

STATE OF OHIO                     )  
  )ss:  
COUNTY OF WAYNE            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.       08CA0061

Appellee

v.

JOHNNY E. HEWLETTE

APPEAL FROM JUDGMENT  
ENTERED IN THE  
WAYNE COUNTY MUNICIPAL COURT  
COUNTY OF WAYNE, OHIO  
CASE No.       CRB-08-06-00840

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 14, 2009

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MOORE, Presiding Judge.

{¶1} Appellant, John Hewlette, appeals from the judgment of the Wayne County Municipal Court. This Court affirms.

I.

{¶2} On June 13, 2008, Appellant, John Hewlette, was charged with one count of operating a business that offers tattooing services without a license, in violation of R.C. 3730.02(A), a misdemeanor of the fourth degree. After a bench trial on November 3, 2008, the trial court convicted Hewlette of the single charge. That same day, the trial court sentenced him to 30 days in the Wayne County Jail consecutive to a sentence he was already serving on an unrelated charge and 50 hours of community service to be completed prior to release. On November 7, 2008, the trial court issued an order staying the sentence pending appeal.

{¶3} The testimony at trial revealed that in January of 2008, David Keeler purchased a tattoo kit for Hewlette, his friend and roommate. David intended to serve as an apprentice to

Hewlette to learn how to tattoo properly. Hewlette performed tattooing services from at least February 2008 through April of 2008 while David observed.

{¶4} Hewlette, Keeler and Keeler's wife, Julie, all lived together at the time and planned to start a tattoo business. In fact, while Hewlette was in the Wayne County Jail on unrelated charges, Julie created business cards with "Lines of Envy" as the business name, as well as their house phone number and her cell phone number. On the cards, John and David were listed as "Masters of Ink." She did not, however, receive any calls.

{¶5} David Keeler and his current girlfriend, Connie Miller, testified at trial that no one, particularly Hewlette, inked any tattoos for compensation. Julie Keeler and Sandy Chrostowski testified otherwise. Hewlette also introduced a letter and a card he received from Chrostowski, which tended to show that she might have romantic feelings towards him. Both were admitted into evidence. Conversely, Chrostowski characterizes her feelings towards Hewlette as loving him like a brother.

{¶6} However, Hewlette did provide at least one tattoo for compensation. He tattooed a blue "M" for Michigan, on Chrostowski's left ankle in exchange for \$25. Chrostowski paid \$20 at the time the tattoo was inked, which was late April of 2008, and \$5 one or two weeks later. Shortly after she received this tattoo on her ankle, the surrounding area became red and inflamed. The redness and swelling eventually spread to include her foot and toes. Due to the severity of this infection, Chrostowski was forced to visit Wooster Community Hospital and later, Dunlap Hospital. Chrostowski has approximately 15 tattoos, but testified that this infection, based on her experience, was unusual. Eventually, Chrostowski's personal doctor, whom she continued to see for treatment, convinced her to report this issue to the Wayne County Health Department.

{¶7} Janet Rittenhouse of the Wayne County Health Department testified that although Hewlette never applied to the Health Department for a license to provide tattooing services, the department was already somewhat familiar with his name. In March or April of 2008, the department received an anonymous call that Hewlette and Keeler were operating a tattoo business without a license. On April 10, 2008, Hewlette received a letter by certified mail from the Wayne County Health Department indicating that a license is required to provide tattooing services. Upon receiving Chrostowski's complaint later in April of 2008, it was clear to the department that Hewlette had ignored the letter. Loretta Firis, Director of Environmental Health with the Wayne County Health Department, testified that the department sent a letter on May 21, 2008 ordering Hewlette to cease and desist from providing tattoos until properly licensed. The department also contacted the prosecutor's office and suggested that Chrostowski file a complaint with the police.

{¶8} Hewlette timely filed a notice of appeal from his conviction. He raises one assignment of error for our review.

## II.

### **ASSIGNMENT OF ERROR**

"THE TRIAL COURT'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶9} In his sole assignment of error, Hewlette argues that the trial court's verdict was against the manifest weight of the evidence. We do not agree.

{¶10} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, at \*1, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring).

{¶11} A determination of whether a conviction is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

“an appellate court 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 that the conviction must be reversed and a new trial ordered.” *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

{¶12} Hewlette was convicted of operating a business that offered tattooing services without a license in violation of R.C. 3730.02(A), which provides that “[n]o person shall: \*\*\* [o]perate a business that offers tattooing services \*\*\* unless a board of health has approved the business[.]” R.C. 3730.01(C) defines a “business” as “any entity that provides services for compensation.” Because it is uncontroverted that Hewlette never applied for a license, the dispositive issue for this Court is whether the trial court lost its way in finding that Hewlette provided tattoo services for compensation.

{¶13} To support his argument, Hewlette points to the conflicting testimony offered by his witnesses and the State’s witnesses. Julie Keeler and Sandy Chrostowski both testified that Hewlette performed tattoo services for compensation. Chrostowski clearly testified that she personally received a tattoo from Hewlette and paid him \$25 over two installments. Julie also testified that Hewlette was paid for tattooing, but she admitted that she never actually witnessed the exchange of money.

{¶14} In contrast, David Keeler and Connie Miller, both of whom live with Hewlette, testified that Hewlette never received compensation for tattoos. Hewlette also suggested that Julie Keeler had motivation to lie because, at the time of the trial, she and David were still

married, yet David and Hewlette were living with Connie Miller. On cross-examination, Chrostowski acknowledged sending a letter and a card to Hewlette while he was in jail. The contents of the letter and card tend to suggest that Chrostowski does, or did, have romantic feelings for Hewlette. However, Chrostowski characterizes her feelings as loving him like a brother.

{¶15} Despite the stark contrast of the testimony provided by each side, the trial court found the State's witnesses to be more credible. After reviewing the record, this Court cannot say that the court below lost its way in making its credibility determinations.

{¶16} Hewlette's argument with regard to the interplay of R.C. 3730.01, et seq. and O.A.C. 3701-9-01, et seq. is not well taken. On appeal, he suggests that based on the provisions for notice and a hearing under O.A.C. 3701-9-09(C), the Wayne County Department of Health could not have denied or revoked his ability to tattoo prior to the cease and desist letter it sent on May 21, 2008. Accordingly, Hewlette argues that he cannot be convicted for Chrostowski's tattoo, which was completed in April, because he cannot have been operating an unlicensed tattoo business prior to May 21, 2008.

{¶17} Hewlette's interpretation, although creative, belies logic. Hewlette fails to recognize that before the department of health can revoke or deny a license one must actually apply for a license. O.A.C. 3701-9-02(B) provides that "[p]ersons seeking approval to operate a business offering tattooing \*\*\* shall apply to the board of health[.]" Two employees of the Wayne County Department of Health provided uncontroverted testimony that Hewlette never applied for a license. Accordingly, Hewlette's argument that one may operate an unlicensed tattoo business up and until the department of health becomes aware of its existence and seeks to administratively close the business, lacks merit.

{¶18} After reviewing the entire record and considering the credibility of the witnesses, we cannot conclude that the trial court clearly lost its way and created a manifest miscarriage of justice when it convicted Hewlette of operating a business providing tattooing services without a license. *Otten*, 33 Ohio App.3d at 340. Hewlette's single assignment of error is overruled.

### III.

{¶19} Hewlette's single assignment of error is overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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CARLA MOORE  
FOR THE COURT

CARR, J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

CLARKE W. OWENS, Attorney at Law, for Appellant.

MARTIN FRANTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.