[Cite as *State v. James*, 2012-Ohio-5000.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio	Court of Appeals No. WD-11-010
Appellee	Trial Court No. 2010CR0357
v.	
Kemon James	**DECISION AND JUDGMENT**
Appellant	Decided: October 26, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Jacqueline M. Kirian, Assistant Prosecuting Attorney, for appellee.

Robert E. Searfoss, III, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from an October 29, 2010 judgment of the Wood County Court of Common Pleas, which found appellant guilty of four counts of forgery, in violation of R.C. 2913.31(A)(1), felonies of the fifth degree.

{¶ 2} Appellant was indicted by a grand jury on August 4, 2010, on four counts of forgery and one count of theft, each a fifth degree felony. A criminal pretrial conference took place on August 31, 2010, where appellant entered a plea of not guilty to each of the four counts of forgery and the one count of theft.

{¶ 3} Appellant was tried by jury on October 29, 2010. At the close of the state's case, and again at the close of all the evidence, appellant moved for acquittal pursuant to Crim.R. 29, which the trial court denied. After deliberations, the jury found appellant guilty on the four counts of forgery, and not guilty on the one count of theft. Appellant was sentenced on January 11, 2011, to two years of community control sanctions, including a 50-day term of imprisonment in the Wood County Justice Center. Appellant now brings this appeal, setting forth two assignments of error.

{¶ 4} For the reasons that follow, we affirm the decision of the trial court.

I. Statement of Facts

{¶ 5} Appellant, Kemon James, was a student at Bowling Green State University ("BGSU"). Appellant had been awarded a $3,000 scholarship from the Pullman Foundation to attend BGSU, beginning in the 2006-2007 school year. Each subsequent year, appellant was required to submit documentation to the Pullman Foundation confirming his scholarship eligibility.

{¶ 6} The documentation required signatures from officials in BGSU's Financial Aid and Registrar Offices. However, for the 2009-2010 school year, appellant did not get the required signatures from the appropriate school officials. Instead, during April and

May of 2009, appellant signed the signatures of two BGSU school officials four times in order to receive the scholarship funds for the 2009-2010 school year. Appellant thrice signed the signature of Charlotte Schwerkolt, on documents dated 5/2/09, 5/4/09, and 4/22/2010,[1] and once signed the signature of Lynette Rosebrook, on a document dated 5/2/09. Appellant received the scholarship funds for the 2009-2010 school year.

{¶ 7} On May 27, 2010, Schwerkolt received an email from Pamela Brown of the Pullman Foundation, in regards to appellant's scholarship request. The email was requesting a missing page from the required form to be filled out and returned to the Pullman Foundation in order for appellant to receive funds for summer 2010. At that time, Schwerkolt noticed that it was not her signature on the form. Schwerkolt then notified her supervisor, Robin Belleville. Schwerkolt also informed Brown that the signature was not hers, and Brown then proceeded to forward the forms filled out from the prior year to Schwerkolt.

{¶ 8} Belleville then contacted the Dean of Students, who assigned Deborah Novak to investigate the allegations against appellant. Novak tried to contact appellant first via email. Novak then made contact with appellant by phone first on June 2, 2010, and again on June 4, 2010. During these phone calls, appellant admitted to having signed the documents in question.

[1] Although the document is dated 4/22/2010, appellant admitted in his testimony to forging the signature on 4/22/2009.

{¶ 9} Detective Anthony Dotson was the arresting police officer with the BGSU Police Department. Detective Dotson formally charged appellant when appellant returned to Wood County from his residence in Chicago. After he had been formally charged, appellant submitted a written statement, in which he also admitted to forging the signatures of both Schwerkolt and Rosebrook.

II. Assignments of Error

{¶ 10} Appellant raises the following two assignments of error:

1. APPELLANT'S CONVICTIONS ON ALL COUNTS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND APPELLANT IS ENTITLED TO A NEW TRIAL.

2. THE TRIAL COURT ERRED BY DENYING APPELLANT'S CRIMINAL RULE 29 MOTIONS, AND IN ENTERING JUDGMENTS OF CONVICTIONS, ON ALL COUNTS BECAUSE THERE WAS LEGALLY INSUFFICIENT EVIDENCE FOR ANY RATIONAL JURY TO CONVICT.

III. Analysis

{¶ 11} We will first address appellant's second assignment of error.

A. Sufficiency of the Evidence

{¶ 12} Appellant argues that his conviction is not supported by sufficient evidence and the trial court erred in denying his Crim.R. 29 motions. We disagree.

{¶ 13} A challenge to a conviction based upon a claim of insufficiency of the evidence presents a question of law on whether the evidence at trial is legally adequate to support a jury verdict on all elements of a crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 14} Similarly, Crim.R. 29(A) provides that "[t]he 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."

{¶ 15} An appellate court does not weigh credibility when reviewing the sufficiency of evidence to support a verdict. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. A reviewing court considers whether the evidence at trial "if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *Id.* at 273.

{¶ 16} In order to decide whether the trial court correctly denied appellant's Crim.R. 29(A) motions, and whether his conviction is supported by sufficient evidence, we must first look to the elements of forgery. "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." R.C. 2913.31(A)(1). To establish forgery, we must examine the definition of "defraud."

{¶ 17} "Defraud" means to "knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B). "Deception," in turn, means,

> [K]nowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact. *Id.* at (A).

{¶ 18} Therefore, we must review the evidence to determine if it is legally sufficient to find that appellant knowingly deceived another to obtain some benefit for himself by forging some writing of another without permission.

{¶ 19} Appellant first argues that the state did not present evidence that he forged the signatures with the purpose to defraud. We disagree. First, appellant testified at trial that he did in fact forge the signatures of both Schwerkolt and Rosebrook: "I admitted to the signatures of those names." Appellant further stated that he forged the signatures "[t]o make sure I obtain[ed] the scholarship."

{¶ 20} Second, Schwerkolt testified to receiving an email from Brown of the Pullman Foundation with one of the forged documents, as well as a previously sent email from appellant to the Pullman Foundation. The email entered into evidence contained the required documents, which appellant needed to continue to receive the scholarship.

Appellant admitted to forging the signatures on those documents. From that email, and from appellant's admission that he forged the signatures to obtain the scholarship, a reasonable juror could conclude that appellant did have a purpose to defraud.

{¶ 21} Appellant next argues that the state did not offer any evidence that appellant forged the signatures in Wood County. Again, we disagree. By appellant's own admission, he went into BGSU's Financial Aid Office three times during the spring of 2009 to try to get the required signatures, right around the time the forgery took place. Additionally, as the state argues, appellant was a student at BGSU at the time of the forgery. Furthermore, in the email from appellant to the Pullman Foundation, appellant stated "[c]urrently the fax machine at my school is out of service" implying that he was in fact at the school at the time he forged the documents. As the trier of fact, a reasonable jury could have found that appellant was within Wood County at the time he forged the signatures of both Shwerkolt and Rosebrook without their authority.

{¶ 22} In sum, appellant knowingly deceived the Pullman Foundation by falsely impersonating both Schwerkolt and Rosebrook. Appellant forged their signatures without their permission in order to obtain the scholarship to benefit himself. We therefore conclude that the evidence "if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *Jenks*, 61 Ohio St.3d at 273, 574 N.E.2d 492.

{¶ 23} Therefore, the evidence was sufficient to support the verdict, and the trial court did not err in denying appellant's Crim.R. 29 motions.

{¶ 24} Accordingly, appellant's second assignment of error is not well-taken.

B. Manifest Weight of the Evidence

{¶ 25} Appellant also argues that his conviction for forgery is against the manifest weight of the evidence. We disagree.

{¶ 26} When reviewing a claim that the conviction is against the manifest weight of the evidence,

> [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 clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, quoting *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541.

{¶ 27} Here, there is a plethora of evidence in the record to demonstrate that the jury did not clearly lose its way. First, the state produced the aforementioned testimonies of Schwerkolt and Rosebrook, as well as the financial aid documents containing the forged signatures. Second, the evidence also included a voicemail from appellant to Schwerkolt in which he admitted that he forged her signature and apologized for his actions. Third, Novak and Dotson both testified at trial that appellant admitted to forging

the signatures in question. Finally, in his own testimony, appellant admitted to forging the signatures without the required authority of Schwerkolt or Rosebrook. Appellant also admitted to forging the signatures with the intent to obtain the scholarship funds from the Pullman Foundation. When asked if he knew what he did was wrong, appellant stated, "I was more concerned on making sure that I retained the scholarship * * *."

{¶ 28} Based on this evidence, we do not find that the jury clearly lost its way, or that this is the exceptional case in which the evidence weighs heavily against the conviction. Therefore, we hold that the convictions on the four counts of forgery are not against the manifest weight of the evidence.

{¶ 29} Accordingly, appellant's first assignment of error is not well-taken.

IV. Conclusion

{¶ 30} We find appellant's assignments of error not well-taken. On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Stephen A. Yarbrough, J.
CONCUR.

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JUDGE