# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>November 17, 2016 |
| v | No. 328262<br>Wayne Circuit Court |
| STEVEN G. ANJORIN,<br><br>Defendant-Appellant. | LC No. 15-001846-01-FH |

Before: JANSEN, P.J., and MURPHY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of one count of offering evidence at an official proceeding that he recklessly disregarded as false (tampering with evidence), MCL 750.483a(5)(b), and three counts of using false pretenses to obtain money in an amount of $1,000 or more, but less than $20,000 (false pretenses), MCL 750.218(4)(a). Defendant was sentenced to six months in jail and two years' probation for his tampering with evidence and false pretenses convictions. We affirm.

## I. SUFFICIENCY OF THE EVIDENCE

This case arises from defendant's unauthorized practice of law under a limited license to practice Nigerian law and specifically involves defendant's participation as a court-appointed criminal defense attorney in Wayne County and defendant's participation in a civil case involving shipment of kola nuts, in which defendant submitted falsified letters to the trial court. Defendant first contends that the prosecution presented insufficient evidence to prove beyond a reasonable doubt the elements of his larceny by false pretenses convictions. We disagree.

A defendant's challenge to the sufficiency of the evidence is reviewed de novo on appeal. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). When determining whether sufficient evidence was presented in a jury trial to support a defendant's conviction, we must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014). "Circumstantial evidence and reasonable inferences arising therefrom may be used to prove the elements of a crime." *People v Brantley*, 296 Mich App 546, 550; 823 NW2d 290 (2012). "All conflicts in the evidence must be resolved in favor of the prosecution." *People v Kanaan*, 278

Mich App 594, 619; 751 NW2d 57 (2008). Furthermore," '[w]e will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses.' " *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012) (citation omitted).

In order to prove the elements of larceny by false pretenses under MCL 750.218(4)(a), the prosecution must prove:

> (1) the defendant must have used a pretense or made a false statement relating to either past or then existing facts and circumstances, (2) at the time the pretense was used the defendant must have known it to be false, (3) at the time the pretense was used the defendant must have intended to defraud someone, (4) the accuser must have relied on the false pretense made by the defendant, (5) because of this reliance that person must have suffered the loss of some money or other valuable thing, and (6) the property obtained by the defendant must have had a fair market value of [$1,000 or more, but less than $20,000] at the time of the crime. [*People v Lueth*, 253 Mich App 670, 680-681; 660 NW2d 322 (2002).]

Defendant only challenges elements five and six, asserting that these elements were not proven beyond a reasonable doubt to support his larceny by false pretenses convictions. Contrary to defendant's assertion, a rational fact-finder could have concluded that the prosecution proved beyond a reasonable doubt the elements of larceny by false pretenses in an amount of $1,000 or more, but less than $20,000. Specifically, with regard to elements five and six, sufficient evidence was presented at trial that Wayne County suffered a loss of money and that loss was in an aggregate amount of $1,000 or more, but less than $20,000, for the years 2009, 2010, and 2011.

Wayne County Accounts Payable Unit Supervisor Beverly Otis testified that defendant submitted legal services billing vouchers for his work on court-appointed cases from 2009 to 2011. Otis further testified that the accounts payable unit issued defendant checks during this period because defendant was believed to be a fully licensed attorney who was able to practice Michigan law. The prosecution introduced evidence of these checks at trial, and Otis testified that the aggregate amount paid to defendant each year exceeded $1,000. No other testimony was presented to refute this amount. Based off of this evidence alone, it was reasonable for the jury to infer the county suffered a loss of money in an amount that exceeded $1,000, but less than $20,000.

Nevertheless, to the extent defendant argues that there was no evidence presented that the county suffered a loss because his criminal clients received the same quality of representation that they would have received from an attorney licensed to practice Michigan law, we disagree with defendant's contention. The plain language of the *Lueth* test makes it clear that the county must have relied on defendant's false pretense that he was able to practice Michigan law, and that because of this reliance, the county suffered a loss of money. Otis explained that the county pays fully licensed Michigan attorneys who rendered legal services. Based off of this testimony, it was reasonable for the jury to infer that the county would not have paid defendant had it been aware of his limited license to practice Nigerian law. Thus, even if the county would have paid a licensed Michigan attorney the same amount to do the work, *it would not have paid defendant* had it known defendant was not fully licensed to practice in the state of Michigan. Thus, the

county incurred a loss of money that it would not have incurred otherwise because defendant's cases would have been reassigned to other attorneys who were fully licensed and capable of handling such cases involving Michigan law. Accordingly, sufficient evidence existed for a rational fact-finder to convict defendant on all three counts of larceny by false pretenses in an amount more than $1,000, but less than $20,000.

## II. PRIOR CONSISTENT STATEMENT

Defendant also contends that the trial court abused its discretion when it allowed the admission of Martin Anumba's out-of-court statement made to Thomas Turkaly in 2011 because such evidence was inadmissible hearsay not subject to an exception or exclusion. We conclude that reversal is not required because any error in the admission of the statement was harmless.

We review a trial court's ruling on an evidentiary issue for an abuse of discretion. *People v Bynum*, 496 Mich 610, 623; 852 NW2d 570 (2014). When a trial court's decision involves a preliminary question of law, such as whether a rule of evidence precludes admission of evidence, we review the question de novo. *People v Mardlin*, 487 Mich 609, 614; 790 NW2d 607 (2010). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013). Further, a "trial court necessarily abuses its discretion when it makes an error of law." *Id*. at 723.

Hearsay is a "statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). See also *People v Musser*, 494 Mich 337, 350; 835 NW2d 319 (2013) (providing the definition of hearsay). Generally, hearsay is inadmissible unless it falls within an exception, and several statements are outlined as nonhearsay under the Michigan Rules of Evidence. MRE 801(d); MRE 802. At issue is whether Anumba's out-of-court statement was admissible under the hearsay exclusion of a prior consistent statement. Under MRE 801(d)(1)(B), testimony is admissible as an exclusion or nonhearsay if the statement is "consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." The proponent offering a prior consistent statement as evidence must establish the following four elements:

> (1) the declarant must testify at trial and be subject to cross-examination; (2) there must be an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony; (3) the proponent must offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and, (4) the prior consistent statement must be made prior to the time that the supposed motive to falsify arose. [*People v Jones*, 240 Mich App 704, 707; 613 NW2d 411 (2000) (citation and quotation marks omitted).]

"[T]he motive in the second element must be the same motive in the fourth element of the four-pronged test to admit a prior consistent statement under MRE 801(d)(1)(B)." *Id*. at 711.

Defendant challenges only the fourth element, arguing that Anumba's prior consistent statement was made after his alleged motive to lie arose. However, even assuming, *arguendo*, that the trial court abused its discretion in admitting the statement, defendant has failed to

establish that the error has resulted in the miscarriage of justice. See *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999) (stating that if an issue is a preserved nonconstitutional error, reversal is not warranted unless the defendant establishes that the error resulted in a miscarriage of justice). The erroneous admission of evidence is presumed harmless and reversal of a conviction based on erroneously admitted evidence will not be granted unless the defendant demonstrates that " 'after an examination of the entire [record], it shall affirmatively appear that the error asserted has resulted in a miscarriage of justice.' " *Id*. at 495 (citation omitted). That is, unless the defendant is able to show that it is more probable than not that the error was outcome determinative, reversal will not be granted. *Id*. at 495-496. "An error is deemed to have been outcome determinative if it undermined the reliability of the verdict." *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000) (quotation marks and citation omitted).

Defendant argues that, because the trial court allowed the admission of Anumba's prior out-of-court statement, the prosecution was permitted to improperly bolster Anumba's credibility, which unfairly "tipped the scales" in the prosecution's favor. However, defendant fails to meet his burden of establishing that it is more probable than not that the admission of Anumba's prior statement was outcome determinative. See *Lukity*, 460 Mich at 495-496. A review of the record confirms that Anumba testified during direct examination that he falsified the five letters in the kola nut case under defendant's direction, and that he had done so after the kola nut case was dismissed. Therefore, the admission of Anumba's prior consistent statement was cumulative to Anumba's in-court testimony, reiterating the fact that the five letters were drafted at defendant's direction after the case was dismissed. In addition, Judge Kathleen MacDonald, the judge who presided over the kola nut case, testified that it was obvious the letters were false because the company mentioned in the letterhead of the letters was not even in existence on the dates listed in each letter. Thus, in light of the strength and weight of the properly admitted evidence, defendant fails to establish that any error was outcome determinative with regard to his tampering with evidence conviction. Accordingly, defendant has not shown an error requiring reversal.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Michael J. Riordan