

[Cite as *State v. Braxton*, 2009-Ohio-2724.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91881

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RICHARD BRAXTON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED AS MODIFIED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-478321

BEFORE: Stewart, J., Gallagher, P.J., and Jones, J.

RELEASED: June 11, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Roosevelt Moore a.k.a. Richard Braxton, appeals from a judgment of the Cuyahoga County Court of Common Pleas finding him guilty of tampering with records in violation of R.C. 2913.42 and sentencing him to five years of community control sanctions. For the reasons that follow, we affirm the judgment as modified by this opinion.

{¶ 2} On May 30, 2006, appellant was indicted by the Cuyahoga County Grand Jury in a 20-count indictment for tampering with records. Counts 1, 2, and 3 relate to fingerprint/booking cards from Cleveland Heights, Bedford Heights, and the Cuyahoga Sheriff's Department. Count 4 relates to appellant's application for renewal of a driver's license. Counts 5 through 20 relate to appellant's application for motor vehicle registrations with the Ohio Bureau of Motor Vehicles. Appellant waived his right to a jury trial and on May 7, 2008, the case was tried to the bench.

{¶ 3} The state alleged that appellant used a fraudulent name, a fraudulent date of birth, and fraudulent social security number to falsify government documents. At trial, the state presented evidence to show that appellant was born on April 9, 1964 and given the name Roosevelt Moore Saunders. When he was five years old, his name was legally changed to Roosevelt Saunders Moore. In 1973, when he was nine years old, Roosevelt was

issued a valid social security number (SS#1).¹ In 1983, when he was 19 years old, Roosevelt applied for a replacement card under the same number. In 1984, Roosevelt was arrested by the Shaker Heights Police Department. The state presented the fingerprint card and mug shot from that arrest. The fingerprint card showed appellant's legal name and valid social security number (SS#1). The photo of Roosevelt closely resembled appellant Braxton.

{¶ 4} In 1994, appellant applied for and was given a social security card in the name of Richard S. R. Braxton, with a birth date of April 9, 1968 (SS#2). In the application for this card, appellant stated that he did not have a number previously issued to him.

{¶ 5} On February 13, 2001, Richard Braxton was arrested and fingerprinted by the Bedford Police Department. On June 4, 2001, Richard Braxton was fingerprinted by the Cuyahoga County Sheriff's Department. On February 3, 2004, Rick Braxton was arrested and fingerprinted by the Cleveland Heights Police Department. All of the fingerprint cards show April 9, 1968 as the date of birth, and all have a social security number different from the one issued to Roosevelt Moore. Social Security Administration records show the number listed on the fingerprint cards was not a valid number (SS#3). The

¹In the interest of security and for ease of understanding, rather than list the actual numbers or x-out partial numbers, we will simply refer to the three social security numbers at issue in this case as SS#1, SS#2, and SS#3.

defense stipulated that the fingerprints on all of the fingerprint cards, including the 1984 card, are appellant's.

{¶ 6} The state presented Bureau of Motor Vehicle (BMV) records showing a driver's license issued to Roosevelt Moore under his valid social security number (SS#1) and licenses issued to Richard Braxton under two different social security numbers (SS#2 and 3). The Braxton licenses included the photographs taken when the licenses were issued. The state also presented BMV records showing vehicle registration applications made by Richard Braxton between 2002 and 2005 using the invalid social security number (SS#3).

{¶ 7} The trial court overruled appellant's motions for acquittal under Crim.R. 29 at the close of the state's case and again at the close of evidence. The court found appellant guilty of all 20 counts of tampering with records as charged in the indictment. The court imposed a sentence of five years of community control under the supervision of the Probation Department.

{¶ 8} Appellant timely filed this appeal raising four assignments of error as follows.

{¶ 9} "I. The trial court erred in overruling Braxton's motion for judgment of acquittal."

{¶ 10} Appellant asserts that he lawfully adopted the name of Rick Braxton in the mid-1990's. He argues that a person has a right to adopt any name he chooses as long as the change is not made for fraudulent purposes. Additionally,

appellant asserts that he need not do so through a formal name change procedure in probate court. Appellant complains that the state failed to present sufficient evidence to prove that he acted purposefully to defraud the state or knowingly facilitated a fraud.

{¶ 11} “Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.” *State v. Bridgeman* (1978), 55 Ohio St.2d 261, at syllabus. We review a challenge to the trial court’s ruling concerning a Crim.R. 29(A) motion for sufficiency of the evidence by examining “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. Jenks* (1991), 61 Ohio St.3d 259, paragraph 2 of the syllabus, citing *Jackson v. Virginia* (1979), 443 U.S. 307.

{¶ 12} The offense of tampering with records is defined by R.C. 2913.42(A) and states:

{¶ 13} “(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

{¶ 14} “(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

{¶ 15} “(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.”

{¶ 16} “Utter” is defined as, “to issue, publish, transfer, use, put or send into circulation, deliver or display.” R.C. 2913.01(H).

{¶ 17} Viewing the evidence in a light most favorable to the state, we conclude that it establishes all the essential elements of tampering with records. The state provided sufficient evidence to show that appellant has utilized two different names, two different dates of birth, and three different social security numbers over the years. The state demonstrated that appellant used the name Rick Braxton with a false date of birth and a false social security number on at least 20 different government records. The false information was on the forms signed by appellant and on the driver’s license used by appellant when applying for the numerous vehicle registrations. These facts constitute circumstantial evidence from which a reasonable trier of fact could infer that appellant knew the records had been falsified and knowingly perpetrated a fraud against the state.

{¶ 18} We are unpersuaded by appellant’s argument that he did nothing illegal in adopting and using the name Rick Braxton. The evidence proves that in addition to changing his name, appellant falsified his date of birth and social security number on the government records. The illegality came not from adopting a new name, but in falsifying a new identity to go with it. Accordingly, appellant’s first assignment of error is overruled.

{¶ 19} “II. Braxton’s convictions are against the manifest weight of the evidence.”

{¶ 20} Appellant argues that testimony of the state witnesses shows that no one knows exactly how the false information was gathered, who provided it, or what role, if any, Braxton had in providing it. He argues that, without this information, the convictions for tampering with records go against the manifest weight of the evidence. We disagree.

{¶ 21} The Supreme Court of Ohio has set forth the following standard for evaluating a claim that a verdict is against the manifest weight of the evidence:

{¶ 22} “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. 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. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. In a bench trial, the trial court assumes the fact-finding function of the jury.

{¶ 23} We are mindful that the weight to be given the evidence and the credibility of the witnesses are matters primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. This gives the trier of fact the authority to “believe or disbelieve any witness or accept part of what a witness says and reject the rest.” *State v. Antill* (1964), 176 Ohio St. 61, 67.

{¶ 24} In this case, the trial court heard the testimony of police officers from the Shaker Heights, Bedford, and Cleveland Heights police departments; a criminal investigator with the Social Security Administration’s Office of the Inspector General; an investigator and supervisor with the Ohio Bureau of Motor Vehicles; a deputy sheriff in the scientific identification unit of the Cuyahoga County Sheriff’s Department; a fingerprint expert from the Bureau of Criminal Investigations; and, a United States postal inspector. Additionally, appellant stipulated that the fingerprints on state’s exhibits 14-18 and 20 (fingerprint cards) were his.

{¶ 25} After listening to all of the evidence and weighing the credibility of the witnesses, the trial court concluded that defendant Rick Braxton and Roosevelt Moore are the same person. The court refused to believe that the

Bedford Police Department personnel made up the information in the top part of the fingerprint card, and so found that appellant provided the false information on the Bedford Police Department records. The court found the state's evidence credible and concluded that appellant provided the false information on each of the government records with intent to defraud or with knowledge that he was facilitating a fraud. After reviewing the record, we cannot find that the trial court lost its way or that the convictions were against the manifest weight of the evidence.

{¶ 26} Accordingly, the second assignment of error is overruled.

{¶ 27} “III. The trial court erred in admitting into evidence Exhibits 15, 16, 17, and 18.”

{¶ 28} Appellant contests the trial court's decision to admit these four exhibits over his objection. Exhibit 15 is a 2001 fingerprint card from the Bedford Police Department, exhibit 16 is a 2001 fingerprint card from the Cuyahoga County Sheriff's Department, and exhibits 17 and 18 are fingerprint cards from the Cleveland Heights Police Department. Each card shows the name Rick or Richard Braxton, the April 9, 1968 date of birth, and a social security number.

{¶ 29} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. Accordingly, we review a challenge to the

admission of evidence under an abuse of discretion standard. The term “abuse of discretion” connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶ 30} Appellant asserts that the fingerprint cards are inadmissible hearsay under Evid.R. 802 and, that the state failed to properly authenticate the cards as business records under Evid.R. 803(6).

{¶ 31} It is axiomatic that any evidentiary material must be properly authenticated; that is, identified as what it purports to be. Evid.R. 901(A). When authenticating a business record under Evid.R. 803(6), it is not necessary for the specific individual who compiled the information to testify. *State v. Davis*, Cuyahoga App. No. 90050, 2008-Ohio-3453. “A sufficient foundation for the introduction of such evidence will be laid if the party seeking to introduce the evidence is able to show that it was the regular practice” to keep such records. *Id.*, citing Senate Report No. 93-1277, Fed.R.Evid. 803(6), Title 28, U.S. Code, 274-75.

{¶ 32} The state presented three witnesses who testified to the circumstances and preparation of the challenged fingerprint cards. Each testified that the fingerprint cards were prepared according to standard policy and procedure within their departments. Bedford police officer Dean David Eschweiler testified that he was the officer who prepared exhibit 15 on February

13, 2001; that his signature was on the card. He testified that it was his practice to get the identification information for the card from the individual being fingerprinted.

{¶ 33} Cleveland Heights police officer Timothy O'Haire testified that exhibits 17 and 18 were fingerprint cards generated by an AFIS machine, an automated fingerprinting and identification system that scans the fingerprints into a computer. He testified that the identification information, such as name and birth date, comes initially from the individual being processed.

{¶ 34} Don Andree of the Cuyahoga County Sheriff's Department Scientific Identification Unit, identified exhibit 16 as one of the older ink fingerprint cards prepared by the sheriff's department as part of the booking process. He testified that the basic identification information such as name, address, social security number, date of birth, height, and weight, is usually provided by the person being booked.

{¶ 35} The state also called Jerry Lanfear, a supervisor of the identification section of the Bureau of Criminal Investigations. The state planned to have Lanfear fingerprint appellant in court and compare appellant's fingerprints to those on the fingerprint cards. Rather than submit to the fingerprint examination at trial, appellant stipulated that the fingerprints on exhibits 14, 15, 16, 17, 18, and 20 are his.

{¶ 36} We are aware that we have previously stated that we are unconvinced that fingerprint cards qualify as business records under the Ohio Rules of Evidence. See *State v. Davis*, supra. However, in this case, based upon the testimony presented, and specifically upon appellant's stipulation that the fingerprints on the cards are his, we cannot find that the trial court abused its discretion in admitting the fingerprint cards into evidence. Accordingly, appellant's third assignment of error is overruled.

{¶ 37} "IV. The trial court erred when ordering Braxton to petition the probate court for a name change as a condition of his community control sanction."

{¶ 38} As conditions of his community control, the court ordered that if appellant was to be known as Rick Braxton, he was to: 1) only use the social security number issued to him under the name Richard S. R. Braxton in 1994 (SS#2), 2) notify the Social Security Administration to delete any information they have in regard to Roosevelt Saunders Moore, 3) use his legal date of birth as shown on his birth certificate, and 4) legally change his name to Rick Braxton through the probate court.

{¶ 39} R.C. 2929.15(A)(1) governs the authority of the trial court to impose conditions of community control. That section provides that when sentencing an offender for a felony, the trial court may impose one or more community sanctions, including residential, nonresidential, and financial sanctions, and any

other conditions that it considers “appropriate.” The General Assembly has thus granted broad discretion to trial courts in imposing community control sanctions.

State v. Talty, 103 Ohio St.3d 177, 2004-Ohio-4888. We review the trial court’s imposition of community-control sanctions under an abuse-of-discretion standard. *Id.*

{¶ 40} When reviewing community control sanctions, we consider whether the condition imposed, “(1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.” *Talty*, 103 Ohio St.3d at 180, citing *State v. Jones* (1990), 49 Ohio St.3d 51, 53.

{¶ 41} Appellant argues that it is unreasonable and unnecessary for the court to order him to petition the probate court for a legal name change because he already legally changed his name to “Rick Braxton” under the common law, and has been legally using that name since 1994. We disagree.

{¶ 42} Appellant relies upon *Pierce v. Brushart* (1950), 153 Ohio St. 372, in which the court stated that, “[i]t is universally recognized that a person may adopt any name he may choose so long as such change is not made for fraudulent purposes.” Notably, in that decision, the court also recognized that a change of one’s name is usually regulated by statutes that prescribe the proceedings by

which such change is to be accomplished. Id. at 380, citing 38 American Jurisprudence, 610, Section 28.

{¶ 43} Appellant did not simply adopt a new name, as he asserts. He created a new identity and falsified government records. The trial court found that Rick Braxton and Roosevelt Saunders Moore are one and the same person, albeit with different names, different dates of birth, and multiple social security numbers. Therefore, in light of appellant's convictions for falsifying records using the Braxton name, we find no abuse of discretion by the trial court in ordering appellant to follow the statutorily prescribed procedure for changing his name to Braxton should he continue to use that name.

{¶ 44} We do question, however, whether the trial court has the authority to designate which one of the two social security numbers issued to appellant he should use. Accordingly, we modify the trial court's conditions of community control sanctions to state that appellant is to notify the Social Security Administration of the circumstances surrounding the issuance of the two numbers and have the Social Security Administration make the determination of the correct number to be used by appellant.

{¶ 45} Appellant's fourth assignment of error is overruled. The judgment of the trial court is affirmed as modified.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MELODY J. STEWART, JUDGE

SEAN C. GALLAGHER, P.J., and
LARRY A. JONES, J., CONCUR