[Cite as *State v. Lawson*, 2012-Ohio-1415.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-516 (C.P.C. No. 10CR-6356)
Dennis E. Lawson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 30, 2012

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Robert D. Essex, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, Dennis E. Lawson ("appellant"), appeals from a May 12, 2011 judgment of conviction and sentence entered by the Franklin County Court of Common Pleas setting forth the jury's verdict of guilty of one count of forgery, in violation of R.C. 2913.31, and one count of possessing criminal tools, in violation of R.C. 2923.24, both felonies of the fifth degree. For the following reasons, we affirm.

{¶ 2} On October 28, 2010, a Franklin County Grand Jury indicted appellant on one count of forgery, in violation of R.C. 2913.31, a felony of the fifth degree, and one count of possessing criminal tools, in violation of R.C. 2923.24, also a felony of the fifth degree. The indictment alleged that, on September 7, 2010, in violation of R.C. 2913.31 appellant:

> * * * with purpose to defraud or knowing that he was facilitating a fraud, did forge a writing, to wit: did write the

> face and/or endorsement on check number 108 on the checking account of Jefferson H. Cardenas and/or Crystal R. Chambliss made payable to Dennis Lawson for the amount of One Hundred Fifty Dollars ($150.00) so that it purported to be genuine when it was actually spurious, and/or did utter, or possess with purpose to utter, a writing, to wit: on check number 108 the checking account of Jefferson H. Cardenas and/or Crystal R. Chambliss made payable to Dennis Lawson for the amount of One Hundred Fifty Dollars ($150.00) which he knew to have been forged.

Further, the indictment alleged that, on that same date, in violation of R.C. 2923.24, appellant:

> * * * did possess or have under his control a substance, device, instrument, or article, to wit: a check, with purpose to use it criminally, and the circumstances indicated that said substance, device, instrument or article was intended for use in the commission of a felony, to wit: Forgery, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

(*See* Indictment, 1-2.)

{¶ 3} On November 1, 2010, the trial court accepted appellant's plea of not guilty as to both charges set forth in the indictment.

{¶ 4} On May 2, 2011, this case proceeded to a jury trial, wherein Officer John R. Stafford, Columbus Police Department ("Officer Stafford"), Pat Phelan, fiscal security consultant for PNC bank ("Phelan"), Crystal Chambliss, victim ("Chambliss"), Desiree Reed, victim's girlfriend ("Reed"), Kathleen Stuebe, forensic scientist employed by the Columbus Police Crime Laboratory ("Stuebe"), and Detective Carl Covey, Columbus Police Department ("Detective Covey"), testified on behalf of the state. Appellant did not call any witnesses to testify on his behalf.

{¶ 5} Chambliss testified that she and appellant used to date for almost three years and that she broke up with him in March of 2010. On September 6, 2010, appellant called her because he needed some food and wanted some money. Chambliss did not give appellant money but, instead, went with him to the store and bought him some groceries. After grocery shopping, they returned to Chambliss's apartment, and Chambliss went upstairs, while appellant waited in the kitchen where Chambliss kept her box of checks on

top of the refrigerator. Chambliss came back downstairs and had breakfast with appellant, and, after breakfast, Chambliss and appellant left the apartment at the same time.

{¶ 6} According to Chambliss, appellant called her on September 7, 2010, around midnight, because he wanted to come over. Chambliss told appellant no, but he came anyway and was knocking on the door and windows. Chambliss called the police and, when they responded, appellant told the police that he lived with Chambliss and that she just "put his stuff out" before they arrived. (Tr. 50.) The police spoke with Chambliss and made appellant leave the premises. Later that same morning, appellant returned to Chambliss's apartment, knocked on her door and window, and busted out the windows on her car. Chambliss called the police but, by the time they responded, appellant had already left.

{¶ 7} Chambliss further testified that, around September 16, 2010, she received a telephone call from her husband, Jefferson Cardenas ("Cardenas"), asking her why she wrote a check to appellant. Due to the fact that Cardenas is also listed on Chambliss's checking account, the bank contacted him because the last check written overdrafted the account. Chambliss told Cardenas that she "didn't write any check to anyone, especially [appellant]." (Tr. 57.) Chambliss testified: "I * * * went looking for my check box. They were gone. * * * There was no one else in my house prior to that beside [appellant]. I called the police and officers came out and took the report." (Tr. 57.) Chambliss also got a copy of the forged check from the bank and turned it over to the police.

{¶ 8} Chambliss then testified, in detail, regarding the forged check:

> Q. So this is the check, check number 108, that you got from the bank?
>
> A. Yes, it is.
>
> Q. Ms. Chambliss, look at this document. Are you able to look at this document and tell you didn't write it?
>
> A. Yes, I am.
>
> Q. Well, first of all, do you remember ever writing this document?

A. I never wrote that.

Q. Do you remember ever telling [appellant] he could do it?

A. No, I haven't. I never told him he could write any checks out.

Q. Do you remember ever giving him a blank check?

A. I never gave him a check.

Q. Looking at this document, then, how are you able to tell that you didn't write that?

* * *

A. I never sign Crystal R. Chambliss. I always sign Crystal Chambliss. How his "H" and his hundreds. I don't do my "Ss" like that. And it's like one-hundred-fifty dollars. I would put an and, the little and part, and write out zero and write out cents.

Q. Okay.

A. I don't write my check like that period, never.

* * *

Q. Ms. Chambliss, you were together with [appellant] for about three years?

A. Almost.

Q. Had you had opportunities before to see his handwriting?

A. Yes, I have.

Q. Are you pretty familiar, then, with his handwriting?

A. I'm pretty familiar. That's his handwriting.

Q. So independent of everything else, if you saw this document could you say that this was his handwriting?

A. Yes, I can.

* * *

Q. Are you able to tell us from looking at this writing who wrote check 108?

A. Yes, I am.

Q. Who wrote that?

A. [Appellant.]

(Tr. 63-65, 74.)

{¶ 9} Stuebe, the state's expert witness, examined State's Exhibits A and C-3 (also known as Q-1), copies of check #108, the questioned document; State's Exhibit C-1 and K-1 (2), copies of check #101, known writing samples of Chambliss; State's Exhibits C-2 and K-1 (3), copies of check #102, known writing samples of Chambliss; State's Exhibits K-1 (1-a) and K-1 (1-b) known writing samples of Chambliss; State's Exhibit K-2 (1-a) and (1-b), known writing sample of appellant, and State's Exhibits K-2 (2-a), K-2 (2-b), K-2 (3-a), and K-2 (3-b), known writing samples of appellant.

{¶ 10} Stuebe testified that she looked at State's Exhibit K-1 (1-b), the known writing sample of Chambliss, and compared it with State's Exhibit A, the questioned check #108. Stuebe opined that Chambliss "probably did not write the entries on the face of Q-1." (Tr. 138.) Further, Stuebe testified that she examined K-2 (1-a), (1-b), (2-a), 2 (2-a), (2-b), (3-a) and (3-b), all of appellant's known writing samples, and compared them against check #108 (Q-1). In doing so, appellant reached the conclusion that "[t]here are indications that [appellant] wrote the payee entry, amount entry and maker signature on Q-1." (Tr. 143.) In addition, Stuebe opined that appellant "probably wrote the endorsement on Q-1." (Tr. 143.) Finally, Stuebe testified that she examined check numbers 101, 102, and 108 (Q-1) to determine which checks, if any, were written by Chambliss, and which checks, if any, were written by appellant. Based upon these comparisons, Stuebe concluded that there are indications that Chambliss did not write the entries on the face of Q-1. She noted as well, however, that "this conclusion is far from conclusive," due to the poor reproduction quality of the submitted evidence and differences in writing styles, such as cursive and print, in the questioned and known writing (Tr. 146-47.)

{¶ 11} Stuebe also testified regarding a nine-point scale called the Standard Terminology for Expressing Conclusions of Forensic Document Examiners. Stuebe explained that:

> Starting at the top is identification. That means that I have absolutely no reservation whatsoever that this person wrote it. Stepping down from that is something called highly probable, which is I'm pretty sure that this person wrote it, but there can be something missing, like maybe in the one examination sample the "B" looks one way, the "B" looks a different way in the known writing. It's just a little bit more conservative. It's pretty sure that the person wrote it, but I can't say yes, they did.
>
> Again, stepping down from that, probably, which I used in this case, where I have the digitalized check and not a very good writing sample.
>
> Stepping down a little bit weaker from that is indications. It's more of a leaning toward than one way or the other. It's very weak.
>
> And then in the middle is no conclusion. That means I have no, absolutely no idea whether or not this person wrote it. Then, it also goes to the reverse, indications did not, probably did not, highly probable did not, and a complete elimination.

(Tr. 148-49.) Stuebe clarified that this scale *does not* correspond to legal theories and legal standards, such as "beyond a reasonable doubt." (Tr. 149-50.)

{¶ 12} Phelan testified that he worked for PNC Bank for 18 years and that he is responsible for robbery, burglary and thefts. Phelan received an e-mail from Detective Covey requesting photos of transactions conducted on Chambliss's account with PNC Bank. The transaction in question occurred at the PNC Berwick office at 2295 East Livingston Avenue, on September 7, 2010, at 2:48 p.m. Phelan located the image of the transaction and e-mailed it to Detective Covey. In addition, Phelan identified State's Exhibits B-1, B-2, and B-3 as the images he e-mailed to Detective Covey. Detective Covey testified that he worked for the Columbus Police Department for a little over 23 years and that he is currently in the burglary squad. Detective Covey identified appellant as the person in the photographs from PNC Bank. In addition, Detective Covey testified that he

got handwriting samples from Chambliss (State's Exhibit K-1 (1-a) and (1-b)) and appellant (State's Exhibit K-2 (1-a), K-2 (1-b), K-2 (2-a), (2-b), and K-2 (3-a) and (3-b)), and he identified the State's exhibits as the handwriting samples he obtained.

{¶ 13} On May 5, 2011, the jury found appellant guilty, beyond a reasonable doubt, of forgery, as charged in Count 1 of the indictment, and of possession of criminal tools, as charged in Count 2 of the indictment.

{¶ 14} Further, on May 5, 2011, the trial court held a sentencing hearing and found Counts 1 and 2, forgery and possessing criminal tools, to be allied offenses of similar import and, as such, directed the state to elect the count on which appellant should be sentenced. The state elected Count 1.

{¶ 15} On May 12, 2011, the trial court journalized its judgment entry sentencing appellant to a period of community control/basic non-reporting supervision for two years. In addition, the trial court also required payment of restitution in the amount of $150. Finally, the trial court indicated that, if appellant violates community control, he will receive a prison term of nine months as to Count 1 of the indictment.

{¶ 16} On June 10, 2011, appellant filed a timely notice of appeal, setting forth two assignments of error for our consideration:

> [1.] Appellant's convictions were not supported by sufficient evidence and were against the manifest weight of the evidence.
>
> [2.] The court erred in allowing Detective Covey to testify to appellant's uncooperativeness during his handwriting sample for the purpose of allowing the jury to use it in their own independent handwriting comparison.

{¶ 17} In his second assignment of error, appellant argues that it was improper to introduce evidence that appellant was uncooperative while giving his handwriting exemplar and to allow the jury to use that evidence to make an independent evaluation of the handwritings, in light of the fact that the state introduced contradictory expert testimony on the same issue. (*See* appellant brief, 11.) In support of this argument, appellant cites our decision in *State v. McCoy*, 89 Ohio App.3d 479 (10th Dist.1993).

{¶ 18} In response, the state argues that: (1) appellant's counsel agreed that the jury was entitled to compare the handwriting on the check with appellant's handwriting

samples; (2) testimony regarding appellant's failure to cooperate while giving his handwriting exemplar was relevant to show that any inconsistencies between appellant's handwriting and the handwriting on the check were the result of appellant masking his handwriting when he gave the samples; and (3) appellant's reliance on *McCoy* is misplaced. (*See* appellee's brief, 7-8.)

{¶ 19} In *McCoy* at 481, the appellant was found guilty of theft, and the jury made additional findings regarding both the value of the stolen property and the fact that the appellant had two previous theft offense convictions. *Id*. The appellant argued that the trial court erred in entering judgment against him on a third-degree felony, as opposed to a fourth-degree felony, because the state failed to present sufficient evidence to identify the appellant as the offender in the two previous cases. *Id*. at 482. As evidence of the appellant's prior convictions, the state entered into evidence several court documents, some of which were allegedly signed by the appellant. *Id*. In its attempt to prove identification for purposes of enhancing the felony from a fourth degree to a third degree, "[t]he state wanted the jurors to compare the signatures on the various documents and determine whether appellant had two previous convictions." *Id*. The jury found that the appellant had twice been convicted of receiving stolen property, breaking and entering, and theft, and the trial court sentenced the appellant on the enhancement.

{¶ 20} In remanding *McCoy* back to the trial court for sentencing of the appellant for a conviction of a fourth-degree felony, instead of a third-degree felony, we found that:

> [N]o foundation was laid that any of the signatures in the exhibits admitted into evidence did, in fact, contain [the] appellant's signature. [The] [a]ppellant's signature was not authenticated by any witness, let alone an expert, and nothing in the evidence identified [the] appellant as the prior offender in the other cases, other than the similarity in name. The jurors were never instructed that they were to examine the various documents and the handwriting thereon to determine whether it was that of [the] appellant. Because the instruction that the jurors were to make whatever comparisons they could from the documents was so broad, it is mere speculation as to what the jurors did with the documents and whether they conducted any handwriting comparison.

Id. at 84.

{¶ 21} We believe that the present matter is distinguishable from *McCoy* for the following reasons: (1) prior to identifying appellant as the writer of check #108, Chambliss testified that she and appellant were together for almost three years and that she is pretty familiar with appellant's handwriting; (2) Stuebe, the state's expert, testified that there were indications that appellant wrote the payee entry, amount entry, and maker signature on check #108, and that appellant probably wrote the endorsement on check #108; (3) Detective Covey identified and authenticated State's Exhibits K-2 (1-a), K-2 (1-b), K-2 (2-a), (2-b), and K-2 (3-a) and (3-b) as appellant's known handwriting samples (Tr. 199-201; *see also* Evid.R. 901(B)(2)); and (4) the jury, as trier of fact, can properly compare appellant's known handwriting samples against check #108, in order to reach an opinion regarding the allegation of forgery.

{¶ 22} Additionally, "[d]ecisions concerning the admission or exclusion of evidence lie within the discretion of the trial court, and will not be reversed on appeal absent an abuse of discretion." *State v. Jennings*, 10th Dist. No. 00AP-1283, 2001 WL 1045490, at *1. "An abuse of discretion constitutes more than an error of law or a decision which might later be considered unwise." *Id*., citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "Rather, it entails an action which is clearly unreasonable, arbitrary, or unconscionable under the circumstances." *Id*.

{¶ 23} Here, appellant contends that the trial court erred in allowing Detective Covey to testify regarding appellant's uncooperativeness during his handwriting sample for the purpose of allowing the jury to use it in their own independent handwriting comparison. (*See* appellant's brief, 4.) Over appellant's objection, Detective Covey testified as follows:

> A. [Appellant] was very combative throughout the entire handwriting. He refused to give as much as I needed, and did not follow instructions throughout the entire process.
>
> * * *
>
> Q. You said at some point he stopped writing or what? Tell us what happened.
>
> A. He stopped writing throughout the whole thing, just verbally saying how many do I have to do, constantly

stopping, which didn't make any sense. He did these three-and-a-half pages. It was over thirty minutes when it should have only been ten, fifteen minutes of this amount of paperwork.

The first page you need to print everything, and on the back I explained to him to print everything and to sign her name. He did not. He printed it. * * *

* * *

On the second page I asked him to do everything in cursive. He did not. Again, on the bottom part you see everything is printed, nothing is in cursive except for his name, his name at the top.

Q. K-2 (2-a) is [what] you are referring to?

A. Yes.

* * *

A. I again told him he needed to do it in cursive. At that point he asked me how to spell Crystal's name, and I asked him that wasn't that his girlfriend at one point. Then, I have him the paper that he filled out the first time where he correctly spelled it. I said, well, here's the paper that you just filled out before this one. Do you want to look at that to spell her name, but he did not do it in cursive again.

Q. After being in a relationship with this woman, already writing one page of a sample, suddenly on page two he claims he doesn't know how to spell Crystal's name?

A. Correct.

* * *

A. Then, on the third sample, again I told him to do it in cursive. It was not. Again, it was in print on the back.

Q. That's K-2 (3-a) you are referring to?

A. Yes. On this third sample, at this point he was telling me he didn't want to write any more. At one point I asked him to give my pen back if he didn't want to do it. He held it back

> saying, no, I'm not giving it to you. Yes, I said, even the deputy said it's his pen, give it to him. * * *
>
> * * *
>
> Q. Okay. Continue about the sample.
>
> A. Okay. After he got done with the front page, he turned it over on the back of that third sample.
>
> Q. So you're on K-2 (3-b)?
>
> A. Explained to him again he needs to do the signature in cursive. At that point he said his hand hurt, it had been broken several times, he's not going to do anything more.
>
> Q. So, he didn't, in fact, finish the sample?
>
> A. Correct.

(Tr. 217-21.) With regard to Detective Covey's testimony, the trial court issued the following limiting instruction to the jury:

> Evidence has been admitted from this witness that the [appellant] may not have fully cooperated in giving a handwriting exemplar to Detective Covey. You may not consider the [appellant's] failure to cooperate as any evidence of guilt.
>
> Further, you may not consider or speculate on the [appellant's] lack of cooperation, if any, in giving a handwriting sample as it may have effected Kathleen Stuebe's opinion in this case, since she was not aware of any lack of cooperation in reaching her opinions. However, you may consider the [appellant's] lack of cooperation, if any, in giving a handwriting exemplar as it bears on your own independent evaluation of those handwriting exemplars given by the [appellant].

(Tr. 231.) Pursuant to Evid.R. 901(B)(3), "an expert or a jury, as a trier of fact, may compare the handwriting in question with a specimen of handwriting which had been authenticated." *McCoy* at 483. As such, the trial court did not err in allowing the jury to compare check #108 with appellant's and Chambliss's known handwriting samples. In addition, because the trial court issued a limiting instruction regarding the jury's use of

Detective Covey's testimony for the purpose of handwriting analysis, and not as evidence of appellant's guilt, we cannot find that the trial court clearly acted unreasonably, arbitrarily, or unconscionably in allowing this testimony. Therefore, the trial court did not abuse its discretion in allowing Detective Covey's testimony regarding appellant's uncooperative demeanor into evidence.

{¶ 24} Appellant's second assignment of error is overruled.

{¶ 25} We now address appellant's first assignment of error regarding the sufficiency and weight of the evidence upon which the jury found him guilty, beyond a reasonable doubt, of forgery, in violation of R.C. 2913.31, and possessing criminal tools, in violation of R.C. 2923.24.

{¶ 26} "Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict." *State v. Cassell*, 10th Dist. No. 08AP-1093, 2010-Ohio-1881, ¶ 36, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In reviewing a challenge to the sufficiency of the evidence, an appellate court must determine "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, superseded by constitutional amendment on other grounds as recognized in *State v. Smith*, 80 Ohio St.3d 89, 102 (1997). "In this inquiry, appellate courts do not assess whether the state's evidence is to be believed, but whether, if believed, the evidence admitted at trial supports the conviction." *State v. Gibson*, 10th Dist. No. 10AP-1047, 2011-Ohio-5614, ¶ 22, citing *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80.

{¶ 27} In the present matter, a jury found appellant guilty of forgery and possessing criminal tools. Forgery is defined in R.C. 2913.31(A), as follows:

> No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:
>
> (1) Forge any writing of another without the other person's authority;
>
> (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not

> authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;
>
> (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

Further, pursuant to R.C. 2923.24(A), possessing criminal tools is defined as: "[n]o person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally."

{¶ 28} Appellant argues that there was insufficient evidence for the jury to find him guilty of forgery and possessing criminal tools. (*See* appellant's brief, 10.) In support of this argument, appellant points only to the testimony of Chambliss, the victim, and Stuebe, a forensic scientist employed by the Columbus Police Crime Laboratory. (*See* appellant's brief, 10.) Specifically, appellant states that "Crystal Chambliss testified that she had already been convicted of theft and simulating a motor vehicle insurance card," and that "Kathleen Stuebe testified that she could only determine that there were 'indications' that appellant had written the face of the check in question." Further, appellant states that Stuebe "could not say 'conclusively' or even 'highly probably' that Ms. Chambliss did not write the check herself." (*See* appellant's brief, 10.)

{¶ 29} In response, the state argues that the evidence sufficiently proved appellant's guilt because: (1) after comparing a copy of check #108 to appellant's known handwriting sample, Stuebe testified that there are "indications" that appellant wrote the payee entry, the amount entry, and the signature, and that appellant "probably" wrote the endorsement; (2) Stuebe testified that, based upon Chambliss's known handwriting samples, Chambliss "probably did not write the check," and, based upon Chambliss's previous checks, there are "indications" that Chambliss did not write the check; (3) Chambliss denied writing check #108 and also denied giving appellant permission to write the check; (4) Chambliss testified that she was familiar with appellant's handwriting, and that appellant's handwriting was on the check; (5) the jury could compare check #108 with known handwriting samples from Chambliss and appellant and could conclude for itself that appellant wrote the check; and (6) there are surveillance photographs showing appellant cashing the check. (*See* appellee's brief, 4-5.)

{¶ 30} We note that appellant's arguments against Chambliss and Stuebe address witness credibility, which actually goes toward whether appellant's conviction is against the manifest weight of the evidence, and not whether there is sufficient evidence to support appellant's conviction. It is well-settled that "in conducting a review for sufficiency of the evidence, an appellate court does not assess the credibility of the witnesses, but instead determines whether the evidence, if believed, supports a conviction." *State v. Monford*, 10th Dist. No. 09AP-274, 2010-Ohio-4732, ¶ 109.

{¶ 31} Based upon the record, and specifically the testimony of Chambliss, Stuebe, Phelan, and Detective Covey, we believe that, in viewing the evidence in a light most favorable to the prosecution, any rationale trier of fact could have found appellant guilty, beyond a reasonable doubt, of forgery and possessing criminal tools.

{¶ 32} First, Chambliss testified that she dated appellant for almost three years and that she broke up with appellant in March of 2010. On September 6, 2010, Chambliss left appellant alone in her kitchen where she kept her box of checks. Further, appellant asked Chambliss for money, but instead of giving him money, she took appellant to buy groceries. Also, Chambliss stated that, around midnight on September 7, 2010, appellant telephoned her and came back to her apartment, but she called the police. Upon responding, the police made appellant leave the premises. However, according to Chambliss, appellant returned later that day, knocked on the doors and windows, and busted in the windows on her vehicle. Chambliss also testified that she did not write check #108, nor did she give appellant permission to write check #108. Finally, Chambliss stated that she is "pretty familiar" with appellant's handwriting and identified the handwriting on check #108 as being appellant's.

{¶ 33} Second, Stuebe opined that: (1) Chambliss probably did not write the entries on check #108; (2) there are indications that appellant wrote the payee entry, amount entry, and maker signature on check #108; and (3) appellant probably wrote the endorsement on check #108.

{¶ 34} Third, Phelan testified regarding surveillance images obtained from PNC Bank on September 7, 2010, at 2:48 p.m., of someone cashing check #108, and Detective Covey identified appellant as the person in those images cashing the check.

{¶ 35} Therefore, if believed, the foregoing evidence would support appellant's convictions for forgery and possessing criminal tools.

{¶ 36} Appellant also contends that his convictions for forgery and possessing criminal tools were against the manifest weight of the evidence. "While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief." *Cassell*, 2010-Ohio-1881, at ¶ 38, citing *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, citing *Thompkins*, 78 Ohio St.3d at 386. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211 (1982). " 'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.' " *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). This discretionary authority " 'should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*

{¶ 37} In the present matter, appellant argues that "the jury clearly lost its way in believing Crystal Chambliss in light of her criminal record for similar type activity and given that the State's own handwriting expert deemed the evidence linking [appellant] to writing the face of [the]check [as] 'weak.' " (*See* appellant's brief, 10-11.)

{¶ 38} In response, the state argues that the jury could have reasonably concluded that: (1) Chambliss's prior convictions did not undermine her overall credibility, and (2) although Stuebe did not phrase her conclusions with a high level of certainty, the jury could have nonetheless accepted Stuebe's conclusion that appellant wrote check #108, or reached this conclusion by its own comparison of check #108 with the known handwriting samples.

{¶ 39} It is well-settled that "[a] jury is free to believe all, part or none of any witness' testimony." *State v. Johns*, 10th Dist. No. 11AP-203, 2011-Ohio-6823, ¶ 21.

Further, in *State v. McDowall*, 10th Dist. No. 09Ap-443, 2009-Ohio-6902, ¶ 17, we found that where a jury had the opportunity to hear the direct and extensive cross-examination of a witness, which included his prior criminal convictions, the jury could determine credibility and believe all or any of the witness's testimony. Here, in spite of the fact that Chambliss admitted to having a criminal record, the jury could have still found Chambliss's testimony to be credible with regard to this incident. Based upon Chambliss's testimony, the jury could have reasonably believed that appellant took the blank checks from Chambliss's kitchen, forged Chambliss's signature, and cashed the check at PNC Bank without Chambliss's knowledge or consent. Further, in its charge to the jury, the trial court advised that "testimony was introduced in this case that a witness, Chrystal Chambliss, has been convicted of certain crimes. You may consider this testimony to judge her credibility and the weight to be given to her testimony." (Tr. 314.) There is no evidence in the record that the jury failed to fairly consider all of the witnesses' testimony, including Chambliss's, or that it lost its way in believing Chambliss's accounting of the facts.

{¶ 40} Also, Stuebe testified that the examination was limited by the reproduction quality of Q-1 [check #108], the small amount of known writing of both Chambliss and appellant, and the differences in writing styles, i.e., cursive and hand printing, in the provided samples. As such, even though Stuebe did not reach a definitive conclusion as to the authorship of check #108, the jury still could have believed that appellant forged the check based upon all of the evidence presented at trial.

{¶ 41} Therefore, based upon the record before us, we cannot say that the jury clearly lost its way in convicting appellant of forgery and possessing criminal tools.

{¶ 42} Appellant's first assignment of error is overruled.

{¶ 43} Having overruled both of appellant's assignments of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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