences or conclusions about other issues in the case.

{¶18} Evidence that a defendant committed other crimes, or prior bad acts, may be admissible pursuant to Evid.R. 404(B), but the evidence is not admissible as substantive proof of the defendant's guilt in the present case—i.e., the defendant was convicted of assault before, therefore he is obviously prone to violence, and likely is guilty of assault in this case. See *State v. Curry* (1975), 43 Ohio St.2d 66, 68. Excluding impeachment purposes (see Evid.R. 609) and other specific, enumerated crimes such as rape, evidence of prior convictions, or bad character is only admissible to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

{¶19} In this case, the State presented the bail bondsman's testimony because it was the best evidence that Frazier received a direct benefit of one of the Medicaid payments the ODJFS purportedly issued to Squire. And, in fact, prior to allowing the bail bondsman to testify, the trial court gave the following limiting instruction to the jury:

* * * [T]he State's going to call its next witness. The witness I believe will be a representative from a bail bond company.
* * * I'm giving you this cautionary instruction * * * in addition to any instructions that I will give to you at the conclusion of this trial.

One of the issues in this trial is whether the defendant Kesha Frazier received proceeds from the State through the Department of Jobs and Family Services, paid as a result of Medicaid services.

This testimony is being offered for the limited purpose of proving that Defendant Kesha Frazier did receive such benefits and the payment was either used by her or for her. It is absolutely no evidence that [she] was guilty of any criminal

offense and may not be considered by you for such purpose.

* * *

(Tr. 249–50.)

{¶20} Arguably, the State had plenty of other evidence proving that the fraudulent Medicaid payments were processed through Frazier's bank account(s), which would weigh in favor of excluding the bondman's testimony as unfairly prejudicial or repetitive. But the bondsman's testimony, together with State's exhibit No. O, provided the only evidence connecting Frazier with one of the four checks not processed through hers or her mother's bank accounts. Furthermore, there is no evidence that the jury disregarded the trial court's limiting instruction. And finally, given the number of fraudulent Medicaid payments that were traced directly to Frazier's bank account(s), admission of the evidence concerning the bail bond was, at best, harmless error.

{¶21} Appellant's counsel cites *Curry* for the proposition that, in order for the prior-crimes evidence to be admissible, the prior crime must be the same or similar to that as the crime(s) charged in the indictment. (Appellant's brief, at 7.) Counsel's argument is misplaced, however, because the requirement that the crimes be the same only applies when the prior-crimes evidence is being offered to show that the defendant used a common "scheme, plan, or system" in carrying out both crimes. *Curry* at 73.

{¶22} Because the State did not offer the bondsman's testimony as proof that the Frazier committed prior crimes or bad acts, we hold that the trial court did not abuse its discretion in allowing the testimony. We, accordingly, overrule the first assignment of error.

{¶23} The remaining assignments of error concern the weight and sufficiency of the evidence that support Frazier's convictions. These being interrelated, we will address them together:

[II.] THE VERDICT IS AGAINST THE SUFFICIENCY AND
MANIFEST WEIGHT OF THE EVIDENCE.

[III.] THERE WAS INSUFFICIENT EVIDENCE TO CONVICT
THE DEFENDANT.

{¶24} In criminal cases, the weight and sufficiency of the evidence supporting the trial court's verdict are two separate inquiries. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. "Sufficiency of the evidence" is a term of art that refers to the legal standard that is applied to determine whether a case may go to the jury, or whether the evidence is legally sufficient to support the jury's verdict as a matter of law. *Id.* (citing *Black's Law Dictionary* (6th ed.1990) 1433). Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶37 (citing *Thompkins*, *supra*).

{¶25} To determine whether the evidence is sufficient to sustain the jury's verdict, an appellate court examines the evidence in the light most favorable to the prosecution, and then determines whether any rational trier of fact could have found that the prosecution proved the essential elements of the crime(s) beyond a reasonable doubt. *Cassell*, *supra* (citing *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78). In evaluating the sufficiency of the evidence, we do not determine whether the evidence is believable, but rather, if believed, whether the evidence supports the conviction. See *Cassell*, (citing *Jenks*); *Thompkins* at 390 (Cook, J., concurring); *Yarbrough* at ¶79) (noting that appellate

courts do not evaluate witness credibility when reviewing the sufficiency of the evidence). Finally, a court of appeals will not disturb a jury's verdict unless it determines that reasonable minds could not arrive at the conclusion reached by the jury. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4; *Jenks* at 273.

{¶26} By contrast, when determining whether a verdict is against the manifest weight of the evidence, the court of appeals sits as a "thirteenth juror," reviewing the entire record, weighing all the evidence and reasonable inferences therefrom, and considering the credibility of the witnesses to resolve any conflicts therein. *Thompkins* at 387 (quoting *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211; *State v. Martin* (1983), 20 Ohio App.3d 172, 175). When resolving apparent conflicts or inconsistencies in the evidence, the reviewing court may not disturb the jury's verdict unless the record shows that the jury "clearly lost its way," creating "such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins* at 378 (quoting *Martin*). Reversal on manifest weight grounds is reserved for only the most exceptional case where the evidence weighs heavily against the conviction. Additionally, the Ohio Constitution provides that the court of appeals may not reverse a jury's verdict on the manifest weight of the evidence unless all three appellate judges concur in the decision to reverse. See Section 3(B)(3), Article IV, Ohio Constitution. ("No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause."), see also *Thompkins* at paragraph four of the syllabus.

{¶27} Turning to the evidence in this case, we will first examine the sufficiency of the evidence supporting Frazier's convictions of theft by deception, and identity fraud. To

do so, we must compare the facts found by the jury with the elements of each crime charged in the indictment.

{¶28} To prove that appellant committed theft by deception, the State must show: (1) intent, (2) to deprive the owner, (3) of something of value—i.e., property or services, (4) without the owner's consent, and (5) by deception. See R.C. 2913.02. " 'Deprive' means * * * [to] [w]ithhold property of another permanently, or for a period that appropriates a substantial portion of its value or use[.]" R.C. 2913.01(C)(1). " 'Deception' means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact." R.C. 2913.01(A). The property's "owner" is "any person, other than the [accused], * * * who has possession or control of, [the property in question]." R.C. 2913.01(D). Although intent is an essential element of the crime, the trier of fact may infer the accused intent from the surrounding circumstances, and may presume intent where the natural and probable consequences of the accused action(s) was calculated to produce the achieved result. See, e.g., *State v. Robinson* (1954), 161 Ohio St. 213, paragraph five of the syllabus ("[I]ntent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death."); *State v. Burke* (Dec. 28, 1993), 10th Dist. No. 90AP-1344, 1993 WL 541653, at *14 (holding that the jury's inference of intent was sufficient to sustain the defendant's conviction).

{¶29} Here, appellants do not dispute the material facts, which speak for themselves. As demonstrated by the endorsed Medicaid checks, and various testimony—especially that of Special Agent Sabrina Long—46 separate checks, totaling \$57,333.60, were processed through Kesha Frazier's bank account(s). The money is, obviously, something of value, and it was under the control of the State of Ohio (until appellants misappropriated it). By keeping the money (or using it for whatever purpose she used it for, personal bail bond, etc.), appellants deprived the State of its use. And appellants acted with deception by, at very least, allowing ODJFS to believe that the named Medicaid providers, Squire and Baker, were providing the in-home specified health services for which appellants had received payment(s). Thus, there was sufficient evidence to prove theft by deception.

{¶30} Identity fraud and its elements are provided in R.C. 2913.49, the pertinent part of which provides that:

(B) No person * * * shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following:

(1) Hold the person out to be the other person[.]

{¶31} Furthermore, no person is permitted to use another's personal identifying information or hold his or herself out to be the other person with the intent to defraud another. See R.C. 2913.49(E).

{¶32} The testimony of Beverly Squire substantiated that appellants used Squire's social security number, and other personal data, and combined with the testimony of Special Agent Long, and others, Frazier held herself out to ODJFS as Beverly Squire and Jacquelyn Baker. Finally, the jury found that Frazier's intent in perpetrating this behavior

was to defraud the State of Ohio out of money. Accordingly, there was sufficient evidence to sustain Frazier's conviction of identity fraud.

{¶33} Appellant's supposition that she did not know that it was unlawful for an individual other than the authorized independent Medicaid provider to provide in-home health services (and collect payment for those services) is wholly irrelevant here. To hold otherwise, would lend credence to the mistake-of-law defense, which, of course, we do not recognize in Ohio. See, e.g., *State v. Pinkney* (1988), 36 Ohio St.3d 190, 198. Furthermore, knowledge that certain conduct is unlawful is not a necessary element for conviction. *Id.*

{¶34} Having found that there is sufficient evidence to sustain Kesha Frazier's conviction, and that the verdict is not against the manifest weight of the evidence, we overrule the second and third assignments of error.

{¶35} Having overruled all three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and CONNOR, JJ., concur.
