

[Cite as *State v. Walls*, 2010-Ohio-3317.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93942

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES WALLS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-494525

BEFORE: Cooney, J., Dyke, P.J., and Jones, J.

RELEASED: July 15, 2010

**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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, James E. Walls (“Walls”), appeals his convictions for two counts of forgery and two counts of uttering. We find no merit to the appeal and affirm.

{¶ 2} In April 2007, Walls was indicted on two counts of forgery, two counts of uttering, and one count of retaliation. In November 2007, the court referred Walls to the Court Psychiatric Clinic for a competency evaluation at defense counsel’s request. The court conducted a competency hearing in April 2008 and found Walls competent to stand trial. In the meantime, Walls had filed two separate motions to dismiss, arguing that the court failed to hold a timely preliminary hearing and violated his right to speedy trial. The court denied both motions to dismiss, and the case proceeded to a jury trial, at which the following evidence was presented.

{¶ 3} In December 2000, the prosecutor’s office filed a motion with the common pleas court requesting that Walls be labeled a sexual predator at a H.B. 180 hearing. The case was assigned to Judge Nancy Margaret Russo who ordered Walls be returned from the Trumbull County Correctional Institution to Cuyahoga County for the sexual predator hearing. Based on the findings of a psychological evaluation, Judge Russo adjudicated Walls a sexual predator.

{¶ 4} In 2003, Walls was transferred to the Hocking Correctional Institution in Nelsonville, Ohio where he met two men, James Rivers and Roger Elvick, who introduced him to redemptionist theories.¹ Sergeant Donald Cleland (“Cleland”), a detective with the Cuyahoga County Sheriff’s Department testified about what he had learned over several years of studying redemptionist theories in similar cases.² Redemptionists operate under the assumption that, in the early part of the 20th Century, the federal government borrowed money from banks. Twenty years later, when the banks “called” the loans, the government was unable to repay the loans because it was in the throes of the Great Depression. As a result, redemptionists claim, the government was placed in receivership and the creditors were international banks, the World Bank, and the International Monetary Fund.

{¶ 5} In 1933, Congress passed House Bill Joint Resolution 192, which removed the country from the gold standard. From that point on, U.S. currency was backed by the full faith and credit of the U.S. government. The redemptionists believe that once money was removed from the gold standard, the government declared bankruptcy and reorganized itself as a corporation. To

¹ A basic understanding of redemptionist theory is necessary to understand the facts involved in these crimes.

² Sergeant Cleland testified that he not only investigated redemptionists and studied their books, websites, and other literature, but he had also testified in five prior cases involving redemptionists.

raise money, the government minted money backed by the net worth of its citizens. Thus, when a child was born in the United States, the child's birth certificate was deposited and voted on the bond market. As a result, every person has a split personality: a real person and a fictional person called the "strawman."

{¶ 6} Redemptionists claim that the government has power only over the strawman and not over the flesh and blood person, who remains free. Individuals can free themselves by filing UCC financing statements, thereby acquiring an interest in their strawman. Thereafter, the real person can demand that government officials pay enormous sums of money to use the strawman's name or, in the case of prisoners, to keep him in custody. Inmates are encouraged to file liens against government officials to extort their release from prison.

{¶ 7} Apparently based on this redemptionist theory, Walls prepared and sent Judge Russo an IRS 1099 form indicating that he had paid her \$10 million. He also sent Cuyahoga County Clerk of Courts, Gerald E. Fuerst ("Fuerst"), an IRS 1099 form indicating that he had paid Fuerst \$96 million.

{¶ 8} At the conclusion of the trial, the jury found Walls guilty of two counts of forgery for preparing forged 1099 forms, and two counts of uttering for passing the forged 1099 forms. Walls now appeals, raising three assignments of error.

Speedy Trial

{¶ 9} In the first assignment of error, Walls argues the trial court erroneously denied his motion to dismiss for violation of his right to a speedy trial.

{¶ 10} When reviewing a speedy-trial issue, an appellate court must calculate the number of days chargeable to either party and determine whether the accused was properly brought to trial within the time limits set forth in R.C. 2945.71. *State v. Riley*, 162 Ohio App.3d 730, 735, 2005-Ohio-4337, 834 N.E.2d 887, 891, ¶19, citing *State v. DePue* (1994), 96 Ohio App.3d 513, 516, 645 N.E.2d 745.

{¶ 11} Walls contends the trial court failed to bring him to trial within 180 days from the date of his indictment, which he claims was required by R.C. 2941.401. R.C. 2941.401 provides:

“When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance.”

{¶ 12} Walls claims he was entitled to a dismissal because the court failed to bring the charges in this case to trial within 180 days from the date of his indictment. However, R.C. 2941.401 clearly states that “the

one-hundred-eighty-day period prescribed by the statute begins to run *after* the prisoner's notice of place of imprisonment and request for final disposition of the matter have been received by the prosecuting attorney and the appropriate court in which the charges are pending." *State v. Smith*, 140 Ohio App.3d 81, 86-87, 2000-Ohio-1777, 746 N.E.2d 678, citing *State v. Cloud* (1997), 122 Ohio App.3d 626, 630, 702 N.E.2d 500. (Emphasis added.)

{¶ 13} According to the record, Walls never sent written notice to the prosecutor or the court requesting final disposition of his case. Therefore, the 180-day period prescribed by R.C. 2941.401 was tolled and has not been violated.

{¶ 14} Walls also claims the speedy-trial requirements of R.C. 2945.71 were violated. Pursuant to R.C. 2945.71(C)(2), a person "against whom a felony charge is pending" must be "brought to trial within two hundred seventy days after the person's arrest." A person charged with an offense shall be discharged, upon his or her motion made at or prior to the commencement of trial, if he or she is not brought to trial within the time required by R.C. 2945.71. R.C. 2945.73(B).

The time to bring an accused to trial can be extended for reasons enumerated in R.C. 2945.72, including any time the accused's mental competence to stand trial is being determined and any motions or actions instituted by the accused. R.C. 2945.72(B) and (E). *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478,

853 N.E.2d 283; *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374, 860 N.E.2d 1011.

{¶ 15} Here, the 270 days prescribed by R.C. 2945.71 began to run on April 11, 2007, when Walls was indicted because he was incarcerated. From April 11 to May 4, 2007, when Walls filed a motion for discovery, 23 speedy trial days ran.

Speedy trial time was tolled pursuant to R.C. 2945.73(E) starting on May 4, 2007 until the State responded to Walls discovery on May 23, 2007. Speedy trial time again ran from May 23 until August 2, 2007, when Walls filed a request for evidence and a motion for bill of particulars, which tolled speedy trial time for thirty days. By this time, speedy trial time had run for a total of 94 days.

{¶ 16} Speedy trial time ran again from August 31, 2007 to November 13, 2007, when Walls moved for a continuance of a pretrial hearing. By this time, a total of 164 speedy trial days had run. Speedy trial time was also tolled when he requested a competency evaluation on November 16, 2007. On December 31, 2007, Walls filed two motions to dismiss. The court denied both motions and found Walls competent to stand trial on April 8, 2008. Hence, speedy trial time began to run again on April 8, 2008 until June 9, 2008 when the trial commenced.

During this period, 61 days of speedy trial time ran for a total of 231 days, which is well within the 270-day limit. Therefore, Wall's right to speedy trial was not violated.

{¶ 17} Accordingly, the first assignment of error is overruled.

Peremptory Challenge

{¶ 18} In the second assignment of error, Walls contends the trial court erred in allowing the State to exercise a peremptory challenge to remove an African-American from the jury in violation of *Batson v. Kentucky* (1986), 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69.

{¶ 19} In *Batson*, the United States Supreme Court set forth the test to be used in determining whether a peremptory strike is racially motivated. Under *Batson*, to establish a prima facie case of purposeful discrimination in choosing jurors, the accused must demonstrate (1) that members of a recognized racial group were peremptorily challenged and (2) that the facts and circumstances raise an inference that the prosecutor used the peremptory challenge to exclude the jurors on account of their race. *Id.* at 96, 106 S.Ct. at 1723, 90 L.Ed.2d at 87. If a prima facie case is established, the State must then come forward with a neutral explanation. *Id.* at 95, 106 S.Ct. at 1724, 90 L.Ed.2d at 88. A simple affirmation of general good faith will not suffice. However, the explanation “need not rise to the level justifying exercise of a challenge for cause.” *Id.* at 97, 106 S.Ct. at 1723, 90 L.Ed.2d at 88. The critical issue is whether a discriminatory intent is inherent in counsel’s explanation for use of the strike; intent is present if the explanation is merely pretext for exclusion on the basis of race. *Id.* at 98, 106 S.Ct. at 1723, 90 L.Ed.2d at 88.; *Hernandez v. New York* (1991), 500 U.S. 352, 363, 111 S.Ct. 1859, 1868, 114 L.Ed.2d 395.

{¶ 20} When a party opposes a peremptory challenge by claiming racial discrimination, the court must decide whether granting the strike will contaminate jury selection through unconstitutional means. *Hicks v. Westinghouse Materials Co.*, 78 Ohio St.3d 95, 99, 1997-Ohio-227, 676 N.E.2d 872. The ultimate question is whether the trial court’s analysis of the contested peremptory strike was sufficient to preserve a constitutionally permissible jury-selection process. Because the trial court is in a better position to evaluate the credibility questions that naturally arise in cases of juror strikes, the appellate court must not reverse the trial court’s decision unless it finds the court acted in a clearly erroneous manner. *State v. Brown*, Cuyahoga App. No. 84059, 2004-Ohio-6862, ¶21.

{¶ 21} In the instant case, the trial court sua sponte requested a race-neutral explanation for the elimination of an African-American juror. When the prosecutor explained that he “didn’t like the way she had her arms folded before her and the looks she gave me while I asked questions,” the court indicated that the prosecutor’s response did “not sound like a sufficient racially neutral explanation.” The prosecutor further explained that he did not like the juror’s body language and she refused to make eye contact with him. Courts have held that body language and demeanor are permissible race-neutral justifications for the exercise of a peremptory challenge. *Id.* at ¶27, citing *United States v. Changco* (C.A.9, 1993), 1 F.3d 837, 840 (“Passivity, inattentiveness, or inability to relate to other jurors [are] valid, race-neutral explanations for excluding

jurors.”). Obviously, such reasons for striking a juror are subjective, and thus virtually impossible for us to review on appeal. *Id.*

{¶ 22} Based on this record, we find that the trial court complied with every requirement set forth in *Batson*. Moreover, the record indicates that the juror who replaced the challenged juror was another African-American woman. Although the prosecutor’s stated reasons for challenging the juror are subjective, the fact that she was replaced with another African-American woman provides objective evidence of a racially-neutral intent. Therefore, the trial court preserved a constitutionally permissible jury-selection process.

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

Sufficiency of the Evidence

{¶ 24} In the third assignment of error, Walls argues the evidence presented at trial was insufficient to support a conviction for forgery, a third degree felony. He claims that because there was no evidence that the victims suffered any actual loss, he should have only been convicted of forgery, a fifth degree felony, not a third degree felony. We disagree.

{¶ 25} A sufficiency claim raises a narrow question of law that we review de novo. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. In a sufficiency claim, we review the record to determine whether, after reviewing the evidence in the 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. Stallings* (2000), 89 Ohio St.3d 280, 289, 731 N.E.2d 159. As the question of sufficiency of the evidence presents a question of law, it does not allow the reviewing court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 26} Walls was charged with two counts of forgery and two counts of uttering in violation of R.C. 2913.31. R.C. 2913.31 provides, in pertinent part:

“(A) 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;

“(2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;

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

* *

“(C)(1)(a) Whoever violates division (A) of this section is guilty of forgery.

“(b) Except as otherwise provided in this division or division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss, forgery is one of the following:

* *

“(ii) If the value of the property or services or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.”

{¶ 27} Here, Walls does not dispute that the evidence at trial showed that he forged two IRS 1099 forms. He also does not dispute the evidence showing that he uttered the forms he purported to be genuine. Rather he claims he is innocent because the victims did not suffer any actual loss. However, the language of the statute does not require proof of actual loss. By using the word “or,” R.C. 2913.31(C)(b)(ii) defines forgery as a third degree felony if either the value of the property or services *or* the loss to victim is \$100,000 or more. The 1099 forms in this case were in the amount of \$10 million and \$96 million.

{¶ 28} Moreover, Ohio courts have held that R.C. 2913.31(C)(1)(b) implicitly contemplates that forgery may involve a noneconomic benefit or detriment. *State v. Sprinkle*, Montgomery App. No. 20780, 2005-Ohio-5240. In the instant case, Walls did not seek economic benefit, but rather sought to terrorize and harass his victims. There have been numerous cases of redemptionists using the redemptionist theories to commit frauds with the intent to harass their victims.

State v. Lutz (Jan. 23, 2003), Cuyahoga App. No. 80241; *Monroe v. Beard* (2007), E.D.Pa. No. 05-04937 (explaining that “‘Redemption’ is an anti-government scheme that utilizes commercial law to harass and terrorize its targets. * * * increasingly popular among prison populations.”); *Ray v. Williams* (Mar. 24, 2005), D. Or. No. CV-04-863-HU.

{¶ 29} Further, Sergeant Cleland testified that redemptionists use 1099 tax documents in an intimidating manner. He explained that although they can

create problems for anyone, they are particularly problematic for public officials who are required to report their incomes. Thus, forged 1099 tax documents can be used as a harassment tool even without any actual economic loss.

{¶ 30} Therefore, we find sufficient, credible evidence was presented that if believed would convince the trier of fact of appellant's guilt and support Walls' forgery convictions.

{¶ 31} Accordingly, the third assignment of error is overruled.

Judgment is affirmed.

It is ordered that 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 common pleas 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.

COLLEEN CONWAY COONEY, JUDGE

ANN DYKE, P.J., and
LARRY A. JONES, J., CONCUR