[Cite as *State v. Mobley*, 2009-Ohio-5091.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-196 (C.P.C. No. 07CR-1749)
Monica L. Mobley,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 17, 2009

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Monica L. Mobley, from a judgment of the Franklin County Court of Common Pleas, following a jury trial in which appellant was found guilty of one count of forgery and one count of possession of criminal tools.

{¶2} On March 8, 2007, appellant was indicted on two counts of forgery, in violation of R.C. 2913.31, and two counts of possession of criminal tools, in violation of R.C. 2923.24. Counts 1 and 2 charged appellant with acts of forgery and possession of

criminal tools allegedly occurring on August 30, 2006, while Counts 3 and 4 charged her with acts of forgery and possession of criminal tools allegedly occurring on September 8, 2006.

{¶3} The matter came for trial before a jury beginning December 8, 2008. At trial, the state presented evidence that, in June 2006, appellant began communicating with a male individual, identified as "Sunday," through an internet "chat" website, "Black Planet." Sunday told appellant that he was originally from Nigeria.

{¶4} The state introduced chat logs of conversations between appellant and Sunday occurring between June and September 2006. During these conversations, appellant told Sunday that she was going through financial difficulties. Sunday promised to send appellant money, and told her that his brother would be mailing her a money order. Several months passed in which appellant continued to ask Sunday about money.

{¶5} In late August, appellant received an express mail envelope from Mumbai, India, with the sender's name listed as David Scott. The envelope contained a money order in the amount of $3,850. On August 30, 2006, appellant took the money order to the Ohio HealthCare Federal Credit Union ("OHCF credit union" or "credit union"), where she was a member, and made a deposit of $3,850. Appellant also withdrew cash in the amount of $1,500, and wired $1,510 to Proponent Federal Credit Union in New York where she had an existing account.

{¶6} In early September 2006, appellant received another express mail envelope from Mumbai, India, containing another money order in the amount of $3,850. On September 8, 2006, appellant took the second money order to the OHCF credit union and

made a deposit of $3,850. Appellant withdrew cash in the amount of $1,500, and wired $2,350 to Proponent Federal Credit Union.

{¶7} The money orders proved to be fraudulent, and Paula Brown, the member services manager for OHCF credit union, subsequently contacted appellant regarding the transactions. Appellant told Brown that an overseas friend had been helping her out financially, and sent her the money.

{¶8} Barbara Pittman, an accounting clerk with the OHCF credit union, is responsible for investigating fraudulent activity. Pittman reviewed appellant's money order transactions, and informed appellant that a return deposit indicated the items were "no good." (Tr. 67.) Pittman cautioned appellant about the potential for scams, and appellant responded that she was already aware of such scams. Appellant told Pittman that she did not wire any money back to the individual who sent her the money orders, nor had this individual made such a request. Pittman requested that appellant return the funds to the credit union, but appellant told Pittman that the money had already been spent. Pittman then advised appellant to file a police report.

{¶9} Pittman testified that it was the procedure of the credit union that large deposits from out-of-state funds be "placed on hold" for five to ten days. (Tr. 77.) Pittman was questioned as to why appellant was able to immediately wire the funds she received, and Pittman testified that a supervisor could "override" the hold upon request by a customer. (Tr. 77.) According to Pittman, an override occurred on appellant's account.

{¶10} Scott Davis, a detective with the city of Dublin, investigated appellant's transactions with the credit union. On October 5, 2006, Detective Davis interviewed

appellant at the police department. That interview was taped, and the recording was played for the jury at trial.

{¶11} During the interview, Detective Davis questioned appellant about the two money orders she deposited at the OHCF credit union. Appellant responded that she received the money orders from a friend named Sunday who she had met in June of 2006 via an on-line chat website. Sunday indicated he was originally from Nigeria. Appellant also received a check in the mail in the amount of $49,000 which, "at that point," made her think "everything was a hoax." (Tr. 104.) Sunday requested that appellant send some of the money back, and appellant questioned him as to why she would have to return any of the money to him.

{¶12} Appellant told the detective that she believed the credit union would put a hold on the funds at the time she made the deposits. Appellant related that she spent all of the money to pay bills, and she denied knowing that the money orders were fraudulent. Appellant also told Detective Davis that she had previously worked for a bank.

{¶13} Following the presentation of evidence, the jury returned verdicts finding appellant not guilty of Counts 1 and 2, but guilty as to Counts 3 and 4. By judgment entry filed January 27, 2007, the trial court sentenced appellant to a period of five years community control, and ordered restitution in the amount of $3,850.

{¶14} On appeal, appellant sets forth the following two assignments of error for this court's review:

> I. THE VERDICT FORM WAS INADEQUATE TO SUPPORT APPELLANT'S CONVICTION FOR POSSESSING CRIMINAL TOOLS AS A FIFTH DEGREE FELONY, IN VIOLATION OF APPELLANT'S RIGHT TO DUE PROCESS

> OF LAW UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.
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> II. THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HER GUILTY OF FORGERY AND POSSESSING CRIMINAL TOOLS AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICEINT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} Under the first assignment of error, appellant asserts that the verdict form was inadequate to support the conviction for possessing criminal tools as a fifth-degree felony. Specifically, appellant argues that the verdict form is in contravention of the Supreme Court of Ohio's holding in *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, as it does not specify the degree of the offense charged, nor does it set forth aggravating factors.

{¶16} R.C. 2945.75(A)(2) states: "A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged." In *Pelfrey,* syllabus, the Supreme Court, in construing the language of R.C. 2945.75, held that:

> Pursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of a criminal offense.

{¶17} The state concedes that the verdict form in this case, contrary to the Supreme Court's holding in *Pelfrey,* does not state the degree of the offense, nor does it

indicate that the offender possessed the criminal tools with the intent to commit a felony. The state therefore acknowledges that this matter should be remanded for the trial court to amend the judgment to reflect a misdemeanor conviction as to Count 4 of the indictment.

{¶18} Accordingly, appellant's first assignment of error is sustained.

{¶19} Under the second assignment of error, appellant argues that her convictions for forgery and possession of criminal tools are not supported by sufficient evidence. Appellant also challenges the convictions as against the manifest weight of the evidence.

{¶20} In *State v. Drummond,* 111 Ohio St.3d 14, 2006-Ohio-5084, ¶192-93, the Supreme Court of Ohio discussed the distinction between a challenge to the sufficiency of the evidence and a challenge to the manifest weight, holding in relevant part:

> A claim of insufficient evidence invokes a due process concern and raises the question of whether the evidence is legally sufficient to support the jury verdict as a matter of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997 Ohio 52, 678 N.E.2d 541. In reviewing such a challenge, "[t]he 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, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.
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> A claim that a jury verdict is against the manifest weight of the evidence involves a separate and distinct test that is much broader. " '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.' " *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 20 OBR 215, 485 N.E.2d 717.

{¶21} R.C. 2913.31(A) sets forth the offense of forgery, and, states in relevant part, as follows:

> No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:
>
> * * *
>
> (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.

{¶22} The terms "forge" and "utter" are defined under R.C. 2913.01 as follows:

> (G) "Forge" means to fabricate or create, in whole or in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce, or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct.
>
> (H) "Utter" means to issue, publish, transfer, use, put or send into circulation, deliver, or display.

{¶23} R.C. 2923.24(A) defines the offense of possession of criminal tools, and states: "No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally." In the present case, the indictment charging appellant with possessing criminal tools alleged in part that she possessed a counterfeit check "with purpose to use it criminally, and the circumstances

indicated that said * * * instrument * * * was intended for use in the commission of a felony, to wit: Forgery[.]"

{¶24} We first consider the sufficiency of the evidence to support the forgery conviction under Count 4, involving the second money order appellant presented to the OHCF credit union on September 8, 2006. Appellant's primary argument is that she lacked any knowledge, at the time she presented the money order, that the document was not legitimate. Appellant also contends that, despite the fact she took cash withdrawals upon depositing both money orders, she spent the money only on outstanding bills as opposed to any luxury items.

{¶25} At trial, the state presented evidence that, in addition to receiving the two money orders by mail from India, appellant also received a cashier's check, dated August 25, 2006, made to the order of Monica L. Mobley in the amount of $49,900.22, as well as a blank cashier's check. Appellant told Detective Davis that, when she received the check, she asked Sunday if he was "smoking crack? I said: You can't send me a check for $49,000. What am I going to do with $49,000? And then he said: Well, is that too much? So at that point I thought everything was a hoax, at that time." (Tr. 104.) Appellant also told Detective Davis during the interview that she had worked as a bank teller, and that she "worked in online banking, so I am aware of * * * banking procedures and everything like that." (Tr. 107.)

{¶26} The chat logs introduced by the state show that appellant, prior to depositing the second money order on September 8, 2006, received a request from Sunday to send some of the money back to him. Specifically, in a chat log dated September 1, 2006, Sunday asked appellant about sending the remaining money back to

him. On September 2, 2006, Sunday raised the issue of appellant sending him $100 through a "money gram," and he provided a phone number. In a chat log entry one day later, Sunday asked appellant "have u send the * * * $100 i ask u to send to me * * * money gram[?]" According to the testimony of Pittman, the accounting clerk for OHCF credit union, appellant represented to Pittman that she had not been asked to wire any funds back to the individual who sent her the money orders.

{¶27} A review of the two money orders indicates that each bore the same seven-digit serial number (8601379). In a September 4, 2006 chat log entry, appellant expressed concern that Sunday was "going to get me in trouble with the authorities by cashing a money order that is not real." Appellant told Sunday she had "read something about money order scams on CNN and the internet from people in Nigeria." Two days later, appellant told Sunday: "I just spoke to some guy named David Scott asking me about the fake check." Appellant further stated: "How dare he tell me to deposit a fake check. * * * He knows that he sent me a fake check."

{¶28} Pursuant to R.C. 2901.22(B), "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." Ohio courts have noted that, "because a defendant's mental state is difficult to demonstrate with direct evidence, it may be inferred from the surrounding circumstances in the case." *State v. Weese,* 9th Dist. No. 23897, 2008-Ohio-3103, ¶13.

{¶29} Based upon the evidence presented, and the reasonable inferences to be drawn thereupon, the jury could have concluded that the information appellant possessed

could have caused a reasonable person to conclude that the money order she presented to the credit union on September 8, 2006, was not genuine and that it should not have been cashed. That evidence included, as noted above, the chat log conversations between appellant and Sunday in which appellant raised concerns about fake checks, questionable money orders, and Nigerian money scams, and which also revealed Sunday's request that appellant return some of the funds to him. All of those discussions arose prior to the time appellant presented the second money order to the credit union. Also relevant to the issue of knowledge was evidence of appellant's receipt of a blank check, as well as a check made out to her in the amount of $49,900.22 which, according to appellant, made her believe everything was a hoax at that time. Finally, the jury heard appellant's representations to the detective that she was familiar with banking procedures, having previously worked for a bank.

{¶30} Construing the evidence most strongly in favor of the state, as we are required to do in considering a sufficiency challenge, a rational trier of fact could have found the essential elements of forgery, including the element of knowledge, proven beyond a reasonable doubt. We further conclude that the state's evidence was sufficient to support appellant's conviction for possession of criminal tools.

{¶31} Regarding appellant's manifest weight argument, although appellant did not testify at trial, the jury had the opportunity to hear appellant explain her version of the facts through the tape-recorded interview with Detective Davis. While appellant made statements to the detective claiming she was unaware of any "red flags" until after the credit union informed her that both money orders were fraudulent, the jury could have reached a different conclusion based upon the evidence noted above. Here, it was within

the province of the jury to determine issues of credibility, and whether appellant was aware of the forgery at the time she presented the second money order to the credit union. Based upon the record, we cannot conclude that the jury lost its way and created such a manifest miscarriage of justice that the convictions for forgery and possession of criminal tools must be reversed and a new trial ordered.

{¶32} Accordingly, appellant's second assignment of error is without merit and is overruled.

{¶33} Based upon the foregoing, the first assignment of error is sustained, the second assignment of error is overruled, the judgment of the Franklin County Court of Common Pleas is affirmed in part and reversed in part, and this matter is remanded to that court for further proceedings in accordance with law, consistent with this decision.

Judgment affirmed in part and reversed in part; cause remanded.

FRENCH, P.J., and SADLER, J., concur.

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