

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-17-019

Appellee

Trial Court No. 2016CR0062

v.

George Barton

DECISION AND JUDGMENT

Appellant

Decided: May 11, 2018

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
David T. Harold, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a March 21, 2017 judgment of the Wood County Court of Common Pleas, finding appellant guilty on two counts of felony theft from a person in a protected class, in violation of R.C. 2913.02(A)(2), with one count being a felony of the third degree and one being a felony of the fourth degree.

{¶ 2} The convictions were merged for sentencing purposes and appellant was sentenced to an 18-month term of incarceration. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellant, George Barton, sets forth the following three assignments of error:

I. The trial court erred to the prejudice of appellant in denying his Crim.R. 29 motion.

II. The court's verdict was against the manifest weight of the evidence.

III. Appellant received ineffective assistance of counsel.

{¶ 4} The following undisputed facts are relevant to this appeal. Approximately 15 years ago, an elderly Wood County man ("victim") sustained serious injuries in a near fatal vehicle accident. As a result of the injuries sustained in the accident, the victim is legally blind.

{¶ 5} Subsequent to the accident, the victim was unable to work. Over the course of time, faced with increasing isolation, he began communicating with people who he contacted on his CB radio. In 2015, the victim encountered appellant, an over-the-road truck driver, via these CB radio conversations.

{¶ 6} Appellant befriended the victim. Appellant offered to pick up the victim, take him on errands, and go to dinner. Ultimately, the victim began to entrust appellant with financial transaction involving the victim's resources. That trust ultimately proved deleterious to the victim.

{¶ 7} Appellant would occasionally drive the victim to the victim's ATM machine. The victim would ask appellant to withdraw money from the victim's account ranging in amounts from \$80.00 to \$140.00 for various expenses.

{¶ 8} Unfortunately, unbeknownst to the legally blind victim, appellant was actually withdrawing \$900.00 from the victim's account on these occasions. Appellant converted the sizable surplus amount of the withdrawals for his own personal use.

{¶ 9} Prior to the victim's bank recognizing the suspicious banking activity, commencing an internal bank investigation, and notifying the local police department, appellant misappropriated nearly \$20,000.00 from the victim.

{¶ 10} Notably, the record reflects that appellant possesses a lengthy criminal history, including multiple past theft convictions.

{¶ 11} In addition to the monies drained from the victim's bank account, it was also discovered during the subsequent investigation that appellant absconded with multiple items of personal property from the victim's home. Appellant removed items such as a snowblower, a weed trimmer, a ladder, a meat slicer, and assorted tools.

{¶ 12} On February 4, 2016, appellant was indicted on two counts of theft from a person in a protected class, in violation of R.C. 2913.02(A)(2), one count being a felony of the third degree and the other count a felony of the fourth degree.

{¶ 13} On January 25, 2017, the matter proceeded to jury trial and appellant was found guilty of the charges. A presentence investigation was ordered. The offenses were merged for sentencing purposes. Appellant was sentenced to an 18-month term of incarceration. This appeal ensued.

{¶ 14} In the first assignment of error, appellant maintains that the trial court erred in denying appellant's Crim.R. 29 motion for acquittal. We do not concur.

{¶ 15} It is well-established that appellate court review of a disputed denial of a Crim.R. 29(A) motion for acquittal is conducted utilizing the same standard of review as used in sufficiency of the evidence challenges. *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶ 40.

{¶ 16} Accordingly, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 17} In support of the first assignment of error, appellant appears to suggest that because he occasionally assisted the victim with errands and because the victim was typically present during the unlawful banking transactions, it should be somehow construed as consent by the victim to the monies being taken. We are not persuaded.

{¶ 18} The record reflects that the victim is legally blind. The record reflects that appellant systematically withdrew, without the victim's knowledge or consent, amounts of money from the victim's bank account vastly in excess of the amount that the victim had requested to be withdrawn. The record reflects that appellant retained and used the excess funds withdrawn. The record reflects that appellant capitalized on the victim's trust and disability in order to take in excess of \$20,000.00 in cash and personal property from the victim.

{¶ 19} The fact that the legally blind victim was present during the transactions only renders appellant's unlawful actions even more troublesome. We find appellant's first assignment of error not well-taken.

{¶ 20} In appellant's second assignment of error, appellant contends that the convictions were against the manifest weight of the evidence. We do not concur.

{¶ 21} It is well-established that when determining whether a conviction was against the manifest weight of the evidence, the appellate court reviews the record, weighs all of the evidence and inferences from it, considers credibility of the witnesses, and determines whether the trier of fact clearly lost its way so as to cause a manifest miscarriage of justice. *State v. Prescott*, 190 Ohio App.3d 702, 2010-Ohio-6048, 943 N.E.2d 1092, ¶ 48 (6th Dist.).

{¶ 22} In support of the second assignment of error, appellant expressly reiterates and incorporates the arguments unsuccessfully set forth in support of appellant's first assignment of error. Appellant again suggests that the financial transactions could not have been unlawful inasmuch as they were openly conducted in front of the victim. We again note that such assertions are unconvincing given the victim's blindness. The record reflects that the amounts of money removed by appellant substantially exceeded the amounts authorized by the victim.

{¶ 23} Appellant has failed to establish that the trial court lost its way and caused a manifest miscarriage of justice in convicting appellant. We find appellant's second assignment of error not-taken.

{¶ 24} In appellant’s third assignment of error, appellant maintains that trial counsel was ineffective. We do not concur.

{¶ 25} It is well-established that in order to prevail on a claim of ineffective assistance of counsel, it must be demonstrated both that trial counsel’s conduct was deficient in certain regards, and that but for those demonstrated deficiencies, the outcome of the matter would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

{¶ 26} In support of the third assignment, appellant generically maintains that trial counsel was ineffective for allegedly failing to adequately, “develop a defense.” In addition, appellant broadly asserts that trial counsel failed to, “properly investigate.”

{¶ 27} Appellant articulates no specific claimed missteps of trial counsel which, if proven to be objectively deficient, arguably establish that the outcome of the matter would have been different. We find appellant’s third assignment of error not well-taken.

{¶ 28} On consideration whereof, the judgment of the Wood County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.

JUDGE

Christine E. Mayle, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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