

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
April 1, 2014 Session

STATE OF TENNESSEE v. PAMELA JAMISON

**Direct Appeal from the Criminal Court for Shelby County
No. 12-01439 James C. Beasley, Jr., Judge**

No. W2013-01762-CCA-R3-CD - Filed June 4, 2014

A Shelby County Criminal Court Jury convicted the appellant, Pamela Jamison, of theft of property valued more than \$1,000 but less than \$10,000 and identity theft, Class D felonies, and she received an effective four-year sentence to be served as six months in confinement and the remainder on supervised probation. On appeal, the appellant contends that the evidence is insufficient to support the convictions. Based upon the record and the parties' briefs, we affirm the judgments of the trial court. However, the case is remanded to the trial court for the correction of a clerical error on the judgment for identity theft.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed, and the Case is Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and D. KELLY THOMAS, JR., JJ., joined.

Stephen Bush and Harry E. Sayle, III (on appeal) and Russell White (at trial), Memphis, Tennessee, for the appellant, Pamela Jamison.

Robert E. Cooper, Jr., Attorney General and Reporter; Caitlin Smith, Assistant Attorney General; and Amy P. Weirich, District Attorney General; and Jose Leon, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

In March 2012, the Shelby County Grand Jury indicted the appellant for theft of property valued more than \$1,000 but less than \$10,000 and identity theft. The victims

named in the indictment were Myra Terry and her mother, Leola Palmer.

At trial, Sergeant Dennis Manning of the Memphis Police Department (MPD) testified that in September 2011, he worked in the MPD's Economics Crime Bureau as an investigator of different types of fraud. A uniformed police officer took a report from Myra Terry, and the case was assigned to Sergeant Manning. Sergeant Manning spoke with Terry about someone using Leola Palmer's bank debit card. Sergeant Manning also spoke with Kimi Johnson, a fraud investigator for First Tennessee Bank. Based on Johnson's information, Sergeant Manning began trying to obtain video surveillance of the person using the card. Sergeant Manning investigated a total of twelve to thirteen transactions with the card that occurred from July 26, 2011, through September 6, 2011, and developed the appellant as a suspect. On September 12, 2011, he contacted the appellant by telephone, and she told him that she spent time with Palmer in Palmer's home. Sergeant Manning asked the appellant if she ever took Palmer out of the home, and the appellant said no.

Sergeant Manning testified that two days later, the appellant came to the police department, waived her Miranda rights, and gave a written statement. The appellant could not read, so Sergeant Manning read her answers to his questions back to her, and she signed the statement. In the statement, the appellant said that she worked for Palmer, that she met Palmer through one of Palmer's daughters, and that she knew Palmer for five to six months. The appellant said that she sat with Palmer three to four hours per day in Palmer's home because Palmer "has Alzheimer's and forgets everything" and that she took Palmer out of Palmer's home three or four times. About two weeks before the statement, the appellant and Palmer went to "the market on Third Street," and the appellant bought Palmer "something out of [the appellant's] own pocket." They also went to Walgreens. Sergeant Manning asked the appellant if she ever had access to Palmer's credit or bank cards, and the appellant said, "Just the First Tennessee card." Palmer wrote down the card's personal identification number (PIN), gave it to the appellant, and told the appellant to stop by the store and withdraw \$100 so Palmer could pay the man who mowed her grass. Another time, Palmer sent the appellant to the "Maxi on Third Street" to get \$300. The appellant received a receipt for the transaction and gave the money to Palmer. A third time, Palmer told the appellant to withdraw \$500. The appellant withdrew \$400 and then went to "the little store by the house" and withdrew another \$100. She also bought Palmer a Coke and a loaf of bread. The appellant gave the receipt and change to Palmer.

Sergeant Manning testified that, according to the appellant's statement, the appellant did not know what Palmer was doing with the money and that she continued to withdraw the money for Palmer because "[i]f you ask her about it, she'll get smart with you and tell you it's her business." Arlena Tippie, Palmer's daughter, had hired the appellant to work for Palmer, and the appellant reported unusual things to Tippie. However, the appellant did not

report the withdrawals to Tippie because Palmer told the appellant “not to tell them her business.” The appellant told Sergeant Manning that she was no longer working for Palmer.

Sergeant Manning testified that the appellant’s written statement was different than their telephone conversation in that the appellant said over the phone that she did not take Palmer out of the house and never used Palmer’s bank card. Sergeant Manning received surveillance video from a convenience store, and the video showed the appellant making a purchase with Palmer’s bank card on the morning of September 6, 2011.

On cross-examination, Sergeant Manning testified that he did not audio-record his telephone conversation with the appellant and did not audio- or video-record her written statement. At the beginning of the appellant’s written statement, she told him that she completed the twelfth grade; therefore, he assumed she could read and write. The appellant did not tell him she was a special education student, and nothing about her demeanor or the way she talked suggested she was a slow learner. However, at the end of her statement, he learned she could not read or write, so he read her statement back to her. Sergeant Manning did not confront the appellant about the inconsistencies between her written statement and what she had said over the phone because he did not see a need to do so. The appellant used Palmer’s bank card at the Maxi Foods automatic teller machine (ATM). The September 6 video Sergeant Manning obtained showed her also using the card at the Express Stop cash register. The appellant appeared to buy a soda and received cash back for the transaction.

Kimi Johnson testified that she was a corporate security investigator for First Tennessee Bank and that she spoke with Sergeant Manning about this case in September 2011. She said that Myra Terry and Arlena Tippie were listed on the account with Leola Palmer but that the account had only one debit card. Johnson identified for the jury the account’s bank statements for August, September, and October 2011, which showed the following transactions with the account’s debit card: July 26, withdrawal of \$102.50 at 3271 East Shelby Avenue; August 11 at 10:41 a.m., withdrawal of \$102 at the Express Stop on Horn Lake Road; August 23 at 11:28 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; August 23 at 11:29 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; August 30 at 9:31 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; August 30 at 9:32 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; August 30 at 9:33 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; September 6 at 11:40 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; September 6 at 11:42 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; September 6 at 11:43 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; September 6 at 11:44 a.m., withdrawal of \$103 at the Maxi Foods on South Third Street; and September 6 at 11:50 a.m., \$104.85 at the Express Stop on Horn Lake Road. The transactions totaled about \$1,200. For some of the transactions, a PIN was used. The debit card had only one

PIN.

On cross-examination, Johnson acknowledged that in addition to the twelve transactions, authorized “regular bills” were being paid out of the account. She said that any one of the people listed on the account had access to it, and she acknowledged that she had no personal knowledge of whether any of the twelve transactions were fraudulent. Johnson simply provided the account records to members of law enforcement to assist with their investigation.

Arlena Tippie testified that at the time of the appellant’s trial, Tippie was 57 years old, and her mother, Leola Palmer, was 77 years old. In 2009, Tippie hired the appellant to do some cleaning work for her. Later, Tippie hired the appellant to help Palmer in Palmer’s home. The appellant was supposed to make sure that Palmer took her medicine. The appellant also prepared breakfast and lunch for Palmer and cleaned around the house. The appellant received \$150 per week for working four hours per day. The appellant was not to handle any of Palmer’s financial affairs. The appellant told Tippie that she offered to drive Palmer somewhere but that Palmer refused to ride with her.

Tippie testified that Palmer was supposed to pay her own bills but that her telephone was disconnected a couple of times. Palmer received \$918 in Social Security every month by direct deposit and would not let anyone manage her financial affairs. If she needed money, she would ask her children to take her to the bank so she could withdraw money from the ATM. Tippie never took Palmer to ATMs at grocery stores or gas stations because they charged fees for withdrawals, and Palmer only used the ATM at First Tennessee Bank. Palmer would not allow her children to touch her ATM card, and Tippie did not know the card’s PIN. Tippie and her siblings provided groceries for Palmer. Palmer would not shop at Maxi Foods, preferred to shop at larger chain stores such as Walmart and Kroger, and would not shop at convenience stores because the prices were higher than grocery stores. Tippie said that her nephew mowed Palmer’s grass sometimes and that he did not charge Palmer. Two of Palmer’s neighbors also mowed her grass.

Tippie testified that she told the appellant that Palmer had Alzheimer’s disease and dementia. The appellant would tell Tippie about what occurred at the house during the day but never told Tippie that she was taking money out of the bank for Palmer. Tippie said that she did not make any of the withdrawals described by Kimi Johnson and that she did not authorize any of the transactions. To her knowledge, no one gave the appellant permission to make the withdrawals. Toward the end of July 2011, Tippie’s siblings decided they no longer wanted to pay the appellant for her work. Tippie said that Palmer also “fuss[ed]” about the appellant and told Tippie, “I don’t want this girl going through my papers, I don’t want her to do this and I don’t want her to do that.” Therefore, Tippie told the appellant that

her last day working for Palmer would be August 5. Tippie said that the appellant was “hurt” but that Tippie “thought that was the end of it.” Tippie identified photographs made from the September 6 surveillance video at the Express Stop and identified the appellant in the photographs.

On cross-examination, Tippie testified that Palmer had her prescriptions filled at Walgreens and that Palmer’s children took her to Walgreens to pick up the medicine. Tippie was satisfied with the appellant’s work and did not fire her for poor work performance. Instead, Tippie terminated the appellant’s employment due to the cost and because the victim was complaining about the appellant’s being in her home. When the appellant began working for Palmer, Tippie stayed at the home with them. Later, though, Tippie left them alone.

On redirect examination, Tippie testified that the only money Palmer kept at home was “a few dollars like when she needed to ride the bus.” Palmer did not keep large sums of money in the house, and Tippie never saw new items or large amounts of money there. In November 2011, Palmer moved into a nursing home due to her Alzheimer’s.

Myra Terry testified that she was 52 years old and Palmer’s daughter. Terry met the appellant through Terry’s sister, Arlena Tippie. Palmer had Alzheimer’s and dementia, and the appellant was to make sure Palmer took her medicine and was to prepare Palmer’s breakfast and lunch. Terry said that she thought Palmer received about \$1,100 per month in Social Security and that the appellant was not to pay Palmer’s bills, handle Palmer’s money, or buy items for Palmer. Palmer’s family took her where she needed to go, and a young man in Palmer’s neighborhood mowed her grass. Terry’s nephew paid the man every month. Terry and her sisters paid Palmer’s bills and bought her groceries. Terry said that Palmer did not need to go to the bank often because her bills were paid by telephone or mail but that she took Palmer to the bank a couple of times. Terry said she thought the appellant earned \$80 per week.

Terry testified that she and one of her sisters were paying the appellant. Terry had told the appellant that Palmer had Alzheimer’s and dementia, and the appellant was supposed to let Terry or her sisters know if Palmer did not eat or take her medication. Terry said that Palmer did not want the appellant in her home and that the appellant “wasn’t doing what she needed to do.” Therefore, Terry and her sister decided they did not want to keep spending money on the appellant and told the appellant the first week of August 2011 not to come to Palmer’s house anymore.

Terry testified that the first or second week of September 2011, she discovered that Palmer’s telephone had been disconnected. Terry talked with someone at AT&T and learned

that a payment to AT&T “didn’t go through.” Terry said that she telephoned First Tennessee Bank and that “that’s when we saw these unusual [withdrawals] coming out.” Due to the ATM withdrawals, the money for the telephone payment was not in the bank account, and Terry filed a report with the MPD.

Terry testified that she never knew the PIN for Palmer’s debit card, that she never took Palmer to make the withdrawals in question, and that Palmer did not use “foreign” ATMs due to the fees. Terry said that she did not authorize any of the transactions and that Palmer only took \$20 or \$30 out of the bank “on a rare occasion, if she’s going to church or she’s going to a grocery store.” Terry never found money in Palmer’s house. At the conclusion of Terry’s testimony, the State rested its case-in-chief.

The appellant testified that she graduated from Douglas High School but took special education classes and never learned to read or write. She said that she had attention and memory problems but that she had worked all of her life, including thirteen years at Saint Francis and eight years at Wonder Bread. The appellant met Arlena Tippie through the appellant’s son, and the appellant cleaned Tippie’s duplex. Eventually, Tippie hired the appellant to help with Tippie’s mother, Leola Palmer. At first, Palmer did not like the appellant. However, after about a month, Palmer and the appellant developed “a real nice relationship.” The appellant gave Palmer her medicine and made sure she ate meals. The appellant also cleaned Palmer’s kitchen and bathroom. The appellant said she paid for Palmer’s food “out of [the appellant’s] pocket quite a bit” because she did not want to prepare Palmer’s meals all the time.

The appellant testified that she had been working for Palmer two or three months the first time Palmer asked her to go to the “Annie,” meaning the ATM. Palmer told the appellant to withdraw \$100 at the store on Horn Lake Road, which was near Palmer’s house, and pay \$40 to the man who mowed her yard. The appellant said that, subsequently, Palmer asked her to get money “at different times.” Palmer went with the appellant to get the money “like twice.” The appellant said that one time, they went to “the market down on Third.” The appellant made the withdrawal at the Maxi store while Palmer waited in the car. At first, the appellant said that Palmer would ask her to go to a store and withdraw money when the appellant was getting ready to leave Palmer’s house for the day. However, when defense counsel noted that some of the withdrawals occurred early in the morning, the appellant stated that Palmer “kept asking me when I got in.” When the appellant would return to Palmer’s house with the money, Palmer would be waiting for her at the front gate. Palmer would take the money into the house, and the appellant never saw where Palmer put the money.

The appellant acknowledged that video surveillance showed her using Palmer’s debit

card at the Express Stop but testified that Palmer gave her the card's PIN and wrote it down on a "yellow sticky sheet." Palmer wrote down the PIN every time the appellant used the debit card. The appellant acknowledged that she would "have to run the card several times" in order to get the amount of money Palmer wanted. The appellant said that she did not steal money from Palmer and that whenever she got money for Palmer, she gave the money and the receipt to Palmer. The appellant also returned the debit card to her. The last time the appellant withdrew money for Palmer was Labor Day in 2011. The appellant checked Palmer's balance at the time of the withdrawal, and Palmer had \$1,000 or \$1,100 in the account.

The appellant testified that she asked Palmer if Palmer's children knew Palmer was taking money out of the bank. The appellant said Palmer stated that "she [could] do what she wanted to do with her so and so money" and that "her kids don't tell her what to do with her money." The appellant told Tippie that Palmer allowed the appellant do things that Palmer did not allow her own children to do. However, the appellant never told Palmer's daughters that Palmer was taking money out of the bank.

The appellant testified that at some point, she received a telephone call from the police, telling her that they wanted to talk with her. The appellant did not talk with Sergeant Manning until she arrived at the police department, but Sergeant Manning spoke with the appellant's sister over the telephone. The appellant said that she worked for Palmer for the entire month of August 2011 and that her last day of work was Labor Day. She said that Palmer was "sharp," that Palmer grew to like her, and that she stayed with Palmer more hours than she was supposed to because they had a good time together. Palmer never said she did not want the appellant to be there.

On cross-examination, the appellant acknowledged that she signed her written statement and that it was correct. She said that no one told her that Palmer had Alzheimer's and that she would have never gone to Palmer's house if she had known Palmer had the disease. She said that she received \$150 per week for her work and that no one ever told her to stop working for Palmer. Instead, Tippie told the appellant that Tippie's sister was going to stop paying the appellant. The appellant said she made six or seven debit card withdrawals for Palmer. She said that she did not make a withdrawal with Palmer's bank card on July 26 but that she made the withdrawal at the Express Stop on August 11. She also made the two withdrawals at the Maxi Foods on August 23. However, she did not make the three withdrawals from the Maxi Foods on August 30, stating, "Never. Not that many times a day, no." She said that she "might have" made the 11:40 a.m. withdrawal at the Maxi Foods and the 11:50 a.m. withdrawal at the Horn Lake Express Stop on September 6 but that she did not make the 11:43 or 11:44 a.m. withdrawals. Regarding the transactions on September 6, Palmer told the appellant that she wanted \$500 out of the Annie, a loaf of bread, and a Coke.

The appellant told Palmer that she could not withdraw that much money out of the ATM, and Palmer told her to “go to Maxi’s you can get two at a time. You get two and come back at the Horn Lake.” The appellant remembered withdrawing \$400 at one store and \$100 at another store.

The appellant testified that nothing was wrong between her and Palmer. However, she acknowledged that when she met with Sergeant Manning at the police department and he asked if she knew why she was there, she answered, “Because of Leola Palmer.” She said she gave him that answer because she knew Palmer’s children were lying about her. She said that she did not tell Sergeant Manning that Palmer “has Alzheimer’s and forgets everything” and that “[h]e had to put that in there.” The appellant said Sergeant Manning made fun of her and told everyone present that she could not read. She said that Palmer allowed her to use the debit card, that she did not take “one penny” from Palmer, and that Palmer “didn’t give [her] a penny.” At the conclusion of the appellant’s testimony, the defense rested its case.

Sergeant Cynthia Jones of the MPD testified on rebuttal for the State that after the appellant gave her written statement to Sergeant Manning, Sergeant Manning learned the appellant could not read. Sergeant Manning called for Sergeant Jones because he needed someone to read the appellant’s statement back to her. Sergeant Jones read the statement to the appellant, and the appellant signed it. Sergeant Jones said that the appellant seemed to understand what was going on and that Sergeant Manning did not make fun of the appellant. On cross-examination, Sergeant Jones acknowledged that she was not present when the appellant gave the written statement to Sergeant Manning.

At the conclusion of Sergeant Jones’s rebuttal testimony, the jury convicted the appellant as charged of theft of property valued more than more than \$1,000 but less than \$10,000 and identity theft, Class D felonies. After a sentencing hearing, the trial court sentenced her to concurrent sentences of four years for each conviction to be served as six months in the workhouse and the remainder on supervised probation.

II. Analysis

The appellant contends that the evidence is insufficient to support the convictions because the State failed to prove that she obtained the money from the bank account without Palmer’s effective consent or that she intended to deprive Palmer of the money. She notes that “the Record is silent regarding even minimal reliable evidence that Ms. Palmer suffered from Alzheimer’s or dementia” and that even if Palmer suffered from those conditions, “there was no indication as to how she was affected or how far advanced her condition might have been.” The State argues that the evidence is sufficient. We agree with the State.

When an appellant challenges the sufficiency of the convicting evidence, the standard for review by an appellate court is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319 (1979); Tenn. R. App. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions concerning the credibility of witnesses and the weight and value to be afforded the evidence, as well as all factual issues raised by the evidence, are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). This court will not reweigh or reevaluate the evidence, nor will this court substitute its inferences drawn from the circumstantial evidence for those inferences drawn by the jury. Id. Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at trial and replaces it on appeal with one of guilt, a convicted defendant has the burden of demonstrating to this court that the evidence is insufficient. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A guilty verdict can be based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Hall, 976 S.W.2d 121, 140 (Tenn. 1998). “The jury decides the weight to be given to circumstantial evidence, and ‘[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.’” State v. Rice, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting State v. Marable, 203 Tenn. 440, 313 S.W.2d 451, 457 (Tenn. 1958)). “The standard of review ‘is the same whether the conviction is based upon direct or circumstantial evidence.’” State v. Dorantes, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting State v. Hanson, 279 S.W.3d 265, 275 (Tenn. 2009)). Moreover, “[t]he standard by which the trial court determines a motion for judgment of acquittal at the end of all the proof is, in essence, the same standard which applies on appeal in determining the sufficiency of the evidence after a conviction.” State v. Thompson, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000).

“A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner’s effective consent.” Tenn. Code Ann. § 39-14-103. “[A] person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.” Tenn. Code Ann. 39-11-302(a). The jury may derive a person’s intent from both direct and circumstantial evidence. State v. Washington, 658 S.W.2d 144, 146 (Tenn. Crim. App. 1983).

As charged in the indictment, identity theft occurs when a person knowingly uses the personal identifying information of another “[w]ith the intent to commit any unlawful act

including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of such other person . . . and . . . [w]ithout the lawful authority to obtain, possess, buy or use that identifying information.” Tenn Code Ann. § 39-14-150(b)(1)(A), (B)(ii). Relevant to this case, “personal identifying information” is defined as

any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including . . . [u]nique electronic identification number, address, routing code or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

Tenn Code Ann. § 39-14-150(e)(3).

The appellant does not contest that she withdrew the money from Palmer’s account but argues that Palmer authorized her to do so. However, taken in the light most favorable to the State, the evidence shows that Arlena Tippie hired the appellant to work in Palmer’s home and that the appellant knew Palmer suffered from Alzheimer’s and dementia. On July 26, 2006, the appellant began using Palmer’s debit card to make withdrawals, and she made twelve withdrawals totaling over \$1,200. Sometimes the appellant made multiple withdrawals over a span of just a few minutes. In September 2011, Sergeant Manning spoke with the appellant over the telephone, and the appellant told him that she did not use Palmer’s bank card or take Palmer out of the house. However, when the appellant gave her written statement to Sergeant Manning two days later, she told him that Palmer gave her permission to use the card at grocery and convenience stores and that she took Palmer out twice. The appellant also told Sergeant Manning that Palmer “has Alzheimer’s and forgets everything” but claimed at trial that she did not know about Palmer’s condition. Arlena Tippie and Myra Terry testified that the appellant’s employment ended the first week of August. Nevertheless, the appellant continued to make withdrawals from Palmer’s account until September 6. In the instant case, the jury clearly resolved issues of credibility in favor of the State’s witnesses and against the appellant. We may not now reconsider the jury’s credibility assessment. See State v. Carruthers, 35 S.W.3d 516, 558 (Tenn. 2000). Therefore, we conclude that the evidence is sufficient to sustain the appellant’s convictions for theft of property and identity theft.

III. Conclusion

Based upon the oral arguments, the record, and the parties’ briefs, we affirm the

judgments of the trial court. However, the case is remanded to the trial court for a correction of the judgment for identity theft to reflect that the convicted offense is a Class E felony.

NORMA McGEE OGLE, JUDGE