

¶ 1 Riise Richards (“Richards”) appeals a judgment of the Superior Court convicting her of embezzlement in violation of Title 14, Section 1089 of the Virgin Islands Code. In this appeal, Richards argues that the Appellate Division of the District Court of the U.S. Virgin Islands lacked jurisdiction to hear an earlier appeal of her case, and therefore this Court does not have jurisdiction to hear the present appeal. Richards also argues that her conviction should be vacated due to insufficient evidence. For the reasons explained below, we reverse the Superior Court’s order with directions to enter a judgment of acquittal.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 Richards was the Director of Planning and Research for the Virgin Islands Police Department (“VIPD”). In this role, Richards was responsible for collecting data, preparing department policies for her division, and other duties assigned to her by the VIPD Commissioner. As the Director of Planning and Research, she was under the supervision of VIPD Commissioner Franz Christian, Sr., and later his successor, Elton Lewis.

¶ 3 While Richards was the Director of Planning and Research for the VIPD, the VIPD funded an account with a private travel agency named “Global Tours” for the purpose of purchasing airline tickets for the work-related travel of VIPD employees. Richards had authority as the Director of Planning and Research to use the VIPD Global Tours account to purchase airline tickets for work-related travel, but the travel requests first had to be approved by the Commissioner. The Commissioner also had to approve cash advance requests for travel expenses. A travel request letter with the reason for the travel had to be submitted by the VIPD employee to the Commissioner’s office to receive a cash advance. If approved by the Commissioner, a disbursement voucher was prepared, which was necessary to generate a check from the

Department of Finance. However, Commissioner Christian never authorized the pertinent cash advances for Richards through Global Tours.

¶4 On February 11, 2003, Richards sent two letters to Celia Daniel (“Daniel”), the owner of Global Tours, requesting a cash advance of \$2500 for hotel expenses in Washington, D.C., and an advance of \$900 for travel expenses for one Claudette Rhymer to attend a conference in Washington, D.C. Richards represented to the owner of Global Tours that Rhymer was an employee of the VIPD, when in fact Rhymer was not, and had never been an employee of the VIPD. Daniel initially questioned Richards’ cash advance requests because Daniel had never issued checks directly to Richards from the VIPD’s Global Tours account. However, based on Richards’ oral and written assertions to Daniel, that as a VIPD director Richards was entitled to the funds, Daniel issued the checks for \$2500 and \$900 payable to “Riise Richards.” There is no evidence that Richards submitted the required travel request form to the Commissioner, and Commissioner Christian testified that he never approved the release of the funds.

¶5 In May of 2003, VIPD Commissioner Lewis sent a letter to the Virgin Islands Inspector General’s Office requesting an investigative audit into certain areas of the VIPD. As the investigation went on, the Attorney General’s Office received an envelope containing a letter with “Riise Richards” typed at the bottom, dated March 22, 2004, and a check for \$3400, dated March 23, 2004. As a result of the investigation, the Department of Justice charged Richards with embezzlement by public and private officers in violation of 14 V.I.C. § 1089, the subject of this appeal, along with seven other charges.

¶6 Richards pled not guilty to the charges in the information, and the Superior Court held a two-day jury trial beginning on February 9, 2006. After the trial, the jury returned a verdict finding Richards guilty of only Count Four—embezzlement in violation of 14 V.I.C. § 1089, and the lesser

included offense of Count Seven—petit larceny in violation of 14 V.I.C. § 1084. Richards then filed motions for a judgment of acquittal, for a new trial, and for arrest of judgment. The court granted Richards’ motion of acquittal as to Count Four and denied her requests for a new trial and for arrest of judgment. On July 26, 2006, the People appealed the trial court’s acquittal on Count Four to the Appellate Division of the District Court of the Virgin Islands (the “Appellate Division”), the designated appellate court for the Territory at the time of that appeal.

¶7 The Appellate Division reversed the judgment of acquittal by the Superior Court and remanded the case for reinstatement of Richards’ conviction. On remand, the Superior Court issued an order reinstating Richards’ conviction on Count Four, and on January 11, 2017, orally sentenced Richards to a one-year suspended sentence with credit for time served and one year of supervised probation.¹ 14 V.I.C. § 1089; 5 V.I.C. § 3711(c). The court memorialized the judgment in a writing on January 19, 2017, and on the same day Richards filed a timely notice of appeal with this court.²

II. JURISDICTION AND STANDARD OF REVIEW

¶8 This Court may not consider the merits of an appeal unless it first determines that it has jurisdiction over the matter. *V.I. Gov’t Hosps. & Health Facilities Corp. v. Gov’t of the V.I.*, 50 V.I. 276, 279 (V.I. 2008). “The Supreme Court [has] jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court.” V.I. CODE ANN. tit. 4, § 32(a). “It is well established that in a criminal case, the written judgment embodying the adjudication of

¹ For reasons not apparent in the record, the matter languished for a decade in the Appellate Division before the Superior Court could enter the judgment directed by the Appellate Division.

² “Because (Richards) filed (her) notice of appeal before the Judgment... issued, this Court treats the notice as having been filed on the date the Superior Court entered the final order...,” January 19, 2017. *Potter v. People*, 56 V.I. 779, 787 n.10 (V.I. 2012). See also *Fontaine v. People*, 56 V.I. 571, 576 n.3 (V.I. 2012) (“A notice of appeal filed after the announcement of an order or judgment, but before the entry of a writing memorializing same, is ‘treated as if filed on the date of and after entry ... and is considered timely filed’ even though it is premature.”).

guilt and the sentence imposed based on that adjudication constitutes a final judgment for purposes of appeal.” *Davis v. People*, 69 V.I. 619, 626 (V.I. 2018) (citations omitted). Accordingly, the Superior Court’s January 19, 2017, judgment constitutes a final judgment, and we have jurisdiction over this appeal.

¶ 9 “When we consider challenges to the sufficiency of the evidence, we apply a particularly deferential standard of review.” *Duggins v. People*, 56 V.I. 295, 300 (V.I. 2012) (internal quotation marks omitted). After a criminal conviction, an appellant who challenges the sufficiency of the evidence bears a very heavy burden. *Charles v. People*, 60 V.I. 823, 831 (V.I. 2014). “[W]e view the evidence presented at trial in a light most favorable to the People.” *Stevens v. People*, 52 V.I. 294, 304 (V.I. 2009). A conviction should be affirmed if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Smith v. People*, 51 V.I. 396, 398 (V.I. 2009).

III. DISCUSSION

¶10 Richards alleges that her conviction for embezzlement under 14 V.I.C. § 1089 must be vacated because the last court to possess jurisdiction over this matter was the Superior Court when it entered a judgment of acquittal in 2006. She contends that when the People appealed the court’s judgment of acquittal, the Appellate Division lacked jurisdiction to hear the appeal when it reversed the Superior Court with directions to reinstate her conviction. Therefore, Richards argues, the Superior Court did not have the jurisdiction on remand to reinstate her conviction and sentence her in 2017, and on that theory this Court does not have jurisdiction over the allegedly null and void January 19, 2017, order of the Superior Court.

¶11 Richards maintains that the Appellate Division did not have the jurisdiction to hear the People’s appeal because the government filed the appeal after the Legislature created the Supreme Court of the Virgin Islands on October 29, 2004. Therefore, she contends that all appeals from courts of the Virgin Islands taken on and after that date must be filed in this Court, because the creation of the Supreme Court immediately divested jurisdiction over new appeals from the Appellate Division and vested the power of review in this Court.

¶12 But if this Court were to determine it has jurisdiction and reaches the merits, Richards argues that her conviction must nevertheless be reversed, as the evidence was legally insufficient for a jury to convict under 14 V.I.C. § 1089, styled “Embezzlement by public and private officers.” We consider each of Appellant’s arguments in turn.

A. Jurisdiction

¶13 The Revised Organic Act (“ROA”) states that upon the *establishment* of the Supreme Court all appeals from decisions of the Superior Court not previously taken must be taken to the Supreme Court. *See* Revised Organic Act of 1954 § 23A(d) (emphasis added). Richards asserts that this Court was “established” within the meaning of the ROA on October 29, 2004, the date Act 6687 passed creating the Supreme Court of the Virgin Islands. Therefore, she alleges that the ROA mandates that all appeals of Superior Court decisions on and after October 29, 2004, must be taken to this Court, that appeals taken to the Appellate Division on or after October 29, 2004, were heard without jurisdiction, and that opinions and orders in those appeals are void (including the People’s 2006 appeal of this case). However, this argument fully ignores our holdings in *V.I. Gov’t Hosps. and Hypolite v. People*, 51 V.I. 97 (V.I. 2009), and would also produce absurd results for the administration of justice in the territory. For those reasons, we reject her argument.

¶14 On August 28, 2006, the Appellant in *V.I. Gov't Hosps.* appealed the dismissal of its action by the Superior Court to the Appellate Division. 50 V.I. at 278. While that appeal was still pending, the Appellant filed another appeal on November 20, 2007, this time in the Supreme Court, regarding attorney's fees in the same action. *Id.* Relying on the Revised Organic Act, we held that "(b)ecause the Supreme Court was *established* after the [Appellant] appealed dismissal of its action to the Appellate Division, but before the [Appellant]... filed [its] appeal of the Superior Court's attorney's fees award, the Appellate Division possesses jurisdiction over the lower court's order dismissing the underlying litigation, but lacks jurisdiction over the instant appeal." *Id.* at 280 (emphasis added). And we squarely decided that this Court was "established" not on October 29, 2004, but on January 29, 2007, and that the Appellate Division was not divested of its jurisdiction over new appeals from the Superior Court until January 29, 2007. *See Hypolite*, 51 V.I. at 101 ("The Supreme Court officially assumed appellate jurisdiction over appeals from the Superior Court on January 29, 2007," and "the Appellate Division's appellate jurisdiction over Superior Court decisions is limited to appeals filed prior to January 29, 2007."); *see also In re Hailey*, 2020 WL 4814226 at *7 n.4 (V.I. 2020); *In re Holcombe*, 63 V.I. 800, 831-32 (V.I. 2015).

¶15 But even if Richards' argument is not already foreclosed by our previous decisions, her interpretation would produce the absurd result of a jurisdictional void where no court in the Virgin Islands could hear an appeal initiated between October 29, 2004, and January 29, 2007. The legislature could not possibly have intended to produce the absurd result where no court would possess jurisdiction to hear appeals from the Superior Court between the passage of the Act creating this Court and this Court's eventual assumption of jurisdiction. *Heyliger v. People*, 66 V.I. 340, 353 (V.I. 2017) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (2005)) ("[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative

interpretations consistent with the legislative purpose are available.”). Accordingly, we reject Richards’ argument.³

¶16 We now turn to whether the Appellate Division had jurisdiction to hear this appeal in 2006. The Superior Court pronounced its original judgment from the bench on July 19, 2006, and subsequently entered a written judgment acquitting Richards of Count Four and convicting Richards of Count Seven on November 30, 2006. The People had filed their notice of appeal previously, on July 26, 2006. Because this appeal was taken before the Virgin Islands Supreme Court assumed jurisdiction over appeals, the Appellate Division had jurisdiction to hear Richards’ appeal under the ROA. Therefore, the case was properly before the Appellate Division, it was properly remanded to the Superior Court, and we now properly exercise jurisdiction over this appeal.⁴

³ Richards also argues that Act 6687 and Act 6730 impermissibly extended the jurisdiction of the District Court’s Appellate Division without Congressional approval to do so, and that, therefore, we should invalidate Act 6730. The District Court of the Virgin Islands sufficiently addressed the merits of this argument in *Joseph v. People*, 50 V.I. 873 (D.V.I. App. Div. 2008). There, the District Court stated:

The People’s interpretation of 6687 proposes that (the Appellate Division’s) appellate jurisdiction ended on the date Act 6687 was signed into law and was reinstated with the passage of Act 6730. However, this interpretation is at odds with both the language of the statute and the demonstrated intent of the Legislature. Indeed, the Legislature could not have intended to curtail this Court’s appellate review while opening a year-long jurisdictional chasm where no local court would exercise appellate jurisdiction over newly filed cases arising from the Superior Court.

Rather, the plain language of Acts 6687 and 6730 demonstrate the Legislature’s intent that this Court maintain uninterrupted jurisdiction over civil and criminal appeals arising from the Superior Court until such time that the newly established Supreme Court of the Virgin Islands certified that it was ready to accept jurisdiction.

Id. at 884. We agree with the District Court and reject Richards’ argument that the Appellate Division’s jurisdiction was impermissibly extended.

⁴ The Appellant also argues that this Court does not have jurisdiction over this appeal because the People filed their notice of appeal prematurely in the Appellate Division on July 26, 2006, before the Superior Court’s original final order issued on November 30, 2006. Therefore, Richards argues, no subsequent court possessed or can possess jurisdiction over this matter. However, the rule in this jurisdiction regarding premature appeals was, and is currently, that an appeal filed too late is fatal, but one filed too early may provide safety, as it becomes effective upon the entry of the judgment or order. *In re Cendant Corp. Securities Litigation*, 454 F.3d 235, 245 n.9 (3d Cir. 2006); *United*

B. Sufficiency of the Evidence

¶17 Richards argues that her conviction under 14 V.I.C. § 1089 should be overturned because the People failed to introduce sufficient evidence from which a rational trier of fact could conclude either: (1) that Richards was an “officer” of the Virgin Islands within the meaning of 14 V.I.C. § 1089; or (2) that she had custody or control of the funds she was convicted of embezzling within the meaning of the statute. To be convicted under 14 V.I.C. § 1089, the People must prove that the defendant either (1)(a) was an officer of the Virgin Islands or a subdivision thereof, or (b) a deputy, clerk, or servant of such officer, or (c) an officer, director, trustee, clerk, servant, attorney, or agent of any association, society, or corporation, that (2) fraudulently appropriated or secreted with fraudulent intent to appropriate to any use or purpose not in the lawful execution of their trust, (3) any property which they had in their possession or under their control by virtue of their trust. Richards argues that the evidence adduced by the People at trial was insufficient to satisfy element (1), that she was an officer or other qualifying individual under the statute, or element (3), that she had possession or control of the funds at issue by virtue of her trust.

1. Officer or Other Qualifying Individual Under § 1089

¶18 Richards maintains that in her role as the Director of Planning and Research for the VIPD she was not an “officer” of the Virgin Islands, and that therefore the People failed to prove this essential element of the crime of embezzlement under 14 V.I.C. § 1089 at trial. *See Phipps v.*

States v. Hashagen, 816 F.2d 899, 901 (3d Cir. 1987) (a notice of appeal filed after verdict but before sentence, although premature, ripens into an appealable order when the judgment of sentence is entered); *Gov't of the V.I. v. Leonard A.*, 922 F.2d 1141, 1146 n.6 (3d Cir. 1991); *accord Fontaine*, 56 V.I. at 576 n.3. The Superior Court granted Richards' motion for a judgment of acquittal on the embezzlement charge on July 19, 2006. The People filed their notice of appeal on July 26, 2006. The final order memorializing the oral judgment of acquittal was issued on November 30, 2006. Therefore, the appeal ripened on November 30, 2006, with the entry of the final judgment. *See Hashagen*, 816 F.2d at 901. Jurisdiction over the original appeal was properly conferred upon the Appellate Division when the notice of appeal was filed. We have jurisdiction over the Superior Court's 2017 final judgment on this ground. V.I. CODE ANN. tit. 4, § 32(a).

People, 54 V.I. 543, 568 (V.I. 2011) (“[T]he Due Process Clause requires the government to prove all elements of the charged offense beyond a reasonable doubt.”) (quoting *United States v. Dodd*, 225 F.3d 340, 344 (3d Cir. 2000)). Richards also contends that not only was she not an officer, she was not a *deputy, clerk, or servant* of such officer, and therefore the Court must reverse her conviction as she is not any of the qualifying individuals under the statute. Section 1089 reads:

Whoever, being an officer of the Virgin Islands or a subdivision thereof, or a deputy, clerk, or servant of such officer, or an officer, director, trustee, clerk, servant, attorney, or agent of any association, society, or corporation (public or private), fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

(emphasis added). Even if Richards was not an officer, a fact which we do not today decide, we nevertheless find that she was a servant of an officer under the statute.

¶19 The VIPD is an executive subdivision of the Virgin Islands government under the statute, *see* 3 V.I.C. § 251, and the Commissioner of the VIPD is an officer under the statute, as he or she is the head of the department, is appointed by the Governor, and the department is administered under his or her supervision and direction. 3 V.I.C. § 252. *See also* 3 V.I.C. § 258; 63C AM. JUR. 2D *Public Officers and Employees* § 9 (observing that “[o]ne who holds a public office is a public officer” and listing characteristics of public officers). Because we find that the Commissioner is an officer of a subdivision of the Virgin Islands, the next step in our analysis is determining the meaning of the word “servant” in the statute. We look first at the word’s plain meaning. *Matter of Adoption of L.O.F.*, 62 V.I. 655, 661 (V.I. 2015).

¶20 “In ascertaining the plain meaning of the words in the statute, we apply any specific definitions that are statutorily prescribed. When no statutory definition is provided, words that have an accumulated legal meaning will be given that meaning.” *Ubiles v. People*, 66 V.I. 572,

590 (V.I. 2017). Since there are no specific statutorily prescribed definitions for “servant,” we turn to the word’s accumulated legal meaning.

¶21 The Supreme Court of California in interpreting their own embezzlement statutes, *see* CAL. PENAL CODE §§ 503, 508, which are substantially similar to our own, *see* 14 V.I.C. §§ 1087, 1093, stated: “[a] servant is a worker for another under an express or implied employment.” *People v. Treadwell*, 10 P. 502, 508 (Cal. 1886). Richards is undoubtedly a worker for the Commissioner through her employment. Further, she is subject to the Commissioner’s direction and control, 3 V.I.C. § 254(b) and (c) (“The (Directors) of divisions... shall perform such functions as the Commissioner prescribes”) which is “the hallmark of a master-servant relationship.” *Myszkowski v. Penn Stroud Hotel, Inc.*, 634 A.2d 622, 626 (Pa. Super. Ct. 1993) (“[T]he hallmark of a master-servant relationship is that the master possesses the right to control the manner in which the servant’s work shall be accomplished.”). The Commissioner is an officer under 14 V.I.C. § 1089 and we find that Richards is a servant of the Commissioner. Accordingly, we hold that a rational trier of fact could have found this essential element of the crime established beyond a reasonable doubt based on the testimony and evidence introduced at trial.

2. Possession or Control of the Funds by Virtue of Trust

¶22 We now turn to whether there was sufficient evidence to support a finding of embezzlement of the VIPD funds. The Appellant argues that “[t]he People did not prove that the funds were ever in Richards’ custody as a *result of her trust*” (emphasis in original). We agree.

¶23 We look first at the plain meaning of the statute. *People v. Baxter*, 49 V.I. 384, 388 (V.I. 2008). Under section 1089, any qualifying person who

fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by

virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

To determine whether the prosecution submitted sufficient evidence of embezzlement, we must first ascertain the meaning of the operative phrase “by virtue of his trust.”

¶24 The Appellate Division of the District Court of the Virgin Islands considered the relevant provision of 14 V.I.C. § 1089 when it heard the first appeal of this case.⁵ In *Richards I*, the Appellate Division found that “from (the) evidence, a jury could reasonably conclude... that (Richards) had access to funds in the course of her position.” 2015 WL 3668804, at *3. The court reasoned that Richards had access to the funds because ordinarily she could request tickets from Daniel and Global Tours, and Daniel issued the tickets to her. *Id.* The court did not discuss, however, whether Richards had possession or control by virtue of her trust; the court instead concluded that proof of Richards’ ability to access the funds was alone sufficient to sustain her conviction. We disagree with the Appellate Division’s conclusion that mere “access” to property is sufficient to satisfy the statute’s requirement of “possession or control by virtue of trust” under § 1089.

¶25 In the Virgin Islands embezzlement is defined as “the fraudulent appropriation of property by a person to whom it has been entrusted.” 14 V.I.C. § 1087. “Entrustment is shown where an owner ‘deliver[ed] to another something in trust or ... commit[ted] something to another with a certain confidence regarding his care, use or disposal of it.’” *Carmichael v. Gov’t of the V.I.*, 46 V.I. 391, 398 (D.V.I. App. Div. 2004) (quoting BLACK’S LAW DICTIONARY 533 (6th ed.1990)). “Thus, to establish the offense of embezzlement, it must be shown as a threshold matter that the

⁵ *People v. Richards (Richards I)*, 2015 WL 3668804, at *3 (D.V.I. App. Div. 2015) (unpublished).

initial possession was lawful.” *Id.* Conversely, “[l]arceny is (an) unlawful taking.” 14 V.I.C. § 1081.⁶

¶26 Our determination of whether Richards had possession or control of the funds by virtue of her trust is guided by previous interpretations of 14 V.I.C. § 1089 by other courts.⁷ In *Carmichael*, the Appellate Division upheld convictions of obtaining money by false pretenses under 14 V.I.C. § 834(b) where the accused’s defense was that she came into lawful possession of checking account funds because they were entrusted to her. 46 V.I. at 397. The court in *Carmichael* found that the defendant in that case had access to a signature stamp, but only for the limited purpose of completing insurance forms in the absence of her supervisor, and that she was not given the authority to use the stamp to sign checks, nor was the stamp used for that purpose in the regular course of business. *Id.* at 398. Her only authority regarding the checks was, on limited occasions, to complete the amount section left blank by her boss on the checks he had previously signed, in order to send to creditors when he was off-island. *Id.* Because the defendant in *Carmichael* had access to the checks, but did not have the authority or permission to draft the checks at issue (instead removing them from the principal’s checkbook in secret), the court concluded that she had not been entrusted with the checks, but instead had used her knowledge and access to unlawfully gain possession of the funds. *Id.* at 395, 399.

⁶ Under a widely recognized distinction between lawful “possession” and mere “custody” of property, the view was that although the property converted was in the accused’s physical possession at and before the time of conversion, nevertheless, if he merely had custody of such property, but its possession remained constructively in another, the fraudulent conversion by the accused violates that possession and constitutes larceny rather than embezzlement, whereas if the accused had lawful possession of the property, his fraudulent conversion of it is embezzlement rather than larceny. C. T. Foster, Annotation, *Distinction Between Larceny and Embezzlement*, 146 A.L.R. 532 (1943, updated 2020) (internal footnote omitted).

⁷ *Defoe v. Phillip*, 56 V.I. 109, 119 (V.I. 2012) (holding that this Court considers Third Circuit and Appellate Division case law as persuasive authority), *aff’d*, 702 F.3d 735 (3d Cir. 2012)

¶27 *Carmichael* echoes the persuasive holding of *Gov't of the V.I. v. Leonard*, 548 F.2d 478 (3d Cir. 1977), a case also interpreting 14 V.I.C. § 1089. Both cases “reject() the notion that ‘mere access’ to an employer's property, without a showing of specific authority or control over that property, is sufficient to establish lawful possession for the purpose of an embezzlement conviction.” *Carmichael*, 46 V.I. at 399 (citing *Leonard*, 548 F.2d at 478). We agree with this holding.

¶28 In *Leonard*, the Third Circuit Court of Appeals reversed a conviction of aiding and abetting embezzlement because the prosecution failed to prove that the principal offender, a communications technician serving in a Civil Defense Office, committed embezzlement. 548 F.2d at 479. The technician had access to an office storeroom containing rolls of chicken wire. *Id.* Everyone in the office knew where the keys to the storeroom were kept, and the technician would enter the office several times at night and use the keys to pilfer rolls of the chicken wire to sell. *Id.* The court posited that “the critical question is whether [the chicken wire] was under his ‘control’ by virtue of his trust.” *Id.* at 480. The communications technician was “not authorized to... remove [items] from the storeroom, or to exercise dominion over the contents of the storeroom in any way,” although he was authorized on at least one occasion to enter the storeroom to note its contents. *Id.* Williams “knew where the storeroom keys were located, but so did the secretaries and part-time volunteers, who also were not authorized to use the keys without permission.” *Id.* The court found that “mere access to the storeroom was not sufficient to invest ‘control’ in [the technician]” *Id.*

¶29 We are also guided by the Supreme Court of California’s decision in *People v. Knott*, 104 P.2d 33 (Cal. 1940), which interpreted that State’s officer embezzlement statute, CAL. PENAL CODE

§ 504,⁸ which is substantially similar to our own, 14 V.I.C. § 1089.⁹ *Knott* is nearly identical to the instant case, with one key difference: the defendant (a county auditor) had both access *and* authority over the funds at issue, resulting in her embezzlement conviction being affirmed. The accused's argument on appeal was that she did not have the funds at issue in her possession or under her control by virtue of her trust. *Id.* at 35. One of her duties as the county auditor was to draw warrants on the county treasury, authorizing payments the county owed. *Id.* at 34. She "required no approval by any other public officer" to obtain payment on warrants she submitted to the county treasurer, including a \$625 warrant she submitted to the county treasurer in the case. *Id.* "It was the duty of the county treasurer to pay such a warrant, regular on its face, upon presentation, provided there were funds available therefor." *Id.* The treasurer paid out on the \$625 warrant "upon the pretext that it was due for (a certain payment obligation), although (it was actually already) paid under another warrant." *Id.* Under these circumstances, the court found that the defendant auditor had control over the money of the county by virtue of her trust, and her embezzlement conviction was affirmed. *Id.* at 35-36.

¶30 In the present case, Richards' taking was unlawful, as she did not have permission to obtain the cash advance funds and she instead procured them by subterfuge. The VIPD did not entrust Richards with custody or control of the funds. Richards had access to funds in the Global Tours

⁸ "Every officer of this state, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of that officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of that person's trust, any property in his or her possession or under his or her control by virtue of that trust, or secretes it with a fraudulent intent to appropriate it to that use or purpose, is guilty of embezzlement." CAL. PENAL CODE § 504.

⁹ "When statutes from other jurisdictions are substantially similar to a Virgin Islands statute, this Court may look for guidance at how that jurisdiction's courts have interpreted the similar statute." *Ottley v. Estate of Bell*, 61 V.I. 480, 494 n.10 (V.I. 2014).

account, but only to purchase airline tickets for travel, and that access was subject to approval of the Commissioner. Her access to the funds was limited and conditional. *Cf. State v. Weaver*, 586 S.E.2d 841, 846 (N.C. Ct. App. 2003) (a conviction of aiding and abetting embezzlement was reversed where the principal's conviction of embezzlement for forging \$498,000 worth of checks required reversal; the principal had no general check-writing authority and needed express authorization and permission to fill out each individual check. The court held that "the law is clear that mere access to personal property will not satisfy the requirement that, to be properly convicted of embezzlement, the defendant must have received the property lawfully, in the course of and under the terms of her employment."). Additionally, only VIPD employees could receive travel accommodations through Global Tours due to the Commissioner's policy forbidding family and friends traveling on department billing, and Ms. Rhymer was not a VIPD employee. However, Richards told Daniel that Rhymer was a VIPD employee. This subterfuge, according to Ms. Daniel, was "the only reason (she) would have issued the ticket." In addition, Commissioner Christian testified that cash advances were never authorized at all through Global Tours during his tenure, and that he never approved the 'authorization' letters Richards wrote to Daniel, nor the cash advances for the \$2500 in hotel expenses or \$900 in travel expenses for Rhymer. Just as the accuseds in *Carmichael* and *Leonard*, Richards had no specific authority over the owner's property that could make her initial possession lawful. Therefore, Richards' unlawful possession cannot "establish the offense of embezzlement." *Carmichael*, 46 V.I. at 398.

¶31 Lastly, Daniel did not willingly disburse the funds Richards requested, because Richards' request was not something Daniel had "done ... before." Daniel questioned Richards' authority and whether Richards had the permission to obtain the cash advances. Daniel denied Richards' request until Richards misrepresented that she had the authority to gain possession of the funds.

Conversely, in *Knott*, the county auditor's conviction for embezzlement was upheld because the county treasurer had a duty to release the treasury's funds upon the auditor's request, the auditor never required any further approval and did not have to misrepresent her authority to turn her access into lawful possession. She had specific authority over the county treasury's funds. In this case, Daniel had no such authority.

¶32 We find that no reasonable juror could conclude that Richards had lawful custody or control of these funds by virtue of her trust within the meaning of the statute. *Cf.* 14 V.I.C. § 834(b) (Obtaining money by false pretenses). The People failed to demonstrate that Richards had specific authority or control over the cash advance funds sufficient to establish control by virtue of her trust. *Carmichael*, 46 V.I. at 399. Her conviction for embezzlement under 14 V.I.C. § 1089 must therefore be reversed.

IV. CONCLUSION

¶33 The Appellate Division properly exercised jurisdiction over the original appeal of the 2006 Superior Court judgment acquitting Richards, and we have jurisdiction over the present appeal. While the evidence introduced at trial was sufficient for a rational trier of fact to establish that Richards was a public officer under 14 V.I.C. § 1089, the prosecution failed to introduce sufficient evidence to establish that Richards had possession or control over the funds she was convicted of embezzling by virtue of her trust. Therefore, we reverse the Superior Court's order reinstating Richards' conviction, and remand to the Superior Court with instructions to enter a judgment of acquittal on Count Four, embezzlement under 14 V.I.C. § 1089.¹⁰

¹⁰ “[I]t may appear unfortunate that the result we reach in this case serves to free a defendant who may well be guilty of some sort of wrongful conversion. But the fact is that the Virgin Islands have not consolidated their statutes governing larceny and embezzlement, and we are constrained to observe the traditional procedural strictures with respect to conviction of one crime when the proof shows another.” *Leonard*, 548 F.2d at 481.

Dated this 9th day of April, 2021.

BY THE COURT:


MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: 
Deputy Clerk

Dated: 4/9/2021

