

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92081

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

EDDIE JACKSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-504920

BEFORE: Blackmon, J., McMonagle, P.J., and Boyle, J.

RELEASED: October 22, 2009

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Michael J. Goldberg

James E. Valentine
Goldberg & Murner, LLP
323 Lakeside Avenue, West
450 Lakeside Place
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

Paul M. Soucie
Sanjeev Bhasker
Assistant County Prosecutors
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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).

PATRICIA ANN BLACKMON, J:

{¶ 1} Appellant Eddie Jackson appeals his convictions for tampering with records and theft in office and assigns the following errors for our review:

“I. The trial court erred and abused its discretion in refusing to charge the jury with the requested instructions regarding the defense theory in violation of appellant’s state and federal constitutional rights.”

“II. The verdict was against the manifest weight of the evidence.”

“III. The trial court erred and abused its discretion in failing to properly determine the amount of restitution and in failing to inquire into the appellant’s ability to pay this restitution ordered.”¹

{¶ 2} Having reviewed the record and pertinent law, we affirm Jackson’s convictions. The apposite facts follow.

Facts

{¶ 3} Jackson was a Cleveland police officer for over twenty-two years. He also served as the Officer in Charge of the Office of Professional Standards (“OPS”). OPS is responsible for investigating allegations of police misconduct. Jackson’s indictment arose from the allegation that he forged

¹ Jackson did assert a third assigned error alleging error in the ordered restitution amount. However, at oral argument, his counsel withdrew this assigned error.

and tampered with his time sheets from November 2005 until June 2006, when he worked for OPS.

{¶ 4} The state presented evidence detailing the police department's requirements regarding the completion of time sheets. Chief of Police, Michael McGrath, explained that each officer must document his hours and provide a description of the duties completed on a daily time sheet. Jackson's supervisor at OPS, Ross Steinberg, testified that department accountability required Jackson to accurately document his hours. He also stated that Jackson's duties were to be completed at work, not at home.

{¶ 5} The police department's Internal Affairs Unit and Overtime Review Unit reviewed Jackson's time sheets. The officers from the Overtime Review Unit testified that a 30-minute grace period was permitted for time discrepancies; such discrepancies were to be handled internally. If the time discrepancies were in excess of 30 minutes, the unit would file a criminal complaint. Additionally, the officers testified that work performed at home must be properly documented on the time sheets.

{¶ 6} In addition to their testimony, the officers from the Internal Affairs Unit presented extensive video and photo surveillance of Jackson's arrival and departures from OPS from November 11, 2005 until June 25, 2006. The footage from the video and photos were then compared with

Jackson's time sheets. The comparison indicated that although Jackson would arrive late to work, he would put an earlier time on his time sheet. He would also leave work earlier than the time documented on his time sheets.

{¶ 7} Jackson admitted to the majority of alleged discrepancies. However, he claimed he unintentionally filled out the time sheets incorrectly contending that he performed work duties prior to arriving to the OPS office and also performed work duties on his way home from work. However, these duties were not documented on his time sheets.

{¶ 8} The jury found Jackson guilty of eight counts of tampering with records and one count of theft in office. The trial court sentenced Jackson to fours years on each count to be served concurrently.² Jackson was also ordered to pay restitution in the amount of \$7,496.31 to the city of Cleveland.

Jury Instruction

{¶ 9} In his first assigned error, Jackson states that he was denied due process of law when the trial court refused to read his proposed jury instructions. Jackson's proposed instructions included instructions that if the defendant acted in good faith, he could not be convicted of the offenses.

²At oral argument, defense counsel stated that the trial court recently granted judicial release to Jackson.

Jackson preserved the issue on appeal by objecting to the trial court's refusal to give his requested instructions.

{¶ 10} A trial court must fully and completely give only those instructions that are relevant and necessary for the jury to weigh all the evidence.³ A defendant is entitled to have his proposed instructions included when they are correct statements of law, pertinent to the proof in the record or material issues, timely presented, and not already included in substance in the charge to the jury.⁴ Proposed jury instructions do not have to be accepted by the trial court in their precise language even if they are correct statements of the applicable law. Rather, the trial court has discretion in using its own language to convey those same legal principles.⁵ A reviewing court must determine whether the trial court abused its discretion in refusing to read an appellant's proposed instruction.⁶

{¶ 11} In the case before us, Jackson's theory of the case was that he acted in good faith when he filled out the time cards and that when he mistakenly documented his time he did not intend to steal from the City. In

³*State v. Comen* (1990), 50 Ohio St.3d 206, paragraph two of the syllabus.

⁴*State v. Guster* (1981), 66 Ohio St.2d 266, 269; *State v. Luff* (1993), 85 Ohio App.3d 785, 804.

⁵*State v. Scott* (1987), 41 Ohio App.3d 313.

deciding not to include Jackson's proposed instructions, the trial court stated the requested instructions went only to whether Jackson intended to defraud the City or just made mistakes in filling out the cards. The court also concluded that it was defense counsel's job to set forth the defendant's defense theory. The court concluded by stating it would set forth the elements of the charges and that it was within the jury's province to determine if the elements, including the requisite intent, were proven.

{¶ 12} In charging the jury on theft in office, the trial court's instruction included, in pertinent part:

“Purpose. Purpose to deprive is an essential element of the crime of theft. A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to use his position as a public official to deprive the City of Cleveland of property or services. * * * To do an act purposely is to do it intentionally and not accidentally.”

⁶*State v. Comen*, supra.

{¶ 13} Regarding the tampering with records charges, the court instructed that the previous definitions of knowingly and purpose applied to the tampering charges. The court also instructed:

“Deception means knowingly 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 which creates, confirms, or perpetuates a false impression in another * * *.”

{¶ 14} These instructions show that the substance of Jackson’s proposed instructions was essentially contained in the charge given to the jury. The court included definitions regarding the requisite intent for the offenses. Consequently, if the jury believed the defense’s theory that Jackson did not purposely commit the crimes, it would enter a finding of not guilty. In light of these instructions, we conclude that the trial court did not abuse its discretion in denying appellant’s proposed jury instruction. Jackson’s first assigned error is overruled.

Manifest Weight of the Evidence

{¶ 15} In his second assigned error, Jackson contends his convictions are against the manifest weight of the evidence because the evidence showed he acted in good faith in filling out the time sheets and that the errors were not intentional, but simply mistakes. He also argues that because his superiors

had approved the time sheets, the City impliedly consented to the taking of property.

{¶ 16} In *State v. Wilson*,⁷ the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

“The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive -- the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the

evidence. Id. at 387, 678 N.E.2d 541. ‘When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.’ Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.”

{¶ 17} However, an appellate court may not merely substitute its view for that of the jury, but must find that “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.”⁸ Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.”⁹

{¶ 18} In the instant case, Police Chief McGrath testified regarding the requirements of completing the time sheets. He explained that the officer must both document his hours and provide a description of the duties he

⁷113 Ohio St.3d 382, 2007-Ohio-2202.

⁸*State v. Thompkins*, supra at 387.

⁹*Id.*

completed within those hours. Jackson conceded that he was familiar with the department's policy regarding the completion of the time sheets.

{¶ 19} The state presented extensive video and photo surveillance documenting Jackson arriving later than his documented time and leaving earlier than his documented time. The following discrepancies were discovered: in November 2005, he worked 10 days and 7 of his reports were inaccurate; in December 2005 he worked 18 days and 13 of his reports were inaccurate; in January 2006, he worked 11 days, but 9 of his reports were inaccurate; in February 2006, he worked 19 days and 16 of his reports were inaccurate; in March 2006, he worked 18 days and 14 of the reports were inaccurate; in April 2006 he worked 14 days and 10 of the reports were inaccurate; in May 2006, he worked 22 days and 21 reports were inaccurate; and in June 2006, he worked 16 days and 12 of the reports were inaccurate.

{¶ 20} Some time sheets also indicated that Jackson worked on the weekend; however, the camera failed to show Jackson arriving at the office, and Jackson's supervisor testified no work was assigned to be done at home. Some of the activities he documented for the weekend were also impossible to have been completed. For example he stated that he supervised and assisted officers at OPS. However, no other officers were present at OPS during the weekend.

{¶ 21} Jackson agreed he was never assigned work to be completed at home, but contended he did work at home because he could complete the work without interruption. He also conceded that his arrival and departure times on the time sheets did not correlate to the times depicted on the camera. However, he insisted that on those days, he engaged in work prior to coming to the office and also did work on the way home. However, these duties were not listed on his time sheets. When there are two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one should be believed.¹⁰ Rather, we defer to the jury who was best able to weigh the evidence and judge the credibility of witnesses by viewing the demeanor, voice inflections, and gestures of the witnesses testifying.¹¹ Obviously, the jury did not believe Jackson's explanations for the incorrect time sheets.

{¶ 22} Moreover, although Jackson's supervisors signed off on Jackson's time sheets, they did not have the evidence depicted on the video and photos when they did so. Therefore, they could not consent to Jackson's conduct

¹⁰*State v. Gore* (1999), 131 Ohio App.3d 197, 201.

¹¹See *Seasons Coal Co. v. Cleveland* (1994), 10 Ohio St.3d 77, 80; *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

when they had no knowledge that the time sheets were incorrect. Accordingly, Jackson's second assigned error is overruled.

Judgment affirmed.

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 be sent to said court 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.

PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
MARY J. BOYLE, J., CONCUR