

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY McCLEAF,	§	
	§	No. 385, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr.A. Nos. IK99-10-0372
Plaintiff Below,	§	through 0374
Appellee.	§	

Submitted: October 16, 2001

Decided: December 4, 2001

Before **WALSH, BERGER,** and **STEELE,** Justices.

O R D E R

This 4<sup>th</sup> day of December, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1) Anthony McCleaf appeals his conviction, following a bench trial, of shoplifting, forgery in the second degree, and criminal impersonation. He argues that (i) the trial court erred in admitting a videotape from the store's surveillance camera; (ii) without the videotape, there was insufficient evidence to support a shoplifting conviction; (iii) signing a false name on an arrest card cannot form the basis of a second degree forgery conviction; and (iv) his criminal impersonation

conviction should be overturned because the name he gave police was the name he had adopted at common law.

2) Chad Wyble and Stephen Roark work at Strawbridge's in the loss prevention department. On the evening in question, Wyble was monitoring the surveillance cameras and saw a man, later identified as McCleaf, acting suspiciously. Wyble instructed Roark to go outside the store entrance to the men's department. Shortly after he got there, Roark saw McCleaf leave the store carrying nine pairs of jeans. Roark confronted McCleaf, recovered the jeans, and brought McCleaf to the Strawbridge's security office.

3) Dover Police Officer Scott Sealund responded to a call from Strawbridge's and, after viewing the security camera videotape of McCleaf, Sealund arrested him. Sealund asked McCleaf for his name and any identification he might have. McCleaf said he had no identification and that his name was Anthony R. Miller. Sealund testified that he warned McCleaf that he could be arrested for criminal impersonation if the name he provided was wrong. McCleaf insisted that his name was Anthony Miller.

4) At the police station, Sealund filled out an arrest card in the name Anthony R. Miller. He again warned McCleaf that, if the information was incorrect

and McCleaf signed the card, he would be charged with criminal impersonation and forgery second. McCleaf signed the card in the name Anthony R. Miller. After some investigation, Sealund determined McCleaf's true identity.

5) McCleaf argues that there was insufficient evidence to support the shoplifting charge. He says that the surveillance videotape was inadmissible because Wyble, the person who was monitoring the camera, did not authenticate the tape. This argument lacks merit. A videotape may be authenticated "by evidence sufficient to support a finding that the matter in question is what its proponent claims." D.R.E. 901(a). In this case, Roark testified that the tape was made by the Strawbridge's security camera, in the normal course of business, on the day of the incident. He also stated that he viewed the tape and that it accurately depicts McCleaf in the men's department selecting merchandise and walking out of the store. Roark's testimony was sufficient to support a finding that the tape was, as claimed, a tape of the Strawbridge's men's department on the date and at the time of the incident that led to McCleaf's arrest. Accordingly, the trial court acted within its discretion in admitting the videotape into evidence. As McCleaf appears to concede, with the videotape showing that McCleaf never paid for the jeans, there was sufficient evidence to support the shoplifting conviction.

6) McCleaf next argues that he did not commit forgery when he signed the arrest card in the name Anthony R. Miller. He points out that, immediately below the signature line, the arrest card states, “I hereby voluntarily submit my social security number for supplemental means of identification only.” McCleaf argues that, since his signature was provided for that limited purpose, the falsification of his signature cannot constitute forgery.

7) McCleaf offers no authority for his restrictive interpretation of the forgery statute. “A person is guilty of forgery when, intending to defraud, deceive or injure another person, the person ... (2) ...executes ... any written instrument which purports to be the act of another person, whether real or fictitious...” 11 *Del.C.* §861(a). If the written instrument is a public record or a document “issued or created by a public office ... or governmental instrumentality,” the forgery is forgery in the second degree. §861(b)(2). Nothing in this statute suggests that one who gives a false signature is somehow exempt from prosecution for forgery if the signature was given for a limited purpose. If the signature is false and the perpetrator intended to defraud, deceive or injure someone by using the false signature, then the person is guilty of forgery.

8) McCleaf's last argument relates to both the forgery and criminal impersonation convictions. He contends that he was not guilty of either crime because he adopted the name Anthony R. Miller, as a matter of common law. McCleaf testified that he started calling himself Miller when he went to live with his father, Charles Miller, in 1976. McCleaf testified that, since his police records in other cases showed his name as "Anthony McCleaf a.k.a. Anthony Miller," he assumed the name McCleaf would come up when he gave the name Miller for this arrest. In short, he claims that he was not trying to deceive or defraud anyone.

9) The trial court did not accept McCleaf's testimony. Based on the fact that McCleaf gave Sealund a false date of birth, false social security number and false identifying scars for "Anthony Miller," the court found that McCleaf intended to deceive the authorities as to his identity. That finding is supported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice