

90756-1

FILED
Aug 27, 2014
Court of Appeals
Division I
State of Washington

Petition for Discretionary Review

Court of Appeal Cause No.
69952-1-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington Respondent

v.

Samantha Jean Pierce, Appellant

PETITION FOR DISCRETIONARY REVIEW

Samantha Jean Pierce
2033 NE 24th Street
Renton, Washington 98056
425.235.9188
Nielsen, Broman & Koch PLLC
Eric Broman
Attorney of Law
1908 E Madison Street
Seattle, Washington 98122
206.623.2373

FILED
SEP 10 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

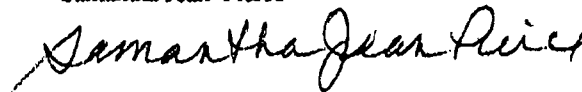
TABLE OF AUTHORITIES

- A. Samantha Jean Pierce asks this court to accept review of the Court of Appeals decision
- C. Issues Presented for Review
Prejudicial judgment, incomplete evidence withheld by state, untrue evidence submitted to court to provide confusion and incomplete and inaccurate information to the jury.
- D. Statement of the Case
Not allowed to give accurate and true information to the court. The State would not allow accurate, correct and true testimony from appellant witnesses. The States fee analysis of transactions is in correct and inaccurate and they would not allow explanation. After returning to the Doces household I did not receive any wage compensation, the way Mr Doces set up the account was part of my compensation. Also I was not allowed to say why I had left, Mr Dean Doces Beat me, I filed a police report. Mr. Doces begged me to come back and I went to a court hearing for Mr Dean Doces and stated all was fine. But I was not allowed to speak in trial.
- E. Argument Why Review Should Be Accepted
I, Samantha Jean Pierce have been diligent and on time with my payments for restitution fees, due to starting my own company, Please see attached copy of business license for confirmation. If I am incarcerated I cannot fulfill my commitments. Also ,my Daughter is now terminally ill, I have no family, Hospice care helps out, her prognosis is to die within the next few months, and we are expecting her to go into a coma at any time. Please see attached letters. My utmost request is for the possibility to serve my sentence on home detention so I may continue to work and take care of my daughter until she passes on.

August 26, 2014

Respectfully submitted,

Samantha Jean Pierce



SAMANTHA JEAN PIERCE
LE DUST
2033 NE 24TH ST
RENTON WA 98056-2288

001283

DETACH BEFORE POSTING



STATE OF
WASHINGTON

BUSINESS LICENSE

Sole Proprietorship

Unified Business ID #: 603 287 021
Business ID #: 1
Location: 1

SAMANTHA JEAN PIERCE
LE DUST
2033 NE 24TH ST
RENTON WA 98056 2288

TAX REGISTRATION

REGISTERED TRADE NAMES:
LE DUST

This document lists the regulations, endorsements, and licenses authorized for the business listed above. By accepting this document, the licensee certifies the information on the application is complete, true and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue



THE POLYCLINIC DOWNTOWN INTERNAL MEDICINE

509 Olive Way, Suite 800
Seattle WA 98101
Phone: 206-860-4700
Fax: 206-824-9520

August 18, 2014


Samantha J Pierce
2033 Ne 24th St
Renton WA 98056
ATTN: Honorable Judge Bill Bowman
RE: Matter of Samantha J Pierce

To Whom It May Concern,

I am writing this letter as the primary care physician for Samantha J Pierce, date of birth March 25, 1959. I am writing this letter as the physician for Ms. Katie Pierce (who is the daughter of the defendant as mentioned). I am asking that you provide the greatest leniency in Ms. Samantha Pierce's sentencing, so that she may remain with her daughter. Ms. Katie Pierce is on hospice care for a progressive, terminal medical condition and Ms. Samantha Pierce is her primary caregiver, providing nearly 24-hour care and surveillance of her daughter's condition. She is the sole caregiver and Ms. Katie Pierce's health will suffer greatly if her mother is not allowed to be by her bedside to provide medical care.

Thank you for your consideration of this matter.
Please do not hesitate to contact me with questions.

Sincerely,


Milah B. Frownfelter, M.D.
Internal Medicine, The Polyclinic

Providence Hospice of Seattle
Providence Hospice of Seattle
425 Pontius Avenue N., Suite 300
Seattle, WA 98109-5452
t: 206.320.4000
f: 206.749.7863
www.providence.org



7/7/14

To Whom It May Concern:

I am writing to you on behalf of Samantha Pierce. Ms. Pierce is the primary caregiver for her thirty-year-old daughter, Katie Pierce, a patient on service with Providence Hospice of Seattle since 6/19/14. Ms. Pierce's daughter has a terminal condition with a life expectancy of less than two months according to Katie's primary care physician, Dr. Millah Frownfelter (206) 860-4413.

Katie lives with Ms. Pierce in a friend's home. Ms. Pierce provides 24 hour per day care for Katie, including bathing, dressing, feeding, shopping, medication supervision and administration. Katie uses an infusion pump for her pain medications, which requires a trained caregiver to be in the home with her to monitor her pain level, notify hospice of symptoms or changes, and make recommended adjustments as needed. Katie is not a candidate for further curative or life sustaining treatment, and has chosen to remain at home on hospice services until end of life. Without her mother acting as her caregiver, Katie would require placement in a Skilled Nursing Facility, which would significantly affect Katie's quality of life and coping during the last weeks of her life.

In the event that Samantha Pierce's conviction is upheld, we would ask that leniency in sentencing be applied on compassionate humanitarian grounds, with the possibility of house arrest with electronic monitoring or probation as the sentence.

If you have any questions, or if I can be of further assistance, please contact me at (206) 320-4000. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Staci Dao, MSW, LICSW". The signature is written in a cursive style.

Staci Dao, MSW, LICSW
MSW Care Coordinator
Providence Hospice of Seattle

2014 JUL 28 AM 8:56

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 69952-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
SAMANTHA JEAN PIERCE,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 28, 2014

LAU, J. — Samantha Pierce appeals her conviction of first degree theft, challenging the admission of (1) an exhibit summarizing thousands of financial transactions in addition to the charged conduct and (2) the victim's videotaped deposition. Because Pierce fails to establish any abuse of discretion, we affirm.

In the summer of 2005, 89-year-old G. John Doces hired Samantha Pierce as a live-in care provider and later as a personal assistant for himself and his wife Sophia. After Sophia died in February 2007, Pierce continued as Doces's personal assistant. In September 2007, Doces opened a joint bank account and credit card account with Pierce. Doces's family members became increasingly concerned about Pierce's access to and use of his accounts. On June 11, 2009, the family members obtained a vulnerable adult protection order against Pierce and reported her activities to the police.

The State charged Pierce with one count of first degree theft based on a series of transactions occurring between September 25, 2007 and June 11, 2009. The State also alleged two aggravating factors: (1) Pierce knew or should have known that Doces was particularly vulnerable or incapable of resistance and that vulnerability was a substantial factor in the commission of the offense and (2) Pierce used her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the offense.

Prior to trial, the State indicated an intention to introduce summaries of bank records that included thousands of transactions in addition to the 273 transactions making up the criminal offense. Pierce moved to exclude the summaries as more prejudicial than probative, cumulative of witness testimony, and confusing. The State argued that the additional financial transactions were relevant as *res gestae* and to show opportunity, intent, and plan. The court denied her motion to exclude the evidence but invited Pierce to propose a limiting instruction.

At a pretrial hearing, the court also determined that Doces, now 96 years old, was incompetent to testify. The State sought to introduce a videotaped deposition of Doces from October 2011. Pierce objected, arguing that Doces was not competent at the time of the deposition and that he lacked personal knowledge of the events to which he testified in the deposition. After viewing the deposition, the court ruled that it was admissible.

At trial, the State presented the testimony of financial analyst Rebecca Tyrell, who testified at length about her review of over 3,000 pages of bank records. Tyrell showed a series of slides to the jury summarizing the extent and types of accounts Doces held between 2003 and 2009. Tyrell traced changes in spending habits from the

various accounts over time and compared average spending in various categories before Doces hired Pierce, after Pierce began working in the Doces household, and after Pierce became a signer on certain accounts. Tyrell displayed examples of checks written and items purchased during the different time frames. Tyrell also described sources of funds and various transfers between accounts. In her testimony, Tyrell described the organization of exhibit 93, three binders containing the records of the 273 transactions forming the basis of the criminal charges. Tyrell also described exhibit 94, a notebook containing the spread sheets she created showing every transaction for each bank and credit card account over specified time periods. The trial court admitted exhibit 94 into evidence and allowed the State to publish it to the jury.

The trial court instructed the jury:

The State's charges allege only those transactions that are included in State's Exhibit #93.

Other transaction evidence, not included in State's Exhibit #93, has been admitted in this case for the limited purpose of considering the defendant's opportunity, intent, and plan. You may not consider it for any other purpose.

This evidence of other transactions that are not part of the State's charges, and are not included in State's exhibit #93. Any discussion of this evidence during your deliberations must be consistent with this limitation.

The State also presented Doces's videotaped deposition for the jury as exhibit 97. The jury found Pierce guilty of first degree theft. Pierce appeals.

ANALYSIS

Pierce first contends that the trial court erred by admitting exhibit 94 because it was unduly prejudicial under ER 403. As below, Pierce argues that exhibit 94 was cumulative to Tyrell's testimony, overwhelming in volume, and likely to confuse and distract the jurors.

We will not reverse the trial court's decision as to the admissibility of evidence absent an abuse of discretion, "which 'occurs only when no reasonable person would take the view adopted by the trial court.'" State v. Atsbeha, 142 Wn.2d 904, 914, 16 P.3d 626 (2001) (quoting State v. Ellis, 136 Wn.2d 498, 504, 963 P.2d 843 (1998)). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." ER 403. Unfair prejudice "means an undue tendency to suggest a decision on an improper basis—commonly an emotional one." State v. Cronin, 142 Wn.2d 568, 584, 14 P.3d 752 (2000).

The record reveals that the trial court carefully considered Pierce's arguments and reviewed all the financial transaction summaries as well as the case law identified by the parties. The court also carefully described its reasoning in a thorough oral ruling. The court specifically determined that the summaries in exhibit 94 would assist the jury in its consideration of Tyrell's testimony. Pierce does not challenge the admissibility of Tyrell's testimony or its relevance to establish Pierce's role in the household accounts. And the court minimized any potential for distraction and confusion by giving a proper limiting instruction. Jurors are presumed to follow the court's instructions. State v. Ervin, 158 Wn.2d 746, 756, 147 P.3d 567 (2006). Pierce fails to establish any abuse of discretion.

Pierce also claims the trial court abused its discretion by admitting Doces's deposition, claiming that his testimony was not based on personal knowledge, in violation of ER 602. In particular, Pierce identifies several incidents that Doces said he

did not recall, such as how he met Pierce, how long she worked for him, how much he paid her, whether he had a joint account with her, whether he shopped at Eddie Bauer or other specific stores, or whether he remembered spending \$17,000 at Eddie Bauer during the charging period.

A witness must testify based on personal knowledge. ER 602. The trial court has broad discretion when evaluating a witness's personal knowledge, and such "testimony should be excluded only if, as a matter of law, no trier of fact could reasonably find that the witness had firsthand knowledge." State v. Vaughn, 101 Wn.2d 604, 611-12, 682 P.2d 878 (1984).

The record is clear that Doces was present and participated in hiring Pierce, agreeing to her duties and pay, and opening a joint account with her. Although Doces did not have clear memories of all the details, as the trial court observed, he could identify Pierce, knew that she worked for him, and was aware of the duties she performed for him. And as the State points out, given Pierce's claim that Doces authorized and approved all her transactions, Doces's lack of personal knowledge of certain transactions was itself probative evidence. Pierce fails to demonstrate any abuse of discretion in the admission of the videotaped deposition.

Affirmed.

WE CONCUR:

Trickey, J.

Jay, J.
COX, J.