

I

{¶ 2} In October 2008, National City Bank was contacted with regard to an account belonging to an individual named Michael Tyler. The person making the contact asked the bank to change the address on Tyler's account to an address where Carter was living with his grandparents. The bank was also asked to send a new card to the new address.

{¶ 3} Between October 15 and October 23 of 2008, Carter used the new bank card to purchase items from several merchants. He purchased a total of \$2,740.11 in merchandise. Carter did not have permission to use the card.

{¶ 4} Springfield Police Detective Edward Icenhour was assigned to investigate Tyler's case. During his investigation, Icenhour was able to positively identify Carter, due to pictures captured on video, as the person using the bank card.

{¶ 5} On October 31, 2008, while the above investigation was ongoing, Carter opened a new account at Universal 1 Credit Union ("Universal 1"). On November 24, 2008, Carter went to Universal 1 and cashed what appeared to be a payroll check from United Rehabilitation Services of Greater Dayton ("United Rehabilitation") in the sum of \$989.34, made payable to Carter. The next day, Carter appeared at Universal 1 with what appeared to be another payroll check from United Rehabilitation in the sum of \$1,223.14, also made payable to Carter. The teller at Universal 1 became suspicious and asked Carter about the check. Carter informed her that the prior check had been his first paycheck and the second one

was a bonus. The teller kept the check and informed Carter that she was going to contact United Rehabilitation to verify his employment. The teller was unable to contact anyone at United Rehabilitation and told Carter that she would keep the check, try to verify employment and then process the check. At that point, Carter left Universal 1. When the teller finally contacted United Rehabilitation the payroll department denied having any employee named Warren Carter.

{¶ 6} The matter was reported to the Springfield Police Department and Icenhour was also assigned to investigate what were determined to be two forged checks. Carter was identified as the person presenting the checks to the credit union. As part of his investigation, Icenhour discovered that the address listed on the two checks was, in actuality, a cemetery. Icenhour spoke to Carter's uncle and grandparents – they did not provide any information regarding his location. On January 8, 2009, Icenhour requested an arrest warrant, which he then posted on the Law Enforcement Automated Data System aka LEADS. Icenhour contacted the "U.S. Marshals' Fugitive Task Force" in order to seek help in apprehending Carter. Icenhour also had information on the case broadcast twice on the "Channel 7 Most Wanted" segment.

{¶ 7} Icenhour was unable to locate Carter until his August 21, 2009 arrest by the U.S. Marshals' Task Force. On August 31, 2009 he was indicted on two counts of Forgery, in violation of R.C. 2913.31(A)(3), and one count of Identity Fraud, in violation of R.C. 2913.49(B)(2). Prior to trial, Carter filed a motion to dismiss the charges based upon a claim of violation of his right to a speedy trial and a claimed violation of his state and federal constitutional right to due process stemming from a

delay in the indictment or prosecution of the case. A hearing was held, following which the trial court overruled Carter's motion to dismiss. Carter also filed a motion seeking to sever the charge of Identity Fraud from the Forgery charges, which the trial court granted.

{¶ 8} Carter entered a plea of no contest to the charge of Identity Fraud. A jury trial was held on the Forgery charges, following which Carter was found guilty of both counts. The trial court sentenced Carter to a term of imprisonment of two years on the Forgery charges, and a term of six months on the charge of Identity Fraud, with both sentences to run concurrently.

{¶ 9} This is Carter's appeal from his conviction and sentence for Forgery. (He has separately appealed from the Identity Fraud conviction.)

II

{¶ 10} Carter's sole assignment of error states:

{¶ 11} "APPELLANT'S CONVICTION FOR FORGERY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 12} Carter argues that he "offered a completely viable explanation of the circumstances that led him to cash and attempt to cash checks he received. No direct evidence was produced to establish that Mr. Carter knew or should have known the checks were fraudulent." He further argues that no evidence was presented that he avoided Universal 1 after the incident, and that he actually attempted to contact the credit union to "make it right."

{¶ 13} At trial, Carter's defense was based upon a claim that he was the victim

of a scam, not the person attempting to perpetrate a scam.

{¶ 14} Carter testified that he responded to a “pop-up” advertisement on his computer regarding a “secret shopper” program and that he provided an address and cellular telephone number to the program. Thereafter, he was contacted by phone and informed that he “had been approved for the secret shopper program.” Carter testified that under the terms of the program he would receive a check, which he would cash. Carter testified that he was to keep a portion of the proceeds of the check and send the remainder back to the program. According to Carter, he would then be eligible to receive gift cards to places where he “was supposed to do [the] secret shopper.”

{¶ 15} He testified that after he sent back the program’s portion of the first check, he received gift cards to three restaurants. Carter testified that he was supposed to go judge the service at each restaurant, and then fill out a questionnaire regarding service and quality of food.

{¶ 16} Carter admitted cashing the first check and attempting to cash the second. However, he testified that once he discovered that the checks were suspicious, he attempted to “make it right” with the credit union. Carter testified that evidence of the secret shopper program was located on his computer and his cell phone. He testified that this evidence would have shown that he was the victim of a scam. He further claims that since he was unaware of the charges against him, he was unable to preserve the evidence, and he did not know where the computer hard drive was located at the time of trial.

{¶ 17} Carter claimed the cemetery address listed on the checks was the first

one that “popped” into his head when he responded to the secret shopper scam. But he later testified that he corrected his address with the secret shopper program as his explanation of why the envelopes containing the checks were mailed to him at his correct address, even though the checks themselves had the wrong address on them. Carter also admitted that he told the teller he had just starting working for United Rehabilitation. He testified that he believed that he was working for the company.

{¶ 18} During his testimony, Detective Icenhour admitted that the type of scam identified by Carter is known as a problem and has “been around for a while.” He further testified that he has experience with these scams and has investigated them frequently. According to Icenhour, Carter’s situation differed from the usual pattern of these scams. Icenhour testified that the checks used in these scams are “based on a business such as insurance companies or medical supplies or construction.” He testified that he had not seen any such scams use checks written for less than \$2,999. Icenhour testified that the checks are mailed to the actual address of the victim, not to a “bogus address,” like the one listed on the checks in Carter’s possession. In other words, Icenhour testified, if Carter were a victim of a scam, the check would have had his actual address, not the address of a cemetery. Icenhour testified that Carter never alerted the police to his claim that he was a victim, either before or after his arrest. He further testified that Carter opened the account with Universal 1 with a minimum deposit, which is consistent with persons attempting to pass forged checks.

{¶ 19} This court has stated that “a weight of the evidence argument

challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive.” *State v. Cassell*, Clark App. No. 09CA0064, 2011-Ohio-23, ¶ 46. “The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶ 20} “ [t]he 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 lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’ ” *Id.* at ¶ 47.

{¶ 21} “The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve.” *Id.* at ¶ 48, citing *State v. DeHass* (1967), 10 Ohio St.2d 230. “This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict.” *Id.* at ¶ 50.

{¶ 22} The jury, as the trier of fact in this case, was free to believe some, all, or none of Carter’s defense theory. It was also free to give more credence to the testimony of the other witnesses, including the bank tellers and Detective Icenhour. The record shows that Carter cashed one forged check and that he attempted to cash a second one. There is testimony that he claimed to work for United Rehabilitation. Furthermore, when he was questioned by the teller, Carter claimed the first check was a payroll check and the second was a bonus. The jury could find Carter’s false claims concerning his employment by United Rehabilitation and the nature of the checks, as evidence that Carter was aware that the checks were not

legitimate.

{¶ 23} This is hardly the case where the finder of fact lost its way, resulting in a miscarriage of justice, in choosing to give no credence to Carter's testimony and defense. Carter's sole assignment of error is overruled.

III

{¶ 24} Carter's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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GRADY, P.J., and DONOVAN, J., concur.

Copies mailed to:

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