

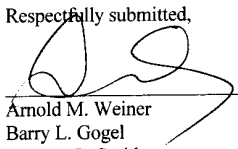
IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

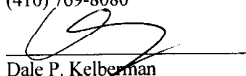
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STATE OF MARYLAND :
v. : Case No. 109210015
SHEILA ANN DIXON :
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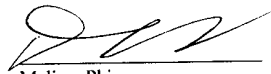
DEFENDANT'S REQUESTED INSTRUCTIONS TO THE JURY

Defendant, Sheila Ann Dixon, by her undersigned attorneys, hereby request the Court to instruct the jury in the above-captioned case in accordance with the proposed instructions attached hereto, in addition to, but not in limitation of, its usual instructions in a criminal case. The defendants further request that, in accordance with the Maryland Rules of Criminal Procedure, the Court inform counsel of its proposed action upon the requested instructions prior to counsel's argument to the jury.

Respectfully submitted,


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DEFENDANT'S REQUESTED INSTRUCTION NOS. 1-18

Defendant requests the following standard instructions from, *Maryland Pattern Criminal Jury Instructions (MICPEL)*:

1. MPJI-Cr 1:00 Pretrial Introductory Instruction
2. MPJI-Cr 1:01 Note Taking by Jury
3. MPJI-Cr 1:02 (A) Publicity
4. MPJI-Cr 1:03 Admonition Upon Recess
5. MPJI-Cr 2:00 (A) Binding Nature of Instructions
6. MPJI-Cr 2:01 Jury's Duty to Deliberate
7. MPJI-Cr 2:02 Presumption of Innocence and Reasonable Doubt
8. MPJI-Cr 2:03 Unanimous Verdict
9. MPJI-Cr 2:04 Impartiality in Consideration
10. MPJI-Cr 3:00 What Constitutes Evidence
11. MPJI-Cr 3:01 Direct and Circumstantial Evidence
12. MPJI-Cr 3:05 Dismissal of Some Charges Against Defendant
13. MPJI-Cr 3:06(A) Separate Consideration of Multiple Counts as to One Defendant
14. MPJI-Cr 3:10 Credibility of Witnesses
15. MPJI-Cr 3:13 Witness Promised Benefit
16. MPJI-Cr 3:16 Number of Witnesses
17. MPJI-Cr 3:17 Election of Defendant Not to Testify (if applicable)
18. MPJI-Cr 3:19 Prior Statements

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 19

MPJI-Cr 4.23.1 Theft -- Obtaining Control by Deception (modified)

Counts One and Two of the Indictment charge the Defendant with theft by deception of gift cards from Patrick Turner and Ronald Lipscomb.

In order to convict the defendant of theft, the State must prove beyond a reasonable doubt:

- (1) that the defendant willfully and knowingly obtained control over Mr. Lipscomb and Mr. Turner's property;
- (2) that the defendant willfully and knowingly used deception; and
- (3) that the defendant had the purpose of depriving the owner of the property; and
- (4) that the value of the property was at least \$ 500.

A person uses deception when she knows that she is creating or confirming a false impression without believing it to be true, or fails to correct such an impression once created or confirmed, or prevents the correct information from being acquired. Deception does not include puffing, immaterial statements and exaggerations unlikely to deceive ordinary persons.

Property means anything of value.

Owner means a person other than the defendant who has possession of, or any other interest in, the property and, without whose consent, the defendant has no authority to exert control over the property.

Deprive means to withhold property of another permanently, for such a period as to appropriate a portion of its value, with the purpose of restoring it only upon payment of a reward or other compensation, or to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 20

MPJI-Cr 4:32 (A) Theft -- Obtaining or Exerting Unauthorized Control (modified)

Count Three of the Indictment charges the Defendant with Theft by Obtaining or Exerting Unauthorized Control of gift cards from Baltimore City Housing.

In order to convict the defendant of theft under this Count the State must prove beyond a reasonable doubt:

- (1) that the defendant took and carried away the property of the Baltimore City Housing Authority; and
- (2) that the defendant did so without authorization and with the intent to deprive the owner of the property; and
- (3) that the value of the property was at least \$ 500.

Property means anything of value.

Theft requires "a distinct act of ownership or dominion exerted by a person over the personal property of another which either denies the other's right or is inconsistent with it." Baltimore and Ohio Railroad Co. v. Equitable Bank, N.A., 77 Md. App. 320, 325 (1988); Wells Fargo Bank Minnesota, N.A. v. Diamond Point Plaza, 171 Md. App. 70, 129 n.7 (2006).

The mere failure to return items entrusted to a person, without more, does not constitute fraudulent conversion. Roderick v. State, 9 Md. App. 120, 126 (1970).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 21

MPJI-Cr 4:22 Misappropriation by a Fiduciary (modified)

Counts Four through Six of the Indictment charge the Defendant with misappropriating certain gift cards in her role as a fiduciary.

In order to convict the defendant of any of these counts, the State must prove beyond a reasonable doubt:

- (1) that the defendant was an trustee, receiver or other fiduciary;
- (2) that the defendant was entrusted with a thing of value belonging to another;
- (3) that the defendant willfully used the thing of value for a purpose other than that for which it was intended; and
- (4) that the defendant acted fraudulently

“To convict appellant under this section, the State [is] required to prove not only the existence of a fiduciary relationship, but also the existence of a specific intent of fraud and willfulness on appellant's behalf.” Schwartz v. State 103 Md. App. 378, 386 (1995).

“One is said to act in a ‘fiduciary capacity’ or to receive money ... in a ‘fiduciary capacity,’ when the business he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part.” Andresen v. State, 24 Md. App. 128, 148-49 (1975) (citing Black's Law Dictionary (4th ed. 1951)); Schwartz v. State 103 Md. App. 378, 386 (1995).

As with the crime of Theft, misappropriation requires “a distinct act of ownership or dominion exerted by a person over the personal property of another which either denies the other's right or is inconsistent with it.” Baltimore and Ohio Railroad Co. v. Equitable Bank,

N.A., 77 Md. App. 320, 325 (1988); Wells Fargo Bank Minnesota, N.A. v. Diamond Point Plaza, 171 Md. App. 70, 129 n.7 (2006).

The mere failure to return items entrusted to a person, without more, does not constitute fraudulent conversion. Roderick v. State, 9 Md. App. 120, 126 (1970).

The defendant acted fraudulently if she intended to promote a personal interest of someone other than the person who entrusted her with the thing of value. It is not necessary for the State to prove that the owner of the thing of value actually lost or that the defendant actually gained as a result of the misappropriation.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 22

**MPJI-Cr 4:23 Misconduct in Office (Malfeasance, Misfeasance, and Nonfeasance)
(modified)**

Count Seven charges the Defendant with Misconduct in Office. In order to convict the defendant, the State must prove beyond a reasonable doubt:

- (1) that the defendant was a public officer;
- (2) that the defendant acted in her official capacity; and
- (3) that the defendant corruptly did an unlawful act.

A local government official acts in an "official capacity" when her "actions implement governmental law, policy or custom." Source: Ashton v. Brown, 339 Md. 70, 112 (1995)

"Corruptly" means with a corrupt intent or with the intent to receive an improper benefit. U.S. v. Jennings, 160 F.3d 1006, 1013 (4th Cir. 1998) (federal bribery case).

For an act to be unlawful, it must be a violation of a legal right committed knowingly. BEP, Inc. v. Atkinson, 174 F. Supp. 2d 400 (D. Md. 2001) (applying Maryland law).

The corrupt behavior may be (1) the doing of an act which is wrongful in itself, or (2) the doing of an act otherwise lawful in a wrongful manner, or (3) the omitting to do an act which is required by the duties of the office. Duncan v. State, 282 Md. 385, 387 (1978).

The specific behavior alleged in this case is "converting to her own use Toys R Us gift cards which had [allegedly] been purchased by the Baltimore City Housing in violation of the common law, and against the peace, government and dignity of the State."

This requires the State to prove beyond a reasonable doubt that the Defendant received the Toys R Us gift cards with the corrupt intent to exercise ownership or dominion over the gift cards and with the intent to deprive the Baltimore City Housing Authority of such use. Baltimore and Ohio Railroad Co. v. Equitable Bank, N.A., 77 Md. App. 320, 325 (1988); Wells Fargo Bank Minnesota, N.A. v. Diamond Point Plaza, 171 Md. App. 70, 129 n.7 (2006).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 23

MPJI-Cr 3:31 Proof of Intent (modified)

Intent is a state of mind and ordinarily cannot be proven directly, because there is no way of looking into a person's mind. Therefore, a defendant's intent may be shown by surrounding circumstances. In determining the defendant's intent, you may consider the defendant's acts and statements, as well as the surrounding circumstances. Further, you may, but are not required to, infer that a person ordinarily intends the natural and probable consequences of her acts.

Intent is subjective and usually cannot be directly and objectively proven. Consequently, intent must be established beyond a reasonable doubt by facts that permit a proper inference of its existence.

Although not required, the defendant is entitled to put forth any evidence that the defendant's intent did not exist. This includes evidence that the defendant had a mistake of fact.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 24

MPJI-Cr 3:32 Motive (modified)

Motive is not an element of the crime charged and need not be shown. However, you may consider the motive or lack of motive as a circumstance in this case. Presence of motive may be evidence of guilt. Absence of motive may suggest innocence. You should give the presence or absence of motive, as the case may be, the weight you believe it deserves.

However, motive can never establish, by itself, the requisite mental state.

MPJI-Cr 3:32 (and Comment thereto citing generally R. Perkins & R. Boyce, Criminal Law 926-32 (3d ed. 1982); W. LaFare & A. Scott, Jr., Criminal Law § 3.6, at 227 (2d ed. 1986)).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 25

Statutory Defense of Good Faith Claim of Right to the Property

The defendant's good faith claim of right to the property is an absolute defense to the charges in this case.

An act done in good faith belief does not amount to a crime.

If the defendant believed in good faith that she was acting properly, even if she was mistaken in that belief, and even if others were injured by her conduct, there would be no crime.

The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove her good faith; rather, the prosecution must prove bad faith beyond a reasonable doubt.

Md. Code Ann. § 7-110(c)(1).

Sand, Siffert, Loughlin, Reiss, *Modern Federal Jury Instructions*, Instruction 8-1;

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 26

**Statutory Defense of Honest Belief That Defendant Had The Right To Obtain Control Over
The Property As She Did**

The defendant's honest belief that she had the right to obtain or exert control over the property as she did is also an absolute defense to the charges in this case.

If the defendant honestly believed that she had the right to obtain or exert control over the property as she did, even if she was mistaken in that belief, and even if others were injured by her conduct, there would be no crime.

The burden of establishing lack of an honest belief rests upon the prosecution. A defendant is under no burden to prove her honest belief; rather, the prosecution must prove bad faith beyond a reasonable doubt.

Md. Code Ann. § 7-110(c)(2).
Sand, Siffert, Loughlin, Reiss, *Modern Federal Jury Instructions*, Instruction 8-1;

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 27

MPJI-Cr 5:06 Mistake of Fact (modified)

You have heard evidence that the defendant's actions were based on a mistake of fact. Mistake of fact is a defense and you are required to find the defendant not guilty if all of the following three factors are present:

- (1) the defendant actually believed that the gift cards in question in this case were given to her to use as she saw fit;
- (2) the defendant's belief and actions were reasonable under the circumstances; and
- (3) the defendant did not intend to commit the crimes of theft, misappropriation by a fiduciary or misconduct in office and the defendant's conduct would not have amounted to any of those crimes if the mistaken belief had been correct, meaning that, if the true facts were what the defendant thought them to be, the defendant's conduct would not have been criminal.

In order to convict the defendant, the State must show that the mistake of fact defense does not apply in this case by proving, beyond a reasonable doubt, that at least one of the three factors previously stated was absent.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 28

MPJI – Cr 3:20 Evidence of Defendant's Good Character (modified)

You have heard testimony about the good character of the defendant for *honesty, generosity and community service*. Evidence of the existence of good character is not in itself a defense to a crime, but when proved, it should be taken into consideration in connection with all the other evidence in the case, and be given such weight under all the facts and circumstances of the case as it merits in the judgment of the jury. Evidence of good character is to be considered by the jury in the same manner as any other evidence in the case. It is not merely collateral evidence, but may, in itself, raise such a doubt as to require the acquittal of the defendant.

You should, however, consider this character evidence together with all the other facts and all the other evidence in the case in determining whether the defendant is guilty or not guilty of the charges.

Such character evidence alone may indicate to you that it is improbable that a person of good reputation would commit the offense charged. Accordingly, if, after considering the question of the defendant's good reputation, you find that a reasonable doubt has been created, you must acquit him of all the charges.

Braxton v. State, 11 Md. App. 435, 441 (1971).
Sand, Siffert, Loughlin, Reiss, *Modern Federal Jury Instructions*, Instruction 1-5;