

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-L-040
DEBORAH P. RAMIREZ,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 09 CR 000374.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Joshua S. Horacek*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Christopher P. Tucci, Attorney Tucci, L.L.C., 3 South State Street, #1, Painesville, OH 44077 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} This appeal is from a final judgment of the Lake County Court of Common Pleas. Appellant, Deborah P. Ramirez, contests the propriety of her conviction on three counts of complicity to election falsification. Ostensibly, appellant submits that the jury verdict cannot stand because the state’s evidence was insufficient to establish every element of the charged crime.

{¶2} Our review of the trial transcript readily indicates that the basic facts of this

case are not in dispute. In 2008, a state organization, MyOhioNow.com, LLC, began a petition drive to have an issue concerning a proposed constitutional amendment placed on the statewide ballot in the November election. The proposed amendment pertained to whether limited casino gambling should be permitted within Ohio.

{¶3} In order for the issue to be on the ballot, MyOhioNow.com was required to obtain the signatures of a certain percentage of the registered voters in every county of the state. To achieve this goal, the organization entered into a contract with a political consulting firm, which then sub-contracted part of the work to a second firm. Ultimately, U.S.A. Political Consultants was hired to gather the necessary signatures. The latter entity is a firm which is owned and operated solely by Joseph Copija, a California resident.

{¶4} In approaching people at various public events and asking them to support the “casino” issue, Copija’s employees were obligated to have each willing individual sign a booklet which was called a “part-petition.” Each part-petition had sufficient lines for 48 signatures and other relevant information. Once an employee collected sufficient signatures to complete a part-petition, that employee was required to execute a “solicitor statement” that was delineated on the back of each form. As part of that statement, the employee/solicitor stated under penalty of election falsification that the employee/solicitor had witnessed each individual sign the part-petition, that the signatures were of the individuals whose names they purported to be, and that the individuals were aware of the contents of the part-petition prior to its execution.

{¶5} In June 2008, Copija hired appellant to collect signatures for the “casino” issue throughout northeastern Ohio, including Lake County. Since California was also

appellant's home state, it was necessary for her to travel to Ohio and reside in a motel in Lake County for a period of approximately three months. Prior to being hired for this particular job, appellant had solicited signatures for various issues on statewide ballots in at least five other states.

{¶6} During her three-month stay in Lake County, appellant was able to solicit enough signatures to complete a significant amount of part-petitions. However, once a part-petition had the requisite 48 signatures, appellant immediately gave it back to Copija without executing the solicitor statement. Instead, her statements were signed by other firm employees who were Ohio residents. The other employees included two persons, Danielle Lee and Jennifer Cameron, who had never worked as a paid-solicitor prior to being hired by Copija in July 2008.

{¶7} When the final deadline for placing a constitutional issue on the November ballot approached in August 2008, the various "casino" part-petitions were assembled from each county in the state and were submitted to the Ohio Secretary of State. Upon conducting a preliminary review of the part-petitions, the office of the secretary returned to the board of elections for each county the respective part-petitions which were signed by registered voters in that specific county. As part of its review of the signatures on the part-petitions from its own county, the Lake County Board of Elections discovered some irregularities regarding the execution of the solicitor statements on the forms.

{¶8} In light of the board's initial findings, the matter was subject to a complete investigation by the Lake County Sheriff's Department. As part of this inquiry, both the board and the department interviewed some of the individuals who had been employed by Copija during the relevant period, including Danielle Lee and Jennifer Cameron. In

their respective interviews, Lee and Cameron admitted that they had signed the solicitor statements of many part-petitions which had either not been completed or contained the signatures of persons whom they had not personally solicited. To this extent, both Lee and Cameron stated that they had violated the terms of the solicitor statements and had thus engaged in elections falsification.

{¶9} At the conclusion of the investigation, appellant and Copija were indicted by the Lake County Grand Jury. Under each of the three counts in her indictment, appellant was charged with aiding and abetting Copija in the commission of the primary offense of election falsification. The sole distinction between each count is the specific period of time in which the crime allegedly occurred; i.e., the first count took place in June 2008, the second took place in July 2008, and the third took place in August 2008.

{¶10} A three-day jury trial was conducted in March 2010. As part of its general case, the state presented evidence demonstrating that a person had to be a resident of Ohio before she could legally solicit signatures to have a constitutional issue placed on the statewide ballot, and that appellant had not been able to satisfy this requirement at any point during the three-month period. In testifying on her own behalf, appellant did not deny that she was a California resident, but stated that she had not been aware that she was unqualified to collect signatures for the part-petitions.

{¶11} After adopting the jury verdict of guilty as to all three counts, the trial court expressly found that the imposition of a community control sanction was consistent with the purposes and principles of sentencing, and that appellant was amenable to such a sanction. Accordingly, the trial court sentenced her to three years of community control, subject to the general supervision of the adult probation department. As one condition

of the sanction, the trial court ordered appellant to serve 120 days in the county jail.

{¶12} In appealing the trial court's sentencing judgment, appellant has asserted the following assignments of error:

{¶13} "[1.] The trial court erred when it denied defendant-appellant's motion for acquittal under Criminal Rule 29(A).

{¶14} "[2.] The jury verdict was against the manifest weight of the evidence in violation of defendant-appellant's right to due process of law."

{¶15} Under her first assignment, appellant contends that the jury verdict cannot be upheld because the state failed to submit sufficient evidence regarding each element of the charged offenses. Specifically, she maintains that none of the state's evidence showed that she was guilty of aiding and abetting Joseph Copija in the commission of any crime.

{¶16} In support of her contention, appellant notes that the underlying offense in each of the three complicity counts was election falsification under R.C. 3599.36. This statute defines the disputed offense in the following manner:

{¶17} "No person, either orally or in writing, on oath lawfully administered or in a statement made under penalty of election falsification, shall knowingly state a falsehood as to material matter relating to an election in a proceeding before a court, tribunal, or election official, or in a matter in relation to which an oath or statement under penalty of election falsification is authorized by law, including a statement required for verifying or filing any declaration of candidacy, declaration of intent to be a write-in candidate, nominating petition, or other petition presented to or filed with the secretary of state, a board of elections, or any other public office for the purpose of becoming a candidate for

any elective office, including the office of a political party, for the purpose of submitting a question or issue to the electors at an election, or for the purpose of forming a political party.”

{¶18} Citing the applicable language in the foregoing statute, appellant indicates that it is the individual who actually signs an oath or statement under penalty of election falsification that is guilty of the crime when a falsehood is propagated. Based upon this, she emphasizes that, under the basic facts of this action, Joseph Copija himself never could have committed the offense of election falsification because he did not sign any of the solicitor statements on the part-petitions. Instead, according to appellant, only the Ohio residents employed by Copija, Danielle Lee and Jennifer Cameron, could be guilty of the underlying crime because they were the individuals who signed the disputed part-petitions. Thus, appellant argues that, since Copija could not have been the principal offender in the commission of election falsification, the state was unable to satisfy each element of the specific crimes charged in the indictment.

{¶19} However, a review of the controlling Ohio case law readily shows the fact that Joseph Copija was not a principal offender would have no effect upon the legal validity of appellant’s conviction. In interpreting R.C. 2923.03, the complicity statute, this court has expressly held that a defendant can still be found guilty of complicity to commit a crime even if the state does not prove the identity of the principal offender. *State v. Read* (Dec. 10, 1999), 11th Dist. No. 98-L-127, 1999 Ohio App. LEXIS 5932, at *7. In order to satisfy the elements of complicity, the state is only obligated to prove that a principal offender did commit the underlying offense, and that the defendant aided and abetted in the matter. *State v. Sailor*, 8th Dist. No. 83552, 2004-Ohio-5207, at ¶60. In

other words, the identity of the principal offender is not considered an actual element of complicity. See *In re T.K.*, 109 Ohio St.3d 512, 2006-Ohio-3056, paragraph one of the syllabus.

{¶20} Consistent with the foregoing precedent, it has also been held that the fact that the indictment refers to one specific person as the principal offender does not bar the state from ultimately proving that the defendant had aided and abetted other individuals in the commission of the underlying offense. In *State v. Tuggle*, 6th Dist. No. L-09-1317, 2010-Ohio-4162, each count of the indictment only named a co-defendant as the person with whom the defendant had acted in complicity in committing four offenses. When the state subsequently changed its theory of the case to demonstrate that the defendant had aided and abetted other individuals not referenced in the indictment, the defendant argued on appeal that the trial court had improperly allowed the state to amend the indictment as to the identity of the principal offender. In rejecting this argument, the Sixth Appellate District concluded that, because the identity of the principal was not an essential element for complicity under R.C. 2923.03, the change in the state's theory of the case did not impermissibly alter the name or identity of the underlying offenses. *Id.* at ¶30-31.

{¶21} In our case, each count of the indictment alleged that appellant had knowingly aided and abetted Joseph J. Copija in the commission of the offense of election falsification. At trial, the state's evidence demonstrated, at best, that Copija himself was only complicit in the commission of the three offenses, and that the actual principal offenders were Danielle Lee and Jennifer Cameron. Yet, since the governing case law provides that the identity of the principal offender is not a true element of

complicity, the discrepancies between the state's evidence and the allegations in the indictment were not fatal to the state's case. Instead, as was noted above, a conviction would still be warranted if it was shown that the principal offenders committed the underlying offenses, and appellant aided and abetted in the matter. *Sailor*, 2004-Ohio-5207, at ¶60.

{¶22} Taken as a whole, the state's evidence readily proved that two principal offenders, Lee and Cameron, had engaged in the offense of election falsification by executing the solicitor statements despite the fact that they had actually solicited or witnessed the signatures. Moreover, the evidence showed that appellant helped to facilitate those three offenses by soliciting signatures despite the fact that she was not an Ohio resident and could not execute the solicitor statements. In attempting to challenge the sufficiency of the state's evidence, appellant has not contested the foregoing two points.

{¶23} As a general proposition, a motion for acquittal under Crim.R. 29(A) must not be granted when the state's evidence is such that a reasonable juror could find that every essential element of the crime was established beyond a reasonable doubt. *State v. Urbancic*, 11th Dist. No. 2010-L-034, 2011-Ohio-1011, at ¶25-26. Consistent with the foregoing analysis, this court concludes that the state satisfied this standard regarding each essential element of the three complicity charges. Therefore, as the trial court did not err in holding that the state's evidence was legally sufficient, the first assignment of error has no merit.

{¶24} Under her second assignment, appellant maintains that the jury verdict on the three charges was against the manifest weight of the evidence. However, in raising

this assignment in her appellate brief, she has failed to assert any new argument for our consideration. Instead, she merely refers to the contention that formed the basis of her first assignment.

{¶25} In light of our legal conclusion that the state was not obligated to establish the precise identity of the principal offender in the underlying crimes, it logically follows that the jury did not lose its way in finding appellant guilty. Hence, as the guilty verdict was not against the manifest weight of the evidence, appellant's second assignment is also without merit.

{¶26} For the foregoing reasons, the judgment of the trial court is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.