

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEPHEN M. THOMAS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 14-CA-90

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 2014CR00567

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 29, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

KENNETH W. OSWALT
Licking County Prosecutor

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Hoffman, P.J.

{¶1} Defendant-appellant Stephen M. Thomas appeals his conviction entered by the Licking County Court of Common Pleas on one count of tampering with evidence, in violation of R.C. 2921.12. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} The facts in this matter are undisputed. On July 31, 2014, Appellant was indicted on one count of tampering with evidence, a felony of the third degree, in violation of R.C. 2921.12. Appellant appeared at a scheduled meeting with his probation officer wearing a device meant to provide a false urine sample. The device, known as a "Whizzinator," is a prosthetic penis attached to a "clean" bag of urine. The wearer of the device uses the same to provide a urine sample when his or her urine would otherwise test positive for illicit drugs and/or alcohol.

{¶3} At the meeting with his probation officer, Appellant attempted to falsify his urine sample by use of the "Whizzinator". His probation officer, Will Champlin, recognized the device, and placed Appellant under arrest.

{¶4} Appellant was charged with one count of tampering with evidence, in violation of R.C. 2921.12. Following Champlin's testimony at trial, Appellant moved the trial court for a Criminal Rule 29 judgment of acquittal. The trial court denied the motion.

{¶5} Following the bench trial, Appellant was convicted of the charge and sentenced accordingly.

{¶6} Appellant appeals, assigning as error:

{¶17} "I. THE TRIAL COURT'S RULING THAT APPELLANT TAMPERED WITH EVIDENCE IS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE."

{¶18} Appellant maintains the trial court erred in overruling his Criminal Rule 29 motion for judgment of acquittal, and the bench verdict for the charge of tampering with evidence was against the manifest weight and sufficiency of the evidence.

{¶19} Under Criminal Rule 29(A) of the Ohio Rules of Criminal Procedure, a defendant is entitled to a judgment of acquittal on a charge against him "if the evidence is insufficient to sustain a conviction...." Whether a conviction is supported by sufficient evidence is a question of law this Court reviews de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005–Ohio–990, ¶ 33. We must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced the average finder of fact of Appellant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶10} If a defendant argues his conviction is against the manifest weight of the evidence, we "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of 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 the conviction must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (9th Dist.1986).

{¶11} When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed,

reasonably could support a finding of guilt beyond a reasonable doubt. See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541, 546 (1997), (stating, “sufficiency is the test of adequacy”); *State v. Jenks*, 61 Ohio St.3d 259 at 273, 574 N.E.2d 492 (1991), at 503. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Jenks*, 61 Ohio St.3d at 273, 574 N.E.2d at 503.

{¶12} Here, Appellant was convicted of tampering with evidence, a violation of R.C. 2921.12(A), which reads,

(A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:

* * *

(2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

{¶13} Appellant maintains his probation, and more specifically, the random drug screening urine test, was not an official proceeding or investigation likely to lead to an official proceeding or investigation being instituted. We disagree.

{¶14} R.C. 2921.01(D) defines "official proceeding" as,

(D) “Official proceeding” means any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

{¶15} We find, Appellant was the subject of an official investigation as part of his ongoing probation and supervision. Appellant's court imposed probation required he submit weekly to mandatory drug screenings before his probation officer. Thus, Appellant was under investigation for the continued use of illegal drugs and/or alcohol pursuant to the terms of the court ordered sanctions. The results of the drug screening investigations, should Appellant test positive for illegal drug or alcohol use, would necessarily lead to an official proceeding to revoke his community control sanctions. Accordingly, we find Appellant was subject to an ongoing court imposed investigation as to his use of illegal drugs and/or alcohol. Appellant's tampering with evidence relative to such investigation is sufficient to sustain the conviction for tampering with evidence herein. We find such conviction is not based on insufficient evidence nor is it against the manifest weight of the evidence.

{¶16} Appellant's assigned error is overruled.

{¶17} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur