

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4662
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SONDRA LEE McVAY,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Texas
(CR4-91-38)

(December 15, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Appellant, Sondra Lee McVay, was convicted by jury trial of one count of embezzlement or misapplication by bank employee in violation of 18 U.S.C. § 656.

The facts in this case derive from largely uncontested trial testimony. Police officers responded to a report of a bank robbery at the drive-in bank where McVay worked as the teller supervisor.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

McVay told investigators that she arrived at the bank at 7 a.m., about 30 minutes earlier than usual, in order to catch up on some paperwork. McVay, who had been a bank employee for five years at the time of the alleged robbery and was one of three employees at the drive-in branch, alternated with one of the other employees in opening the bank. On the morning of the supposed robbery she was the first to arrive and the only one present during the incident.

According to McVay, as she was putting her key in the lock to the front door, a person approached her from behind "out of nowhere" and told her not to turn around if she did not want to be hurt. She identified the person as a man based on his voice, but could provide no other details or descriptions. McVay punched in her security code and then unlocked a second door into the bank.

McVay stated that the man grabbed her keys and pushed her through the door, but that moments later when she turned around no one was there. The man's voice, however, supposedly ordered her to go to the vault at which point he started following her again. McVay testified that she opened the vault, took money out, and placed it in the man's bag. The robber allegedly told McVay not to place a stack of "bait money" (money with pre-recorded serial numbers) in the bag because it contained some visibly mutilated currency.

After she heard the bank's doors close McVay claimed to have gone into a paralytic "shock" and was unable to call for help or push an alarm button. According to trial testimony, there were

four alarm holdup buttons and telephones nearby in the bank. A co-worker of McVay's showed up at about 8 a.m., found McVay sitting on the floor crying, and called police.

According to Officer David Wilson, one of several city police officers and FBI agents who responded to the robbery report, there was no indication that a robbery had taken place beyond the information provided by McVay. Wilson interviewed McVay, felt that her story was unreliable, and obtained a signed consent form to search her car.

Inside McVay's car Wilson discovered a trash bag in the rear of the passenger compartment containing \$180,500. Police subsequently found another \$30,000 in McVay's workout bag under the passenger side seat of the car. Following an audit, the bank determined that \$214,000 was missing. McVay testified that she had no idea how the money appeared in her car.

The only latent fingerprint found on one of the bags belonged to McVay. While McVay repeatedly claimed that it was very dark in the bank that morning, another teller supervisor who began working at the bank after the incident testified that there are some lights on at all times in the bank and that these cannot be turned off.

According to a bank employee McVay claimed that the person who robbed the bank took her keys so that he could let himself out of the bank. Some ten months after the incident a bank teller discovered a small woman's glove with keys inside in a box underneath the sink in the bank's bathroom. McVay, in the presence

of FBI agents, identified the keys as hers. The glove, identified as belonging to McVay, matched a glove discovered in the bank the day after the alleged robbery.

The day before the incident the bank announced that it had hired two new employees so that two people would open and close the bank instead of just one. The new employees were to start the following Monday.

McVay, with minimal elaboration, argues that there was insufficient evidence to convict her. According to McVay, it is not believable beyond a reasonable doubt that a "reasonably intelligent" person with a good work history who cooperated with police and consented to a search of her car could have committed the crime for which she was convicted. At no point in her brief does McVay contest any of the evidence adduced by the government at trial.

A violation of 18 U.S.C. § 656 is committed when an employee of a federally insured bank embezzles money intrusted to the custody or care of the bank with the intent to injure or defraud the bank. U.S. v. Brock, 833 F.2d 519, 522 (5th Cir. 1987). McVay concedes only the fact that she was an employee of a bank insured by the Federal Deposit Insurance Corporation.

In considering McVay's argument that the evidence does not support her conviction, we start with the premise that a jury verdict must be sustained if there is substantial evidence, in the light most favorable to the Government, to support it. U.S. v.

Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989). The jury is the final authority on the credibility of witnesses. U.S. v. Lerma, 657 F.2d 786, 789 (5th Cir. 1981), cert. denied, 455 U.S. 921 (1982) (citation omitted). This Court "accepts all credibility choices that tend to support the jury's verdict." U.S. v. Salazar, 958 F.2d 1285, 1294 (5th Cir.), cert. denied, 61 U.S.L.W. 3260 (1992).

Evidence is sufficient to uphold a jury verdict if a reasonable trier of fact could have found all the necessary elements of the offense under consideration beyond a reasonable doubt. Lechuga, 888 F.2d at 1476 (citation omitted). Furthermore, an individual may be found guilty beyond a reasonable doubt based on circumstantial evidence. Although individual facts and incidents standing alone might be inconclusive, they "may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof." Lechuga, 888 F.2d at 1476 (quoting Coggeshall v. U.S. (The Slavers, Reindeer), 69 U.S. (2 Wall.) 383, 17 L.Ed. 911, 914-15 (1865)).

The cumulative effect of the evidence amply supports the jury's verdict against McVay on the remaining elements of the § 656 violation. This evidence included the absence of any indication that a robbery had taken place beyond McVay's story to police, the somewhat ethereal description of the alleged robber, the implausibility of McVay's claim that she was unable to call for help or push an alarm button and her contradicted emphasis on how

dark it was in the bank. Perhaps the most compelling evidence of her guilt is the discovery of the money in her car and her inability to explain how it got there. Still further, there is the presence of her fingerprint on a bag containing some of the money, and the discovery of her bank keys--which the robber supposedly took--hidden in one of her gloves in the bathroom of the bank.

This evidence is clearly sufficient to support the jury verdict and requires that the conviction of Sondra Lee McVay be

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