

[Cite as *State v. Whiteaker*, 2010-Ohio-3410.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93303

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROLAND WHITEAKER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517209

BEFORE: Stewart, J., Rocco, P.J., and Celebrezze, J.

RELEASED: July 22, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender

BY: David M. King
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: R. Paul Racette
Assistant County Prosecutor
General Felony Unit
The Justice Center
1200 Ontario Street, 8th Floor
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Roland Whiteaker, appeals from a judgment of conviction finding him guilty of a single count that charged him with the theft of a large quantity of loose change from his parents. His sole assignment of error is that the state failed to offer sufficient evidence to establish that he lacked consent to take the money.

{¶ 2} When reviewing a claim that there is insufficient evidence to support a conviction, we view the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 3} The evidence shows that Whiteaker's parents owned a number of rental properties with vending machines. When they emptied the vending machines, they took the loose change to their house and stored it in creamery canisters and cloth bags. Whiteaker's mother kept the canisters in the house and covered them with decorative items so that the contents of the canisters would not be obvious.

{¶ 4} Whiteaker's father suffered from dementia, so when the mother wished to take a one-week, out-of-state trip, she asked Whiteaker to care for the father. The mother gave Whiteaker \$1,000 to cover expenses for the week and departed. A short while later, however, she grew concerned about Whiteaker's conduct. She called home frequently but Whiteaker said that the father was unavailable. On other occasions, no one would answer the telephone. During one call home, the mother learned that Whiteaker found a check for \$82,000 on a table, but he could not say where it came from. On another call home, Whiteaker told the mother that the father was "throwing

two dollar bills all over the kitchen.” The mother had never known the father to act like that, so she cut short her trip and returned home.

{¶ 5} About two months after returning home from her trip, the mother noticed that the decorative items placed on the creamery canisters had been moved. She checked the canisters and found them either empty or considerably lighter, and discovered that the cloth bags containing collectible coins were missing. Suspecting that Whiteaker had taken the change, she called the police. Whiteaker and his wife, codefendant Corrine Whiteaker,¹ stipulated prior to trial that in a 60-day period they jointly made ten different deposits of loose change into a bank account held in the wife’s name. The mother firmly denied giving Whiteaker permission to take the money. The court found the amount of change taken by Whiteaker was more than \$500 and less than \$5,000.

{¶ 6} Whiteaker testified and claimed that his father gave him permission to take the money. He claimed that on one of the days during the mother’s trip, the father spilled coins on the ground. Whiteaker told the father to clean the coins up. When Whiteaker and his father were leaving the house to go to Whiteaker’s apartment, he found two bags of coins in his car — coins that he assumed his father had placed in the car for Whiteaker’s

¹This is a companion appeal with that of codefendant Corrine Whiteaker. See *State v. Corrine Whiteaker*, 8th Dist. No. 93304.

personal use. Whiteaker further justified taking possession of the coins by explaining that he had been told to remove the coins if “something happened to either one of my parents or both.” He said that by taking her trip, the mother “abandoned” the father, thus justifying removal of the coins. Whiteaker said that he used the money to pay bills because his mother’s abandonment of the father necessitated that he stay with the father, causing him to lose work.

{¶ 7} R.C. 2913.02(A)(1) states: “(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: (1) Without the consent of the owner or person authorized to give consent[.]”

{¶ 8} The sole issue at trial was whether Whiteaker had consent to take the money. Viewing the evidence in a light most favorable to the state, we find it proved a lack of consent sufficient to sustain a conviction for theft. The mother gave unequivocal testimony that she did not give Whiteaker consent to take the money — testimony that by itself was sufficient to establish the elements of theft.

{¶ 9} In reaching this conclusion, we reject Whiteaker’s argument that he received the father’s consent to take the money. Even assuming the father’s capacity to grant consent despite his dementia (he died just days before the trial), Whiteaker’s testimony did not conclusively show that the

father consented to his taking the money. The father's reasons for putting the money in the car were unknown, so Whiteaker could do nothing more than assume that the father gave him the money — an assumption that lacked credibility given the father's dementia. In any event, we review the evidence in a light most favorable to the state, and Whiteaker's use of the money for his own personal need was inconsistent with any directive to remove the coins in the event something happened to either the mother or father.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR