

[Cite as *State v. Dorsey*, 2010-Ohio-1424.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93115

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ADRIANE DORSEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-504981

BEFORE: Sweeney, J., McMonagle, P.J., and Cooney, J.

RELEASED: April 1, 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).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Adriane Dorsey (“defendant”), appeals her conviction for theft. For the reasons that follow, we affirm.

{¶ 2} Defendant was charged with theft and forgery. At trial, the court granted defendant’s motion for acquittal on the counts of forgery, and the jury found her guilty of theft. In this appeal, defendant maintains that her theft conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. For the reasons that follow, we affirm.

{¶ 3} The following evidence was presented at trial:

{¶ 4} A security investigator for Dollar Bank (the “Bank”), Melinda Jacobs (“Jacobs”), testified as follows: State’s Ex. 1 is a signature card to open an account at the Bank, which bears the signature of “Adriane Dorsey” and is dated December 16, 2006.

{¶ 5} The Bank’s policy for deposited checks is to make \$100 immediately available. The next day, the Bank makes up to \$5,000 available “for an established customer, which means any account that’s been opened for more than 30 days.” This is done in “good faith” with the Bank’s expectation that the check is valid.

{¶ 6} On June 21, 2007, defendant deposited a \$2,980 check drawn on American State Bank in Charleston, Virginia into her account at the Bank. Defendant’s account history reflected that the next morning an item for \$307.31 was cashed against defendant’s account and defendant also made a \$1,500 cash withdrawal. The withdrawal occurred at the Maple Heights branch. A few hours

later, defendant went to the Independence branch and made another cash withdrawal, this time for \$1,060. On June 25, 2007, defendant returned to the Maple Heights branch and withdrew another \$209, leaving a three-cent balance in her account. The next day, June 26, 2007, the Bank discovered that defendant's June 21, 2007 deposit was made by a counterfeit check. This created a \$2,979.97 deficit in defendant's account.

{¶ 7} When the Bank received notification that the check defendant had deposited was returned unpaid, Jacobs began an investigation. A letter was sent to defendant. Jacobs also spoke with defendant to inform her that the check was being returned unpaid. Jacobs instructed defendant to return the funds she had withdrawn.

{¶ 8} Defendant told Jacobs that she had received the check in the mail and that she spent the money on bills. Defendant claimed she had won a prize. She had been instructed to wire the money back to the company and, in exchange, she would receive an even larger amount. Defendant said that instead of mailing the money back, she decided to spend it. Although defendant was told she would have to repay the funds to the Bank, she did not do so. After ten business days, the account was closed with a negative balance and the Bank sent defendant a certified demand letter allowing her an additional ten days to make full payment. Although defendant received the letter, she did not respond to it. According to Jacobs, three letters were sent to defendant about the matter. The Bank ultimately reported the matter to the police.

{¶ 9} Jacobs explained that if defendant had wired the money back to a third party, as she was allegedly instructed to do, and she could substantiate that she did not benefit from the scheme, the Bank would have treated her as a victim. However, because defendant realized a gain from the scheme in that she spent the money on her personal bills or other items, the Bank did not consider her a victim.

{¶ 10} Sgt. Park of the Maple Heights Police Department testified about her investigation of the counterfeit check deposited by defendant into her account at the Bank. Sgt. Park attempted to contact defendant over a five-day period to no avail. Officers were sent to defendant's house at least three or four times but were also unsuccessful in contacting defendant. Eventually, family members informed the police that defendant no longer lived at the Maple Heights residence. Defendant did not return any of Sgt. Park's phone calls or otherwise attempt to contact the police.

{¶ 11} The jury found defendant guilty of theft in violation of R.C. 2913.02(A)(1), a felony of the fifth degree. Defendant has appealed this conviction and assigns the following assignment of error for our review:

{¶ 12} "1. There was insufficient evidence to support the guilty verdicts [sic] for [theft], and appellant's conviction was against the manifest weight of the evidence."

{¶ 13} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at

trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a 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. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 14} To warrant reversal of a verdict under a manifest weight of the evidence claim, this 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 evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, N.E.2d 541.

{¶ 15} Reversal of defendant's theft conviction is not warranted under either standard of review.

{¶ 16} R.C. 2913.02(A)(1) provides:

{¶ 17} "(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

{¶ 18} "(1) Without the consent of the owner or person authorized to give consent[.]"

{¶ 19} Defendant was charged with obtaining or exerting control over money with the purpose of depriving the Bank of it, without the Bank's consent. Defendant contends that the State failed to establish the requisite mens rea to sustain a conviction; specifically, she asserts the State did not prove she intentionally presented the Bank with a counterfeit check with the purpose of unlawfully obtaining the Bank's funds.

{¶ 20} Defendant told Jacobs she believed the check was prize money. According to Jacobs, defendant said she was told to wire the money back to the sender in exchange for an even larger prize. She, however, did not do that but chose instead to spend the money for her own purposes. The evidence reflects that defendant deposited the money into her account on June 21st and withdrew the entire balance of it prior to the check being cleared. Defendant did this by making large cash withdrawals at two separate branches on the same day, which, according to Jacobs, is suspicious behavior. More significantly, when defendant was informed the check was counterfeit and was asked to return the Bank's funds she had used for her benefit, defendant did not cooperate. She did not make any effort to rectify the situation and essentially disregarded the Bank's and police officers' efforts to resolve the matter.

{¶ 21} When the evidence is viewed in a light most favorable to the State, there is sufficient evidence to support a theft conviction. Also, the theft conviction is not against the weight of the evidence such that it would constitute a manifest

miscarriage of justice. Accordingly, defendant's sole assignment of error is overruled.

{¶ 22} Judgment affirmed.

It is ordered that appellee recover from appellant its 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 Court of Common Pleas 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.

JAMES J. SWEENEY, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR