ELECTRONICALLY FILED
9/7/2021 1:23 PM
44-CC-2019-000476.00
CIRCUIT COURT OF
LIMESTONE COUNTY, ALABAMA
BRAD CURNUTT, CLERK

IN THE 39th JUDICIAL CIRCUIT FOR THE STATE OF ALABAMA
LIMESTONE COUNTY

STATE OF ALABAMA,	)	
	)	
v.	)	**CASE NO. CC-2019-0476**
	)	
MICHAEL ANTHONY BLAKELY,	)	
	)	
Defendant.	)	

State's Response in Opposition to Defendant's Motion for a New Trial

The State of Alabama respectfully submits this response in opposition to Defendant Michael Anthony Blakely's motion for a new trial. This Court should reject Blakely's motion because his trial was fair and impartial, none of the conclusory claims that his motion raised merit relief, and the weight of the evidence proved that he was guilty beyond a reasonable doubt.

Standard of Review

A motion for a new trial is "addressed to the sound discretion of the trial court and [a decision thereon] will not be revised on appeal unless it clearly appears that the discretion has been abused." *Wesson v. State*, 644 So. 2d 1302, 1315 (Ala. Crim. App. 1994) (quoting *Nichols v. State*, 100 So. 2d 750, 760–61 (Ala. 1958)). As to decisions to admit or exclude evidence, a "trial court has substantial discretion in determining whether evidence is admissible and [] a trial court's decision will not be reversed unless its determination constitutes a clear abuse of discretion." *Hosch v. State*, 155 So. 3d 1048, 1081 (Ala. Crim. App. 2013).

Argument

Blakely's amended motion for a new trial purports to identify 49 separately numbered bases on which he is entitled to relief. Doc. 455. In actuality, Blakely's motion is conclusory, repetitive, and inadequate. Of the motion's 49 "paragraphs," 41 consist of a single sentence. The remaining eight numbered paragraphs combine to contain just eleven sentences. Nowhere in the 52 sentences that comprise the substance of Blakely's motion does he identify a single supporting case. Nowhere does he spell out how a single rule of evidence or procedure was violated. And nowhere does he explain how any of his statutory or constitutional rights were violated. In sum, Blakely's motion is facially deficient, and this Court should deny it.

1. Paragraph 1: Closing the courtroom

In paragraph one, Blakely challenges the closing of the courtroom to media members during a portion of voir dire for the first time. The Court should reject this claim because his counsel affirmatively stated on the record before voir dire commenced that he had no objection to this arrangement. *See Fuller v. State*, 365 So. 2d 1010, 1012 (Ala. Crim. App. 1978) ("The grounds urged for a new trial must ordinarily have been preserved at the trial by timely and sufficient objections."). For this reason, Blakely has waived any objection on this issue.

2. Paragraphs 2–4: FCPA allegations

As to paragraphs two through four, Blakely incorrectly argues that the Court lacked jurisdiction over the theft of property charge alleging that he stole $4,000 from the Friends of Mike Blakely principal campaign committee. Though the grand jury indicted Blakely

for theft from his campaign committee in August 2019, Blakely did not raise his "I can't steal from my own campaign argument" until the day before testimony in his trial—nearly two years later—when he filed a motion to dismiss counts one through four. *See* Doc. 357. This Court correctly denied that motion for the substantive reasons the State argued during the hearing the next day. This Court also correctly rejected this same argument when Blakely raised it again in his two motions for judgment of acquittal. Now, in the third iteration of this argument, Blakely offers no new reasoning or caselaw to support his view that political candidates need not worry about theft laws. Accordingly, the State adopts its prior responses and asks this Court to reject this contention once more.

Additionally, this Court properly admitted evidence concerning what the FCPA permits candidates to do with campaign money. Because Blakely argued vigorously that he never *intended* to steal his campaign money, it was appropriate for this Court to allow the State to elicit evidence and make arguments that Blakely did not comply with the FCPA, thus demonstrating his intent to steal.

3. Paragraphs 5, 22: Trent Willis

Blakely's Trent Willis arguments (¶¶ 5, 22) fail for the same reasons his prior arguments about Wills have failed: they are misleading and wrong. As the State detailed in the notice it filed at the Court's request (Doc. 367), Blakely knew about the Attorney General's investigation into Willis as early as February 2020. It is simply untrue that Blakely learned of this investigation during trial. If the defense did not know about the investigation, then why did they subpoena "Kyle Drake [sic]" (Kyle Clark), the lead Attorney General investigator of the Willis theft case in March 2020? *See* Doc. 202. And

why—before Willis took the witness stand—did they subpoena multiple witnesses involved in his theft case for the July 2021 trial setting? The defense has never provided any explanation for these inconvenient questions because there is only one answer: they knew about the investigation the whole time, as Assistant Attorney General Roberts testified outside the presence of the jury.

It is also untrue that the State sought to advise Willis of his *Miranda* rights "just prior" to being cross examined. Defense counsel made this same argument during trial, but when the court reporter produced a rough transcript, it was clear the State said nothing even remotely close to suggesting it was "passing" the witness, despite defense counsel's claim otherwise. While it can be tough to know what was said in the heat of a trial, the rough transcript removed any confusion. That Blakely still refuses to align his story with the actual facts speaks volumes about the weakness of his argument. There was no prosecutorial misconduct.

Finally, as to Blakely's claim that the trial court failed to offer a remedy, he seems to have forgotten that Willis never once invoked his Fifth Amendment right to any question from defense counsel. Blakely had a full and thorough opportunity to accuse Willis of an innumerable number of cons, deceits, and thefts from multiple parties. Blakely also called multiple witnesses to cast further aspersions on Willis's character and behavior. Nevertheless, the jury found Blakely guilty of count two. This does not mean Blakely was denied a remedy; it simply means the State presented overwhelming evidence of Blakely's guilt and that the jury rejected Blakely's version of the events surrounding his check exchange with Willis. In sum, Blakely had an effective cross examination concerning a

ground of attack he knew about for more than a year. Blakely is not entitled to relief because the jury refused to agree that Willis was the *only* criminal, when it was Blakely who wrote the checks and stole the money.

4. Paragraphs 6–9: Cynthia Raulston and John Plunk

Blakely's arguments as to the testimony of Cynthia Raulston (not Rawlston), the general counsel of the Alabama Ethics Commission, are equally unavailing. Her qualifications as an expert were numerous, and Alabama caselaw has required significantly fewer qualifications than she possessed to meet that standard. In *Fitch v. State*, the Alabama Court of Criminal Appeals held it was not error to qualify an attorney for the Ethics Commission as an expert because he testified to authoring advisory opinions applying the Ethics laws to fact situations. 851 So. 2d 103, 117–18 (Ala. Crim. App. 2001). Raulston testified to authoring numerous advisory opinions in addition to her other qualifications. Blakely has offered nothing to show that it was error to qualify her as an expert.

Blakely is similarly wrong to argue that it was error to allow Raulston to testify about the Commission's procedures concerning an ethics complaint. For one, this testimony was relevant because counts three and four each involved Blakely repaying misused campaign money *after* the Ethics Commission took actions on a complaint filed against him. Two, *Fitch* is clear in its holding that an expert from the Ethics Commission may testify on matters that will aid the jury's understanding and assessment of the evidence, even including testimony on the ultimate issue. *See id.*, 851 So. 2d at 117–18. Finally, as to the argument that Raulston testified to matters outside her knowledge, the

record shows no error, and the State declines to make a specific defense to a vague and conclusory allegation.

As to paragraph nine—a supposed objection by the State to testimony of John Plunk—the State does not know to what Blakely is referring. But to be clear, the State did not call Plunk to rebut the testimony of Raulston; she said nothing to rebut. The State called Plunk because he was an integral part of Blakely's plan to steal $4,000 from the Friends of Mike Blakely. In any event, the State declines to make Blakely's argument for him. A bare reference to an unknown objection without elaboration is not grounds for a new trial. *Phillips v. State*, 65 So. 3d 971, 1035 (Ala. Crim. App. 2010).

5. Paragraph 10: Authentication of Willis emails

Blakely is incorrect to claim error based on the admission of certain emails between the defendant and Willis. These emails were properly authenticated under Alabama Rule of Evidence 901(b)(4). First, the jury heard from Willis himself what his email address was, and Agent Stuart (not Stewart) reinforced this to the jury in authenticating these emails. Second, Agent Stuart testified to certain distinctive characteristics (such as the Red Brick symbol in Willis's email that corroborated that it was his true and correct email). Accordingly, it was not error for this Court to admit the emails. *See Culp v. State*, 178 So. 3d 378 (Ala. Crim. App. 2014) (holding that emails may be authenticated by references to characteristics and other factors identified in Alabama Rule of Evidence 901).

6. Paragraphs 11–12: Jury issues

As to paragraph 11, Blakely cannot claim that the *Allen* charge was erroneous because he raised no objection when the Court specifically asked the parties' opinion on

whether such a charge would be appropriate. Moreover, the critical factor concerning an *Allen* charge is whether it is unduly coercive or suggestive. *McMorris v. State*, 394 So. 2d 392, 403 (Ala. Crim. App. 1980). Blakely makes no argument that the Court's charge was wrong as a matter of substance, nor can he. This is not a ground for error. As to Blakely's renewed argument concerning the affidavit from a single juror, the State adopts and incorporates the response it filed when Blakely first raised this issue. Doc. 421. For those reasons, Blakely offers no basis for relief.

7. Paragraphs 13–15, 20: Sentencing Guidelines

This Court did not err in sentencing Blakely to 36 months in the county jail. As the sentencing worksheet showed, Blakely's disposition was an "out" recommendation with a range of punishment between 24 and 46 months. Doc. 428. An out recommendation does not mean probation must be ordered; it simply means that—barring other factors—a defendant cannot be sentenced to the Alabama Department of Corrections. *See* Ala. Sentencing Comm'n, *Presumptive and Voluntary Sentencing Standards Manual*, at 29 (2019). But a defendant with an out recommendation may be sentenced to the county jail. For this reason, Blakely's sentence was not error.

Blakely is also incorrect that the Court erred in supposedly allowing the State to "interject" various aggravators. As the State made clear in its sentencing brief and at the sentencing hearing, the State did not offer evidence of these factors as a basis to depart from the sentencing recommendation. *See* Doc. 427 at 7. The State offered these factors as additional probative evidence supporting a sentence on the high end of the designated

range. Regardless, this Court did not depart from the sentencing recommendation so there is no error.

8. Paragraphs 16–17: Unknown 404(b) errors

Here Blakely makes a boilerplate, vague allegation that 404(b) evidence—which evidence he does not say—was too remote, too far removed, and too prejudicial. Absent some specific allegation, the State declines to speculate on Blakely's argument.

9. Paragraph 18: Denying a motion to dismiss counts 1–5

The State is not aware of Blakely filing any motion to dismiss counts 1–5. Blakely did file a motion to dismiss counts 1–4, which the State addressed above in paragraph two of this response. To the extent Blakely reprises that argument, the State adopts its response above. To the extent Blakely makes a new argument, the State is once again unclear to what evidence Blakely is referring.

10. Paragraph 19: Sheriff's Office money

The State fails to understand Blakely's alleged error that the State supposedly failed to prove that money taken from the Sheriff's Office was not used "in furtherance of law enforcement." If Blakely is referring to count 13—of which he was convicted—there was no requirement that the State prove Blakely was taking inmate money for reasons other than the furtherance of law enforcement. To be clear, the State did prove Blakely was taking inmate money for non-law-enforcement reasons—his own checkbook and the testimony of Debbie Davis proved that—but regardless, that was not an element the State needed to prove. For this reason, there is no error.

11. Paragraph 21: The testimony of Jasper Roberts

It was not error for Assistant Attorney General Jasper Roberts to testify at a hearing outside the presence of the jury. To be clear, AAG Roberts never appeared as counsel before the jurors either before or after his testimony in this case. But even if Roberts had appeared as counsel before the jury, Blakely has cited no authority holding that it is error for an attorney to testify outside the presence of the jury. Moreover, the State is not aware of any decision holding as much. For this reason, there is no error.

12. Paragraph 23: Blakely's "no missing money" claim

Alabama law did not require the State to prove—either as to the theft charge or the use-of-office charge—that there was money missing. To the contrary, this Court correctly held that the State made a prima facie case as to Blakely's guilt on count two, in that the State presented evidence that Blakely stole $4,000. Even Blakely's own expert witness—Steve Raby—testified that there would be no reason for a candidate to personally get a refund that was owed to his campaign committee. Accordingly, there *was* missing money, not that the State was required to prove that. As to count 13, Blakely fundamentally misunderstands that the prisoners' money was not his. He does not get to use prisoner money for personal use even if he returns it—because it is not his money. For this reason, it is irrelevant whether the State proved there was missing money. Blakely's claim of error falls short.

13. Paragraph 24: Raby limiting instruction

It was not error for this Court to instruct the jury to disregard certain testimony offered by defense expert Raby concerning possible penalties for violations of the FCPA.

The penalties for a violation of the FCPA had no bearing whatsoever on whether Blakely was guilty of theft from his campaign. To be sure, the FCPA laws were relevant because it went to Blakely's intent. But evidence about penalties—particularly Raby testifying wrongly that putting money in the wrong account was only a civil penalty of a $100—was designed solely to make the jury feel that Blakely was overcharged or wrongly charged. This Court acted appropriately in telling the jury to disregard such evidence because it did not tend to make the existence of any fact that was of consequence to the jury's decision more or less probable than it would have been without the evidence. *See* Ala. R. Evid. 401 (defining relevant evidence). For this reason, there was no error.

14. Paragraph 25: Witness intimidation

Blakely's claim that the Court should have ordered a mistrial because of supposed witness intimidation of a trained investigator in the Sheriff's Office is absurd on its face. The record is clear that the witness was not intimidated and that the questions he was asked in a public hallway did not affect his courtroom testimony, which occurred hours later, despite the defense's claim otherwise. For this reason, a mistrial is not appropriate.

15. Paragraphs 26–28, 45: Prosecutorial misconduct

Blakely's vague claims of prosecutorial misconduct fall short. There was no prosecutorial misconduct in this case, and Blakely's refusal to identify a single specific allegation shows as much. The State declines to make Blakely's argument for him.

16. Paragraphs 29–44, 48: Boilerplate objections

The vague, conclusory, and inadequate allegations in paragraphs 29 through 44 are not a basis for a new trial. There was overwhelming evidence of Blakely's guilt, and the

verdict was not contrary to law. Similarly, boilerplate objections that "each and every" objection, motion, or jury instruction by the defense should have been granted is not a basis for relief without some specific allegation of what the error was and how it prejudiced Blakely. *Meeks v. State*, 697 So.60, 61 (Ala. Crim. App. 1996). For this reason, sweeping allegations of error are not availing.

17. Paragraphs 46–47: Jury issues

The State is not aware of any visual aids that the jury took into the deliberation room. To be sure, the jury took the State's admitted evidence into the jury room, but the State does not read Blakely's motion as challenging that. Regardless, the State recalls no objection on this point during trial. Likewise, the State is unaware of the Clerk of Court dismissing any potential jurors, and if it did happen, the State is not aware that the Defendant ever raised an objection. For these reasons, neither argument is a basis for a new trial.

18. Paragraph 49: Restitution

This Court properly rejected the Defendant's motions for judgment of acquittal on count two, the theft charge. That the Court declined to order restitution has no bearing on the fact that State made its case beyond a reasonable doubt. The Defendant cannot overturn a jury verdict based on a legal decision concerning whether restitution is appropriate.

Conclusion

For the foregoing reasons, the State asks this Court to deny Defendant Michael Anthony Blakely's motion for a new trial.

Respectfully submitted this 7th day of September, 2021.

Steve Marshall
Attorney General

s/ Kyle Beckman
Kyle Beckman
Sara M. (Peggy) Rossmanith
Assistant Attorneys General
A. Clark Morris
Deputy Attorney General

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Kyle.Beckman@AlabamaAG.gov

CERTIFICATE OF SERVICE

I certify that on September 7, 2021, I electronically filed the foregoing using the AlaFile system, which will send notification of such filing to all counsel of record:

s/ Kyle Beckman
Assistant Attorney General