73046-1

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Division I
State of Washington

NO. 73046-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SANDRA ALLEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LEROY MCCULLOUGH

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Constitutional Provisions

Washington State:

Statutes

Washington State:

Other Authorities

A. ISSUE PRESENTED

Where a criminal offense can be committed in more than one way, an expression of jury unanimity is not required if each alternative means presented to the jury is supported by sufficient evidence. In Allen's trial for first-degree theft, the jury was instructed on two alternative means: exerting unauthorized control of property as a partner, and obtaining control of property by color or aid of deception. The State's evidence showed that the victim gave Allen about $77,000 with the agreement and understanding that they would participate together in a Christian outreach ministry, with the money specified for non-personal uses focused on that ministry; that Allen portrayed herself falsely as a prophet of God, a well-connected pastor, and a well-paid musician who would repay the victim from future royalties; and the victim testified she would not have given Allen the money but for the promises of a ministry and repayment. When viewed in the proper light, was there sufficient evidence for a rational jury to conclude that Allen violated an agreement to use the money in partnership in the ministry and that Allen obtained the money through deception?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Sandra Allen was charged by Second Amended Information with Theft in the First Degree as a major economic offense and Perjury in the Second Degree. CP 20-21. The theft charge alleged that between June 3, 2012, and August 16, 2012, with intent to deprive Elizabeth Hughes of more than $5,000 in currency, Allen obtained control over such property by color and aid of deception and exerted unauthorized control of such property in a series of transactions that were part of a continuing criminal impulse, a continuing course of conduct, and a common scheme or plan in which the sum of the property taken exceeded $5,000. CP 20. The theft count further alleged that the crime was a major economic offense in that there were multiple incidents per victim, a monetary loss greater than typical, occurring over a long period of time, and that Allen used her position of trust to facilitate the offense. Id.

The trial court dismissed the perjury charge for insufficient evidence at the close of the State's case. CP 80; 11RP 151.[1] The

[1] The verbatim report of proceedings is divided into 15 individually numbered volumes, which will be referred to here as: 1RP (August 8, 2014); 2RP (October 16, 2014); 3RP (October 20, 2014); 4RP (December 4, 2014); 5RP (December 8, 2014); 6RP (December 9, 2014); 7RP (December 10, 2014); 8RP (December 15, 2014); 9RP (December 16, 2014); 10RP (December 17, 2014); 11RP (January 5,

jury convicted Allen of Theft in the First Degree, and found the aggravating factor of a major economic offense. CP 45-46. The court imposed a standard-range sentence of 90 days confinement, with 30 days converted to community service and the remainder eligible for work release. CP 63. The court ordered Allen to pay $77,030.41 in restitution. CP 62, 68.

2. SUBSTANTIVE FACTS

In 2012, Elizabeth Hughes had a stable home in Federal Way, Washington, with her husband of 21 years, three children, and seven pets. 11RP 18-23. The family certainly was not rich, but they were "getting by" — they paid the bills on time, had money in the bank and healthy available credit, and Hughes had a modest retirement account, thanks to a former career in advertising. 11RP 23-25, 47-48; Ex 24.

What Hughes personally lacked was a spiritual purpose and a spiritual home. 11RP 20-22. A deeply Christian woman, Hughes considered Jesus Christ to be her "best friend" and had privately studied his teachings. 11RP 20-21. But she had been casting about for an organized ministry that fit with the relationship she sought with God, and that also would be right for her children.

2015); 12RP (January 7, 2015); 13RP (January 8, 2015); 14RP (January 9, 2015); and 15RP (February 13, 2015).

11RP 20-23. In the meantime, Hughes watched Christian television broadcasts and made modest donations — $7 here, another $7 there — to Christian charities and televangelist ministries. 11RP 22-23, 26-29; Ex, 24.

In the late spring of 2012, Hughes met Sandra Allen through mutual acquaintances. 9RP 41; 11RP 31. Allen had been claiming to be a "prophetess" who was well-known to prominent ministers. 9RP 40-46. Shortly after their first meeting, around early-to-mid-June, Hughes encountered Allen at a local store and invited her to stay the night with the Hughes family because Allen was living in her car. 11RP 32-33. On the way home, Allen told Hughes that she was a pastor and a prophetess. 11RP 34.

That night, Allen stayed in a den that doubled as a home office where the Hughes family's financial records were kept, and Hughes noticed that the light remained on most of the night. 11RP 35-38. The next morning, Allen demanded to be alone in the room for about two hours, and then departed hastily. 11RP 40-41.

Soon afterward, Allen called Hughes and asked Hughes to help her pay for a local motel room, and on June 15, Hughes paid $276.24 for Allen's room. 11RP 41-42; Ex. 24. Hughes also

bought Allen meals, brought her vitamins and a fan for her room, and paid her storage-unit rent. 11RP 43.

Over the next days, Hughes grew to trust Allen as a pastor, a friend and a confidante. 11RP 53. Allen and Hughes prayed and studied the Bible together, and Allen seemed "very loving, kind and encouraging." 11RP 54. Allen claimed to have an established ministry and important friends in the Christian community, and she spoke of plans to "start an outreach center for homeless people" in Federal Way. 11RP 54, 81-83.

But the relationship quickly evolved to where Hughes was a "follower type person," and Allen told Hughes that she was being disobedient to God and needed to pay thousands of dollars in "back tithing" from the past 10 years. 11RP 50, 54. Allen warned of "bad things" happening to Hughes and her children if she did not fulfill her "obligations to God on tithing." 11RP 56. Allen said that Hughes needed to repay God by contributing to Allen's efforts to build a ministry, including putting a down payment on an outreach-center building to "help people in the City of Federal Way." 11RP 53-54. Hughes would be Allen's "ministry assistant" in this effort. 11RP 61.

Allen boasted of being a "recording artist" who had "a record deal coming up" worth $300,000, and she promised to repay Hughes up to $100,000 for the investment in the ministry. 11RP 80. "And she was telling me the whole time, God was just testing me to trust, and see if I would trust Him with the money, and that it would all come back to me," Hughes later testified. 11RP 125. "And I would come out better than I was." Id.

On June 20, 2012, Hughes withdrew $11,335.84 — all but $300 — from her family's savings account, cashed out her entire retirement account worth $44,194.87, and gave two cashier's checks to Allen. 11RP 45-48; Ex. 8, 24, 25, 26. The same day, Allen opened an account at Chase bank with a deposit of $55,330.71. 8RP 44-45; Ex. 8.

Also the same day, Allen wrote out a "receipt" to memorialize the money Hughes had given. 11RP 52-53; Ex. 27. The handwritten note said that checks were "donated for outreach work, ministry building, and church ministries, and music publications, and helps." Ex. 27. It further stated that Allen received "a donation of funds from Elizabeth Hughes for the outreach work and for [the] needy and Federal Way Outreach Ministries to help the indigent and any needy people." Id. "Elizabeth Hughes donated these

funds freely to the ministry to help the poor and the homeless." Id. Lastly, it stated that "Elizabeth willingly donated these proceeds to help support this work and to help feed the needy." Id. Both Allen and Hughes signed the document. Id.

Hughes later testified that her understanding and her intention for the money was that it was firmly "for the ministry," and to "start a ministry," and that she would be repaid, and the money was not given for Allen's personal use. 11RP 79-80, 133. When the prosecutor asked directly whether Hughes would have given Allen $55,000 "if she had told you that she just needed some help," Hughes replied, "No, not that amount of money, no, sir." 11RP 79.

On June 21, 2012, the day after Hughes gave Allen the two checks, Allen withdrew $20,000 in cash from the Chase account. 8RP 51; Ex. 8. On June 22, Allen paid $7,500 in cash for a 2002 Jaguar sedan. Ex. 4. Hughes did not find out about the car until a police detective told her about it later. 11RP 121.

The next week, Allen announced that God had told her that he was unsatisfied. 11RP 63. God had told Allen that Hughes actually owed 12 years' worth of back tithings, not ten years, and the tithings should have been calculated on her family's gross income, not the net. Id. Hughes asked Allen why God "changes

the bar" and was "changing his plan," but Allen snapped, "Obey the prophet," and told Hughes not to "blaspheme the Holy Spirit." Id. Allen reminded Hughes of a New Testament parable in which God struck dead a man and wife for lying. 11RP 69.

Hughes could get cash advances on her credit cards, but she worried that her family could not meet the monthly payments and her husband would find out. 11RP 99. Allen assured Hughes that Allen would repay Hughes from Allen's impending record deals before Hughes' husband found out. Id. On June 28, Hughes took cash advances on four credit cards and gave Allen $21,500, which Allen deposited in her Chase checking account the next day. Ex. 8, 24; 8RP 48-49.

The women's foray into ministry was cooperative but short-lived. Once they went together to a pancake restaurant and ministered to a woman with a sick child by buying her some baby clothes and a "prayer blanket." 11RP 60. But Hughes soon grew "anxious, and suspicious, and frustrated" with Allen's unlikely stories and her insatiable demands for money. 11RP 72. Meanwhile, unbeknownst to Hughes, Allen had begun spending the money, including — all on July 9 — paying a $1,412.28 insurance bill; a $14.50 meal at Taco Bell; a $433.62 purchase at Coach, an

upscale handbag store; paying her $272 storage-unit rent; spending $273.52 at a Ross clothing store; and two purchases at Best Buy, an electronics retailer, totaling $1,329.24. 8RP 49; Ex. 8.

About that same day, July 9, 2012, the women met at the pancake restaurant and, as Hughes later testified, Allen announced that "God just told me that you need to give more money, like, $12,000 approximately to atone for the sin of one of your ancestors who murdered somebody." 11RP 72. If Hughes failed, Allen promised, God would strike down Hughes' son. Id. Hughes assured Allen that she would give her another $14,000 the next day. 11RP 74.

Instead, Hughes "decided to do some research" to "see if she [Allen] actually was who she said she was at this point." 11RP 77. On July 10, Hughes "chose to call the police." 7RP 33; 11RP 77.

On July 11, Federal Way police found Allen at her motel and took her to the station. 7RP 33-37. Allen gave a lengthy recorded interview. 7RP 38; Ex. 1; Pretrial Ex. 3. Allen claimed to be a "music writer" with a "lucrative salary," as well as a decades-long minister who knew "many, many leaders." Ex. 1; Pretrial Ex. 3 at 4, 11.

In this interview, Allen acknowledged taking Hughes' money and assured the officers that it was exclusively for opening an outreach store or "help center," and for outreach. Ex. 1; Pretrial Ex. 3 at 15. Allen agreed that Hughes' understanding was that the money was for outreach. Id. Allen insisted that her only intention for the money was to do outreach and secure a physical building, and the money would not be spent for anything else. Ex. 1; Pretrial Ex. 3 at 23, 52. Allen said "not one penny has been spent." Ex. 1; Pretrial Ex. 3 at 52, 54. She specifically denied buying the Jaguar "with Elizabeth's money." Ex. 1; Pretrial Ex. 3 at 56. She claimed she bought the car with her "lucrative salary," which she claimed to be $260,000 the previous year. Id.

During this interview, Allen portrayed the ministry as a cooperative effort between herself and Hughes. Ex. 1. Allen said Hughes "wants to do it," and, "She said I want to help the vision that you have and what I have ...." Ex. 1; Supp. CP __ at 15. Allen described Hughes as her "prayer partner" and said they were "buddies." Ex. 1; Supp. CP __ at 18. Allen described the venture in the first-person plural, as, "that's what we talked about, what are we going to, whether I'm going to buy a place ...," and "we need a

church building ... and we want to be more supportive of outreach here in our own city." Ex. 1; Supp. CP __ at 19.

Allen reiterated that Hughes not only wanted to "donate" but had said, "I want to go, and I want to see and I want to travel." Id. And Allen said she told Hughes "it's time for us to go back to the full outreach, not just stand behind the scenes here." Ex. 1; Supp. CP __ at 21.

The next day, on July 12, Allen delivered an eight-page, handwritten statement to the police. Ex. 22; 9RP 29. In it, she again portrayed the ministry as a cooperative effort and Hughes' money as more than a passive donation. Ex. 22. Allen said Hughes "had the same desires and wanted to help too." Id. "Elizabeth said she was tired of being un-involved," Allen wrote. Id. "She wanted to do outreach to help people with me. She said she was tired of fakes in the Church who did not help others." Id. "Elizabeth said over and over she was sick of people hurting and she would gladly give her monies to help me start the work." Id.

But four days later, on July 16, Allen withdrew $10,000 cash from the Chase account. 8RP 51; Ex. 8. The next day, July 17, she left a long, rambling voicemail with a Federal Way police detective in which she accused Hughes of lying and defaming her,

and claimed to have given Hughes $7,000. Ex. 17. On July 18, Allen withdrew another $10,000 cash from Chase and opened two accounts at Wells Fargo bank, one jointly with her adult son, totaling $9,000. 8RP 51, 56-59; Ex. 8,9.

The following Monday, on July 23, Allen delivered to police a handwritten letter in which she again claimed to be "organizing a faith based outreach center" and to have important friends, including "church clergies" and "news editors." Ex. 5. She denied stealing from or threatening Hughes, and said that Hughes "volunteered to give funds and be a part of this work" and that she thought Hughes "was sincerely devoted to this vision." Id. After she dropped off the letter, Allen called the detective from the parking lot of the police station and left another lengthy voicemail saying that she was "flabbergasted" that Elizabeth had "changed her mind," when "we're trying to get something started." Ex. 17.

The next day, July 24, Allen took another $15,000 cash from the Chase savings account. And since July 9 Allen had been on a spending spree with the checking account, spending thousands of dollars at retail establishments, restaurants and a beauty salon. 8RP 49-55; Ex. 8. By August 16, the total balance in the Chase

bank accounts was a mere $360.93. Ex. 8. Police were unable to recover any of Hughes' money. 8RP 61.

On August 16, Allen agreed to meet with police for another recorded interview. 8RP 110; Ex. 16. This time, Allen admitted that she bought the Jaguar with "money out of that account." Ex. 16. Allen described the account as "the money that we had, me and Elizabeth." Id.

As it turned out, two of the prominent Seattle-area pastors whom Allen claimed as longtime friends had never heard of Allen. 9RP 17; 10RP 14, 20. When, on August 16, Allen told police that she had just returned from a professional trip to Detroit to perform in a concert, she was lying. 10RP 21-22. Allen also admitted to the Department of Social and Health Services that she had falsely claimed to work for the "Federal Way Outreach Church," or the "Federal Way Outreach Ministries," which did not exist. Ex. 15.

On January 7, 2015, Allen testified in her own defense at trial. 12RP 11-144. Allen denied ever discussing tithing with Hughes. 12RP 24. Allen denied ever telling Hughes that she had been trying to set up a ministry. 12RP 25. Allen said that the ministry was all Hughes' idea, and that Hughes had insisted on it even though Allen had doubts because of her health. Id. Allen

denied ever asking Hughes for money, and claimed that one day Hughes had suddenly given her a check as a "surprise." 12RP 28. Allen claimed that the storage units she rented were not for herself but were "donated" for "other outreaches." 12RP 30. Allen even denied ever planning or discussing a building, explaining that the term "ministry building" on the receipt meant "building" in the figurative sense of "doing ministry work." Id.

Allen testified that it was in fact Hughes who claimed to be a prophetess, and that Hughes was "very aggressive" about spending the money on Allen's personal needs. 12RP 33. But Allen also portrayed Hughes' planned involvement in their ministry as cooperative and active, calling Hughes an "armor bearer" who "took it upon herself to make a blueprint plan for me," and made plans "like a personal representative would for any person or a leader." 12RP 143-44.

Allen could not say where all the money went. 12RP 52, 105-10. She claimed she gave thousands of dollars back to Hughes. 12RP 34. She claimed that she spent "a few thousand" on her own medication, but she gave most of the rest away to unnamed people as "outreach." 12RP 52, 105-10. When the prosecutor asked Allen whether she felt entitled to the money, Allen

replied, "I felt no reason to give her the money back because she never asked for it, no one asked, and she gave to me." 12RP 120. "I needed shelter, I needed help." Id.

C. ARGUMENT

1. THE EVIDENCE WAS SUFFICIENT TO CONVICT ALLEN OF FIRST-DEGREE THEFT UNDER EACH ALTERNATIVE MEANS PRESENTED.

Allen contends that the jury in her trial had insufficient evidence to convict her of first-degree theft under either of the alternative means presented. First, she alleges that an absence of a formal written business partnership agreement, and a lack of express written prohibition on Allen spending all the money on herself, means there was no evidence that Allen exerted unauthorized control over property as a partner. Second, she alleges that the State cannot prove theft by deception because, Allen claims, Hughes would have given Allen $77,000 regardless of Allen's numerous false claims. To the contrary, the jury had substantial evidence, especially when properly viewed in the light most favorable to the State, to conclude that Hughes' "donation" of $77,000 was part of a partnership between Hughes and Allen to start a church ministry cooperatively, and that Hughes relied extensively on Allen's phony claims of being well-connected,

important, soon-to-be-rich and in direct contact with God when Hughes handed over her family's entire fortune, and she would not have done so simply to help Allen personally.

In Washington, criminal defendants have a constitutional right to a unanimous jury verdict. CONST. art. I, § 21. If the legislature has defined a crime to include an element that may be established by alternative means, then the jury must only be unanimous that the defendant committed the crime in one or another of the alternative ways provided by the legislature. Schad v. Arizona, 501 U.S. 624, 632, 645, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991); State v. Williams, 136 Wn. App. 486, 497-98, 150 P.3d 111 (2007) (citing State v. Kitchen, 110 Wn.2d 403, 410, 756 P.2d 105 (1988)).

The State is not required to elect a means nor does the jury need to be instructed that it must agree on the means if substantial evidence supports each. Kitchen, 110 Wn.2d at 410. "[A] particularized expression of unanimity as to the means by which the defendant committed the crime is unnecessary to affirm a conviction because we infer that the jury rested its decision on a unanimous finding as to the means." State v. Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994). Put succinctly, "an

expression of jury unanimity is not required provided each alternative means presented to the jury is supported by sufficient evidence." State v. Sandholm, __ Wn.2d __, 90246-1, 2015 WL 7770651 (December 3, 2015).

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Id. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Id. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Additionally, credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, this Court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

a. Relevant Jury Instructions.

Allen's jury was instructed that to convict Allen of first-degree theft, it was required to find beyond a reasonable doubt:

> (1) That during a time between June 3, 2012, and August 16, 2012, the defendant
> (a) exerted unauthorized control over property of another; or
> (b) by color or aid of deception, obtained control over property of another;
> and
> (2) That the property exceeded $5000 in value;
> (3) That the defendant intended to deprive the other person of the property;
> (4) That this act occurred in the State of Washington.

CP 33. See also WPIC 70.02.

The jury was further instructed that:

> To exert unauthorized control means, having any property in one's possession, custody or control as partner, to secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement.

CP 36. See also WPIC 79.02.

Additionally, the jury was instructed that:

> By color or aid of deception means that the deception operated to bring about the obtaining of the property. It is not necessary that deception be the sole means of obtaining the property.

CP 37. See also WPIC 79.03.

The jury was instructed further that:

> Deception occurs when an actor knowingly creates or confirms another's false impression which the actor knows to be false or fails to correct another's impression which the actor previously has created or confirmed or promises performance which the actor does not intend to perform or knows will not be performed.

CP 38. See also WPIC 79.04.

b. The Jury Had Ample Evidence To Find Unauthorized Control As A Partner.

A person is guilty of first-degree theft if she commits theft of property or services that exceeds $5,000 in value. RCW 9A.56.030. One of the means of committing theft is to "exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(a). One of the meanings of "exert unauthorized control" is "[h]aving any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement." RCW 9A.56.010(22)(c).

The terms "partner," and "partnership agreement" are not defined in the theft statutes, and there is no pattern jury instruction

defining those terms. If a term is not defined by statute, addressed by a pattern jury instruction, or defined by an appellate court, it is a non-technical term of common understanding and its meaning comes from common usage.[2] State v. Brown, 132 Wn.2d 529, 611, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998). Trial courts have discretion to determine whether they should define words of common understanding. Id.

Thus, whether or not Allen and Hughes were partners in their ministry, and had a partnership agreement, and whether Allen secreted, withheld, or appropriated partnership funds for her use, or any other use, unauthorized by the partnership agreement, were questions of fact for the jury to decide based on the evidence and the jurors' own common understandings of the terms. The State presented ample evidence for the jury to conclude that there was such a partnership agreement, and that Allen violated it.

To determine the ordinary meaning of an undefined term, our courts look to standard English language dictionaries. Boeing Co. v. Aetna Cas. & Sur. Co., 113 Wn.2d 869, 877, 784 P.2d 507 (1990). See also State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d

[2] After a thorough review of Washington case law, the State is unaware of any appellate opinions that specifically define "partner" or "partnership agreement" as applied to the theft statutes, and Allen cites none.

131 (2010) ("When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning."). "Partner" in modern usage means "one that is associated in any action with another: Associate, Colleague." Webster's Third New International Dictionary 1648 (1993). An "agreement" is primarily "the act of agreeing or coming to a mutual arrangement," or "an arrangement (as between two or more parties) as to a course of action." Id. at 43. And "unauthorized" means "not authorized," with "authorized" meaning "to endorse, empower, justify, or permit by or as if by some recognized or proper authority." Id. at 2482, 146 (1993).

Here, the evidence and all the reasonable inferences, viewed properly in the State's favor, showed that Hughes handed over her family's fortune based on an agreement with Allen that they were going to participate together in creating an outreach ministry, and the money was going to be used exclusively for that purpose. After all, Hughes told the jury point-blank that the money was intended only for the ministry, and she would not have given it for Allen's own use. The handwritten "receipt," especially when considered along with Hughes' testimony, made it quite clear that the mutual agreement and arrangement between Hughes and Allen

was to engage in a ministry rather than to enrich Allen. Even if the receipt were subject to interpretation, it is to be interpreted in the State's favor here.

Moreover, Allen's own statements to the police show that she well knew that the funds were designated for the cooperative ministry. In her first interview, in July 2012, Allen defensively agreed that the money was strictly for the ministry, including opening a physical building, and not for her own use. She spoke of the ministry as a cooperative effort. Perhaps most tellingly, if Hughes' $77,000 had been a no-strings-attached donation, as Allen now portrays, Allen would not have falsely denied buying a car with "Elizabeth's money."

And in the second interview, on August 16, 2012 — by which time Allen had drained away almost all the money — she still called it "the money that we had, me and Elizabeth." Ex. 16. Certainly, any rational jury could find that a partnership existed and that Allen violated the partnership agreement by frittering away $77,000 on her own selfish uses.

Allen proffers a legal definition of partnership and argues, essentially as a matter of law, that no partnership existed because there was no agreement to engage in business for profit. Her

reliance on this strict definition is misplaced because the court did not instruct the jury on the legal definition of partnership.[3] The prosecutor in closing offered his own broad definition, which was not limited to doing business, but also, "when you decide to do something together, and you say we're going to pool this money together for X." 13RP 39-40. But the jury was free to make its own decision on this question of fact based on its own common understandings of the language.

Allen further asserts that she was exercising her First Amendment religious rights by going shopping with the Hughes family fortune, and portrays Hughes' money as the equivalent of donating to the Red Cross. What Allen ignores is that this is essentially the same argument she made to the jury — that the money should be interpreted as a gift — but the jury rejected that. For this Court to accept that argument now, it would have to view the evidence improperly, by drawing all inferences in the light most favorable to Allen.

Allen also focuses almost exclusively on the wording of the "receipt" signed by Allen and Hughes on June 20, 2012 (Ex. 27), to argue that no partnership agreement was violated because the

[3] Allen did not request an instruction defining these terms.

document did not contain the word "only" and thus did not specifically restrict Allen from taking the money to Coach, Best Buy, Nordstrom, an auto dealership, and other places for her own gain. But again, whether Allen's use of the money violated a partnership agreement was a question of fact for the jury, and the jury had ample evidence to reject Allen's tortured interpretations.

The common usage of "authorize," defined *supra*, describes an affirmative endorsement or permission, so any reasonable jury could take "unauthorized" in this context to mean that the use of the partnership money was theft because personal use was not affirmatively permitted in the agreement. Here, the receipt — and the testimony of Hughes, and the financial records, and Allen's own statements to police — were sufficient for the jury to conclude that Allen was not authorized to spend $77,000 on herself, because the money was earmarked for the ministry.

Allen offers an extensive comparison to State v. Joy, which at first blush might seem useful. 121 Wn.2d 333, 851 P.2d 654 (1993). But a closer look shows that Joy is inapposite to Allen's case.

In Joy, the defendant was a home-improvement contractor accused of embezzling clients' advances and down payments. Id.

at 334-37. Joy was charged under former RCW 9A.56.010(7)(b),[4] which is the subsection for bailees, employees and agents, etc., and is separate from the subsection criminalizing partnership embezzlement, under which Allen was charged.[5] Id. at 339. The dispositive question before the Washington Supreme Court in Joy was whether the payments Joy had received were "property of another," and the holding turned on whether formal contracts with his clients specified uses for the advance payments, such as buying materials, thus retaining in the clients an interest in the money. 121 Wn.2d at 341-43. In contracts where the advance payments were designated for specific uses, the convictions stood; where the contracts did not specify what the advances were for, the convictions failed. Id. at 335-38, 341-43.

Joy is inapposite here because the issue for Allen is whether she misappropriated partnership funds contrary to RCW 9A.56.010(22)(c). As Allen points out, the partnership provision of the theft statutes was added in 1986 in response to State v. Birch, which held that partnership funds are not "property of another" because each partner holds an ownership interest in the funds, and

[4] Now RCW 9A.56.010(22)(b).

[5] When Joy was decided, the partnership provision of the theft statute was codified at RCW 9A.56.010(7)(c).

"partner" was not on the list in the embezzlement subsection among bailees, employees and the like. 36 Wn. App. 405, 410, 675 P.2d 246 (1984); see also State v. Coria, 146 Wn.2d 631, 638, 48 P.3d 980 (2002) (legislature criminalized stealing partnership property in response to Birch).

The legislature's creation of a separate subsection to criminalize partnership embezzlement means that stealing partnership property is theft regardless of the thief's ownership interest in the property. So the question of whether specific restrictions affected ownership interests, as analyzed in Joy, does not apply here. The questions of fact in Allen's case were much simpler: Was the $77,000, or any $5,001 portion thereof, partnership property? If yes, was Allen's use of the money unauthorized? If yes, then Allen is guilty of first-degree theft.

Nevertheless, even if a comparison to Joy were appropriate, Allen's situation is much more like Joy's convictions that were upheld. The issues in Joy were not questions of law but whether "the jury was entitled to infer" agreements where the money was handed over for stated uses. Joy, 121 Wn.2d at 341. In Allen's case, there was more than sufficient evidence for the jury to infer an agreement to spend the money only on the ministry.

Certainly, another jury might conceivably have looked at the same evidence under Allen's light and believed her instead of Hughes and all the other evidence. But the only question before this Court now is whether the evidence was sufficient for the jury to see it the State's way beyond a reasonable doubt. Was it *impossible* for a rational jury to conclude that Hughes and Allen were partners in an outreach ministry, and had agreed to spend the money only on the ministry and not on Allen's personal wants? Of course not. The evidence in this case was strongly in the State's favor. Allen's argument fails.

c. The Jury Had Ample Evidence To Find The Property Was Obtained By Color Or Aid Of Deception.

The second alternative means charged in Allen's case was theft by color or aid of deception, requiring the State to prove beyond a reasonable doubt that "[b]y color or aid of deception," Allen "obtain[ed] control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(b). As the jury was instructed, "'by color or aid of deception' means that the deception operated to bring about the obtaining of the property or services; it is not

necessary that deception be the sole means of obtaining the property or services." RCW 9A.56.010(4).

"Deception" occurs when, among other things, the defendant knowingly "[c]reates or confirms another's false impression which the actor knows to be false[ ] or ... [f]ails to correct another's impression which the actor previously has created or confirmed." RCW 9A.56.010(5)(a), (b). "'Deception' includes a broad range of conduct, including 'not only representations about past or existing facts, but also representations about future facts, inducement achieved by means other than conduct or words, and inducement achieved by creating a false impression even though particular statements or acts might not be false.'" State v. Mehrabian, 175 Wn. App. 678, 700, 308 P.3d 660, review denied, 178 Wn.2d 1022 (2013) (quoting State v. Casey, 81 Wn. App. 524, 528, 915 P.2d 587 (1996)).

The State must also prove that the victim relied on the defendant's deception, which "is established where the deception in some measure operated as inducement." Casey, 81 Wn. App. at 529. The plain language of the theft by color or aid of deception statute does not require an express misrepresentation; the statute

focuses on the false impression created rather than the falsity of any particular statement. Mehrabian, 175 Wn. App. at 700.

If the victim would have parted with the property even if the true facts were known, there is no theft. State v. Renhard, 71 Wn.2d 670, 672-74, 430 P.2d 557 (1967). On the other hand, it is unnecessary that the deception be the sole reason that induced the victim to give up the property. Casey, 81 Wn. App. at 529. It is sufficient that the false representations were believed and relied on by the victim and in some measure operated to induce the victim to part with the property. Mehrabian, 175 Wn. App. at 701 (citing State v. Zorich, 72 Wn.2d 31, 34, 431 P.2d 584 (1967)).

Here again, the issue is whether the evidence, in the light most favorable to the State, was sufficient for a rational jury to find that Hughes was induced to hand over her family's fortune by any of Allen's many deceptions and false representations. The wealth of evidence on this point was overwhelmingly in the State's favor.

Allen explicitly and falsely claimed to be a well-connected pastor with the wherewithal and resources to launch a legitimate outreach ministry. Allen explicitly claimed to be a prophet of God who warned the devoutly religious Hughes of tragic consequences for failure to turn over the money to the ministry. Allen falsely

claimed to be a famous recording artist with a $300,000 contract looming, and she explicitly promised to pay Hughes back from royalties that did not exist.

Hughes expressly testified that she relied on the false impressions that Allen created about her importance in the local Christian community. Indeed, as soon as Hughes found out that this was not true, she immediately stopped giving Allen money — and called the police. Hughes expressly testified that she relied on Allen's misrepresentations about being a soon-to-be-wealthy musician and on her promise to pay Hughes back. There was substantial evidence for a jury to conclude beyond a reasonable doubt that Allen got her hands on Hughes' $77,000 through layer upon layer of deception.

And even if a jury were to conclude that Hughes might have given *some* of her money to Allen even though virtually everything about Allen was a fraud, all that was required for a single conviction for first-degree theft was that Allen obtained any $5,001 as a result of her deception. Certainly, at the very least, a rational jury could find that the credit-card cash advances of $21,500 were given to Allen because Allen falsely claimed to have royalties coming to pay

the money back before Hughes' husband ever found out it was gone.

Allen asserts that Hughes would have handed over virtually every last dollar to her family's name even if she had known of Allen's lies. She offers quotes from Hughes' testimony — focusing on the issue of tithing — to contend that Hughes believed the money was ordered by God via the prophet Sandra Allen. Even if that were all the evidence against Allen, any rational jury — if not every rational jury — could easily conclude that Allen was a false prophet, so the tithing order from God was itself a relied-upon deception.

Moreover, Allen conspicuously leaves out all of Hughes' testimony about her belief in Allen's prominence in the community and about being swayed to take cash advances by Allen's promises of impending royalties. If the religious aspects of this case were removed, it would be nothing more than a straightforward swindle.

Allen's case is completely different from State v. Renhard, upon which she relies so heavily. 71 Wn.2d 670, 430 P.2d 557 (1967). In Renhard, the defendant was the president of a company, and had drawn checks that he put to personal use. 71 Wn.2d at 670-71. Because there was no evidence that his

secretary would have, or could have, refused to sign the checks had she known of Renhard's planned personal use — essentially Renhard controlled the funds himself — there was no evidence of inducement and thus no larceny.[6] Id. at 672, 674.

But in Allen's case, the evidence was clear — especially when viewed exclusively in the State's favor — that Hughes never would have given Allen the money had she not believed Allen's claim to be a prophet of an angry God, a successful pastor capable of building a real ministry center, and a well-compensated musician intent on repaying the money. Most strikingly, Allen conspicuously ignores Hughes' response to the prosecutor's pointed question: "Would you have given her that $55,000 if she had told you she just needed some help?" 11RP 79. Answer: "No, not that amount of money, no sir." Id.

The evidence was overwhelming in this case that Allen obtained Hughes' money by color or aid of deception. Her argument fails. And because there also was substantial evidence to convict Allen of theft by exerting unauthorized control of property as a partner, Allen's assertion of a violation of her right to a unanimous jury is baseless.

[6] The jury in Renhard's trial was not instructed on the alternative means of embezzlement. Renhard, 71 Wn.2d at 673.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Allen's judgment and sentence.

DATED this 14th day of December, 2015.

Respectfully submitted,

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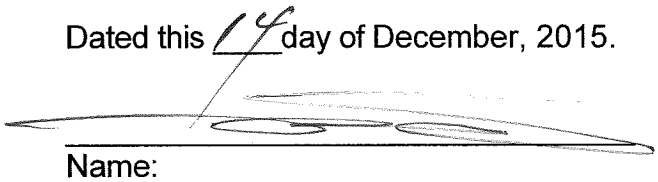
Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Richard W Lechich, the attorney for the appellant, at richard@washapp.org, containing a copy of the BRIEF OF RESPONDENT in State v. Sandra Lee Allen, Cause No. 73046-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 14 day of December, 2015.



Name:
Done in Seattle, Washington