

# Tennessee Supreme Court Rules on Issue of Theft of Real Property

by James Bergstrom

On November 29, 2017, the Tennessee Supreme Court held that the state's theft statute applies to real property in a high-profile, multimillion-dollar Memphis case against the holdover tenant Tabitha Gentry — aka Abka Re Bay. No. W2015-01745-SC-R11-CD, 2017 Tenn. LEXIS 733 (June 1, 2017).

It was a case that began in August of 2011, but to understand it fully, we must go back to 1989, when Tennessee first enacted a consolidated theft statute that eliminated the confusing and fine-line distinctions between different forms of theft.

The then precedent-setting theft statute was based on the Model Penal Code, and its introduction brought about a "*major structural change in Tennessee theft law*". Prior to 1989, Tennessee did not have a single, comprehensive definition of theft. Theft offenses in the state were contained in a number of specific "*antiquated and confusing statutes*," such as embezzlement, larceny, receiving or concealing stolen property, and shoplifting.

Most importantly here, however, is that the enactment of the consolidated statute broadened the application of the Tennessee theft statute to include theft of real property. Under Tennessee's 1989 statute, theft was now committed when a criminal actor "*obtains or exercises control over [] property without the owner's effective consent.*" Tenn. Code Ann. § 39-14-103.

With that established, we fast forward two decades to August 26, 2011, and the case at hand. It was at this time Renasant Bank was foreclosing on real property located in an upmarket neighborhood in Memphis, Tennessee.

The property, valued at around \$2 million dollars and set on three-and-a-half acres of land, featured a \$250,000, ten-thousand square foot home with seventeen rooms, a four-car garage, expensive exterior landscaping, and a swimming pool.

By February 2013, Renasant had sold the real property for \$2.4 million dollars. And after reviewing a home inspection report and factoring in time for repairs, it decided to schedule the closing date for late March.

Unbeknownst to the bank, during these few months, the defendant, Tabitha Gentry, had filed twelve pages of inscrutable documents with the Shelby County Register of Deeds, including a quitclaim deed that purported to transfer ownership of the real property to "*Abka Re Bey*," Gentry's alias. She had also proceeded to enter the home, change the locks, chain the driveway entrance, and place signs about the property notifying the public to "*Keep Out*," that there was "*No Trespassing*," and that the property was "*Private Property*."

But little did Gentry know, because the documents she had filed with the Register of Deeds were so anomalous, they had been stored away under 'miscellaneous', rather than being indexed and processed as a genuine transfer of ownership of the home.

And so, it wasn't long after that the real estate agent in charge of selling the property discovered the illegal entry and notified the police. As well as the chains and signs, he also noticed that Gentry had placed a flag on the gate for the "*Moorish National Republic*," and another sign stating, "*I Abka Re Bay, seize this land*" for the "*Moorish National Trust*."

A meeting was immediately held with the President of the bank, and it was decided that a sign of their own should be placed on the property, this time stating:

*March 5, 2013 (2:30) p.m.*

*This is your formal notice to vacate this property . . . within 24 (twenty-four) hours from date and time above.*

*You must have vacated this property by March 6th, 2013 at 2:30 p.m.*

## **Gentry, aka "Abka Re Bay", vs. Tennessee Supreme Court**

Despite the notices from the bank, Gentry failed to vacate the property by the given deadline. By this time, the bank had also learned that she was under FBI investigation. This led to the Shelby County Sheriff's Office becoming involved and a SWAT team being called to make the arrest for the home occupation.

On March 7, less than a week after she entered the home, Gentry tried to flee in her car and was arrested just outside the property. At least three camera crews had congregated around the home and were reporting to local news outlets on the events of the case.

On her arrest, the Sheriff's Office searched and photographed the house. They discovered clothing, food, a few air mattresses, and that the interior doors had been tied shut with ropes and belts. They also found official documents under the name of Tabitha Gentry, and "*Moorish sovereign documents*" issued to "*Abka Re Bay*".

The resulting conviction for Gentry was of theft of property valued at over \$250,000 and aggravated burglary. She appealed to the Court of Criminal Appeals, which, to her dismay, affirmed the lower court's convictions. She then took the case higher and appealed to the Tennessee Supreme Court. The issue on appeal was regarding the precedent-setting consolidated 1989 statute, and whether it "*encompasses the offense of real property, and if so, whether theft had been committed based on the facts of this case.*" *Id.*, 9-11.

Gentry first argued that the theft statute should be limited to include only theft offenses recognized before the enactment of the 1989 theft statute. The Court, however, reviewed Tennessee's consolidated theft statute and determined that a person commits theft when he or she "*obtains or exercises control over [] property without the owner's effective consent.*" Tennessee Code Ann. § 39-14-103.

To clarify the statute, the Court zeroed in on the General Assembly's definition of "*obtain*". It found that the General Assembly broadly defined the term, stating that theft "*includes, but is not limited to, the taking or carrying away or the sale, conveyance or transfer of title to or interest in or possession of property[.]*" Tenn. Code Ann. § 39-11-106(a)(24)(B).

Citing *State v. Amanns*, 2 S.W.3d 241, 244-45 (Tenn. Crim. App. 1999), the Court concluded that theft under Tennessee law “*is complete when a person takes property without the owner’s consent with the intent to deprive the owner of the property.*”

Gentry persisted, arguing that the Tennessee theft statute only applies to “*tangible, movable property*” and not to real property. The Court again turned to the theft statute and found the term “*property*” to be broadly defined as “*anything of value, including, but not limited to . . . real estate.*” Tenn. Code Ann. § 39-11-106(a)(28)

The Court judged that the General Assembly could have adopted statutory language that could have excluded real property in the definition of “*property*,” but did not do so. Therefore, it was held that the theft statute applied to real property and the judgment of the Court of Criminal Appeals against Gentry was affirmed.

The Court made efforts to distinguish a cause of action for theft of real property from the more common causes of action against a squatter or a holdover tenant. The Court opined that in a case against a squatter or a holdover tenant, the State would find it difficult to prove one of the elements of theft, namely, the defendant’s intent to deprive the owner of her ownership interest in the property. Yet in Gentry’s case, the Court was able to conclude she was not a mere squatter or holdover tenant. Rather, the evidence fully supported her intent to deprive Renasant Bank of its interest in the real property.

This reasoning was grounded in her decision to file “*papers with the Register of Deeds Office by which she sought to obtain record ownership of the property*” and was further strengthened by the fact that she went on to enter the house, post signs along the exterior of the property indicating it belonged to her, padlock the entrance, and change the door locks. The Court inferred that the facts under Gentry are distinguishable from the typical causes of action against a squatter and holdover tenant.

The case of Tabitha Gentry aka “*Abka Re Bay*” was certainly far from typical. And in November 2017, the Tennessee Supreme Court affirmed the judgments of the trial court and the Court of Criminal Appeals and remanded the case for re-sentencing.