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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
May 28, 2025 Session

STATE OF TENNESSEE v. GINNY ELIZABETH PARKER

Appeal by Permission from the Court of Criminal Appeals
Circuit Court for Williamson County
No. B-CR210047 Michael Binkley, Judge

No. M2022-00955-SC-R11-CD

DWIGHT E. TARWATER, J., with whom MARY L. WAGNER, J., joins, dissenting.

Despite lack of evidence on an element the State was required to prove beyond a reasonable doubt, the majority upholds Parker's convictions solely on her lack of credibility. Because disbelief of a defendant's statement alone cannot establish an element of the offense, I respectfully dissent from my colleagues' opinion.

The only element of forgery at issue here is lack of authorization. *See* Tenn. Code Ann. § 39-14-114(b)(1)(A)(i) (2018). Did Parker have her grandmother's authorization to pass the five checks, or not? As the majority notes, this inquiry is made difficult by the fact that grandmother passed away before charges were filed in this case. The only direct evidence of authorization is Parker's statement that her grandmother authorized the checks, and grandfather's testimony that he himself did not authorize the checks (and did not know what his wife was doing). Present is direct evidence that the checks were authorized, and noticeably absent is direct evidence of lack of authorization. But as the majority notes, either direct or circumstantial evidence may be used to prove an element of the offense.

Certainly, the element of lack of authorization may be proven solely by circumstantial evidence. But the record must actually contain some circumstantial evidence of that fact. In this case, that means the record must contain some evidence of Parker's lack of authorization. The majority correctly notes that, "while the fact-finder is permitted to disbelieve a witness' testimony, 'it may not construct a theory based on no evidence at all.'" *Napolitano v. Bd. of Prof. Resp.*, 535 S.W.3d 481, 501, 505–07 (Tenn. 2017) (citations omitted). The majority notes that this is consistent with other jurisdictions which hold that disbelief of a witness's testimony on a fact is circumstantial evidence of the opposite fact, but it cannot be the *only* evidence of that opposite fact.

"Circumstantial evidence is evidence of collateral facts and circumstances from which the trier-of-fact may infer" another fact based on reason and common experience. *State v. Phillips*, 138 S.W.3d 224, 231 (Tenn. Ct. App. 2003) (first citing *Bishop v. State*, 287 S.W.2d 49, 50 (Tenn. 1956); and then citing *Johnson v. Ely*, 205 S.W.2d 759, 762 (Tenn. Ct. App. 1947)); *see also* 7 Tenn. Pattern Jury Instr. T.P.I.—Crim. 42.03 Evidence: Direct and circumstantial (2025 ed.) ("Circumstantial evidence consists of proof of collateral facts and circumstances which do not directly prove the fact in issue but from which that fact may be logically inferred."). For example, consider a defendant who testified that he did not run a red light and that it was a dry day. But another individual testified that a bystander wore a raincoat covered with drops of water and carried a wet umbrella. This testimony would be circumstantial evidence from which a fact-finder could conclude that it was raining and disbelieve the defendant's statement about it being a dry day. However, this testimony is not circumstantial evidence that the light was red. Without other circumstantial proof related to the light's color, the defendant could not be convicted of running a red light merely because a fact-finder disbelieved his testimony about the weather and inferred the defendant was not a credible witness. In the same way, the record here must present some circumstantial evidence of lack of authorization in addition to Parker's lack of credibility.

The majority posits that certain circumstantial evidence introduced in this case not only discredits Parker's statement but also proves the element of lack of authorization. The majority finds that (1) Parker's statements regarding a $4,000 conferral to her grandparents and lack of a $4,000 deposit in their account, and (2) the fact that the five checks were in round amounts constitute circumstantial evidence permitting an inference of lack of authorization for the five checks at issue. That's it. And that is where I depart from the majority. I do not agree that any part of this evidence individually or collectively constitutes circumstantial evidence of lack of authorization. I go through each in turn.

The majority first discusses a $4,000 deposit that Parker brought up during her interview with the detective.[1] There was and still is quite a bit of confusion surrounding the $4,000 deposit. At trial, Detective Cox was not sure exactly what had been said regarding the $4,000. The large majority of his interview with Parker concerned other topics—most of which had no relation to this case—and little was said about the $4,000. Parker made three passing references to the $4,000 during the interview, none of which

[1] The interview was an audio recording, with no video. The trial court was unable to view Parker's demeanor during this interview, and reviewing courts have been unable to as well. *Cf. State v. Ellis*, 453 S.W.3d 889, 899–907 (Tenn. 2015) (discussing importance of viewing witness demeanor in making credibility and weight of evidence determinations); *State v. Moats*, 906 S.W.2d 431, 433, 435 (Tenn. 1995) (same); *see also Overton v. Lowe*, No. E2007-00843-COA-R3-CV, 2009 WL 1871946, at *7 (Tenn. Ct. App. June 30, 2009) (finding a judge who does not "see and hear" witnesses is at a "significant disadvantage" when making credibility determinations). Notably, Ginny Parker was not a witness in this case as she did not testify.

were clear on what had occurred and none of which the detective followed up with questions. At no point during her interview did Parker state that she deposited $4,000 into her grandparents' account or that she wrote her grandmother a $4,000 check. She did state that she gave her grandmother $4,000 to hold onto for her and sought to track how much money was spent on the $4,000; what form that bestowal took was never inquired into or discussed further. (Was it cash? Check?) And after discussing putting money into her *mother's* bank account, Parker stated, "[W]hen I put the deposit of four thousand dollars—technically, there's still twenty-three or twenty-six hundred in the account that's mine . . . ." Again, the detective did not follow up on what Parker meant by this statement. Over half an hour later, Parker then said that the checks written to her and Clark "would not equal [her] $4,000."

Although this has been interpreted as her stating she made a $4,000 deposit into her grandparents' account, a careful review of the recording reveals that Parker never stated as much. At the motion for a new trial, Parker produced records showing she had made a $4,000 deposit, albeit not in her grandparents' account. The State acknowledged it misunderstood what had been said about the $4,000 check and withdrew its statements regarding any inferences that could be made from that check, conceding "the $4,000 check is consistent with [defense] version of events." While the majority is correct that evidence introduced in support of a motion for a new trial does not factor into a sufficiency determination, the State's reversal on the $4,000 question in the trial court indicates the evidence is ambiguous and not so probative as the majority argues.

Yet even in the light most favorable to the State, Parker's statements regarding the $4,000 combined with the lack of a $4,000 deposit in her grandparents' account are not circumstantial evidence of lack of authorization. The lack of a $4,000 deposit in her grandparents' account does not support an inference that Parker lacked authorization to pass the checks. Not even the majority pretends the lack of a $4,000 deposit itself creates an inference that Parker lacked authorization. Rather, it finds that "the Defendant's dishonesty about the $4,000 supports a rational inference of *guilt as to authorization*." (Emphasis added.) The only inference that can be made from the lack of a $4,000 deposit in the grandparents' account is that Parker misspoke or possibly lied about giving her grandmother $4,000. It goes to credibility alone and not to the main issue—whether Parker had her grandmother's authorization. *See Phillips*, 138 S.W.3d at 231.

Nevertheless, the majority seeks to link Parker's possible dishonesty on this point to lack of authorization by finding that "[t]he only authorization claimed by the Defendant in her interview was authorization to spend her *own* $4,000 purportedly sitting in the Gordons' bank account" and that "any authorization by Mrs. Gordon was explicitly premised on the Defendant's act of depositing $4,000 of her own money into the Gordons' bank account." The majority partly buttresses this with Parker's insistence that she "had never, ever, taken a damn dime" from her grandmother.

This characterization stretches what little Parker said regarding the checks during the interview. Parker in no way premised her grandmother's authorization of the checks on a bestowal of $4,000 or any other amount. I believe a better understanding of Parker's statement that she had never taken a dime from her grandmother is she never took a dime *without authorization*—i.e., she never stole from her grandmother. Indeed, Parker emphasized during the interview, "I wasn't *stealing* the money from them."

In short, the lack of $4,000 deposited into the grandparents' account is not circumstantial evidence of lack of authorization. The lack of a $4,000 deposit in her grandmother's account undermines her credibility or perhaps her accuracy, but it is not affirmative proof that she lacked her grandmother's authorization.

Even if it were considered circumstantial evidence of lack of authorization, it does not get the proof over the finish line. No rational trier of fact could have found Parker guilty based on her statements regarding the $4,000 and the lack of a $4,000 deposit.

The majority next suggests the fact the five checks were in round amounts and were payable to Parker and not to a doctor's office, pharmacy, etc., is circumstantial evidence indicative of lack of authorization. I cannot agree. Grandmother, and sometimes grandfather, wrote dozens of checks to several family members during the time period contained in the record. All family members except one received checks in round amounts.[2] The round amounts on Parker's checks were in line with the amounts given to other family members during that time period. Consequently, the fact that the checks were in round amounts is consistent with the Gordons' familial financial assistance habits at the time and is not indicative of lack of authorization. If anything, it is circumstantial evidence that the checks *were* authorized.

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[2] Shirley Montgomery received checks for $150.00 (February 21, 2019); $125.00 (March 24, 2019); $150.00 (April 19, 2019); $100.00 (June 15, 2019); $350.00 (July 12, 2019); and $500.00 (August 13, 2019).

Maggie Gordon received checks for $50.00 (December 11, 2018); $75.00 (December 28, 2018); $100.00 (February 9, 2019); $200.00 (February 15, 2019); $400.00 (February 22, 2019); $150.00 (February 22, 2019); $80.00 (April 17, 2019); $60.00 (May 29, 2019); $200.00 (June 13, 2019); $100.00 (September 13, 2019); $300.00 (September 28, 2019); $300.00 (October 26, 2019); $300.00 (January 4, 2020); and $80.00 (February 14, 2020).

Mary Thomas received checks for $300.00 (October 19, 2019); $200.00 (November 16, 2019); $200.00 (November 19, 2019); $200.00 (November 26, 2019); $250.00 (January 17, 2020); and $55.00 (February 22, 2020).

Tonya Gordon, the only family member who did not receive checks in round amounts, received checks for $348.05 (March 4, 2020); $135.00 (March 19, 2020); $106.63 (March 30, 2020); and $242.65 (April 2, 2020).

One other topic must be addressed. While the majority states it does not consider evidence of drug use, PayPal transactions, or checks to Brandon Clark, it nevertheless notes that these *could be* considered in the sufficiency assessment. This is not about "could." I disagree that these are worthy of discussion, much less that they may be considered in the sufficiency assessment as they consist entirely of propensity evidence and are irrelevant to the element of authorization. They too are neither direct nor circumstantial evidence of lack of authorization—the only element at issue.

As to the drugs, Parker's drug use was not tied to the time period of the five checks at issue—i.e., no causal nexus was established. Parker's interview with the detective occurred in late July 2020, and the five checks were passed between October 2019 and February 2020; no timeline was given for Parker's tumor growing back, either during the interview or at trial. Moreover, motive is not an issue in every case and it was not in this case. *See State v. McCary*, 922 S.W.2d 511, 514 (Tenn. 1996) (finding "motive" a subcategory of the "identity" other purpose under Rule 404(b)); *see also United States v. Sutton*, 41 F.3d 1257, 1259 (8th Cir. 1994) (finding evidence of drug use improper for proving motive because motive was not at issue in the case). The drug motive does not relate to the element of lack of authorization or to this offense in particular; it serves only as general motive for why Parker would steal or commit crimes in general. *Cf. United States v. Jones*, 455 F.3d 800, 812 (7th Cir. 2006) (Easterbrook J., concurring) (noting admission of drug evidence "without demonstrating relevance to some concrete dispute between the litigants creates needless risk that a conviction will rest on the forbidden propensity inference"); *State v. Mazowski*, 766 A.2d 1176, 1180 (N.J. Super. Ct. App. Div. 2001) (finding evidence of drug use inadmissible as an "undifferentiated 'motive' to steal").

There is no doubt that overuse of pain medication is a problem in Tennessee. And while it is undeniable that it may be of some value in some prosecutions, it is not here. Past overuse of pain medication is not circumstantial evidence of forgery.

Likewise, the PayPal transactions and checks to Brandon Clark consist entirely of propensity evidence and should play no role in the consideration of guilt. *See State v. Rodriguez*, 254 S.W.3d 361, 377 (Tenn. 2008) (finding evidence of other bad acts of a similar nature to the offense for which defendant was on trial constituted propensity evidence that had "the effect of converting the trial from an assessment of the charges against [the defendant] to a general inquiry as to his character" (alternation in original) (quoting *Staton v. Commonwealth*, No. 1362-01-4, 2002 WL 1792094, at *4 (Va. Ct. App. Aug. 6, 2002))); *State v. Parton*, 694 S.W.2d 299, 303 (Tenn. 1985) ("Evidence of other offenses is not admissible for the purpose of showing propensity or disposition on the part of the defendant to commit the crime for which he is on trial."); *Harris v. State*, 227 S.W.2d 8, 9–10 (Tenn. 1950) (collecting Tennessee cases). Moreover, Parker was not charged for

any of this conduct, and all charges against Clark were dismissed. And while it does not affect this Court's sufficiency assessment, not even the trial court relied on the Clark checks as circumstantial evidence of Parker's guilt.

In summary, all evidence that the majority paints as circumstantial evidence of lack of authorization is nothing more than evidence undermining Parker's credibility. When viewed in light of all the evidence in the case, here is what we find. Rose Gordon handled money matters in her marriage. Rose Gordon was in the habit of writing checks to family members in need of help. In October 2019, when Parker first cashed checks from her grandmother, Parker's mother—Rose Gordon's daughter—had just died. Four of the five checks were issued soon after Parker's mother's death, and soon before the $1,000 loan. These four checks were issued about six months before Rose Gordon died, yet she never reported the checks or alleged Parker cashed the checks without her authorization. That is, the person in charge of the Gordons' finances never claimed the checks were unauthorized; but the person who did not handle and was unaware of the Gordons' finances was the one who pursued criminal charges following the death of the other. And even grandfather pursued charges only because his sister—who likewise had no role in the couple's finances—reported the checks stolen and brought him to the police station. The lack of $4,000 goes to credibility alone and is not circumstantial evidence of lack of authorization. Even if it were, no rational trier of fact could have found Parker guilty beyond a reasonable doubt based upon the lack of a $4,000 deposit alone, particularly given the lack of clarity regarding the $4,000 in Parker's interview and the State's concession that no inferences could be drawn from the comment about the $4,000.

Ginny Parker may have fallen short in some aspects of how she expressed herself during the interview and in some of her life choices, but that sheds no light on whether Rose Gordon did or did not authorize the five checks. Moreover, there is nothing in the record regarding Rose Gordon's state of mind that negates her apparent authorization of the checks. The State simply did not meet its burden to prove the element of lack of authorization for the five checks at issue. *See* Tenn. Code Ann. § 39-14-114(b)(1)(A)(i).

Cases must be tried on the strength of the State's evidence, not on the strength of character of the person accused. The State did not meet its burden of proving beyond a reasonable doubt that Ginny Parker forged the five checks, yet she was inferred guilty based on evidence undermining her credibility alone. The majority opinion provides no reassurance that Parker was found guilty on any other basis.

For these reasons, I respectfully dissent.

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DWIGHT E. TARWATER, JUSTICE