

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
KENNETH JETER,	:	No. 1875 EDA 2011
	:	
Appellant	:	

Appeal from the Judgment of Sentence, March 25, 2011,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0010744-2010

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS AND MUSMANNO, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.:

Filed: March 1, 2013

Kenneth Jeter appeals the judgment of sentence entered on March 25, 2011 following his conviction of theft by unlawful taking, theft by deception, receiving stolen property, and misapplication of entrusted property. Herein, appellant argues that the evidence was insufficient to support his convictions. We affirm.

The facts, as summarized by the trial court, are as follows:

[Appellant] was a senior food service worker in the cafeteria at the Meredith [S]chool in Philadelphia. Part of his responsibilities included preparing a weekly deposit of cash that was picked up by Dunbar Armored company. [Appellant] was the only employee who handled the actual cash contained in the deposit slips and then sealed the actual cash inside the deposit envelope for pick up by Dunbar.

Stephen Simms was an auditor employed by the School District of Philadelphia. Part of his

responsibilities includes auditing monies (non-cash and actual cash) received by the school district's food service workers. In 2010, Simms was asked to audit all monies (including non-cash and actual cash) received by the cafeteria at the Meredith [S]chool. In particular, Simms was asked to audit the actual cash that was picked up by (and deposited with) Dunbar to the actual cash that was entered into the cafeteria's point-of-service system. The cafeteria's point-of-service system is a computer system that keeps track of monies related to the sale of food at the cafeteria.

As part of his audit, Simms reviewed the cash deposit slips signed and completed by [appellant] (Exh. C1), a red receipt book signed by a Dunbar representative when actual cash is picked up at Meredith (Exh. C2), and a daily computer printout from the point-of-service system that displays, *inter alia*, the amount of actual cash collected each day at Meredith (Exh. C3). Although most of the entries on C3 are automatically generated by the point-of-service computer, the entry for the "daily deposit" of cash is manually inputted by [appellant] based upon the amount of actual cash that he is depositing with Dunbar. Thus, the "daily deposit" reflects actual cash that he is depositing with Dunbar. Using these documents, Simms created a spreadsheet (Exh. C4) that showed variances in monies including variances between the actual cash [appellant] received at Meredith and the actual cash he deposited with Dunbar.

Simms also created an audit report (Exh. C5) that included a summary of the variances in actual cash from September 2009 to May 2010, which totaled \$5,472.36. Simms testified that no Meredith employee other than [appellant] had access to the actual cash received from the cafeteria and deposited with Dunbar. He also testified that the variances in the actual cash deposited with Dunbar stopped when [appellant] was fired. There are continuing variances in other amounts of monies for the lunch program but those variances only involve

non-cash monies reflected in the point-of-service system.

Audrey Mathis is an investigator for the Philadelphia School District and works for the inspector general's office. Mathis conducted an investigation of the missing cash. As part of his investigation, he interviewed [appellant] on May 27, 2010. During the interview, Mathis asked [appellant] if he knew what happened to the missing cash. [Appellant] responded that "he did not know but would be willing to pay the money back." At a second interview, Mathis again asked [appellant] if he knew what happened to the missing cash. This time, [appellant] responded that "he didn't know, but he wanted to make it go away, and he would be willing to pay the money back."

Chris Stankiewicz is a branch manager for Dunbar. He explained that only Dunbar drivers pick-up actual cash deposits in a sealed cash deposit envelope. Each deposit is signed for by the driver on a redbook (C2) when it is picked up at Meredith.

Defense counsel called Cindy Farlino, the principal of Meredith, as a defense witness. Farlino testified to [appellant's] good character for being law-abiding and honest. Defense counsel also called Doris Smith, the president of Local 634 of the school cafeteria employee union, as a defense witness. Smith described several issues with the point-of-service computer system but conceded that all of those issues related to non-cash payments.

Trial court opinion, 6/29/12 at 1-3 (citations to the record omitted).

On March 24, 2011, appellant waived a jury trial and proceeded to a bench trial before the Honorable Daniel J. Anders. Thereafter, appellant was convicted of the aforementioned crimes. The following day, appellant was sentenced to a total of 18 months' reporting probation, a consecutive term

of 18 months' non-reporting probation, and restitution. Appellant's post-sentence motions were denied and this timely appeal followed.¹ On July 28, 2011, the trial court directed appellant to file a concise statement of errors complained of on appeal within 21 days pursuant to Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A. Appellant complied on January 19, 2012.²

Again, the sole issue raised challenges the sufficiency of the evidence to support appellant's convictions.³ Our standard of review is as follows:

In reviewing sufficiency of evidence claims, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all the elements of the offense. Additionally, to sustain a conviction, the facts and circumstances which the Commonwealth must prove, must be such that every essential element of the crime is established beyond a reasonable doubt. Admittedly, guilt must be based on facts and conditions proved, and not on suspicion or surmise. Entirely circumstantial evidence is sufficient so long as the combination of the evidence

¹ Appellant was permitted to file post-sentence motions *nunc pro tunc*, which were denied on June 17, 2011. Because July 17, 2011 fell on a Sunday, appellant had until Monday to file his notice of appeal. 1 Pa.C.S.A. § 1908.

² Previously, this late filing would have resulted in waiver of appellant's issues. *Commonwealth v. Castillo*, 585 Pa. 395, 888 A.2d 775 (2005). However, subsequent changes to Rule 1925(b), and recent case law allow us to review the issues. *See Commonwealth v. Burton*, 973 A.2d 428 (Pa.Super. 2009) (*en banc*) (untimely concise statement amounts to ineffective assistance of counsel *per se* and review of issues is permitted similarly to outright failure to file concise statement under Rule 1925(c)(3)).

³ Additional issues contained in the Rule 1925(b) statement have not been presented by appellant to our court in his brief, hence we deem them to have been abandoned.

links the accused to the crime beyond a reasonable doubt. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The fact finder is free to believe all, part, or none of the evidence presented at trial.

Commonwealth v. Moreno, 14 A.3d 133, 136 (Pa.Super. 2011), ***appeal denied***, ___Pa. ___, 44 A.3d 1161 (2012) (citations omitted). After examining the evidence presented, we find appellant's claims to be meritless.

Section 3921(a) of the Crimes Code provides: "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." The crime of theft by deception is defined at 18 Pa.C.S.A. § 3922 as follows:

- (a) **Offense defined.**-A person is guilty of theft if he intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:
- (1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - (2) prevents another from acquiring information which would affect his judgment of a transaction; or

- (3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

A defendant is guilty of receiving stolen property when “he intentionally acquires possession or control, retains or disposes of movable property of another knowing that it has been stolen and having no intention to restore the property to the owner.” 18 Pa.C.S.A. § 3925. Finally, a defendant will be convicted of misapplication of entrusted property when he “applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.” 18 Pa.C.S.A. § 4113.

Appellant alleges that the Commonwealth’s evidence “failed to dispel the equally probable inference that someone other than appellant. . . . had taken the money.” (Appellant’s brief at 11.) Appellant avers that “any number of other people working in the school” could have taken the money. (*Id.* at 12-13.) Appellant states that the circumstantial evidence presented only proved that appellant had access and opportunity. (*Id.* at 15.)

Nothing in the record supports appellant’s claim that another employee had access or an opportunity to take the missing cash. Instantly, the

evidence accepted as credible by the trial court shows that appellant had exclusive access to and control over the cash deposits with Dunbar. While testimony was presented that appellant's supervisor had access to appellant's computer, the supervisor merely checked on appellant's handling of cash before appellant sealed and delivered it for deposit. Appellant alone prepared sealed packages of cash collected in exchange for school lunches for deposit and delivery to armored truck drivers at the end of the week. Appellant then consistently delivered less than the collected amounts to the armored truck personnel who collected it. Specifically, appellant took at least three to four hundred dollars each month from the students' lunch money cash receipts. These monthly shortages prompted a ten-month investigation.

During the investigation, an auditor discovered that appellant had failed to account for \$5,472.56 of cash receipts. Appellant was confronted by his employer and he denied having any knowledge of the missing money but immediately offered to pay the sum out of his own pocket to "make it go away." In June of 2010, the school district fired appellant. Thereafter, no further cash shortages occurred.

We find that the circumstantial evidence presented, viewed in the light most favorable to the Commonwealth, was sufficient for the finder of fact to conclude that appellant was the only employee at the school who had access to the missing funds. Appellant's statements to investigators expressed a

consciousness of guilt.⁴ The only logical inference to be drawn from the credible evidence accepted by the trial court was that appellant took the money. ***See Commonwealth v. Payne***, 445 A.2d 804 (Pa.Super. 1982).

Judgment of sentence affirmed.

⁴ Finally, we note that appellant argues that there was never any missing money and refers us to discrepancies in the balance sheet that were the result of computer accounting errors. First, this claim is waived as appellant did not present this argument in his Rule 1925(b) statement. Pa.R.A.P., Rule 302, 42 Pa.C.S.A. Furthermore, the missing funds were cash receipts from students who had not paid electronically and cash receipts were not accounted for by the computer. Again, testimony was presented that appellant was solely responsible for accounting for the cash receipts.