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NO. 41903-3-II

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

RHONDA GOUDIE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Ken Williams, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
I. ASSIGNMENTS OF ERROR.....	1
Issues Pertaining to the Assignments of Error.....	2
II. STATEMENT OF FACTS	2
III. ARGUMENT	18
A. THE TRIAL COURT’S FINDINGS AND CONCLUSIONS ARE INADEQUATE.....	18
B. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTIONS	21
C. FINDING OF FACT NUMBER 18 IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.....	25
IV. CONCLUSION.....	26

TABLE OF AUTHORITIES

Page

Washington Cases

State v. Chapin,
118 Wn.2d 681, 691-92, 826 P.2d 194 (1992) 21, 24

State v. Colquitt,
133 Wn. App. 789, 796, 137 P.3d 892 (2006) 21, 23

State v. Head,
136 Wn.2d 619, 623, 964 P.2d 1187 (1998).....20

State v. Hobbs,
71 Wn. App. 419, 424 (1993) 24

State v. Hutton,
7 Wn. App. 726, 728, 505 P.2d 1037 (1972)..... 25

State v. Kenney,
23 Wn. App. 220, 224-25, 595 P.2d 52 (1979)..... 18

State v. Russell,
68 Wn.2d 748, 750, 415 P.2d 503 (1966)) 18

State v. Smith,
155 Wn.2d 496, 502, 120 P.3d 559 (2005) 21

Statutes

RCW 9A.56.030(1)(a)..... 19

Other Authorities

WPIC 70.02 19

Rules

CrR 6.1(d)..... 18, 20

U.S. Cases

In re Winship,
397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)..... 21

I. ASSIGNMENTS OF ERROR

1. The court erred in failing to enter written findings of fact supporting each element of the offense.

2. There was insufficient evidence to support the court's conclusion that appellant was guilty of two counts of first degree theft.

3. Finding of Fact Number 18 was not supported by substantial evidence.

Issues Pertaining to the Assignments of Error

1. Following a bench trial, the court is required to set forth findings as to each element of the offense, along with the evidence supporting that element. The court failed to do this. At the very least, does the case need to be remanded for the trial court to enter findings and to identify what, if any, facts support those findings?

2. The Appellant owned an adult care home. Sometimes she collected the rent from the residents, other times it was the manager who collected the rent. There was an apparent overpayment of rent on some months. The State elected to charge separate counts for each check. As a result, the State was obligated to prove that each charged count did not relate to the

proper, authorized rent payment. Where the State failed to present any such evidence, must the two theft convictions be reversed?

3. The alleged victim did not testify, and so there was no evidence that the checks were taken under false pretense or without permission. Nor was there evidence—other than speculation—that the owner of the home was aware that too many rent checks had been paid. Was there insufficient evidence to support the two theft convictions?

II. STATEMENT OF FACTS

1. Summary of Trial Proceedings

Rhonda Goudie was the owner of an adult care home in Port Angeles. One of her clients was an elderly gentleman named Tom Curry, the alleged victim in the case. He lived there for 17 months, but paid 23 monthly rent checks during that time period. Although there was no testimony from Tom or any of his family members, the State theorized that Rhonda must have intentionally overcharged Tom so as to pocket the additional money. The State charged Rhonda with six counts of theft in the first degree, plus a count of money laundering. CP 130. The case was tried to the bench in Clallam County beginning on September 29, 2010 and

concluding the following day.¹ In an oral ruling on October 13, 2010, The Honorable Ken Williams found Rhonda guilty of counts III and V, along with one count of money laundering. 4RP 4-20.

The defense filed a double jeopardy challenge to the money laundering conviction. CP 28. The State conceded on the issue and that charge was dismissed. CP 13. The defense also brought a motion to dismiss the theft charges based on selective prosecution, arguing that other defendants who had committed more egregious thefts, involving an abuse of trust, were offered a diversion opportunity. CP 33, 66. The court denied the motion to dismiss, but imposed a first offender waiver on Ms. Goudie. CP 17.

Key Players in the Case

Rhonda Goudie

Rhonda Goudie was a nurse who loved her profession. Graduating from nursing school in 2001, Rhonda eventually became the director of nursing at Crestwood Convalescence Center. 2RP 214-15. It was here, that for the first time, she started to become disenchanted with her work. Rhonda had to spend too much of her time dealing with office politics, rather than taking care

¹ The Verbatim Report of Proceedings is contained within six volumes. They will be designated as follows. 1RP is for July 13, 2010; 2RP is for Sept 29, 2010; 3RP is for Sept 30, 2010; 4RP is for October 13, 2010; 5RP is for March 16, 2011; 6RP is for April 1, 2011.

of patients. It simply was not the type of work she enjoyed. 2RP 215. She decided she needed a change. So in 2007, Rhonda opened Olympic RN Home Care. 2RP 215.

This was a big step for Rhonda. Unfortunately, Rhonda lacked the basic business and accounting skills useful in operating a business. 2RP 216. Not only did she have no experience in this area, she had never taken a business class, and was not even in the habit of balancing her own checkbook. 2RP 216. Nonetheless, Rhonda charged forward with the business. She created a business checking account at Bank of America, in addition to her various personal checking accounts at U.S. Bank. 2RP 233.

At its fullest capacity, the house was able to take care of 6 patients. At times, however, they would be down to one or two patients. 2RP 230. Because of that, Rhonda worked two 16-hour shifts as a floor nurse at Sequim Health and Rehabilitation. 2RP 226, 227 & 230. During slow times at the Olympic RN Home Care, Rhonda's part time income would help pay for the house's operating expenses. 2RP 230. As such, it was not unusual for her to transfer money from one account to the other. 2RP 231. During slow times, she would even pay some of the workers from her own personal account. 3RP 66.

Rhonda was aware of her shortcomings when it came to finances. It was a source of stress and insecurity. Because of those feelings of inadequacy, Rhonda would often ignore that part of the business. For instance, she never balanced her checkbook and did not even look at her bank statements. 2RP 230. Instead, she would “just call the 1-800 number and check the balance, see what was in there and then I knew what I had.” 2RP 229. Rhonda asked a few different people for help, as it was just too stressful for her. Unfortunately, she did not obtain that help and so continued to ignore this important facet of her business. 2RP 229.

Tom Curry

Tom was 85 years old when he moved into Olympic RN Home Care. 3RP 62. He had been a pilot in the war, followed by a successful career at Boeing. He was diagnosed with dementia, but according to people who had talked to him there at the facility, he did not appear to be confused, just forgetful at times. 2RP 58; 2RP 197; 3RP 56;

Tom was a very engaging conversationalist, and Rhonda enjoyed their time together. They would talk about all sorts of things that Tom had done in his life, his flying, his family, or movies he'd seen. 3RP 56. Rhonda admitted that she kind of spoiled

Tom. He liked to have everything “just so” and Rhonda would make sure that he got what he wanted. 2RP 222. She would prepare meals just the way he liked them, and she would help set him up at the table in the kitchen with his letters and bills. It seemed that everyday, Tom’s mailbox was full of letters soliciting donations from Tom. 2RP 231. Tom was very generous with his money and contributed to a number of different charities. It seemed he was always writing out checks to one cause or another. 2RP 66; 2RP 231.

Rhonda did worry whether Tom needed some outside assistance or guidance with all of his financial dealings. 2RP 231. She spoke with him about this, but he was very proud about being able to handle all of this on his own. 2RP 232. Rhonda did make a few calls behind his back to his doctor, his son, and a CPA. 2RP 234; 3RP 69-70. She also contacted Nick Kavadas, a certified professional guardian with a focus upon elderly incapacitated adults. Nick had another client at Rhonda’s house. 2RP 232. At Rhonda’s request, Nick came out to the home and visited with Tom. Tom remained insistent during that meeting, that he did not need any help. It was Nick’s opinion, after spending time talking with

Tom, that Tom remained capable of handling his own affairs. 3RP 21-22.

There was no evidence presented that Tom ever complained that Rhonda had taken his money. Sadly, he passed away before trial, so that the defense was not able to call him to the stand.

Jennette DeWater

When Rhonda opened the Olympic RN Home Care, she hired Jeanette DeWater to serve as the manager. Jeanette was a registered nurse with whom Rhonda had worked at Crestwood. As the manager, Jeanette took care of administrative matters as well as caring for the residents. 2RP 222-24.

One such duty was to collect the rent from the various residents at the Home. 2RP 228. She would often leave the checks face down on the table for Rhonda to endorse the ones that were not already stamped. Often times Rhonda would not look at the checks before endorsing them with a signature or stamp. 2RP 228-29; 3RP 66. After endorsing the checks, Rhonda would sometimes give the checks to Jeanette for her to deposit. 2RP 229. The bankcard and the banking material were kept in the kitchen. 2RP 224.

According to Rhonda, Jeanette did a poor job at charting. 3RP 38. Additionally, there had been arguments about money, with Rhonda feeling that she deserved more. All of this led to Rhonda talking with another employee about possibly taking over the management position. That employee spoke with Jeanette, who felt like she had been backstabbed. This occurred on June 2, 2009. Jeanette quit that same day.² 3RP 38-40

Trial Testimony

Tom Curry made a monthly payment of \$3,500 to Olympic RN Home Care. In April, a check bounced. This led Rhonda to follow up with the bank. Rhonda discovered that Tom had made too many monthly payments. 2RP 35-36. According to Rhonda, it first appeared that there had been three overpayments, and so she later entered into an agreement with Tom to reduce his rent to \$2,000, with the extra \$1,500 going towards the overpayment. 2RP 36-39. When Rhonda later discovered that it was six checks, rather than the three, she was shocked. She was able to get

² As discussed below, Jeanette appears to claim that she quit on an earlier date, but was somewhat unclear as to when that might have been (The court did not make a finding as to this issue.)

money from a different account to pay back the \$21,500. 3RP 50-51.

There was general agreement amongst the witnesses as to how the overpayments were discovered; although, there was some dispute as to what was said by Rhonda following that discovery. According to Jeanette, sometime in April or May of 2009, she gave Rhonda a rent check from Tom. Shortly thereafter, Rhonda called Jeanette and said, "Oh my God, the check didn't go through." 2RP 48-49. At trial, Jeanette said she had a clear recollection of Rhonda calling her and saying those words. According to Jeanette, she offered to call the bank but Rhonda told her not to bother, because that is where she just got the information. 2RP 34. Jeanette claims that Rhonda then told her that she was just going to write the check off. Id.

After her conversation with Rhonda, she called the bank on Tom's behalf. After talking to the bank, Jeanette confronted Rhonda with what the bank had said, asking if it was true. Rhonda replied "No, I can't believe you'd think I'd do something like that." 2RP 37. Jeanette claims that in response, she quit her job the next day and then reported it to Candice Corey at DSHS. 2RP 37. Upon cross-examination, however, Jeanette acknowledged that she did

not report any of this to the State until a couple of months later.

2RP 44.

Further, after being shown an earlier statement Jeanette had made, Jeanette suddenly changed her story as to how she learned of the bounced check. Although she earlier was quite sure that Rhonda had called and said "Oh my God, the check did not go through," (2RP 49), she now claimed she learned of it when Rhonda texted her about a bounced check. Jeanette further claimed that she is the one who later called Rhonda to confront her about the check. 2RP 45.

Contrary to Jeanette's claim, Rhonda testified that she did not tell Jeanette that they would write off the check. Rather, Rhonda told Jeanette to tell Tom so that Tom could decide what to do about it. 3RP 36. Back at the house, Rhonda spoke with Tom. Rhonda became aware that there were three overpayments. 3RP 37.

At trial, Rhonda was asked how she became aware of those overpayments, but the court would not allow her to testify as to what Tom had told her. 3RP 38. Tom and Rhonda then had a conversation where she asked him whether he wanted it paid back in a lump sum or whether he wanted to cut down the rent. 3RP 50.

Following that conversation, it was agreed that she would cut his rent down to \$2,000 per month until Tom was completely reimbursed. 3RP 39, 50.

Jeanette admitted that as manager, it was her responsibility to collect the rent check, and that she usually did this in the middle of the month. 2RP 22. But she also claimed that she would only do so when she was the manager. 2RP 23. Jeanette could not estimate the number of months that she was a manager nor the number of times she had collected rent from Tom. 2RP 46-47.

Jeanette's claim was rebutted by Rhonda, who explained that Jeanette was the manager the whole time, and that her position did not change on a month-to-month basis. 3RP 26-28. Jeanette's claim was further undercut by another employee who had worked there for the last 18 months, and who stated that Jeanette had been the manager the whole time. 2RP 62.

That other testifying employee was Lisa "Julie" DeWater, Jeanette's own sister-in-law. She had been hired by Jeanette (3RP 59); although, she was not yet married to Jeanette's brother and still went by the name Julie Wilson. 2RP 66. Julie described Tom as having "slight dementia," noting that he was sometimes forgetful of little things. 2RP 58.

According to Julie, Tom asked her why there were three checks written to Rhonda on his bank statement? Defense counsel objected that this was hearsay, to which the state responded that it would not be introduced for the truth of the matter asserted. The court agreed that the question might be relevant to explain what Julie did and why she did it. 2RP 59.

The State asked Julie whether she noticed that there were multiple checks for the month. Julie stated that she did, but that she knew that bank statements “don’t go exactly month to month.” Because of that, Julie told Tom that he would need to ask Rhonda about the checks. 2RP 60. Julie claims that she did talk with Rhonda who told her that Tom was paid up two months in advance. 2RP 60. Rhonda denied that she ever said that to Julie.

The day following Jeanette’s departure from work, she made an anonymous call to DSHS to report elder abuse of Tom. 2RP 44. On June 8, 2009, Candace Corey, a DSHS complaint investigator named made a visit on June 8, 2009. 2RP 126, 134. She asked Rhonda questions about Tom’s chart and payment of rent. According to Corey, Rhonda did not volunteer any statements that Tom had over-paid. 1 RP 156. Corey spoke with Tom, whom she described as sounding confused. 2RP 153. According to

Corey, it was not until the following day that Rhonda called and said that the defendant had paid two months in advance. Rhonda was not sure how that would have occurred, but thought that it might have happened in January, February, or March of 2009. 1 RP 157.

The defense challenged the accuracy of Ms. Corey's recollections. For instance, Ms. Corey described how Jeanette had opened the door to the house and let Corey in. Corey also described how she spoke with Jeanette on that visit. 2RP 136. The problem is that Jeanette no longer even worked at the house on June 8, 2009. That conversation simply did not happen.

The defense also called into question Ms. Corey's claim that Tom was confused. Not only did that differ from the observations of the other witnesses, the defense questioned why Ms. Corey would not take any steps towards ensuring that a guardian was assigned to help Tom if he so clearly needed one. Ms. Corey's unpersuasive response was "that's not my role." 2RP 175.

At trial Rhonda explained how Ms. Corey had not told her they were investigating the overpayment. Later that day, however, Julie called in sick and scolded Rhonda for overcharging Tom. It was only then that Rhonda realized that DSHS was concerned about the overpayment. She made a point to call Corey the

following day to say that there had been an over-payment, and that it was being taken care of. At that time, Rhonda believed that the over-payment amount was \$10,500.

On June 16, 2009, Ms. Corey returned to the house along with Loida Baniqued. 2RP 190. Baniqued's job was to investigate allegations of abuse and financial exploitation. 2RP 183. At the time, Rhonda explained that there had been an overpayment, that it was an honest mistake, and that she had made plans to pay back the funds to Tom. 3RP 46.

Baniqued talked to Tom and observed that he seemed to understand and follow everything that was being said. 2RP 197. Rhonda told her about the overpayments, and explained that it was an honest mistake based on both Jeanette and Rhonda both collecting checks. Rhonda stated that she had made arrangements for payback of the funds to Tom. 2RP 190.

The decision was made to remove all of the residents from the house. It was extremely upsetting for Rhonda and the residents. Rhonda tried her best to keep a happy face so as to minimize the impact on the residents. 2RP 220-21; 3RP 52-53. Remarkably, Baniqued and Corey attempted to use this against Rhonda at trial. According to Baniqued, there appeared to be

“warm interaction, warm relationship” between Rhonda and Tom which Baniqued believed to be unprofessional as between a business owner and resident.³ 2RP 196.

It was not until June 16th, that Rhonda learned there were six, rather than three, overpayments. 3RP 51. Once Rhonda learned of the extent of the overpayment, she contacted her money and obtained money to pay it all back. 3RP 52.

Prior to any of this happening, Rhonda had taken steps to help Tom. She had called his family, his doctor, Greg Cox (an accountant), and Nick Kavadas, a professional guardian.

Nick testified at trial that Rhonda had called him to the house because she thought that Tom needed some help in paying the bills. 3RP 15. Nick met with Tom alone for about a half hour, during which time Tom remained insistent that he did not need help.

Nick was in touch with the Port Angeles health care community. He had been a professional guardian for approximately 10 years, and most of his clients resided in some type of facility within the area. 3RP 8-9. He has known Rhonda for

³ An unsolicited editorial comment: It is a sad state of affairs when genuine warmth and compassion towards elderly residents is labeled “unprofessional” by our regulatory agencies. Rhonda ran a “Home”, not an “Institution.”

at least five of those years, during which she had been helping residents at the Crestwood Convalescent Center, the Sequim Health and Rehabilitation in Sequim, and her adult care home.

3RP 8-9. As Nick began to testify as to the people who knew her, the prosecutor lodged an objection to any character evidence, on the basis that the witnesses had not been disclosed for that purpose. The court sustained the objection, also noting that her character had not yet been challenged.

At trial, the court heard testimony from a bank representative and an investigative detective. Through these witnesses, the court learned that there were 11 rent checks deposited between the start of January and the end of June. Rhonda endorsed some of these checks while others just had the business stamp on them. There were no handwriting experts called, but both Rhonda and Jeanette offered opinions as to whether the signature on the various check looked like Tom's signature.

The eleven checks deposited during that six month period are as follows. (The asterisk denotes charged offenses)

Check 698 Written on 1/1/09 Deposited 1/5/09

Check 699* Written on 1/11/09 Deposited 1/16/09

Check 533* Written on 1/16/09 Deposited 1/20/09

Check 244 Written on 2/03/09 Deposited 2/3/09
Check 342* Written on 2/20/09 Deposited 2/20/09
Check 173 Written on 3/15/09 Deposited 3/16/09
Check 702 Written on 4/7/09 Deposited 4/7/09
Check 739* Written on 4/20/09 Deposited 5/5/09
Check 245* Written on 4/14/09 Deposited 4/16/09
Check 239* Written on 5/13/08 Deposited 2/13/09
Check 782 Written on 5/20/09 Deposited 6/03/09

Of the six theft charges, the court found Rhonda guilty of two: check 342 (count 3) and 245 (count 5).

As to check number 342, both Rhonda and Jeanette believed that the signature was Tom's. See Exhibit 11; 2RP 27; 3RP 31. The check was cashed into the business account. Rhonda had not endorsed it, but it did have the company stamp on the back. 2RP 78.

Check number 245 did not appear to Rhonda to be Tom's signature; although, Rhonda had endorsed the back of the check. Exhibit 14; 3RP 33. She would not have looked at the check before signing it. Id. The check was deposited into the U.S. Bank account. 2RP 79.

The court signed findings of fact and conclusions of law that did not set forth the elements of the offense, did not make factual findings in support of each element, and did not distinguish why the defendant was not guilty of some offenses but guilty of others. CP 8-13

III. ARGUMENT

A. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS ARE INADEQUATE.

CrR 6.1(d) requires the court to enter findings of fact and conclusions of law in any case tried to the court. The facts should address the elements of the crime separately and state the factual basis for the legal conclusion as to each element. State v. Russell, 68 Wn.2d 748, 750, 415 P.2d 503 (1966). This the trial court failed to do. In fact, the trial court did not even set forth the essential elements of theft, much less specify what evidence satisfied each element. CP 8-13.

The two missing essential elements in the court's findings are: 1) that Rhonda wrongfully obtained the property, and 2) that Rhonda had an intent to deprive Tom of that wrongfully obtained property. See State v. Kenney, 23 Wn. App. 220, 224-25, 595 P.2d 52 (1979) ("intent to deprive' another of his property or services is

an essential element necessary to support a conviction for any degree of theft defined in Title 9A.”); 9A.56.030(1)(a); WPIC 70.02. These two elements are the touchstone of criminal theft. After all, in a business setting, there will often be an overpayment, or a dispute as to whether one party should return particular funds that have been paid. Such matters are the subject of civil suits, not criminal sanctions.

The closest the court came to marking one of the necessary findings is Finding of Fact No. 39, where the court stated: “There is sufficient proof beyond a reasonable doubt that Checks nos. 342 and 245 were not monies defendant was entitled to.” CP 12. But, as discussed above, that is no different than any other finding in a contractual dispute as to which party is entitled to the money. What separates those matters from a criminal conviction is the intent to deprive someone of that wrongfully obtained property. Finding of Fact No. 39 does not satisfy the court’s requirements under CrR 6.1(d).

Nor does Finding of Fact No. 41 help. That finding states: “No reasonable person would have an additional \$21,500 worth of money in their accounts and not wonder where the money came from.” CP 12. But the court was not required to make a finding

as to what a reasonable person might know or intend. The Court was required to make findings related to Rhonda. The fact is, a reasonable business person would balance their check book. A reasonable business person would open her bank statements and not just rely upon calling a "1-800" number to determine the balance. We know, however, that Rhonda did none of those things. The court's findings, as drafted by the State, are insufficient under CrR 6.1(d).⁴

Even more importantly, it was clear from the testimony that at least one payment of \$3,500 per month was appropriate. The court's findings do not set forth any facts explaining why the two counts for which Rhonda was convicted were the improper thefts as opposed to the proper monthly payment.

The normal remedy for the failure to include these elements in the findings, and to identify the facts supporting each of them, is to remand for the entry of the written facts and conclusions. See State v. Head, 136 Wn.2d 619, 623, 964 P.2d 1187 (1998). In the present case, however, the evidence was insufficient to support either of those two elements. Because of this deficiency in the

⁴ It should be noted that the additional \$21,500 was not in her account all at one time, which certainly is something a reasonable person would take notice of.

evidence, remand for additional findings is not appropriate.

Instead, the two convictions should be vacated and dismissed.

B. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTIONS.

In determining the sufficiency of the evidence, "the existence of a fact cannot rest upon guess, speculation, or conjecture." State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). As described below, that is precisely what occurred in the present case. Other than speculation, there is no substantial evidence as to which checks were not authorized, or whether any of the checks were unauthorized by Tom.

Due process under the Fourteenth Amendment of the United States Constitution requires the State to prove all necessary facts of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). Evidence is insufficient to support a conviction unless; viewed in the light most favorable to the State, a rational trier of fact could find each essential element of the crime beyond a reasonable doubt. State v. Chapin, 118 Wn.2d 681, 691-92, 826 P.2d 194 (1992).

In the present case, it would not be enough to prove that Rhonda accepted checks that she should not have accepted with the intent of depriving Tom of his funds. She has been found guilty of wrongfully accepting two specific checks with the intent to deprive the rightful owner of that property. So even assuming she had committed a theft—which she didn't—the State had to present proof beyond a reasonable doubt as to those two checks. The State did not come close.

As to Count III, this was a check written on February 20, 2009, and deposited on the same day. Jeanette had testified that she tended to collect the rent checks around the middle of month. 2RP 22. Accordingly, it would make sense that this was one of the legitimate rent payments collected by Rhonda or Jeanette DeWater. Thus, a preponderance of the evidence would suggest that this was not a theft. Certainly the State did not present proof beyond a reasonable that the check deposited on February 20th was a theft.

As to Count V, this also was apparently collected in the middle of the month on April 14, 2009. While it is true that this check was cashed in the personal account, the court made a specific finding that Rhonda mingled her two accounts.

Additionally, Rhonda explained how she paid a number of business expenses out of her personal account.

In response, the State may present some theory as to why this particular check on April 14th was a theft. But there is a great chasm separating “some theory” or “some evidence” with proof beyond a reasonable doubt. This Court’s decision in State v. Colquitt, supra, demonstrates that distinction. In Colquitt, the defendant was charged with possession of cocaine, which had been found in a plastic bag in his pants. According to the police report, the arresting officer said that the little rocks “appeared to be rock cocaine.” The officer conducted a field test that tested positive for the presence of cocaine. The defendant stipulated to a trial based on the police report and was found guilty. He appealed and this Court reversed. This Court explained this evidence, standing alone without a confession, could not support a conviction. In doing so, this Court reaffirmed that some evidence is not tantamount to proof beyond a reasonable doubt.

In the present case, there is no meaningful proof that the checks in Count III and V were not proper rent payments.⁵ While

⁵ The court’s oral ruling as to those two counts can be found on pages 4RP 13-14, and does not shed any light as to why these two checks were the unlawful

the State may try to argue that this is a "technicality," it is the State that elected to charge the case in this manner. The State cannot complain when it is forced to prove the case in the same manner in which it was charged. See State v. Hobbs, 71 Wn. App. 419, 424 (1993) ("The State now characterizes this defense strategy as "lying in the weeds" on a "technicality". We disagree. . . . Defense counsel is an advocate for her client, not a "law clerk" for the prosecutor.)

In addition to the above glaring deficiencies in relating to the particular checks, the evidence falls short of establishing that any of the checks were wrongfully obtained by Rhonda. While the facts reveal that Tom over-paid Rhonda for his rent, they do not establish Rhonda's intent, the mens rea of this crime. No question, Rhonda was grossly negligent in the operation of her business. While she may be an outstanding and compassionate nurse, she should not have been running a business without administrative assistance. But gross negligence in her financial affairs does not make her guilty of theft. The evidence does not support her convictions. See State v. Chapin, 118 Wn.2d at 692 (Convictions build upon speculative evidence cannot be upheld)

checks as opposed to the legitimate rental payment. Those oral rulings were not incorporated into the written findings of fact.

C. FINDING OF FACT NUMBER 18 IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

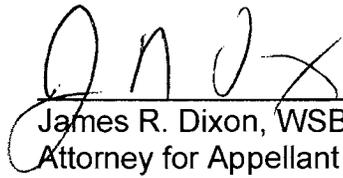
Although of no particular significance to the issues in this appeal, it should be noted that Finding of Fact Number 18 is not supported by substantial evidence. That finding states: "At some point before early June 2009, Ms. Dewater learned, from the bank manager, that one of Mr. Curry's rent checks bounced. Ms. Dewater texted and then called defendant, offering to call the bank to inquire." CP 10.

Contrary to the court's finding, the evidence at trial was that in April of 2009, it was Rhonda who contacted Jeanette when Tom's check had bounced. Although Jeanette's testimony flip-flopped on whether it was a text or telephone call, in either event, it was Rhonda notifying Jeanette DeWater about the bounced check. Because Finding of Fact No. 18 is not supported by substantial evidence, it must be stricken. See State v. Hutton, 7 Wn. App. 726, 728, 505 P.2d 1037 (1972) ("In order to support a determination of the existence of a fact, evidence thereof must be substantial, i.e., it must attain that character which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed.")

CONCLUSION

For the reasons set forth above, appellant asks this Court to reverse her convictions and remand the case for dismissal of charges against her.

Respectfully Submitted on this 11th day of October, 2011



James R. Dixon, WSBA #18014
Attorney for Appellant

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6
7 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
8 DIVISION TWO

9 STATE OF WASHINGTON
10 Plaintiff

No. 41903-3-II

11 v.

**DECLARATION OF PROOF OF
SERVICE ON APPELLANT**

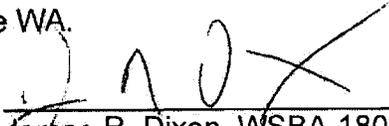
12 RHONDA GOUDIE
13 Defendant.

14 I, James R. Dixon, declare under penalty of perjury under the laws of the State of
15 Washington that the following is true and correct:

16 1. I am over 18 years old, I am competent to testify, and have personal
17 knowledge of the facts contained in this declaration.

18 2. I am attorney of record for Appellant Rhonda Goudie. On October 11,
19 2011, I did deposit in the US mail, postage prepaid, a copy of appellant's opening brief
20 addressed to Rhonda Goudie at her current address of 124 E. 12th St. Port Angeles,
21 WA 98362.

22 Dated October 14, 2011 in Seattle WA.

23
24 
25 James R. Dixon, WSBA 18014
Attorney for Defendant

26 PROOF OF SERVICE

27 PAGE 1 OF 1

28
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