

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR12-224

JEAN MARIE LEEK

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** December 12, 2012

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
FOURTH DIVISION  
[NO. CR 2010-4307]

HONORABLE HERBERT THOMAS  
WRIGHT, JR., JUDGE

AFFIRMED

---

**ROBIN F. WYNNE, Judge**

Jean Marie Leek appeals from her conviction on a charge of theft of property, B felony. She argues that the trial court erred in ordering her to pay restitution for instances of theft that occurred more than three years prior to her arrest. We affirm the judgment of the trial court.

Appellant was arrested on November 8, 2010, on a charge of felony theft of property. The State filed a criminal information on December 17, 2010, wherein it charged appellant with theft of property with a value of \$2500 or more which, at the time the thefts occurred, was classified as a B felony.<sup>1</sup> The information alleged that from November 1, 2007, through November 30, 2010, appellant stole money from Powerhouse Gym.<sup>2</sup> During that time,

---

<sup>1</sup>The statute has since been amended to make the threshold amount for a Class B felony \$25,000. Ark. Code Ann. § 5-36-103(b)(1)(A) (Supp. 2011).

<sup>2</sup>Although the State alleged that appellant committed several acts of theft over a period of time, consolidation of all the occurrences into one count of theft was proper under



appellant was the bookkeeper for the business. The State filed an amended information on June 7, 2011, in which it added a second count of criminal use of property or laundering criminal proceeds.

A bench trial was held on October 14, 2011. At the trial, Robin Fletcher testified that Jeff Lawrence, the owner of Powerhouse, called her in February 2010 after appellant had quit her job. Fletcher testified that the financial records showed a discrepancy between what appellant was supposed to have been paid and what she was actually being paid. Appellant was overpaid \$15,900 in 2007, \$16,200 in 2008, \$16,600 in 2009, and \$1650 in 2010. The business's records showed that appellant was receiving her usual salary each pay period plus what was termed a "manager add-on."

David G. Scott, who was qualified as an expert in financial analysis, testified that Jeff Lawrence called him in 2010 to help determine whether there were any financial irregularities. He also testified that the records showed that appellant was receiving manager pay in addition to her regular salary.

Jeff Lawrence testified that appellant received a salary of \$1575 per pay period until the end of 2008, when her salary was reduced to \$1275. He testified that he never authorized any payment to her in excess of that amount, and that she never had the authority to give herself bonuses or "manager add-ons." Appellant handled payroll from 2007 to 2010, and the first time Lawrence ever handled the payroll was after appellant had quit. He testified that she would tell him the amount to fund for the payroll, and he would write the check. According

---

Arkansas Code Annotated section 5-36-102(e)(2) (Supp. 2011).



to Lawrence, the paperwork that appellant provided to him did not show that she was receiving money in addition to her salary. He testified that appellant took \$50,350 over a three-year period. The State entered into evidence a spreadsheet showing the amount by which appellant overpaid herself.

After the State rested, appellant moved for a directed verdict on the count of theft of property, which was denied. The State nolle-prossed the count of criminal use of property. Appellant denied stealing from the company and testified that Jeff Lawrence had authorized the extra payments.

The trial court found that appellant had committed the offense of theft of property. After a sentencing hearing, the trial court entered a judgment and commitment order in which it sentenced appellant to sixty months' probation and ordered her to pay restitution to Powerhouse Gym in the amount of \$49,000. Appellant did not object to the restitution below. This appeal followed.

Appellant was convicted of a Class B felony. Class B felonies are governed by a three-year statute of limitations. Ark. Code Ann. § 5-1-109(b)(2) (Repl. 2006). Appellant argues that she could not be prosecuted for any instances of theft that occurred prior to November 8, 2007, because those instances occurred more than three years prior to her arrest, which was the event that began the criminal proceedings against her and tolled the statute of limitations.

Although appellant never raised a statute-of-limitations argument before the trial court, the issue can be considered on appeal because it implicates jurisdiction to hear the case and cannot be waived. *Gardner v. State*, 76 Ark. App. 258, 64 S.W.3d 761 (2001). On appellate



review of a statute-of-limitations question, we review the record in the light most favorable to the State. *Id.* Generally, an argument regarding the amount of restitution ordered by a trial court may not be considered for the first time on appeal. *See Milton v. State*, 83 Ark. App. 42, 137 S.W.3d 402 (2003). Resolution of the tension between these differing propositions need not be undertaken in this case, as appellant's statute-of-limitations argument, which this court may consider for the first time on appeal, is determinative.

We find appellant's statute-of-limitations argument to be without merit. Arkansas Code Annotated section 5-1-109(b)(2) (Repl. 2006) does subject Class B felonies to a three-year statute of limitations. However, section 5-1-109(c)(1) states that, although a statute of limitations outlined in subsection (b) may have expired, a prosecution may be commenced for any offense involving fraud or breach of a fiduciary obligation within one year after the offense is discovered or should have been discovered. Appellant was convicted of using her position handling the payroll for her employer to steal tens of thousands of dollars over a three-year period. Her actions clearly constituted fraud. Jeff Lawrence testified that appellant was in charge of Powerhouse Gym's payroll from 2007 until the time she left in early 2010. He also testified that the first time he handled the payroll was after she had left. Therefore, the fraud was not discovered until early 2010. Appellant was arrested in late 2010, within a year of the discovery of her theft. Therefore, the statute of limitations had not run as to any of the applicable thefts at the time the criminal proceedings were initiated. The judgment of the trial court is affirmed.

Affirmed.

PITTMAN and BROWN, JJ., agree.

*Jason Kordsmeier*, Deputy Public Defender, by: *Clint Miller*, Deputy Public Defender, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.