

[Cite as *State v. Ward*, 2009-Ohio-4192.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91240

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES WARD

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-497192

BEFORE: Jones, J., Boyle, P.J., and Sweeney, J.

RELEASED: August 20, 2009

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), 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).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, James Ward (“Ward”), appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} On June 18, 2007, the Cuyahoga County Grand Jury issued a five-count indictment charging appellant Ward with two counts of forgery under R.C. 2913.31(A)(2), two counts of forgery under R.C. 2913.31(A)(3), and one count of tampering with records under R.C. 2913.42(A)(1). The indictment listed the Ohio Bureau of Motor Vehicles (“BMV”) as the victim in all counts. Ward was arraigned on July 9, 2007, and entered a plea of not guilty. Ward retained counsel and made bail. Numerous pretrials were held, discovery was exchanged, and the case proceeded to a trial by jury on January 22, 2008. On January 25, 2008, Ward was found guilty of all charges, and was later sentenced to fines, restitution, and community control sanctions.

{¶ 3} Yania Sumo (“Sumo”) works in nursing, and in early 2006 she was looking to purchase a car for transportation to get to and from work. Sumo’s father saw a 1997 Pontiac Grand Prix for sale on the lawn of the property located at 1283 South Belvoir, and told Sumo about the car. Sumo called Ward and met with him to discuss purchasing the Grand Prix. Ward stated that the car had been in his family and was in good condition; the odometer, at the time of negotiating the purchase of the car, reflected that the car had been driven 62,000

miles. On May 20, 2006, Sumo gave Ward a \$500 down payment, and on May 22, 2006, she gave Ward the remaining balance of \$1,700.

{¶ 4} On May 24, 2006, Ward sent Sumo a title for the 1997 Grand Prix by certified mail. This title listed the mileage on the car as 62,000 and reflected a date of May 24, 2006. The title was signed by Ward.¹ Ward also sent Sumo a note that stated the following, “Here is your title, Due to the trouble you have caused, please take this to the title bureau and have it transferred.”²

{¶ 5} Prior to finalizing the purchase of the Grand Prix, Sumo noticed mechanical problems with the brakes. She had complained to Ward who promised to rectify the problem. After purchasing the car, Sumo soon realized the brakes were still malfunctioning. Sumo called Ward numerous times to fix the car. Ward became angry and told Sumo to bring the car to his detail shop in Kirtland, Ohio. Sumo and her friend, Bridgette Schiffer, drove to the address Ward had given Sumo. However, the address was bogus. Schiffer then called Ward and threatened to go to the police if he did not give them the correct address. Ward then provided another address; however, when the women went to this address Ward was nowhere to be found. Sumo then contacted the police where she made a report and discovered that the true mileage for the car was actually 173,985.

¹See State’s Exhibit two.

²Tr. 272.

{¶ 6} Sumo later spoke with Laura Cicero from the BMV who conducted an investigation. The investigation revealed that the 1997 Grand Prix was originally given to Precious Johnson (“Johnson”) by her boyfriend in 2004. Approximately two years later, the car was unable to pass the E-Check emissions test. In order to bypass the E-Check and still drive the car, Johnson began transferring the car back and forth between herself and her cousin, LaJero Lee (“Lee”). By transferring title ownership between Johnson and Lee and still keeping possession of the vehicle, Johnson was able to drive the car (with temporary tags) while avoiding the E-Check test.

{¶ 7} Initially, Johnson wanted to get a new car to replace the Grand Prix. Johnson searched the Internet and found a 1999 Malibu she was interested in purchasing. The name on the advertisement was that of appellant, James Ward.

Johnson purchased the Malibu and traded the 1997 Grand Prix to Ward as partial payment. Ward told Johnson that she did not need to worry about transferring the title. He told her that she only had to give him the title and he would “switch it over.” Johnson stated that she never put Lee, who was the actual titleholder at the time of the transfer, in contact with Ward.

{¶ 8} Johnson also stated that Ward never provided her with a title for the Malibu. Johnson stated that she called Ward several times, but he never called her back. Johnson noticed that some of the paperwork Ward used had the name of Affordable Used Cars on it. Johnson then called Affordable Used Cars and spoke to Stan Wagner (“Wagner”) who informed Johnson that Ward used to work

for him at the company. However, Wagner told Johnson that he had nothing to do with the sale of the Grand Prix. Although Wagner was not involved in the sale, he did eventually help Johnson get the Malibu titled in her name.

{¶ 9} Ward arranged to sell the 1999 Malibu to Johnson and initially approached Wagner about taking the 1997 Grand Prix as part of the deal. However, Wagner declined due to the car's high mileage. Wagner later testified that he had nothing to do with the Grand Prix and stated that the car was never on his lot. Ward makes much of the fact that Wagner's wife is a notary, that she sometimes works with Wagner at the car lot, and keeps her stamp in a desk drawer at the car lot office. However, this information was ultimately found to be irrelevant.

{¶ 10} The BMV investigation further revealed that the only time the mileage on the Grand Prix was reduced significantly was when it was placed in Ward's name in May of 2006. Ms. Cicero physically examined the Grand Prix and noticed that there was evidence that the odometer had been tampered with.

Assignments of Error

{¶ 11} Ward assigns two assignments of error on appeal:

{¶ 12} “[1.] The trial court committed reversible error in excluding the testimony of three defense witnesses and refusing to allow defense counsel to call state's witness in the defendants case in chief.

{¶ 13} “[2.] The trial court erred when it overruled Mr. Ward's Criminal Rule 29 motion for acquittal and ultimately found Mr. Ward guilty because the evidence

presented by the state was insufficient to support a criminal conviction resulting in the judgement being against the manifest weight of the evidence.”

LEGAL ANALYSIS

Testimony

{¶ 14} Ward argues that the trial court erred in 1) excluding the testimony of three defense witnesses, 2) refusing to allow defense counsel to call the state’s witnesses, and 3) refusing to admit various defense exhibits.

{¶ 15} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, 510 N.E.2d 343. We will not disturb a trial court's evidentiary ruling unless we find said ruling to be an abuse of discretion, i.e., unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. See, also, *State v. Parker*, Cuyahoga App. No. 87145, 2006-Ohio-3684.

{¶ 16} Ward argues that when the trial court denied the testimony he wanted to introduce it prevented him from demonstrating that Wagner typically illegally signed his wife’s name on documents transferring titles. Ward further argues that the trial court’s failure to allow this testimony prevented him from demonstrating a pattern of activity in which Wagner allegedly illegally signed his wife’s name on various title documents. We find this argument to be without merit.

{¶ 17} Ward’s argument is irrelevant to the case at bar. In fact, no evidence demonstrating Wagner had any dealings with the Grand Prix was ever proffered or

produced at the trial court. The evidence presented demonstrates that Ward, not Wagner, was the individual who dealt exclusively with selling the vehicle to Sumo.

{¶ 18} Under Evid.R. 403(A), the trial court did not err by denying a request to admit a confusing, non-probative memo into evidence as the memo did not apply to the issue of insurance reimbursement being disputed in the case. *Dover Lake Park, Inc. v. Scottsdale Ins. Co.*, Summit App. No. 21324, 2003-Ohio-3312. A trial court has discretion to exclude evidence of marginal probative value on collateral issues. *Parma v. Manning* (1986), 33 Ohio App. 3d 67.

{¶ 19} Evid.R. 403, Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay, provides the following:

{¶ 20} “(A) Exclusion mandatory.

“Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

“(B) Exclusion discretionary.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.”

{¶ 21} The issue in the case at bar centered on whether Ward forged the title to the 1997 Grand Prix, *not* whether Wagner allegedly forged other titles. The evidence Ward wanted admitted was irrelevant. Assuming *arguendo* that the evidence was actually relevant, it would have still been disallowed as unnecessarily misleading or confusing under Evid.R. 403. Wagner’s bad acts or

other acts claims are also without merit. Wagner was not on trial and his habits were not relevant to the case at bar.

{¶ 22} Accordingly, we find no abuse of discretion on the part of the lower court. Moreover, we find the lower court's actions in excluding the testimony and refusing to admit various defense exhibits to be proper.

Motion for Acquittal and Manifest Weight of the Evidence

{¶ 23} Ward argues in his second assignment of error that the evidence presented

{¶ 24} by the state was insufficient to support a conviction and the trial court's judgment was against the manifest weight of the evidence.

{¶ 25} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. With respect to sufficiency of the evidence, sufficiency is a term of art meaning that legal standard that is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law. In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 26} Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may, nevertheless, conclude that the judgment is against the weight of the evidence. Weight of the evidence

concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jurors that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, their verdict shall find the greater amount of credible evidence sustains the issue that is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief. 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 fact finder's resolution of the conflicting testimony. *Id.*

{¶ 27} As to a claim that a judgment is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶ 28} R.C. 2913.31(A)(2), Forgery, identification card offenses, provides the following:

“(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.”

{¶ 29} A review of R.C. 2913.42(A)(1), Tampering with records provides the following:

“(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

“(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

“(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

“(B) (1) Whoever violates this section is guilty of tampering with records.”

{¶ 30} In the case at bar, Ward was found guilty of forgery and tampering with records. A review of the evidence demonstrates that Ward did indeed commit the crimes in question. Lee, the title owner of the Grand Prix at the time of title transfer to Sumo, denied ever signing the title of the car over to Ward. Additionally, Johnson testified that Ward was well aware there was an issue with

the title. Johnson testified that when Ward took the title from her, the two discussed the title transfer issue, and Ward assured her that he would take care of it and “switch it over.”

{¶ 31} In addition, Carol Ann Wagner, the notary who worked part-time with her husband Wagner at Affordable Used Cars, testified that she never notarized the title to the Grand Prix. Moreover, Wagner testified that Ward told him that he had bought and sold the Grand Prix on his own, without any involvement from Wagner.

{¶ 32} Laura Cicero conducted an investigation on behalf of the BMV and explained how Ward erroneously transferred and notarized the vehicle’s title with respect to the BMV. There was also significant evidence presented regarding Ward’s motive to forge the documents concerning the odometer. Specifically, Ward’s motive to forge the title with a significantly lower amount of miles, 62,000 versus the 170,000-200,000 miles the vehicle actually had, thereby, enabling Ward to sell the Grand Prix to Yania Sumo for more money than the car was actually worth.

{¶ 33} Sumo testified that Ward lied about the car, making it appear as if it had been in Ward’s family for years. Ward also avoided Sumo’s calls after the sale was complete and gave her a bogus address for his place of business. Additionally, the receipts from the BMV provide additional evidence that Ward tampered with records by transferring the fraudulent title.

{¶ 34} Furthermore, Ward's self-serving testimony had significant contradictions and significantly conflicted with the testimony of all of the other witnesses in the case. The evidence, when taken as a whole, demonstrates Ward illegally rolled back the odometer, forged the title, committed a fraud on the BMV, and tampered with records by filing a fraudulent transfer from Lee to himself.

{¶ 35} Accordingly, we affirm the ruling of the trial court. We find no error by the trial court in overruling Ward's motion for acquittal. Moreover, we find the evidence presented by the state to be sufficient to support the lower court's verdict.

{¶ 36} Ward's second assignment of error is overruled.

Judgment 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

MARY JANE BOYLE, P.J., and

JAMES J. SWEENEY, J., CONCUR