NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 0703

STATE OF LOUISIANA

VERSUS

PEGGY O'NEAL BALLARD

Judgment Rendered: November 3, 2006

Appealed from the
Twenty-first Judicial District Court
in and for the Parish of Livingston, State of Louisiana

Trial Court Number 19005

Honorable Ernest G. Drake, Jr., Judge Presiding

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BEFORE: CARTER, C. J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

The defendant, Peggy O'Neal Ballard, was charged by bill of information with theft (value over $500.00), in violation of LSA-R.S. 14:67. She pled not guilty. Following a trial, a six-person jury found the defendant guilty as charged. The defendant moved for post verdict judgment of acquittal. The trial court denied the motion. The defendant was sentenced to eight years imprisonment at hard labor. The sentence was suspended, and the defendant was placed on active supervised probation for five years.[1] The defendant now appeals, asserting that the evidence presented at trial was insufficient to support the conviction.

Finding no merit in the assigned error, we affirm the defendant's conviction and sentence.

FACTS

On August 20, 2004, Lettie Bowman contacted the Livingston Parish Sheriff's Office and reported that her friend, the defendant, had stolen approximately $4,810.00 in cash from her. The defendant was arrested and charged with theft.

At trial, Lettie testified that, on August 18, 2004, her oldest son, Jessie Cantrelle, was arrested on drug charges in Tangipahoa Parish. The next day, August 19, 2004, Jessie's girlfriend returned to Lettie approximately $4,810.00 in cash. Lettie explained that the money was given as repayment of a $5,200.00 loan she previously made to her son. Later that same day, in a telephone conversation, Lettie mentioned receipt of the money to the defendant. The defendant then advised Lettie that she had reason to believe that the money given to Lettie was

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[1]In addition to all general conditions of probation, the following special conditions of probation were imposed: (1) be evaluated and if necessary participate in a court-approved substance abuse clinic; (2) refrain from criminal conduct; (3) report any changes in address or employment to her probation officer; (4) pay $60.00 per month to Department of Corrections; (5) make restitution to Lettie Bowman in the amount of $4,810.00; (6) pay court costs; and (7) submit to random drug testing at the defendant's expense.

"marked money" used in the investigation of Jessie on the drug charges. The defendant warned Lettie that she could be arrested for possessing the marked money. The defendant told Lettie that she would "check" with her ex-husband, whom she claimed worked with the Denham Springs Police Department, to confirm the "marked" nature of the funds.

The following morning, the defendant telephoned Lettie and advised that her ex-husband had confirmed that the money Lettie received was "marked." The defendant also told Lettie that she had spoken with Agent Tommy Schiro of the "DEA"[2] regarding the money in question. The defendant told Lettie that Agent Schiro instructed her to bring the money in so that he could "run it" to determine if it was, in fact, "marked." If the money turned out to be "marked," the defendant explained, it would be exchanged for "unmarked" money and returned to Lettie. If the money was not "marked," it would immediately be returned to Lettie. Either way, Lettie would get her money back.

Because she knew that one of her sons had been arrested a day or so earlier for illegal drug activity, Lettie believed there was a possibility that the money could, in fact, be "marked," and that the defendant, her friend, was trying to help her out. Lettie testified she and another son, Timothy, immediately drove to the defendant's home in Holden, Louisiana and turned over the $4,810.00 in cash. The defendant told Lettie she would be in touch with her later that night or the next day.

Later that night, Lettie received a phone call from the defendant indicating Agent Schiro had determined that only $500.00 of the money was not marked. The defendant then told Lettie she could not get back the marked money and that only the $500.00 in unmarked funds would be returned. When Lettie demanded to

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[2]The term "DEA" apparently refers to the U.S. Drug Enforcement Administration. However, this was never explicitly stated on the record.

speak directly to Agent Schiro, the defendant assured Lettie that she would set up an appointment for Lettie to meet with Schiro. Later, however, the defendant told Lettie that Schiro did not wish to meet with her and that none of the money would be returned. The defendant claimed the DEA was keeping all of the money because it was all marked.

Finding the defendant's story strange, Lettie sought the assistance of Allen Arceneaux, a detective in Hammond, Louisiana.[3] Upon confirming that there was never any money involved in the case of her son who had been arrested, i.e., Jessie Cantrelle's case, Arceneaux instructed Lettie to return to Livingston Parish, the parish where the money was exchanged, and to make a theft report against the defendant. Lettie did as instructed. The defendant never returned the money.

Lettie's son, Timothy Bowman, also testified at the trial. Timothy's testimony corroborated the version of the events provided by his mother. Timothy testified that the defendant told both of them that she "had some rank with the DA"[4] and that she knew the money Lettie received from Jessie's girlfriend was "marked." The defendant told them that Lettie could be arrested for "having marked money." According to Timothy, the defendant also told him that she was in contact with Tommy Schiro, who was going to "run" the money for them. Timothy testified that he went with his mother to the defendant's residence to bring her the money. He personally observed his mother hand the money over to the defendant, but none of the money was ever returned.

Timothy testified that both he and his mother believed the defendant had

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[3]During her trial testimony, Lettie referred to Arceneaux as a "detective in Hammond, Louisiana." However, she did not indicate which law enforcement agency employed Detective Arceneaux.

[4]It is unclear from the record whether Timothy believed the defendant worked with the "DA" (District Attorney) or the "DEA" (Drug Enforcement Administration). In his testimony, Timothy refers to both agencies.

connections with law enforcement and that was trying to help them like she had helped them in the past. He explained that the defendant had recently assisted him by falsifying community service documentation to submit to the court in fulfillment of a sentence he had received on an unrelated charge. Timothy explained the defendant had signed paperwork stating that Timothy had completed 100 community service hours when he "never did a lick of it whatsoever."

At trial, the defense called Deputy Glascock of the Livingston Parish Sheriff's Office.[5] Deputy Glascock testified that he did not recall speaking to the defendant personally, but that based upon his limited investigation, he was not impressed "that it was a criminal matter," but instead was a civil matter. He explained that he felt there was insufficient proof or corroborating evidence of what was going on, other than "two parties saying one owes money and one saying they didn't." The defense did not present any additional evidence.

ASSIGNMENT OF ERROR

In a single assignment of error, the defendant contends the trial court erred in denying her motion for post verdict judgment of acquittal. Specifically, the defendant asserts the evidence presented by the State at trial was insufficient to support the theft conviction. The defendant claims the State failed to present any evidence to substantiate Lettie's version of the events. She avers that without supporting evidence, this is nothing more than a case of "he said/she said," which, the defendant argues, is insufficient to support the conviction.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the

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[5]The record before us reflects that a portion of Deputy Glascock's testimony was not transcribed. The transcript states, "Mr. Glascock's testimony was started without the court reporter being present." We note that on appeal, the defendant has not complained that the missing portion of the transcript violates her constitutional right to judicial review based upon a complete record. Instead, she cites the transcribed portion of Deputy Glascock's testimony as support for her claim that the evidence was insufficient.

prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). See also LSA-C.Cr.P. art. 821(B); State v. Mussall, 523 So. 2d 1305, 1308-09 (La. 1988).

In this case, the defendant was convicted of theft of property having a value of over $500.00 dollars. Louisiana Revised Statute 14:67 provides, in pertinent part, as follows:

> A. Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.

An appellate court is constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases; that determination rests solely on the sound discretion of the trier of fact. As the trier of fact, the jury was free to accept, or reject, in whole or in part, the testimony of any witness. State v. Young, 99-1264, p. 10 (La. App. 1st Cir. 3/31/00), 764 So. 2d 998, 1006; State v. Richardson, 459 So. 2d 31, 38 (La. App. 1st Cir. 1984). In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a requisite factual finding. State v. Higgins, 2003-1980, p. 6 (La. 4/1/05), 898 So. 2d 1219, 1226, cert. denied, __ U.S. __, 126 S. Ct. 182, 163 L. Ed. 2d 187 (2005); State v. Davis, 2000-2685, p. 6 (La. App. 1st Cir. 11/9/01), 818 So. 2d 76, 80.

The guilty verdict in this case indicates that the jury, after hearing the testimony and evaluating the credibility of the witnesses, accepted the testimony of the State's witnesses as true. The jury believed that the defendant, by means of fraud, took the money that belonged to Lettie Bowman and failed to return it. As

previously noted, the testimony of the victim alone, if believed, is sufficient to establish the elements of the offense. See State v. Creel, 540 So. 2d 511, 514 (La. App. 1st Cir.) writ denied, 546 So. 2d 169 (La. 1989). Thus, contrary to the defendant's assertions, even without any supporting physical evidence, the testimonial evidence, which was accepted by the jury as true, provided sufficient proof of the elements of the crime. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. State v. Polkey, 529 So. 2d 474, 476 (La. App. 1st Cir. 1988), writ denied, 536 So. 2d 1233 (La. 1989).

Considering the foregoing, we are convinced that the evidence presented at the trial of this matter, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact beyond a reasonable doubt that the defendant committed the offense of theft of property having a value of over $500.00. Accordingly, the trial court correctly denied the defendant's motion for post verdict judgment of acquittal. This assignment lacks merit.

CONVICTION AND SENTENCE AFFIRMED.