

NOTICE

*Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PAMELA JENEENE NICHOLS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11128  
Trial Court No. 3AN-10-6531 CR

MEMORANDUM OPINION

No. 6058 — June 4, 2014

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Michael R. Spaan, Judge.

Appearances: Jane B. Martinez, Anchorage, under contract with  
the Public Defender Agency, and Quinlan Steiner, Public  
Defender, Anchorage, for the Appellant. Elizabeth T. Burke,  
Assistant Attorney General, Office of Special Prosecutions and  
Appeals, Anchorage, and Michael C. Geraghty, Attorney  
General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley,  
District Court Judge.\*

Judge MANNHEIMER.

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\* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Pamela Jeneene Nichols befriended and then took advantage of an elderly man suffering from Alzheimer's disease. The man had an account at Wells Fargo Bank, and Nichols induced him to withdraw thousands of dollars from this account over a period of months. The man also had an investment account at Charles Schwab; funds from this account were accessible with an ATM card. Nichols — and, perhaps, other people acting in connivance with her — used this ATM card to withdraw thousands of dollars from the investment account.

Based on this conduct, Nichols was indicted for scheme to defraud and second-degree theft. Nichols ultimately pleaded guilty to the theft charge. She was sentenced to 5 years' imprisonment, and she was ordered to pay restitution. In this appeal, Nichols challenges the amount of restitution ordered by the superior court.

At the restitution hearing, the State presented testimony from various witnesses concerning the series of withdrawals from the bank account and the investment account, and concerning the victim's failing mental capacities during the time when these withdrawals were taking place. The State asked the superior court to hold Nichols responsible for all the money withdrawn from the bank account and the investment account.

Nichols contended that some of the money withdrawn from the Wells Fargo bank account represented gifts to her, and that other withdrawals from the bank account were loans to her that she might have later repaid. However, with one exception (which we describe later), Nichols offered no testimony to directly support these assertions. Instead, she relied mainly on the fact that the victim was unable to say whether this was true or not.

Nichols further contended that she did not perform all of the ATM withdrawals from the Charles Schwab investment account — that some of these withdrawals were performed by other people (using the same ATM card). Again,

however, Nichols offered no evidence to support these assertions, other than the fact that some of the photos from the ATM security camera depicted people who could not readily be identified as Nichols.

After hearing this evidence, the superior court concluded that Nichols was responsible, “as either principal or accomplice”, for all of the withdrawals from the Charles Schwab investment account, and that Nichols was responsible for all but one of the withdrawals from the Wells Fargo bank account.

(With respect to the one exceptional withdrawal, the evidence presented at the hearing suggested that, on this occasion, the victim had withdrawn \$620.70 from his Wells Fargo bank account for the purpose of purchasing clothing for Nichols at Sears.)

The superior court therefore ordered Nichols to pay restitution in the total amount of \$18,087 — \$9,167 for losses from the Wells Fargo bank account, and \$8,920 for losses from the Charles Schwab investment account.

On appeal, Nichols renews her argument that some of the withdrawals from the Wells Fargo bank account were either gifts or loans that she later repaid. As we just explained, the superior court found, with one exception, that Nichols stole the money that was withdrawn from the bank account. The question is whether the superior court’s finding is clearly erroneous.

Although there was little direct evidence on this point (because the victim was no longer capable of testifying coherently about these matters), the circumstantial evidence supported a reasonable conclusion that Nichols stole the money that was withdrawn from the bank account (again, with one exception). We therefore conclude that the superior court’s finding is not clearly erroneous.

Nichols also argues that the superior court should not have ordered her to repay all of the money withdrawn from the Charles Schwab investment account — because, according to Nichols, some of the withdrawals were performed by other people.

But, as we explained, the superior court found that Nichols participated in all of these withdrawals “as either [a] principal or [an] accomplice”. In other words, the court apparently accepted the fact that some of the withdrawals were performed by other people, but with Nichols’s assistance or encouragement.

Again, the evidence supports the superior court’s conclusion. All of the withdrawals from the Charles Schwab account were performed with the same ATM card, and the security photos from the ATM machine revealed that Nichols possessed and used this card on multiple occasions. The superior court’s finding that Nichols was responsible for all of the withdrawals is not clearly erroneous.

The judgement of the superior court is AFFIRMED.