

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

JEFFREY HUBBARD,

Defendant and Appellant.

Case No. S216444

NOV - 7 2014

Court of Appeal, Second Appellate District, Division One No. B239519
Los Angeles County Superior Court Case Nos. SA075027, BA382926
The Honorable Stephen A. Marcus, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

While serving as the Superintendent of the Beverly Hills Unified School District (“BHUSD”), appellant knowingly arranged for Karen Christiansen, a contract employee of the district, to be paid a \$500 monthly car allowance and a \$20,000 stipend without the approval of the school board, which was necessary for all such payments to be lawfully made. Interpreting Penal Code¹ section 424 to require a showing that a public officer was “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” and additionally had authority to lawfully approve expenditures contradicts the Legislature’s intent underlying the statute and well-established principles of statutory construction. Appellant was properly convicted of violating section 424 because he both was a public officer and had some control over the public funds he misappropriated.

ARGUMENT

I. APPELLANT’S INTERPRETATION OF SECTION 424 SEVERELY LIMITS ITS APPLICATION TO PUBLIC OFFICIALS AND CONTRADICTS THE LEGISLATURE’S INTENT TO CONSTRUE THE STATUTE BROADLY

Appellant argues that the Court of Appeal correctly held that section 424 did not apply to him because he did not have “approval authority” for the expenditure of BHUSD funds. (AB² 7-12; Opn. 10.) However, as explained in full in Arguments I and II of respondent’s opening brief, such a strict construction of section 424 severely limits the applicability of the statute and runs counter to the Legislature’s intent to interpret the statute broadly and hold public officers specially accountable.

¹ All further statutory references are to the Penal Code.

² “AB” refers to appellant’s answering brief.

A. Section 424 Applied to Appellant Because He Was a Public Officer

Section 424 plainly states that public officers are subject to liability for misappropriation of public funds. Appellant disregards the plain language of the statute and argues that, in addition to being an officer, appellant must also have been “charged with the receipt, safekeeping, transfer, or disbursement of public moneys.” (AB 7-10.) Appellant concedes that he was a public officer. (AB 7.) Indeed, appellant was the superintendent of the BHUSD and chief executive officer of the district with oversight over all of the district’s operations. However, appellant contends that the Court of Appeal correctly held that section 424 did not apply to him, even though he was a public officer, because he was not “charged with the receipt, safekeeping, transfer, or disbursement” of the funds used to pay Christiansen. (AB 7-8.) But requiring a public officer to be “charged with the receipt, safekeeping, transfer, or disbursement of public moneys” renders the first part of the statute meaningless and disregards the legislative intent to hold public officers specially accountable. If the Legislature intended the statute to be construed as appellant urges, it could have simply written the statute to apply to, “Any person charged with the receipt, safekeeping, transfer, or disbursement of public moneys” Appellant fails to explain how his interpretation is logical and reasonable given well-established principles of statutory construction.

Contrary to the Court of Appeal’s and appellant’s interpretation of section 424, the statute should be interpreted as listing the various people subject to the statute, i.e., “each officer of this state . . .” or a “person charged with the receipt . . . of public moneys.” (See *People v. Groat* (1993) 19 Cal.App.4th 1228, 1231-1232 (“*Groat*”) [“To be convicted under section 424, a defendant must be a public ‘officer’ or a ‘person charged

with the receipt, safekeeping, transfer, or disbursement of public moneys”].) Such a construction of the statute gives each word and phrase of the statute its plain and commonsense meaning and effectuates the legislative intent to “safeguard the public treasury and ensure public confidence in the state’s use of its funds.” (*Id.* at p. 1232.)

B. Requiring a Defendant to Have “Approval Authority” For the Expenditure of Public Funds Renders Section 424 Virtually Meaningless

Appellant contends that a public officer must have “approval authority” to be liable under section 424. (AB 9-12.) As set forth in Argument II of respondent’s opening brief, however, the “some control” standard articulated in *Groat, supra*, 19 Cal.App.4th at page 1233, is consistent with the legislative intent to construe the statute broadly and ensure that public funds are lawfully spent. Appellant disputes *Groat*’s “some control” standard as “merely *dictum*.” (AB 10, italics original.)

But appellant ignores the long line of cases cited by *Groat*, and described in respondent’s opening brief on pages 17 through 20, that rejected the notion that actual custody or control of public funds was required. *Groat* reasonably interpreted the prior cases as applying a standard of “some control” for determining whether a person is charged with the receipt, safekeeping, transfer, or disbursement of public moneys. (*Groat, supra*, 19 Cal.App.4th at pp. 1232-1233; see *People v. Schoeller* (1950) 96 Cal.App.2d 55; *People v. Qui Mei Lee* (1975) 48 Cal.App.3d 516; *People v. Vallerga* (1977) 67 Cal.App.3d 847; *People v. Webb* (1988) 202 Cal.App.3d 872.) Further, appellant ignores this Court’s citation of *Groat*’s “some control” standard with approval in *Stark v. Superior Court* (2011) 52 Cal.4th 368, 400. The “some control” standard articulated in *Groat* comports with the Legislature’s intent to construe section 424 broadly to safeguard public funds. This Court should hold that a “person

charged with the receipt, safekeeping, transfer, or disbursement of public moneys” need only have some control over public funds. If the statement in *Groat* is dictum, it is nevertheless a statement of a well-used and well-approved standard that should become this Court’s holding.

Appellant contends that the “some control” standard “has serious negative implications for the administration of public agencies” (AB 11), but he fails to identify what the “serious negative implications” might be. And construing section 424 to require “approval authority” would severely limit the application of the statute and permit clear abuses of public trust that would not occur but for the public officer’s position of authority. Under such a standard, an officer (such as a school district superintendent) and other persons who exercise some control over public funds but who lack final “approval authority” to lawfully expend those funds could never be found liable for misappropriating public funds. Moreover, the “approval authority” standard is contrary to the legislative intent that section 424 be “construed very broadly” (*Stark, supra*, 52 Cal.4th at p. 400) so that public officers are held specially accountable (*Groat, supra*, 19 Cal.App.4th at p. 1232).

II. APPELLANT IMPROPERLY DISREGARDS THE JURY’S VERDICT AND RELITIGATES THE FACTS OF HIS CASE

Appellant asserts that the evidence failed to support a finding he had “some degree of control” over the disbursements to Christiansen. In his view, rather than knowingly subvert the lawful approval process and cause district funds to be unlawfully paid to Christiansen, he merely requested that his subordinate staff prepare the necessary submissions to the board and to obtain board approval. (AB 11.) He also contends that two other BHUSD employees, the assistant superintendents for human resources and business affairs, had more control over BHUSD funds than he did, and were more responsible than he was for the payments to Christiansen. (AB

11-12.) Appellant's arguments portraying himself as a powerless paper-pusher are disingenuous, completely disregard the jury's verdict, and constitute an attempt to relitigate the facts of his case.

The jury was instructed that, in order to find appellant guilty of misappropriation of public funds, they had to find that appellant, "without authority of law, appropriated public moneys to his . . . own use or to the use of another." (2CT 303.) Further the jury was instructed:

The defendant is not guilty of Misappropriation of Public Funds if he did not have the intent or mental state required to commit the crime because he reasonably did not know a fact or reasonably and mistakenly believed a fact.

If the defendant's conduct would have been lawful under the facts as he reasonably believed them to be, he did not commit the crime of Misappropriation of Public Funds.

If you find the defendant believed that he had the proper Beverly Hills School Board Approvals and if you find that belief was reasonable, he did not have the mental state required for the charged crimes of Misappropriation of Public Funds.

If you have a reasonable doubt about whether the defendant had the mental state required for Misappropriation of Public Funds, you must find him not guilty of those crimes as charged in Counts 1, 2, and 3.

(2CT 299.) Therefore, by finding appellant guilty of misappropriation of public funds, the jury necessarily found that appellant knowingly caused the payments to be disbursed without board approval.

The jury's verdict was supported by substantial evidence. Appellant was the chief executive officer of the BHUSD and was responsible for the day-to-day business and operations of the district. Appellant's power and responsibilities included oversight over all aspects of the district's operations, including business, accounting, facilities, and human resources. (7RT 1600.) He initiated district expenditures by bringing them to the board for approval. If an expenditure was approved, he was then obligated

to ensure that the payment was made. The BHUSD board relied on appellant to spend district funds only on things that had been approved by the board. (7RT 1543.) The evidence also showed that appellant nevertheless had the actual ability to order funds to be disbursed because he directed subordinate staff to make payments to Christiansen, and that directive was carried out.

Appellant used his position as the superintendent of the BHUSD, and the authority that position carried with it, to cause BHUSD funds to be unlawfully disbursed to Christiansen. Appellant did not follow the proper procedure for increasing an employee's compensation and bypassed the established process for obtaining board approval. He chose to address his instructions to a low-level employee (Melody Voyles) unlikely to question whether he had obtained the necessary board approvals. He fostered a false assumption that his unusual directive had official sanction by purporting to "copy" higher level supervisors on his missives. The jury reasonably found that appellant abused the authority inherent in his position as superintendent to direct the disbursement of funds to Christiansen without board approval. (See *Webb v. Superior Court*, *supra*, 202 Cal.App.3d at p. 886 ["What petitioner did that provides the basis for the charges . . . was use his position as a member of the Board and the trust and respect that position carries with it to implement a scheme . . . that he would not have been able to accomplish through the ordinary and, indeed, legal channels"].)

III. APPELLANT'S REMAINING ARGUMENTS ADDRESS ISSUES NOT BEFORE THIS COURT

The majority of appellant's answering brief addresses issues that are not before this Court. Specifically, he contends that he was deprived of his constitutional right to compel the attendance of witnesses on his behalf, that the evidence was insufficient to establish that he had the requisite criminal intent, and that the charges were barred by the statute of limitations. (AB

12-27.) As appellant concedes, the Court of Appeal specifically declined to address those issues due to its holding that section 424 did not apply to appellant. (See Opn. 10; AB 12.)

Further, this Court granted review on two issues:

1. Does a superintendent of a public school district (i.e., an officer of a district of this state), qualify for prosecution for misappropriation of public funds under Penal Code section 424 without a further showing that the officer is “charged with the receipt, safekeeping, transfer, or disbursement of public moneys”?

2. If section 424 applies only when an officer is “charged with the receipt, safekeeping, transfer, or disbursement of public moneys,” must the officer have final “approval authority” of the expenditure (Opn. 6-8) rather than “some degree of control” over the disbursement of public funds (*People v. Groat* (1993) 19 Cal.App.4th 1228, 1232) for the officer to qualify for prosecution for misappropriation of public funds?

(See Pet. for Review at 1; Order Granting Petition dated April 9, 2014.)

Appellant did not timely request review of these additional claims through his own petition or his answer to the petition for review. (See Cal. Rules of Court, rule 8.500(a)(1) & (2).) The Rules of Court provide that “the parties must limit their briefs and arguments to those issues and any issues fairly included in them.” (Cal. Rules of Court, rule 8.516(a)(1).)

Appellant’s additional arguments are inapplicable to the two issues on which this Court granted review. Respondent does not address them here but will do so should the Court so order. (Cal. Rules of Court, rule 8.516(b).)

CONCLUSION

As the superintendent of the BHUSD appellant was a public officer within the meaning of section 424, and he was therefore liable for misappropriation of funds without an additional showing of control over public funds. However, the duties of appellant's public office qualified him as a person "charged with the receipt, safekeeping, transfer, or disbursement of public moneys" within the meaning of section 424 because he had, at the least, some control over public funds. Appellant knowingly and unlawfully directed the disbursement of district funds to Christiansen without board approval. He was properly convicted of misappropriating public funds. Accordingly, for the reasons stated above and in respondent's opening brief, the Court of Appeal's decision should be reversed, and appellant's conviction should be affirmed.

Dated: November 6, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 2,180 words.

Dated: November 6, 2014

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read "E. Reynolds". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

ERIC E. REYNOLDS
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE

Case Name: *People v. Jeffrey Hubbard*

Case No.: **S216444**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 6, 2014, I served the attached **RESPONDENT'S REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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On November 6, 2014, I caused [**number of**] copies of the **RESPONDENT'S REPLY BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by **OnTrac, Tracking #B10304251893**.

On November 6, 2014, I caused one electronic copy of the **RESPONDENT'S REPLY BRIEF ON THE MERITS** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

On November 6, 2014, I caused one electronic copy of the **RESPONDENT'S REPLY BRIEF ON THE MERITS** in this case to be served electronically on the California Court of Appeal by using the Court's Electronic Service Document Submission system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 6, 2014, at Los Angeles, California.

Z. Salena
Declarant



Signature