

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 24, 2007 Session

**STATE OF TENNESSEE v. BARBARA WATSON**

**Appeal from the Criminal Court for Morgan County  
No. 9187 Eugene Eblen, Judge**

**No. E2006-02275-CCA-R3-CD - Filed August 30, 2007**

The defendant, Barbara Watson, appeals as of right her conviction for theft of property valued at over one thousand dollars, a Class D felony, resulting from her bench trial in the Morgan County Criminal Court. On appeal, she asserts that there was insufficient proof of the value of property stolen and, absent such proof, the conviction should be for theft of property valued under five hundred dollars, a misdemeanor. She also argues that the trial court's restitution order of \$3,926.11 is not supported by the evidence. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J. C. MCLIN, JJ., joined.

Kevin C. Angel, Clinton, Tennessee, attorney for appellant, Barbara Watson.

Robert E. Cooper, Jr., Attorney General & Reporter; Cameron L. Hyder, Assistant Attorney General; Russell Johnson, District Attorney General; and Frank Harvey, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

**OPINION**

The defendant was employed as the librarian for the Coalfield Library. After a random audit revealed discrepancies in the accounts of the library, an investigation by the Tennessee Bureau of Investigation led to an indictment charging her with theft of property valued at over one thousand dollars but less than ten thousand dollars occurring from September 20, 2001 through March 4, 2004. On June 26, 2006, the defendant entered an open guilty plea to theft with the grade of the theft offense to be determined by the trial court at sentencing.

The evidence presented by the state at the sentencing hearing consisted of the testimony of Lester Tackett, an auditor with the State of Tennessee, and Brad Nealon, a TBI special agent

assigned to investigate the misappropriation of funds from the library. Tackett testified that the mishandling of funds came to his attention through a routine annual audit of the Morgan County government. His audit revealed that checks totaling \$5700 were written for cash on the library account without sufficient documentation of the purpose of the expenditures. There were also disbursements of approximately \$7000 that were insufficiently documented. The defendant was the only signatory on the checking account. Tackett testified that “it was almost impossible to trace down the documentation that [the defendant] did provide for specific checks.” Tackett stated on cross-examination that his audit revealed discrepancies totaling approximately \$12,000, but that the defendant had attempted to provide documentation for \$4600 of expenditures.

Special Agent Nealon testified that he took a written statement from the defendant during the course of his investigation. The defendant indicated that she was told to open a checking account but was not trained in how to manage the account. In her statement, she admitted to using the checking account for personal purchases occasionally, but claimed that she did that only to reimburse herself for her own out-of-pocket expenses related to the operation of the library. When asked to explain why the county was only claiming approximately \$4000 in restitution when the defendant was indicted for approximately \$6400 in missing funds, Special Agent Nealon explained that the county had recovered some of the loss through an insurance policy. Special Agent Nealon also admitted that the receipts provided by the defendant relating to personal expenditures on the library account totaled only \$700.

The defendant testified that she opened an account for the library after receiving a computer grant from the Gates Foundation. She was never trained or instructed in the management of the account. As other grant or donated money arrived, the defendant would deposit the money into the account and use it for the general operation of the library. For the five years prior to the opening of the account, the defendant testified that she spent her own money to buy supplies for the library. She stated that she often purchased food and craft activities for the local children with library funds with the knowledge of the county government and library board. She said that everyone agreed that such purchases were appropriate. She admitted that there were some funds for personal use that she had not reimbursed, but that they totaled only \$400.

Based upon this evidence, the trial court determined that there was sufficient evidence to convict the defendant of theft of property valued at over \$1000 and sentenced the defendant to two years as a Range I, standard offender to be served on probation. The trial court also ordered the payment of \$3,926.11 in restitution, as requested by the county.

### ANALYSIS

The defendant contends that the evidence is insufficient to support her conviction for theft of property valued at over \$1000. She claims that there is nonspecific evidence as to the amount of misused funds. Therefore, she should only be convicted of misdemeanor theft. The state argues that there is sufficient evidence of the amount of money misappropriated from the library account to support the trial court’s finding of theft valued at over \$1000.

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal 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). The appellate court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Accordingly, in a bench trial, the trial judge, as the trier of fact, must resolve all questions concerning the credibility of witnesses and the weight and value to be given the evidence, as well as all factual issues raised by the evidence. State v. Ball, 973 S.W.2d 288, 292 (Tenn. Crim. App. 1998). The trial judge's verdict carries the same weight as a jury verdict. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Bland, 958 S.W.2d at 659; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

A person commits theft who, acting with the intent to deprive the owner of property, knowingly obtains or exercises control over property without the owner's effective consent. Tenn. Code Ann. § 39-14-103. As stated previously, the record reflects that the defendant pled guilty to these primary elements of theft and left the determination of the grade of theft under Tennessee Code Annotated section 39-14-105 to the determination of the trial court at the subsequent sentencing hearing. This court acknowledges that the testimony regarding the amount of money stolen varied. However, the trial court accredited the testimony of Tackett and Special Agent Nealon in finding the amount of money stolen exceeded \$1000 but was less than \$10,000. We conclude that there is sufficient evidence to show that the amount of money stolen was in excess of \$1000 but less than \$10,000, thereby establishing the grade of theft as a Class D felony. Similarly, the trial court had sufficient proof upon which to order restitution in the amount of \$3,926.11 based upon the amount requested in the victim impact statement provided to the trial court at sentencing. Accordingly, the judgment of the trial court is affirmed.

### CONCLUSION

Based upon the foregoing and after a full consideration of the record, arguments of counsel and applicable law, this court concludes that there is sufficient evidence of the amount of money stolen to support the grading of the theft offense as a Class D felony and to support the imposition of restitution in the amount of \$3,926.11. Therefore, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE