[Cite as *State v. Rhoads* , 2009-Ohio-4180.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 08CA25
	:	
vs.	:	**Released: August 14, 2009**
	:	
DAVID A. RHOADS,	:	DECISION AND JUDGMENT
	:	ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Susan M. Zurface Daniels, Hillsboro, Ohio, for Appellant.

James B. Grandey, Highland County Prosecuting Attorney, and Keith C. Brewster, III, Highland County Assistant Prosecuting Attorney, Hillsboro, Ohio, for Appellee.

McFarland, J.:

{¶1} Appellant appeals from his conviction and sentence by the Highland County Court of Common Pleas, after a jury found him guilty of forgery, in violation of R.C. 2913.31(A)(3), and receiving stolen property, in violation of R.C. 2913.51, both fifth degree felonies. On appeal, Appellant asserts that (1) the trial court erred in overruling his Crim.R. 29(A) motion for acquittal on the grounds that, when viewed in a light most favorable to the prosecution, the State had failed at the close of its evidence to meet its burden on essential elements of each charge; (2) the verdicts finding him

guilty of forgery, in violation of R.C. 2913.31(A)(3) and receiving stolen property, in violation of R.C. 2913.51, were against the manifest weight of the evidence; and (3) the verdicts finding him guilty of forgery and receiving stolen property were not supported by sufficient evidence. Because we conclude that Appellant's convictions were supported by sufficient evidence and were not beyond the manifest weight of the evidence, we overrule each of Appellant's assigned errors and affirm the judgment of the trial court.

FACTS

{¶2} Appellant, David Rhoads, and Christina Sears have known each other and been friends for ten years. In the spring of 2007, Christina Sears unlawfully came into possession of several checks belonging to her uncle, William Blakey. On two different occasions, Appellant assisted in the cashing of these checks on Sears' behalf. First, on March 28, 2007, Appellant, along with another unidentified woman, not Sears, entered Bolte's Grocery.[1] The woman accompanying Appellant possessed check number 232 in the amount of $300.00, which had purportedly been made out to Bolte's and signed by Blakey with a note that it was "for golf cart." Although the store clerk did not know the woman who presented the check,

[1] The record indicates that Sears did not cash the check at Bolte's herself because she had a history of bouncing checks and Bolte's would not cash checks for her.

Appellant "vouched" for her, resulting in the clerk agreeing to cash the check.

{¶3} The very next day, Appellant entered Bolte's with another of Mr. Blakey's checks, numbered 224 and dated March 29, 2007, in the amount of $200.00. A note in the memo line indicated the check was written "for working." Upon presenting the check to the owner of Bolte's Grocery, Appellant was asked to endorse the check, which he did, in his own name. Bolte's proceeded to cash that check as well. Sears testified that Appellant did not keep that money but instead gave it to her.

{¶4} The next week, on April 9, 2007, Appellant drove Sears through a U.S. Bank drive through in Hillsboro in order to cash another of Blakey's checks. This time, the check was written to Sears "for labor" and Sears signed the back of the check and sent her ID along with the check through the drive-through window. Because the bank had been previously notified by Mr. Blakey that his checks had been stolen, the bank notified the police, which promptly arrived at the bank and arrested Sears for forgery and receiving stolen property.

{¶5} Although Sears initially denied any wrongdoing, she later confessed to forging the checks. She maintained, however, that her cousin had stolen the checks from her uncle and that Appellant was unaware that

the checks had been stolen or forged. Subsequently, on July 10, 2007, following grand jury proceedings related to Sears' indictment, Appellant was also indicted. The three count indictment charged Appellant with two counts of forgery with regard to check numbers 224 and 232, fifth degree felonies, in violation of R.C. 2913.31(A)(3) and one count of receiving stolen property, with regard to the same checks, also a fifth degree felony, in violation of R.C. 2913.51.

{¶6} Appellant denied the charges and the matter proceeded to a jury trial on October 9, 2008. In support of its case, the State called several witnesses including, William Blakey (Sears' uncle and owner of the checks), William Bolte (owner of Bolte's Grocery who testified regarding the cashing of check number 224), Christina Sears (who claimed to have been best friends with Appellant for ten years), Betty Suiter (Bolte's clerk who cashed check number 232), as well as Officers Terrell and Salyers (who testified regarding Sear's initial denial of wrongdoing and subsequent confession).

{¶7} At the close of the State's case, Appellant moved for acquittal pursuant to Crim.R. 29(A); however, the motion was denied by the trial court. The State did, however, voluntarily dismiss count two of the indictment, which charged Appellant with forgery based upon the cashing of

check number 232. Appellant then rested his case without presenting any witnesses or evidence.

{¶8} The matter was submitted to a jury, which returned a verdict of guilt on the remaining counts of forgery and receiving stolen property. Appellant was subsequently sentenced to serve nine months on each count, to be served consecutively. It is from this conviction and sentence that Appellant now brings his timely appeal, assigning the following errors for our review.

ASSIGNMENTS OF ERROR

"I. THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S CRIM.R. 29(A) MOTION FOR ACQUITTAL ON THE GROUNDS THAT, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE PROSECUTION, THE STATE HAD FAILED AT THE CLOSE OF ITS EVIDENCE TO MEET ITS BURDEN ON ESSENTIAL ELEMENTS OF EACH CHARGE.

II. THE VERIDICTS FINDING DEFENDANT GUILTY OF FORGERY IN VIOLATION OF O.R.C. §2913.31(A)(3) AND OF RECEIVING STOLEN PROPERTY IN VIOLATION OF O.R.C. §2913.51 WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. THE VERDICTS FINDING DEFENDANT GUILTY OF FORGERY IN VIOLATION OF O.R.C. §2913.31(A)(3) AND OF RECEIVING STOLEN PROPERTY IN VIOLATION OF O.R.C. §2913.51 WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE."

ASSIGNMENT OF ERROR I

{¶9} In his first assignment of error, Appellant contends that the trial court erred in overruling his Crim.R. 29(A) motion for acquittal made at the close of the State's evidence. Crim.R. 29(A) provides: "The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses."

{¶10} At the close of the State's case-in-chief, Appellant moved for a Crim.R. 29 acquittal, which the trial court denied. We review the trial court's denial of Appellant's Crim.R. 29 motion for acquittal for sufficiency of the evidence. When reviewing a case to determine if the record contains sufficient evidence to support a criminal conviction, we must "examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is 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. Smith*, Pickaway App. No. 06CA7, 2007-Ohio-502, ¶ 33, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492,

paragraph two of the syllabus. See, also, *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781.

{¶11} The sufficiency of the evidence test "raises a question of law and does not allow us to weigh the evidence." *Smith* at ¶ 34, citing *State v. Martin* (1983), 20 Ohio App .3d 172, 175, 485 N.E.2d 717. Instead, the sufficiency of the evidence test "gives full play to the responsibility of the trier of fact [to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id., citing *Jackson*, supra, at 319. This court will "reserve the issues of the weight given to the evidence and the credibility of witnesses for the trier of fact." Id., citing *State v. Thomas* (1982), 70 Ohio St.2d 79, 79-80, 434 N.E.2d 1356; *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶12} Appellant was charged and convicted of forgery, in violation of R.C. 2913.31(A)(3) and receiving stolen property, in violation of R.C. 2913.51. R.C. 2913.31(A)(3) provides that:

"(A) No person, *with purpose to defraud*, or *knowing* that the person is facilitating a fraud, shall do any of the following:

* * *

(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged." (Emphasis added).

R.C. 2913.01(H) states that "'[u]tter' means to issue, publish, transfer, use, put or send into circulation, deliver, or display." Thus, Appellant was convicted of forgery as a result of the State's allegation that he uttered a check which he knew to have been forged by Sears.

{¶13} Likewise, R.C. 2913.51 governs receiving stolen property and provides in section (A) that "[n]o person shall receive, retain, or dispose of property of another *knowing or having reasonable cause to believe* that the property has been obtained through commission of a theft offense." (Emphasis added). The crimes of forgery and receiving stolen property share the same mens rea element, requiring the State to prove that Appellant acted with knowledge. With regard to forgery, the State was required to prove that Appellant acted with purpose to defraud or knew that he was facilitating a fraud when he cashed the check on Sears behalf. With regard to receiving stolen property, the State was required to prove that Appellant knew or had reasonable cause to believe that the check at issue was obtained through commission of a theft offense. Appellant's challenge on appeal raises an issue only with regard to whether the State met its burden of proof with regard to the knowledge element contained within each crime. Thus, we will not address whether the State met its burden as to the other elements of each of the crimes for which Appellant was convicted.

{¶14} Appellant contends that the trial court erred in denying his Crim.R. 29 motion for acquittal, arguing that none of the State's witnesses gave any testimony that Appellant acted with purpose to defraud or that he knew the check had been forged or obtained through commission of a theft offense. The State counters by arguing that while it did not present direct evidence as to the mens rea elements of the crimes, it presented circumstantial evidence from multiple witnesses, which, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find that all of the elements of the offenses had been proven beyond a reasonable doubt. Based upon our review of the record, we agree with the State.

{¶15} The State presented testimony regarding Appellant's long relationship with Sears, spanning approximately ten years. Further, the State presented testimony that Appellant assisted Sears in cashing not one, but two, checks. Although the charges with regard to the first check that was cashed were dismissed, the circumstances surrounding the cashing of that check are relevant to Appellant's state of mind at the time and create an inference in favor of the State's argument that Appellant had knowledge that both checks had been forged and were stolen. For instance, although the charges with respect to the cashing of check number 232 were dismissed, the

State presented testimony that Appellant assisted in the cashing of that check on Sear's behalf by having another woman appear with him in Bolte's, presumably in place of Sears. The testimony presented at trial indicated that Appellant "vouched" for the woman in order that the store clerk would cash the check. The store clerk testified at trial, stating that the woman who appeared with Appellant was not Sears.

{¶16} The State further introduced testimony at trial that on the very next day Appellant entered Bolte's once again with a check he received from Sears. This time, Appellant cashed the check himself, even endorsing the back of the check at the request of the owner of Bolte's. The State argued that such conduct created an inference that because Appellant had gotten away with cashing the check the day before, he was more confident with regard to the cashing of check number 224.

{¶17} Based upon the trial testimony and construing that testimony in favor of the State, we find that any rational trier of fact could have found that Appellant either knew or had reason to believe that the check he was cashing for Sears was both forged and obtained through commission of a theft offense. Because Appellant only challenges the knowledge element of the crimes for which he was convicted, he apparently concedes that the State proved the other elements of the offenses charged. Consequently, after

viewing the evidence in a light most favorable to the State, we find that any rational trier of fact could have found the essential elements of forgery and receiving stolen property proven beyond a reasonable doubt. Accordingly, we overrule Appellant's first assignment of error.

ASSIGNMENT OF ERROR II

{¶18} In his second assignment of error, Appellant contends that his convictions for forgery and receiving stolen property were against the manifest weight of the evidence. "The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. Sufficiency is a test of the adequacy of the evidence, while "[w]eight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other[.]' " *State v. Sudderth*, Lawrence App. No. 07CA38, 2008-Ohio-5115, at ¶ 27, quoting *Thompkins* at 387.

{¶19} "Even when sufficient evidence supports a verdict, we may conclude that the verdict is against the manifest weight of the evidence, because the test under the manifest weight standard is much broader than that for sufficiency of the evidence." *Smith* at ¶ 41. When determining whether a criminal conviction is against the manifest weight of the evidence,

we "will not reverse a conviction where there is substantial evidence upon which the [trier of fact] could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt." *State v. Eskridge* (1988), 38 Ohio St.3d 56, 526 N.E.2d 304, paragraph two of the syllabus. See, also, *Smith* at ¶ 41. We "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial granted." *Smith* at ¶ 41, citing *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814; *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. However, "[o]n the trial of a case, * * * the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶20} As with his first assignment of error, Appellant only challenges the State's proof with regard to his mental state under this assignment of error. As such, we limit our analysis to whether the jury's determination that Appellant acted with knowledge in committing forgery and receiving stolen property was against the manifest weight of the evidence.

{¶21} Relying on the argument presented in his first assignment of error, Appellant again argues that the State failed to introduce any direct evidence of his mental state and instead relied on circumstantial evidence only. Appellant furthers that argument in this assignment of error, arguing that when the State bases its case solely on circumstantial evidence to prove an essential element of its case, that circumstantial evidence "must be consistent only with the theory of guilt and irreconcilable with any reasonable theory of innocence[,]" citing *State v. Kulig* (1974), 37 Ohio St.2d 157, 309 N.E.2d 897, in support. Appellant asserts that a reasonable theory of innocence exists if you accept Sears' testimony that Appellant was unaware of her drug habit and that she did not disclose to him that the checks at issue had been stolen and forged. As such, Appellant argues that "the purely circumstantial evidence presented by the State of Ohio is not irreconcilable with any reasonable theory of innocence."

{¶22} The State counters by correctly pointing out that the reasoning of *State v. Kulig*, supra, on the issue of the weight to be afforded to circumstantial evidence, was overruled by the Supreme Court of Ohio in *State v. Jenks*, supra. In fact, the *Jenks* court stated as follows:

"We hold that when the state relies on circumstantial evidence to prove an element of the offense charged, there is no requirement that the evidence must be irreconcilable with any reasonable theory of innocence in order to support a conviction. *State v. Kulig* (1974), 37 Ohio St.2d 157, 66 O.O.2d

351, 309 N.E.2d 897, is overruled to the extent it is inconsistent with our decision announced today. All other cases adhering to the *Kulig* rule are hereby disapproved to the extent they conflict with this opinion." *Jenks* at 273.

Further, this Court has previously reasoned that whether the evidence supporting a defendant's conviction is direct or circumstantial does not bear on our determination. *State v. Judy*, Ross App. No. 08CA3013, 2008-Ohio-5551. "Circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof." Id., citing *Jenks* at paragraph one of the syllabus. Thus, we reject Appellant's argument that the State's reliance on strictly circumstantial evidence in support the knowledge elements of the offenses at issue must be subjected to a more stringent standard.

{¶23} The record reveals that Appellant rested below without presenting any witnesses or evidence. In his appeal, Appellant cites us to Sears' testimony which claimed that Appellant knew nothing regarding her drug addiction and was unaware that the checks at issue were forged or stolen. Appellant argues that Sears' trial testimony weighed in his favor. However, the credibility of witnesses and the weight given to the evidence are issues for the trier of fact. See *Cole v. Complete Auto Transit, Inc.* (1997), 119 Ohio App.3d 771, 777-778, 696 N.E.2d 289; *GTE Telephone Operations v. J & H Reinforcing & Structural Erectors, Inc*., Scioto App.

No. 01CA2808, 2002-Ohio-2553, at ¶ 10; *Reed v. Smith* (Mar. 14, 2001), Pike App. No. 00CA650. The trier of fact is better suited than an appellate court to view the witnesses and observe their demeanor, gestures, and voice inflections and to use those observations in weighing credibility. See *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614 N.E.2d 742 and *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 461 N.E.2d 1273. Thus, the trier of fact is free to believe all, part, or none of the testimony of any witness who appears before it. See *Rogers v. Hill* (1998), 124 Ohio App.3d 468, 470, 706 N.E.2d 438; *Stewart v. B.F. Goodrich Co*. (1993), 89 Ohio App.3d 35, 42, 623 N.E.2d 591; see, also, *State v. Nichols* (1993), 85 Ohio App.3d 65, 76, 619 N.E.2d 80; *State v. Harriston* (1989), 63 Ohio App.3d 58, 63, 577 N.E.2d 1144.

{¶24} Here, the evidence presented at trial indicated that Sears had a history of stealing checks, had a drug habit, had known Appellant for ten years and was best friends with Appellant. Additional evidence presented at trial established that Sears asked Appellant to cash checks for her because she knew he would not question her, Sears lied to police about how she obtained the checks when initially arrested and lied again to police even after a partial confession, claiming that her cousin, not Appellant, assisted her in cashing the checks. Based upon the evidence presented, the jury

apparently rejected Sears' testimony that Appellant acted without knowledge, which was well within its province to do.

{¶25} Appellant also suggests that the fact that he endorsed check number 232 in his own name weighs in favor of his not knowing that the check had been stolen or forged. The same argument is made with respect to Sear's own endorsement of the check presented to U.S. Bank, along with her identification card. A similar argument was made and rejected in *State v. Bender* (1985), 24 Ohio App.3d 131, 493 N.E.2d 552, albeit with regard to the presentment of forged credit slips. In *Bender*, the court reasoned that "[s]igning one's own name and using one's own identification to cash a credit slip does not legitimize an otherwise spurious writing and constitutes a 'forgery' under R.C. 2913.01(G)." As such, we reject similar suggestions made by Appellant herein.

{¶26} As a result, we cannot find that the jury, as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that Appellant's convictions must be reversed and a new trial granted. We find substantial evidence upon which the trier of fact could reasonably conclude that all the elements of both forgery and receiving stolen property were proven beyond a reasonable doubt, including that Appellant acted with

knowledge. Therefore, we find that Appellant's convictions are not against the manifest weight of the evidence.

ASSIGNMENT OF ERROR III

{¶27} In his third assignment of error, Appellant contends that there was insufficient evidence to support his convictions for forgery and receiving stolen property. We review Appellant's sufficiency of the evidence claim using the same standard that we used to review his first assignment of error. *State v. Hicks*, Highland App. No. 08CA6, 2009-Ohio-3115; citing *State v. Gravelle*, Huron App. No. H-07-010, 2009-Ohio-1533, at ¶ 37 and *State v. Carter* (1995), 72 Ohio St.3d 545, 553, 1995-Ohio-104, 651 N.E.2d 965. We have already found that the trial court did not err in denying Appellant's Crim.R. 29 motion for acquittal. Therefore, for the same reasons that we overruled Appellant's first assignment of error, we also overrule Appellant's third assignment of error.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Abele, J.: Concurs in Judgment and Opinion.
Harsha, J.: Dissents.

For the Court,

BY: _____
Judge Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.