

State of Tennessee v. Tabitha Gentry (AKA Abka Re Bay)

No. W2015-01745-SC-R11-CD

Judge Jerry Smith

Criminal Law Journal Member: Kendahl Shoemaker Luce

Defendant, Tabitha Gentry, was indicted by a Shelby County Grand Jury for theft of property valued at over \$250,000 and aggravated burglary.¹ The charges stemmed from Gentry's week-long seizure and physical occupation of a 10,000 square foot East Memphis home.² On August 26, 2011, Renasant Bank foreclosed on the home and assigned Greg Paule, who was in charge of managing the bank's foreclosed homes, to prepare the home for sale.³ By February 2013, the bank had sold the home for \$2.4 million dollars and as it prepared for closing, Gentry simultaneously worked to acquire the property without purchasing it.⁴ Gentry filed twelve pages of "difficult to decipher documents" with the Shelby County Register of Deeds, including a document titled "quitclaim deed" that purported to transfer title of the home to Gentry using her alias, Abka Re Bay.⁵ By March 4, 2013, Gentry had entered the home without the Bank's consent or knowledge, changed the locks, and placed a large chain and padlock on the front gate of the property.⁶ She also posted six signs advertising "No Trespassing," "Private Property," and "Keep Out" on the trees around the property and placed a flag for the "Moorish National Republic" on the front gate with a sign stating, "I Abka Re Bay, seize this land for the Moorish National Trust."⁷

On March 4, the real estate agent for the bank discovered the signs, flag, chain, and padlock when he drove by to check on the property.⁸ He called Paule to notify him about what was occurring at the home, and Paule then called the police.⁹ By the time the police had spoken with both men and prepared a written report, it was nearly dark so the police decided not to

¹ *State v. Gentry*, 538 S.W.3d 413, 417 (Tenn. 2017)

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 417-18.

⁸ *Id.* at 418.

⁹ *Id.*

approach the house at that time because of safety concerns.¹⁰ The next morning, both men and the bank president met with the police and it was decided that the bank needed to give the occupants of the home twenty-four hours' notice to vacate, so they placed a written notice to vacate on the gate.¹¹ The next day, however, Paule learned from an attorney for the City of Memphis that Gentry was under FBI investigation because of threats she had made against the President of the United States.¹² As a result of concerns related to those threats, the Shelby County Sheriff's Office became involved in this matter and decided to enter the house with a Special Weapons and Tactics ("SWAT") team to arrest Gentry for the home occupation.¹³ As SWAT prepared to enter the property, they saw a white car leave through the front gate. A sergeant with the Sheriff's Office followed the car, pulled it over, and arrested Gentry.¹⁴ After which, SWAT entered the home and discovered clothing, food, a few air mattresses, and official documents under the name of Tabitha Gentry and "Moorish sovereign documents" issued to "Abka Re Bay."¹⁵

At trial, Gentry chose not to testify, at least partly based on her belief that she was "not subject to [the] futile jurisdiction" of the trial court.¹⁶ The jury convicted her of theft of property valued at \$250,000 or more and aggravated burglary.¹⁷ The aggravated burglary conviction was based on Gentry's intent to commit the theft of the real property when she entered the same house.¹⁸ She was sentenced to twenty years for the theft conviction and to three years for the aggravated burglary conviction.¹⁹ On appeal, the Court of Criminal Appeals affirmed the convictions and sentences.²⁰ Gentry then filed an application for permission to appeal pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure,²¹ which the Tennessee Supreme Court granted.²²

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 419.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 420.

²¹ "An appeal by permission may be taken from a final decision of the Court of Appeals or Court of Criminal Appeals to the Supreme Court only on application and in the discretion of the Supreme Court." Tenn. R. App. P. 11.

²² *Gentry*, 583 S.W.3d at 420.

The primary issues on appeal were whether Tennessee’s consolidated theft statute encompasses the offense of theft of real property, and if so, based on the facts of this case, the evidence was sufficient to sustain a theft conviction.²³ The Court ultimately concluded that the General Assembly intended Tennessee’s consolidated theft statute to apply to theft of real property in the same way it applies to other property, and that there was sufficient evidence to support a conviction for the theft of realty.²⁴ In determining whether there was sufficient proof to support a conviction for theft of property valued at over \$250,000, the Court noted that, although the facts of most “squatter” cases would not support a conviction for theft, this was not a typical case as Gentry was not a “mere squatter.”²⁵ Based on Gentry’s filing of papers with the Register of Deeds Office by which she sought to obtain record ownership of the property coupled with her physical occupation and seizure of the house, the Court held that there was sufficient evidence to support the jury’s finding that Gentry had the intent to permanently deprive the Bank of the property and had obtained and/or exercised control over the real property.²⁶

III. Analysis

As noted in the opinion, in 1989, Tennessee adopted a consolidated theft statute which incorporated all the myriad ways at common law one might deprive another of his/her property.²⁷ The legislative intent was to relieve the burden on prosecutors to choose the precise common law offense for the situation at hand.²⁸ The hope was that no longer would an accused thief be able to escape punishment through dismissal of an indictment which charged the wrong common law offense.²⁹ With these considerations in mind, thirty-six states have, as of June 1, 2017, enacted consolidated theft statutes similar to Tennessee’s.³⁰

Tennessee Code Annotated Section 39-14-103 (a) provides that:

²³ *Id.*

²⁴ *Id.* at 426.

²⁵ *Id.* at 427.

²⁶ *Id.*; see Tenn. Code Ann. § 39-14-103(a) (West, Westlaw through 2018 Second Reg. Sess.) (“A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner’s effective consent.”).

²⁷ *Id.* at 421.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 422.

A person commits theft of property if, with the intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent.³¹

This consolidation of various common law offenses into a single theft statute did however change the definition of some of the old common law offenses and the elements that must be proven for a conviction of the offenses.³² For example, an asportation or moving of property is no longer necessary to prove a theft.³³ In this case, the primary issue raised was whether Tennessee's consolidated theft statute encompasses theft of real property.³⁴ Based on the statutory language the General Assembly chose to adopt when it enacted the consolidated theft statute, the Court determined that there are no limitations in the statute that preclude its application to theft of real property generally or distinguish between real and personal property for purposes of conduct requirements for carrying out a theft.³⁵ Therefore, the Court held that under Tennessee's broad theft statute, real property, which, of course, cannot be asported or moved, might be the subject of a theft conviction.³⁶ Thus, the question in the case *sub judice* resolves itself into whether the evidence is sufficient to prove the defendant obtained or exercised control over the realty with the intent to deprive the owner of the real estate.³⁷

The unusual and egregious actions of the defendant in this case were found by the Court to be sufficient to sustain a theft conviction. The defendant took up residence in the realty, put up signs stating her intent to seize the property, publicly proclaimed herself the owner of the property, and even executed a fake "deed" indicating the property had been transferred to her.³⁸ Under these circumstances, the Court found the evidence sufficient to support a conviction for the theft of realty.³⁹

Notably, while holding the evidence sufficient for the conviction in the instant case, the Court took pains to explain that this conviction was upheld due to the actions of the defendant which evinced an intent to deprive the owner of the realty. In the more typical "squatter case,"

³¹ *Id.*

³² *Id.* at 422-23.

³³ *Id.*

³⁴ *Id.* at 416.

³⁵ *Id.* at 425-26.

³⁶ *Id.* at 425.

³⁷ *Id.* at 427.

³⁸ *Id.*

³⁹ *Id.*

the squatter temporarily occupies the property without evincing any intent to deprive the owner of the property.⁴⁰

Although not stated in the opinion, reading between the lines, it appears the audacity of the defendant in her actions of attempting to remain in control of the property prompted prosecutors to charge her with theft rather than the less serious offenses of trespass or vandalism. Practitioners should keep in mind the unusual nature of this case and watch for prosecutorial overreach in more routine squatter cases.

The Court in this case concluded that the evidence was sufficient for a trier of fact to conclude that the defendant “obtained and/or exercised control over the real property”.⁴¹ Consequently, a question arises from this seeming conflation of the elements of “obtaining” and “exercising control” over the realty. Specifically, one might ask, how does this holding affect the case of State v. Byrd in which the Supreme Court held that aggregation of the value of property in a theft prosecution depends on whether the defendant is charged with “obtaining” property, stolen from multiple owners, (usually cannot aggregate value of property taken from multiple owners) or ”exercising control” (usually can aggregate value of property taken from multiple owners)?⁴² Given the exceptional nature of the instant case, any answer as to the effect of this case on Byrd may remain unanswered for some time to come.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *State v. Byrd*, 968 S.W. 2d 290, 292 (Tenn. 1998)