

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002224-MR

DOLLY MAJORS

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 05-CR-00098

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON, JUDGE; EMBERTON AND PAISLEY, SENIOR JUDGES.¹

PAISLEY, SENIOR JUDGE: Dolly R. Majors appeals from a judgment of conviction and final sentence entered by the Muhlenberg Circuit Court on October 25, 2005. On October 6, 2005, a jury convicted Dolly of theft by unlawful taking over \$300.00, a Class D felony, and the trial court sentenced Dolly to serve two years in prison. On appeal, Dolly argues that the evidence presented by the Commonwealth was not sufficient to support her conviction. Finding that the evidence was sufficient, we affirm.

¹ Senior Judges Thomas D. Emberton and Lewis G. Paisley sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

To understand this present case, we must briefly set forth some of the underlying facts. In September of 2003, Dolly married Freddie Majors and moved into the home he had built in Greenville, Muhlenberg County, Kentucky. Both Dolly and Freddie had been previously married. Dolly had at least one adult daughter, Jamie Thompson, from a previous marriage, and Freddie had at least one adult daughter, Megan Price, from a previous marriage. It is important to note that Megan was paralyzed from the chest down as a result of a 1993 car accident. After the accident, litigation ensued and Megan received a large cash settlement in 1996. Since Megan was a minor at the time, Freddie placed most of the settlement money in trust for Megan's benefit; however, he claimed that he kept and managed approximately \$28,000.00 of Megan's settlement money in cash at his home to cover any emergency cost, such as medical expenses, that might occur due to Megan's disability. It is this emergency cache of money that is at the center of the present case. According to the record, Freddie kept what he referred to as "Megan's money" in a small fireproof box which he stored in a larger cedar chest. The cedar chest was approximately 48 inches long, 24 inches tall and 20 inches deep and weighed approximately 120 to 130 pounds. Freddie also stored his business records and Megan's medical records inside the cedar chest. On May 11, 2005, Freddie claimed that the cedar chest contained approximately \$19,460.00 which belonged to Megan. On that day, the chest, along with its contents, went missing. On June 10, 2005, a Muhlenberg County grand jury indicted Dolly with theft by unlawful taking over \$300.00 for allegedly stealing the chest which contained Megan's money. The grand jury indicted

Dolly's daughter, Jamie, with complicity to commit theft by unlawful taking over \$300.00 as well. On October 6, 2005, Dolly and Jamie proceeded to trial.

At the trial, Freddie testified on behalf of the Commonwealth. According to his testimony, he and Dolly had engaged in a minor argument on the night of May 10th. Early the next morning, May 11th, Freddie asked Dolly if she wished to go to work with him. At the time, Freddie worked as a contractor building housing, and, if Dolly had a day off from her job, then she would often accompany Freddie to work. On the morning of May 11th, Dolly told Freddie that she was sick and that she would join him in a couple of hours. Freddie went to work and phoned Dolly later, but she begged off once more. Freddie called again and was unable to reach Dolly. After several more attempted phone calls, Freddie went home at approximately 10:00 a.m. According to Freddie's testimony, when he arrived home he realized that the 2002 Mustang which Dolly ordinarily drove was missing. In the house, Freddie found that many of Dolly's items, such as her clothes, were missing as well. Lastly, he found that the cedar chest was missing. While searching the house, Freddie discovered scratch marks on the floor that seemed to indicate that someone had dragged the cedar chest from the house. Freddie suspected that Dolly had left him and had taken the chest. After discovering the alleged theft, Freddie phoned his two employees and then contacted the police. Freddie's employees went to Freddie's house, arriving before the police, and Freddie sent one employee to summons a neighbor, Glendel Bethel, so Freddie could talk to Mr. Bethel. Around 10:30 a.m., Deputy Darrell Rector of the Muhlenberg County Sheriff's Department arrived to

investigate the alleged theft. According to Freddie, he showed the scratch marks to the deputy and informed the deputy about his suspicions. Freddie also told the deputy that the chest contained approximately \$24,000.00, although, at that time, he did not mention that any of the money belonged to Megan. Freddie testified that he later told the county attorney that the chest contained \$19,460.00 in cash which belonged to Megan.

According to Freddie, Dolly was aware that he kept approximately \$28,000.00 of Megan's money in the cedar chest. Although Freddie suspected Dolly, he admitted that he did not see Dolly take the chest nor did she tell him that she did.

During the Commonwealth's case-in-chief, the prosecutor presented several witnesses, all Freddie's relatives, who testified that Dolly was aware that the chest contained a substantial sum of Megan's money. The Commonwealth also presented Deputy Rector as a witness. According to the deputy's brief testimony, he went to Freddie's house to investigate the theft. He testified that he observed the scratch marks, and he admitted that he did not search for fingerprints claiming it was unnecessary since there was no sign of forced entry. Deputy Rector relayed that he had spoken to Glendel Bethel and learned that Jamie Thompson may have been involved. Also, according to the deputy, he obtained Dolly's cell phone number from Freddie and left a message for her to call him. The deputy testified that, on the evening of May 11th, Dolly called him, and he informed her of Freddie's suspicions. According to the deputy, Dolly began to cry and admitted that she took the Mustang claiming that it had been a gift from Freddie. Furthermore, Dolly allegedly stated that Freddie had told her that if she left him, he

would make sure she left with nothing. In addition, Dolly never mentioned the cedar chest even though the deputy testified that he had told her that Freddie suspected that she had taken it. Furthermore, Deputy Rector admitted that he did not attempt to search Dolly's new residence nor did he attempt to search Jamie's residence.

Probably the most important witness presented by the Commonwealth was Glendel Bethel. Mr. Bethel testified that, on the morning of May 11th at approximately 7:00 or 8:00 a.m., he observed a black Dodge pickup truck pull into Freddie's driveway. According to Mr. Bethel, he recognized the truck as belonging to Jamie Thompson's boyfriend. Mr. Bethel admitted that he did not see the driver of the truck nor did he see anyone move anything out of Freddie's home. In addition, he testified that the truck stayed at Freddie's house for approximately an hour, although he admitted on cross-examination that he had previously told Deputy Rector that the truck only stayed there for thirty minutes. Mr. Bethel testified that he observed the truck leave and that he saw two people in it; furthermore, he observed the 2002 Mustang following the truck as it left. Upon cross-examination, Mr. Bethel testified that he did not remember seeing anything in the bed of the truck, and he stated that, if there were anything in the truck's bed, then he was unable to see it. Furthermore, Mr. Bethel testified that, after the truck and Mustang had left, he did not observe anyone else at Freddie's home until Freddie arrived there later that morning.

After the close of the Commonwealth's case-in-chief, Dolly testified on her own behalf. According to Dolly, on May 9th, she accused Freddie of having an affair and

they argued vociferously that day and the next. She stated that the argument turned violent when Freddie threw a phone and grabbed her keys from her hand telling her that she would leave with nothing. According to Dolly's testimony, on the morning of May 11th, Freddie asked her if she wanted to go to work with him, and she told him that she might join him in a couple of hours. She then called Jamie and invited Jamie and Jamie's four year old son to have breakfast with her. Later, after Freddie had left, Dolly called Jamie again and told her that she had decided to leave Freddie and asked for Jamie's help. Although she had requested Jamie's help, Dolly testified that she had packed and moved most of her belongings herself since Jamie was pregnant with twins at the time and could not lift heavy objects. Dolly testified that, around 7:00 a.m., Jamie and her son arrived in her boyfriend's truck. They quickly placed Dolly's things in the truck and in the Mustang and left. According to Dolly, Jamie and her son were in the truck while Dolly was driving the Mustang. In addition, Dolly testified that the money stored in the cedar chest belonged to Freddie not Megan, and if the money did belong to Megan, then she had no knowledge of that fact. Dolly insisted that she and Jamie did not take the chest and insisted that Jamie was physically incapable of taking the chest since it was so heavy and she was pregnant at the time. Dolly opined that Freddie had taken the chest himself or had his two employees take it.

After the Commonwealth had closed its case, Dolly moved the trial court for a directed verdict, but the court denied her motion. Subsequently, after the close of all the evidence, Dolly renewed her motion, but the trial court denied it once again and

sent the case to the jury. After deliberating, the jury found Jamie guilty of facilitation to commit theft by unlawful taking over \$300.00, and, as previously stated, it found Dolly guilty of theft by unlawful taking over \$300.00. At a subsequent sentencing hearing, the trial court sentenced Dolly to serve two years in prison. Believing that the evidence was insufficient, Dolly now seeks relief from her conviction.

In her appellate brief, Dolly points out that no one saw her take the chest and that Deputy Rector searched neither her residence nor Jamie's residence. In addition, Dolly avers that the only witness who testified that she took the chest was Freddie, her estranged husband, and she insists that he was simply not a credible witness.

Furthermore, Dolly avers that the chest weighed between 120 and 130 pounds; that she is only 5 feet 2 inches tall and weighs only 117 pounds and that her daughter, Jamie, was pregnant at the time of the theft. Based on these facts and citing *Weinel v.*

Commonwealth, 302 Ky. 742, 196 S.W.2d 375 (Ky. 1946), Dolly contends that it was simply physically impossible for them to have taken the chest. Thus, Dolly insists that the trial court erred when it denied her motions for directed verdict since the evidence was not sufficient to support her conviction.

Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991) is one of the leading cases addressing directed verdicts in criminal cases. According to *Benham*, when a trial court considers a motion for directed verdict, it must draw from the evidence all fair and reasonable inferences in favor of the Commonwealth. *Id.* at 187. Furthermore, a trial court is prohibited from granting a directed verdict if the evidence is sufficient to

persuade a reasonable juror to believe that the defendant is guilty beyond a reasonable doubt. *Id.* In addition, the trial court must accept the Commonwealth's evidence as true; however, it must reserve questions of credibility and weight for the jury. *Id.* When we review the trial court's decision, we must determine, given the totality of the evidence, whether it would be clearly unreasonable for a jury to find guilt. *Id.*

The evidence adduced at trial clearly demonstrates that the chest was present when Freddie left his house on the morning of May 11th and was not present when he returned home at approximately 10:00 a.m. Moreover, Glendel Bethel's testimony established that, after Freddie left, Dolly and Jamie were the only persons present at Freddie's home during the time frame established by the evidence that had the opportunity to take the chest. While this evidence may only be circumstantial, it constituted sufficient evidence from which a reasonable juror could conclude that Dolly was guilty. Thus, given the totality of the evidence, the trial court acted properly when it denied Dolly's motions for directed verdict and allowed the case to go to the jury.

The judgment of conviction is affirmed.

ALL CONCUR.

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