

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of April, 2021.*

Present: All the Justices.

Sun Hui Jung, Appellant,

against Record No. 191495  
Circuit Court No. 2017-7664

David Daewon Park, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

Sun Hui Jung (“Jung”) retained David Daewon Park (“Park”) to find three individuals who she believed might be involved in her husband’s unsolved murder. Park charged her \$1,500 per person, for a total of \$4,500. After finding one of the three individuals, Park told Jung that he believed that a man named Guen Suk Yoo (“Yoo”) was involved in her husband’s murder. According to Park, Yoo now lived in South Korea. Jung then paid Park \$20,000 to find Yoo in South Korea.

In April 2015, Park called Jung and informed her that he had located Yoo. According to Park, Yoo owed \$100,000 in alimony to his ex-wife who lived in Virginia and he offered to provide information about the murder if Jung paid the money. Jung agreed to make the payment.

Park then set up a meeting with Yoo’s purported ex-wife at a Wendy’s in Annandale. Both Park and Jung were familiar with the Wendy’s, as it was the location where they first met. On or about April 20, 2015, Jung packaged \$100,000 in cash into bundles of \$10,000. She placed the bundles into two grocery bags, along with a cheesecake, a fruitcake and some assorted fruits.

Although Park had instructed Jung to go to the meeting alone, she was afraid, and she asked her friend Eun Joo Seo (“Seo”) to accompany her. Jung and Seo arrived at the Wendy’s

just prior to 9:00 p.m. Soon, a black Toyota SUV with two people inside arrived. Jung was too scared to get out of the vehicle, so Seo took the bags to the black Toyota. Seo noticed that the driver of the SUV was a young man who appeared to be 20 to 30 years old. As she approached, a woman got out of the vehicle. Seo gave the grocery bags to the woman, then returned to the car and left with Jung. As Jung and Seo were driving home, Park called Jung to confirm that he was able to obtain an affidavit from Yoo.

Park returned to the United States in May 2015 with an affidavit written in Korean that purported to describe Jung's husband's murder. After the affidavit was translated, Park brought it to the police. However, he did not have any proof of Yoo's identity and Jung asked him to return to South Korea to get additional proof. In June 2015, Park returned to South Korea, but he was unable to get any proof of Yoo's identity. According to Park, Yoo had moved to China. At that point, Jung determined that Park had been lying to her about Yoo.

Some time later, while at the Fairfax County Courthouse, Jung and Seo again saw the woman to whom they had given the \$100,000. Jung and Seo subsequently learned that the woman was actually Park's wife, Susan. Additionally, Jung later discovered that Park and Susan have a college-age son who drives a black Toyota SUV.

Jung filed a complaint against Park alleging, among other things, fraud. At the subsequent jury trial, Jung testified that she got the \$100,000 she used to pay Susan out of a safe deposit box. Park, however, presented evidence showing that Jung had not visited her safe deposit box at any point during 2015. When confronted with this evidence, Jung stated that it was "100 percent true that I took the money out of the [safe deposit] box. However, I'm not so sure about the dates and amounts that I took out of the box."

In addition to Jung's testimony, Seo testified about the delivery of the money. Evidence was also presented that, in August 2015, over \$50,000 was found in Park's home, the bulk of which was wrapped in bundles of \$10,000.<sup>1</sup> When questioned about the money, Park explained that the money was "from the bank" and it was kept in a "[s]hoebox for vacation money."

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<sup>1</sup> The jury was not informed as to how or why the money was discovered in Park's home.

After deliberating, the jury returned a verdict in favor of Jung on the fraud claim and awarded her \$124,500.<sup>2</sup> Park moved to set aside the verdict, arguing that there was “no evidentiary or factual support that Mr. Park ever damaged Mrs. Jung in that \$100,000 amount.” According to Park, there was no evidence that she actually paid the money because Jung failed to prove where she got the \$100,000 in cash.

After considering the matter, the circuit court agreed with Park, stating:

[T]here is absolutely no evidence in the record that [Jung] had any access, that she accessed the safe deposit box at any time in 2015 and as a result I don’t believe, based on the evidence, that there was sufficient evidence to allow the jury to have concluded that the \$100,000 was given to Mr. Park, and as a result of that, I am going to grant the motion to non obstante veredicto, and enter judgment in this case for the \$24,500.

On appeal, Jung argues that the circuit court erred in setting aside the jury’s award because there was credible evidence that supported the verdict. She contends that the circuit court improperly based its decision on a fact that she was not required to prove. Specifically, she claims she was not required to prove where she got the \$100,000.

Under repeated decisions of this [C]ourt, the verdict of a jury cannot be set aside unless there is a palpable insufficiency of evidence to sustain it. Nor is interference with a verdict authorized where the court merely doubts its correctness, or would itself have found a different verdict. The admissibility of evidence is with the court, but its weight is wholly with the jury.

*Morien v. Norfolk & Atl. Terminal Co.*, 102 Va. 622, 624 (1904).

Thus, to determine whether a circuit court erred in setting aside a jury’s verdict, the question before the Court is whether the jury’s verdict rested upon “facts proven, fair inferences therefrom or circumstances having a tendency to establish the necessary facts.” *Cloutier v. Virginia Gas Distribution Corp.*, 202 Va. 646, 651 (1961). If the answer is yes, then the circuit court erred in setting aside the verdict; if the answer is no, then the circuit court’s decision will be affirmed. Moreover, “when conflicting inferences have been resolved by a jury and those necessarily underlying the conclusion reflected in the verdict are reasonably deducible from the evidence, a trial judge should not set the verdict aside.” *Lane v. Scott*, 220 Va. 578, 582 (1979).

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<sup>2</sup> This amount breaks down to \$4,500 for the retainer fee, \$20,000 for the expense on Park’s trip to Korea and \$100,000 for the bribe that was collected by Susan.

Further, the Court considers the evidence in the light most favorable to the party that received the jury verdict. *Deskins v. T.H. Nichols Line Contractor, Inc.*, 234 Va. 185, 185 (1987); *see also* Kent Sinclair, 1 Virginia Civil Procedure § 13.13 (2020) (“Present-day J.N.O.V. practice is based upon the rationale that the only office of [Code § 8.01-430] is to test the sufficiency of the evidence.”).

In the present case, the circuit court found that Jung’s failure to prove that she withdrew the money from her safe deposit box in 2015 was dispositive of the question of whether she actually paid the money to Park. Although Jung’s inability to fully explain where she got the money lends itself to the possibility that the money never existed and she made the whole thing up, it does not exclude the possibility that she was simply wrong about when she withdrew the money. Notably, Jung acknowledged that she may have simply misremembered when she got the money out of the safe deposit box. Thus, while Jung’s inability to remember full details about when she got the money raises questions about her credibility, it does not render her testimony entirely incredible. Indeed, even if the jury discounted her testimony entirely about the source of the funds, that would not render her entire testimony incredible. *See Simpson v. Commonwealth*, 199 Va. 549, 558 (1957) (“To be incredible, evidence must be either so manifestly false that reasonable [persons] ought not to believe it, or it must be shown to be false by objects or things as to the existence and meaning of which reasonable men should not differ.”).

Moreover, there is additional evidence beyond Jung’s testimony that supports the jury’s finding that she paid the money to Park. Notably, Jung’s testimony regarding the manner in which the money was transferred was corroborated by Seo. Indeed, it was Seo who identified Susan as the woman to whom she gave the shopping bags. There is also the fact that, approximately four months after the money was delivered, over \$50,000 in cash, bundled in the same manner as Jung described, was found at Park’s home.

Here, the jury was fully aware that a discrepancy existed regarding the source of the money. Park’s closing argument focused heavily on Jung’s inability to explain where the money came from to support his assertion that she never actually made the payment. Faced with conflicting possibilities, the jury chose to accept Jung’s explanation. Having considered all of the facts, however, the jury determined that Jung was sufficiently credible and ruled in her favor. All of these facts, viewed in the light most favorable to Jung, support the jury’s finding that Jung

did, in fact, pay Park \$100,000. Thus, the circuit court erred in setting the jury's verdict aside. Accordingly, the circuit court's order setting aside the jury verdict is reversed, the jury verdict is reinstated in the full amount, and final judgment is entered in favor of Jung.

This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

A handwritten signature in blue ink, appearing to read "John B. R. [unclear]". The signature is written in a cursive style with a long horizontal line extending to the right.

Clerk