

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP686-CR

Cir. Ct. No. 2010CF196

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SANDEE SUE TURNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
ROBERT P. VANDEHEY, Judge. *Affirmed.*

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Sandee Sue Turner appeals a judgment of conviction. The issue is whether the evidence was sufficient to prove one count of theft by fraud. We conclude the evidence was sufficient, and therefore we affirm.

¶2 In reviewing sufficiency of the evidence, we affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

¶3 The count at issue on appeal is count three of the information. That count alleged that Turner committed theft by false representation, in violation of WIS. STAT. § 943.20(1)(d) (2011-12).¹

¶4 The basic evidence supporting the State's case as to that count can be briefly stated. Turner was a home care aide to a retired priest and the priest's retired housekeeper.² The priest asked Turner to help with his finances, and she agreed. In December 2009 the priest and Turner opened a joint checking account. Either account holder could write checks on the account without the signature of the other.

¶5 Most of the deposits into the joint account corresponded with withdrawals made from other accounts held by the priest or the housekeeper. In other words, the joint account was funded by money that initially belonged to the priest or the housekeeper. The withdrawals from the housekeeper accounts were made by the priest, who had power of attorney. Turner made withdrawals from

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² In the interest of confidentiality, we will refer to them with these descriptions, rather than by name.

the joint account she held with the priest, which she claimed was a gift from the priest, and used the money for purchases that arguably benefitted only Turner.

¶6 Count three alleged a theft on or about January 16, 2010.³ The instruction for count three contained seven elements. Except for the first element, which is the focus of this appeal, we paraphrase the elements. The jury was required to find that: (1) “Father [name of priest] was the owner of property;” (2) the defendant made a false representation to the owner; (3) the defendant knew the representation was false; (4) the defendant made the representation with intent to deceive and defraud the owner; (5) the defendant obtained title to the property of the owner by the false representation; (6) the owner was deceived by the representation; and (7) the owner was defrauded by that representation.

¶7 Turner’s insufficiency argument is based on the premise that any theft by Turner occurred when the money was deposited into her joint account with the priest, not when she withdrew it from that account. More specifically, Turner argues that the evidence was insufficient because the only reasonable interpretation of the evidence was that all the money deposited into the joint account in January 2010 was actually the housekeeper’s, transferred by the priest using a power of attorney, and thus was not the priest’s money. Therefore, Turner argues, the evidence was insufficient to establish the first element, namely, that “Father [name of priest] was the owner of property.”

¶8 The State’s response begins by conceding that Turner obtained title to property of the housekeeper when the housekeeper’s money was deposited into

³ The date for the offense was amended from January 25, 2010, by the State at a pretrial hearing.

the joint account. From there, the State argues that the evidence is nonetheless sufficient because Turner obtained title to the property of *the priest* when Turner withdrew funds from the account she held with the priest, and then used them for her own purposes.

¶9 The State relies in part on a definition in the theft statute: “Property of another’ includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.” *See* WIS. STAT. § 943.20(2)(c). The State argues that this definition shows that a person can commit theft from a co-owner.

¶10 In reply, Turner asserts that her withdrawal of money cannot form the basis for count three because she did not take title to the money at that point. Rather, she *already had* title to the money, starting from it was deposited into the joint account of which she was a co-owner.

¶11 Turner may well be correct that a completed crime of theft occurred when the money was deposited into her joint account. She correctly points out that, under the instructions given, the moment at which she takes title to the money is significant. And, it is true that normally a person is considered to have title to money in a bank account they own.

¶12 However, that does not necessarily mean that a *second* crime of theft by Turner did not occur after that, when she withdrew the money. If the housekeeper’s money had gone into an account that was *solely* owned by Turner, a charge based on withdrawal of the money might be infirm, because it would essentially charge Turner with stealing from herself. However, in this case the housekeeper’s money was deposited into an account that Turner shared with the priest.

¶13 Turner does not dispute the State's premise that one co-owner of property can commit a theft from another co-owner of the property. If theft from a co-owner is possible, it is the obtaining of sole title, in a way that excludes the co-owner, that lies at the heart of that crime. Therefore, even if it is true that a theft *from the housekeeper* occurred when the money was deposited, Turner has not explained why it is not possible that a second theft occurred *from the priest* when Turner withdrew the money from their joint account. Even if Turner already had shared title to the money before she withdrew it, the withdrawal was still an acquisition of title because it gave her *sole* title, to the exclusion of the co-owner.

¶14 Accordingly, we conclude that the evidence was sufficient on the first element of count three. The evidence was sufficient to find that the priest was owner of the money that Turner took title to when she withdrew it from the joint account.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

