NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
LOVELL A. RODGERS	:	
Appellant	:	No. 2163 EDA 2021

Appeal from the Judgment of Sentence Entered September 20, 2021
In the Court of Common Pleas of Monroe County
Criminal Division at CP-45-CR-0001204-2018

BEFORE: NICHOLS, J., MURRAY, J., and SULLIVAN, J.

MEMORANDUM BY MURRAY, J.: **FILED JUNE 14, 2022**

Lovell A. Rodgers, (Appellant), appeals from the judgment of sentence imposed after a jury convicted him of 17 counts: one count each of dealing in proceeds of unlawful activities, criminal conspiracy, and corrupt organizations; four counts of theft by unlawful taking; and ten counts of tampering with public records or information.[1] Upon review, we affirm on the basis of the trial court's well-reasoned opinion.

Appellant's convictions resulted from his actions, with co-conspirators,[2] in defrauding Pennsylvania's Workforce and Economic Development Network

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[1] 18 Pa.C.S.A. §§ 5111(a)(1), 903(e), 911(b), 3921(a), and 4911(a)(2). The jury found Appellant not guilty of one count of theft by unlawful taking and four counts of tampering with public records.

[2] The co-conspirators entered guilty pleas. ***See*** Commonwealth Brief at 2.

(WEDnet). WEDnet is a state-funded program that reimburses manufacturers and technology companies for employee training.

The trial court recounted the details of Appellant's criminal activity, which arose from Appellant using a dormant corporation he formed to revive "the well-oiled WEDnet scam" of one of his co-conspirators. ***See*** Trial Court Opinion, 1/20/22, at 9-14. The WEDnet program specifically excludes restaurants and retail employers. Appellant owned a restaurant, and used his dormant corporation (with no revenue or employees) to "submit fake invoices to WEDnet for training that never occurred." ***Id.*** at 12. In return, "Appellant received fraudulent training reimbursement from WEDnet, deposited the funds into the [dormant] corporate account, then distributed same to support the Restaurant and himself." ***Id.*** at 13.

The Commonwealth charged Appellant with the aforementioned crimes, and a jury trial was held in July 2021. After the foreperson read the verdict, Appellant's counsel requested the trial court "poll the jury, Your Honor, on individual counts." N.T., 7/14/21, at 242. Noting that there were a total of 22 counts, the court asked, "Any problem if I poll them as to the entire verdict one at a time as opposed to each count?" ***Id.*** at 243. Appellant's counsel responded, "I need them to be individually polled." ***Id.*** The Commonwealth objected. The court then polled each juror individually as to the 22-count verdict. ***Id.*** at 243-50.

On September 20, 2021, the trial court sentenced Appellant to an aggregate 2-5 years of incarceration, followed by 3 years of probation. Appellant filed a timely notice of appeal and concise statement of errors pursuant to Pa.R.A.P. 1925. Appellant raises the following two issues:

> [1.] Is the evidence sufficient to convict [Appellant] of the offense of tampering with public records, 18 Pa.C.S.A. § 4911?
>
> [2.] Did the trial court err by denying [Appellant's] timely request for individual polling of the jury?

Appellant's Brief at 5.

In his first issue, Appellant challenges the sufficiency of the evidence underlying his convictions of ten counts of tampering with public records. Appellant's Brief at 24-33. In his second issue, he challenges the manner in which the trial court polled the jury. ***Id.*** at 33-42.

With respect to sufficiency,

> The determination of whether sufficient evidence exists to support the verdict is a question of law; accordingly, our standard of review is *de novo* and our scope of review is plenary. In assessing [a] sufficiency challenge, we must determine whether viewing all the evidence admitted at trial in the light most favorable to the [Commonwealth], there is sufficient evidence to enable the factfinder to find every element of the crime beyond a reasonable doubt. [T]he facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. ... [T]he finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part, or none of the evidence.

Commonwealth v. Edwards, 177 A.3d 963, 969-70 (Pa. Super. 2018) (citations omitted).

A person is guilty of tampering with public records if he:

> (1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
>
> (2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection[.]

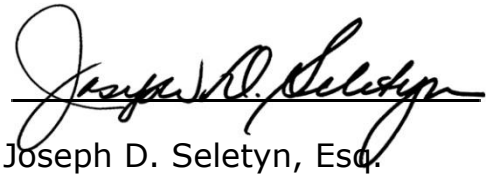
18 Pa.C.S.A. § 4911(a)(1) and (2).

Concerning the trial court's polling of the jury, a criminal defendant has an absolute right to poll the jury to ascertain that each juror voluntarily joined the verdict. ***Commonwealth v. Rush***, 838 A.2d 651, 660 (Pa. 2003); Pa.R.Crim.P. 648(B) and (G) (jury verdicts and polling). In reviewing a claim that the trial court's method of polling the jury was defective, we examine the totality of the circumstances to establish the validity of the polling and determine whether each juror voluntarily agreed to the verdict. ***Commonwealth v. Ciotti***, 436 A.2d 983, 985-86 (Pa. 1981).

After careful review of the record, we find no merit to Appellant's issues. The Honorable Jonathan Mark, sitting as the trial court, has authored a factually and legally comprehensive opinion. ***See generally***, Trial Court Opinion, 1/20/22, at 1-20. As the January 20, 2022 opinion properly addresses Appellant's issues, we adopt and incorporate it in this decision.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/14/2022

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**1204 CR 2018**
	:	
v.	:	**Appeal Docket No. 2163 EDA 2021**
	:	
LOVELL RODGERS,	:	
Defendant.	:	

STATEMENT PURSUANT TO Pa. R.A.P. 1925(a)

We submit this statement in response to the appeal filed by Defendant Lovell Rodgers ("Appellant") from the judgment of sentence entered on September 21, 2021. The relevant procedural history of this case is as follows:

BACKGROUND

On July 14, 2021, after trial by jury, Appellant was convicted of Dealing in the Proceeds of Unlawful Activities,[1] Criminal Conspiracy–Multiple Criminal Objectives,[2] and Corrupt Organizations,[3] all of which are felonies of the first degree; four counts of Theft by Unlawful Taking or Disposition,[4] graded as felonies of the third degree; and ten counts of Tampering with Public Records or Information,[5] also graded as third degree felonies. The jury found Appellant not guilty of one count of Theft by Unlawful Taking or Disposition and four counts of Tampering with Public Records or Information.[6]

On September 20, 2021, we sentenced Appellant to an aggregate of two to five years'

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[1] 18 Pa. C.S.A. § 5111(a)(1).
[2] § 903(e).
[3] § 911(b).
[4] § 3921(a).
[5] § 4911(a)(2).
[6] We note Count 9 of the Amended Criminal Information, Criminal Attempt, 18 Pa. C.S.A. § 901(a), was dismissed by Court Order dated July 14, 2021, following request by the Commonwealth that same be withdrawn.

incarceration, followed by a consecutive three-year period of probation, on the Dealing in Proceeds of Unlawful Activities, Conspiracy, Corrupt Organizations, and Theft convictions. With respect to the ten Tampering with Public Records or Information convictions, the only convictions challenged in this appeal, Appellant was sentenced to a total of three years' concurrent probation. In addition, Appellant was ordered to pay restitution and deemed eligible for the RRRI program. *See* Sentencing Order, 9/20/21, pp. 1–3. Appellant did not file Post-Sentence Motions.

On October 19, 2021, Appellant timely filed this appeal. On October 20, 2021, we issued an Order directing Appellant to file a Concise Statement within 21 days pursuant to Pa. R.A.P. 1925(b).[7] On December 20, 2021, Appellant filed a Concise Statement alleging the following errors: (1) "a new trial is warranted as a result of the trial court's denial of [Appellant's] timely request for individual polling of the jury;" and (2) "the evidence at trial was insufficient as a matter of law to sustain the conviction for each of the ten counts of the offense of tampering with public records, 18 Pa. C.S.A. Sec. 4911[(a)(2)]." *See* Statement of Errors, 12/20/21, pp. 1–2. We address each in turn.

DISCUSSION

In his first assignment of error, Appellant alleges that this Court erred in denying his request for individual polling of the jury. This assignment of error is without merit.

Initially, even a cursory review of the record reveals that the Court did, in fact, individually poll the jury. After the verdict was read, the following occurred:

The Court: Counsel, any requests?

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[7] After trial and before sentencing, Appellant changed attorneys. Current counsel asked for an extension of time of 21 days from receipt of trial transcripts in which to file a Concise Statement because he was not trial counsel and the trial had not yet been transcribed. The last transcript was filed on November 29, 2021. The Concise Statement was filed at 5:07 p.m. on December 20, 2021, the 21st day after the transcripts were filed. Since December 20th was also the due date of the original record, and considering the then-upcoming holidays, this Court submitted a written request for a 30-day extension of time to transmit the record. As of the preparation of this opinion, the Court has not received a response. However, we note that this opinion is being filed and the record transmitted within the requested extension.

Attorney Jackson, defense: We do request that you poll the jury, Your Honor, on individual counts.

The Court: Any problem if we poll them as to the entire verdict one at a time as opposed to each count?

Attorney Jackson: Each count is different, Your Honor, so I guess I need them to be individual . . . There's different verdicts so I think I need them to be individually polled.

The Court: I understand that. But what I'm saying is do you have an objection to saying, for example, to Juror No. 2, did you hear the verdict announced with respect to the 22 counts, and do you agree with that? Is that also your verdict, or are you asking that we go through one at a time?

Attorney Jackson: I'm asking you to go through them one at a time.

* * *

Attorney Anderson, Assistant Attorney General: I object to that, Judge. I think the polling that you indicated first would be more reasonable.

The Court: I think what we'll do is we'll ask it the way I was talking about, but if there is any juror who doesn't believe they could answer the question like that and needs us to go through, then we'll ask those individual questions. So I'll ask you one at a time as we go through. So Juror No. 2, if you could stand, please. I'll ask you, did you hear the verdict that was just read in the courtroom?

Juror No. 2: Yes.

The Court: As to all 22 counts?

Juror No. 2: Yes.

The Court: And do you believe that that verdict is the true and correct verdict reached unanimously by the jury?

Juror No. 2: Yes.

The Court: Is that also your verdict?

Juror No. 2: Yes.

Following this exchange, the Court repeated the same line of questioning to each of the eleven remaining jurors and received unanimous agreement that the verdict as to all twenty-two counts was the true and correct verdict reached by the jury and that the verdict represented the individual verdict of each juror polled. *See* Notes of Testimony, Trial, Day 3, 7/14/21, pp. 242–50 ("N.T., Day 3, p. ____.").

Simply, it is clear from the record that the Court did not deny Appellant's request to poll the jury. On the contrary, the Court thoroughly questioned each juror individually to ensure his or her assent to the verdict and unanimity as to all twenty-two counts.

Appellant may attempt to argue, as trial counsel requested, that individual jurors should have been polled on each of the twenty-two charges. Any such argument would be equally without merit.

Initially, Appellant did not specifically raise the argument in his Concise Statement. As written, Appellant's assertion is that we ***denied*** trial counsel's request to poll the jury. Likewise, *Commonwealth v. Downey*, 732 A.2d 593, 595 (Pa.1999), the decision cited by Appellant to support this assertion, involved a trial court's outright denial of a request to poll the jury, not a claim that the polling methodology was defective. Thus, it is not clear that Appellant properly preserved a challenge to the manner in which the poll was conducted.

Additionally, Appellant did not cite authority that would require a trial court to ask each juror about each count of a multiple count verdict or that gives defense counsel the ability to dictate the manner of polling or the language used. We do not believe that such requirements exist. Instead, under established precedent, the basic requirement, regardless of the method employed or

language used, is that the poll must ensure that each juror voluntarily joined in the verdict as written and announced. That is exactly what we ensured here.

A conviction must be based on a unanimous jury verdict. *Commonwealth v. Ciotti,* 436 A.2d 983 (Pa. 1981); *Commonwealth v. Carter*, 478 A.2d 1286 (Pa. Super. 1984); *Commonwealth v. Pemberton,* 389 A.2d 1132 (Pa. Super. 1978); Pa.R.Crim.P. 648(B). An accused has an absolute right to poll the jury after in order to ensure that each juror voluntarily joined in the verdict as written and announced. *Commonwealth v. Rush*, 838 A.2d 651, 660 (Pa. 2003); *Ciotti, supra*; *Commonwealth v. Downey*, *supra*; *Commonwealth ex rel. Ryan v. Banmiller*,162 A.2d 354, 356 (1960), *cert. denied*, 364 U.S. 852 (1960); *Commonwealth v. Martin,* 109 A.2d 325, 328 (Pa. 1954). In more expanded terms:

> The purpose of permitting individual polling is to protect one's right to be convicted by a unanimous jury only, a right protected by both the United States Constitution and the Constitution of this Commonwealth. *See* U.S. Const. art. III § 2; U.S. Const. amend. VI; Pa. Const. art. I, § 6. As explained by this court in *Commonwealth v. Martin,* 379 Pa. 587, 109 A.2d 325, 328 (1954):
>
> > The polling of the jury is the means for definitely determining, before it is too late, whether the jury's verdict reflects the conscience of each of the jurors or whether it was brought about through the coercion or domination of one of them by some of his fellow jurors or resulted from sheer mental or physical exhaustion of a juror. [. . .]

Downey, 732 A.2d at 595.

The constitutionally-based unanimity requirement and right to poll the jury are codified in the Rules of Criminal Procedure. Specifically, Pa. R.Crim.P. 648(B) and (G) provide:

> (B) The verdict shall be unanimous, and shall be announced by the foreman in open court in the presence of a judge, the attorney for the Commonwealth, the defendant and defendant's attorney. . . .

* * *

> (G) Before a verdict, whether oral or sealed, is recorded, the jury shall be polled at the request of any party. Except where the verdict is sealed, if upon such poll there is no concurrence, the jury shall be directed to retire for further deliberations.

In cases in which a defendant argues that the trial court's polling procedure or colloquy are defective, or that a *de facto* denial of the right to poll occurred, our appellate courts look to the totality of the circumstances to determine the validity of the polling and whether each juror voluntarily entered into the verdict. *See Ciotti, supra; Banmiller*, *supra*; *Carter, supra*; *Commonwealth v. Parks*, 417 A.2d 1163 (Pa. Super. 1979). "The words used in the polling . . . are not necessarily determinative of the poll's validity. The court must also consider '(t)he demeanor and appearance of the juror(s) as well as all of the surrounding circumstances" to determine "whether their answers do clearly indicate the assent of their individual minds.'" *Ciotti*, 436 A.2d at 985-86 (quoting *Banmiller*, 162 A.2d at 356) (footnote omitted).

In this case, we believe it is clear from our colloquy, standing alone, that the polling we conducted was constitutionally firm and ensured both unanimity and that each juror voluntary assented to the verdict as to all twenty-two counts. However, to the extent further analysis is needed, the polling colloquy did not stand alone. As in the cited cases, before the jury retired to deliberate, we instructed the jury that: 1) their verdict must be unanimous; 2) the verdict must be based solely on the evidence presented in the courtroom during the trial; 3) each individual juror must make an independent judgment of Appellant's guilt or innocence and must not agree to a verdict if it does violence to their individual judgment; and 4) a juror should not hesitate to reexamine his or her own views and change his or her opinion if convinced it was erroneous. N.T., Day 3, pp. 225-27. In addition, the jury was provided with a written verdict slip that was explained to them. *Id.* at 229-30. After the verdict was reached, the slip was completed as to each count. All

twelve jurors signed the completed slip and the foreperson signed a second time in that capacity. Verdict Slip, 7/14/2021, pp. 1–6. When the jury returned to the Courtroom the verdict slip was reviewed by the Court. The written verdict was read in open court and assented to by the jury as a group. Thereafter, we individually polled the jurors, each of whom confirmed that the verdict as announced was both his or her own verdict and the unanimous verdict of the jury. In conducting the poll, we instructed that if a juror could not answer the questions as presented, the Court would go through each individual charge with the juror. Finally, the verdict as announced in the courtroom and assented to by the jury individually and as a group mirrored the verdict entered on the slip that was signed by all jurors. Under the totality of these circumstances, we believe that the jury poll we conducted was valid.

In sum, the poll we conducted was proper and ensured each juror's voluntary assent to the verdict as to all twenty-two charges and that the verdict was unanimous. Appellant's right to be convicted by a unanimous jury was thoroughly safeguarded and his first issue on appeal is without merit.

In his second assignment of error, Appellant argues the evidence at trial was insufficient as a matter of law to sustain the convictions for each of the ten counts of Tampering with Public Records. This, too, lacks merit.

In reviewing the sufficiency of the evidence, we must determine whether the evidence, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict winner, supports the jury's finding of all of the elements of the offense beyond a reasonable doubt. *Commonwealth v. Eichinger*, 915 A.2d 1122, 1130 (Pa. 2007); *Commonwealth v. Spotz*, 759 A.2d 1280, 1283 (Pa. 2000). This standard is "equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the

evidence links the accused to the crime beyond a reasonable doubt." *Commonwealth v. Antidormi*, 84 A.3d 736, 756 (Pa. Super. 2014) (quoting *Commonwealth v. Sanders*, 627 A.2d 183, 185 (Pa. Super. 1993)). Moreover, the facts and circumstances need not be absolutely incompatible with the Appellant's innocence. *See Commonwealth v. Cruz-Centeno*, 668 A.2d 536, 539 (Pa. Super. 1995). The question of any doubt is for the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. *See id.*

The trier of fact, while passing upon the credibility of witnesses, is free to believe all, part, or none of the evidence. *Commonwealth v. Dupre*, 866 A.2d 1089 (Pa. Super. 2005); *Commonwealth v. DiStefano*, 782 A.2d 574 (Pa. Super. 2001). In this regard, credibility determinations are generally not subject to review. *See Commonwealth. v. Garcia*, 535 A.2d 1186, 1188 (Pa. Super. 1988).

Tampering with Public Records or Information, 18 Pa. C.S.A. Sec. 4911(a)(2), is defined in relevant part as follows:

> **(a) Offense defined.**--A person commits an offense if he:
>
> (1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
>
> (2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection;
>
> * * *
>
> **(b) Grading.**--An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

Thus, to be found guilty of Tampering with Public Records under 4911(a)(2) as a felony requires proof that: 1) Appellant made, presented or used a record or document as alleged; 2) the document or record was false; 3) Appellant knew it was false; 4) Appellant intended that the record or document be taken as a genuine part of information or records belonging to the government or received or kept by the government for information or record; and 5) the intent of the Appellant was to defraud.

In this case, the evidence presented at trial, viewed in the light most favorable to the Commonwealth, clearly establishes all elements. In comprehensive summary:

The Commonwealth of Pennsylvania administers a grant program called the Guaranteed Free Training Program ("Program"). *See* Notes of Testimony, Trial, Day 1, 7/12/21, pp. 45–46 ("N.T., Day 1, p. ____."). The Program is administered by the Pennsylvania Department of Community and Economic Development through an agency designated the Workforce and Economic Development Network of Pennsylvania ("WEDnet"). *Id.* The Program is designed to help manufacturers and technology companies train their employees. *Id.* Through the Program, a qualifying business can have training expenses reimbursed for employees in two approved fields: (1) essential skills training; and (2) information technology training. *Id.* at 53. Notably, retail businesses and restaurants are explicitly defined as ineligible under the Program. *Id.* at 48. In addition, the WEDnet program is administered through local partners – East Stroudsburg University is the local partner in Monroe County. *Id.* at 56.

To qualify for grant reimbursement, a company point of contact ("POC") must first execute an inquiry form on the WEDnet website to determine eligibility for the Program. *Id.* at 50–55. If the company meets threshold requirements, the POC executes a Memorandum of Agreement ("MOA") through the WEDnet website certifying that the business meets certain

additional requirements. *Id.* at 56. The MOA includes a certification by the applicant that they are eligible to receive the funds, and that providing knowingly false information will result in legal action. *Id.* at 65. Notably, a company may file separate MOA for each of the two funding streams – essential skills and information technology. *Id.* at 67. Moreover, a company may only receive training grants two years in a row, or three years out of a five year period. *Id.* at 66.

Once complete, the MOA is signed electronically and submitted to WEDnet. *Id.* at 56. Following this, the completed inquiry and MOA are submitted to the local WEDnet partner for review. *Id.* If the partner approves the submitted information, it is sent to WEDnet in Harrisburg for final approval. *Id.* at 57. Once the MOA is executed and approved by WEDnet, a contract is formed and the POC is authorized to submit invoices for training in one of the two approved fields. *Id.* WEDnet is a reimbursement program and does not provide grant money up-front. *Id.* at 47. Thus, WEDnet reimburses training expenses following the occurrence of the designated training and submission to WEDnet of a paid invoice from the training company. *Id.* As discussed, WEDnet does not directly issue the training reimbursement checks. In this case, East Stroudsburg University cut the relevant reimbursement checks. *Id.* at 60.

In the fall of 2013, Appellant, his wife, Marsha Rodgers, and their friends, John and Donna Marino, formed a corporate entity called "Jubillee, Inc." ("Jubillee") to own a restaurant named "Ahh Sheri Empanadas" ("Restaurant") they planned to open. *Id.* at 181–86. Appellant, his wife, and the Marinos were the shareholders. *Id.* From the beginning, the Restaurant and Jubillee struggled financially. *See* Notes of Testimony, Trial, Day 2, 7/13/21, pp. 6–8, 14 ("N.T., Day 2, p. ____.").

John Marino previously used two of his own companies, YKT Corporation ("YKT") and Pocono Developers, to submit fake invoices for employee training reimbursement through the

WEDnet Program. N.T., Day 1, pp. 63–67, 70–74, 96. Marino's scheme to defraud WEDnet was lucrative and generated over two hundred thousand dollars in fraudulent training reimbursement; however, both YKT and Pocono Developers were nearing the five-year maximum allowable grant allotment. *Id.* With the Restaurant and Jubillee desperately in need of funding, Marino and Appellant used R1 Incorporated ("R1"), a dormant corporation formed by Appellant in 2007 to run a cleaning business called Rodgers Carpet Cleaning Service, to revive the well-oiled WEDnet scam. *Id.* at 169. R1 had no revenue, no employees, and there were no records filed with the Pennsylvania Department of Labor and Industry. *Id.* at 170.

On October 15, 2014, R1 submitted an essential skills grant application and MOA to WEDnet with the intention of receiving employee training reimbursement. *Id.* at 80. In addition, R1 submitted a nearly identical information technology grant application and MOA, thus seeking access to both funding streams allocated by the Program. *Id.* at 88. The applications indicated R1 was a food manufacturer for restaurants specializing in dough wrapped products. *Id.* at 80. Under this false description, R1 satisfied the Program's manufacturing requirement. *Id.*

The MOAs submitted for R1 listed Appellant as POC, company executive, and registered user to access the WEDnet system. In addition, the MOAs included a contact address of 2398 Winding Way – Appellant's home address – in Tobyhanna, PA, and were transmitted with Appellant's digital signature. *Id.* at 80–81. Based on the representations made in the applications and MOAs, R1 was approved for the Program benefits. *Id.* A user account was authorized for R1 to submit requests for training reimbursement. Appellant was listed as the active user for the WEDnet account. *Id.*

On July 29, 2015, R1 submitted identical essential skills and information technology grant applications and MOAs to WEDnet with the intention of receiving employee training

reimbursement and accessing both funding streams allocated by the Program. *Id.* at 90. The Program requires grant applications be resubmitted every fiscal year. As such, R1 sought renewal of their previously approved grants. *Id.* Both applications were approved and R1 resumed submitting training invoices for reimbursement.

Thus, using Appellant's inactive cleaning company R1, Appellant and John Marino agreed to submit fake invoices to WEDnet for training that never occurred and for employees that were not employed by R1, the Restaurant or Jubillee. The training was supposedly provided to R1 by a company called Discover Link, Inc. ("Discover Link") based in Chicago; however, Discover Link never provided any training to R1 employees and never rendered any invoices to R1. As such, the invoices submitted by R1 to WEDnet were not created or issued by Discover Link. *Id.* at 99. In fact, the invoices were wholly fabricated by Appellant and Marino with the intent of defrauding the Program and WEDnet.

In the fall of 2014, Appellant and Marino began to receive employee training reimbursement checks from WEDnet. On December 17, 2014, Appellant went to Peoples Security Bank in Mount Pocono, Pennsylvania, and opened a corporate account for R1. *Id.* at 125-27. Appellant provided an email address for R1 and an address of 2398 Winding Way, Tobyhanna, PA. *Id.* at 137–38. Appellant funded the account with a $27,135 check from WEDnet, payable through East Stroudsburg University, that was addressed to R1 and endorsed by Appellant. *Id.* at 139-40.

Over the next two years, the R1 corporate account opened by Appellant and initially funded by a check signed by Appellant was used as the repository for the deposit of training reimbursement checks from WEDnet. Each deposited check was endorsed by Appellant. *Id.* at 140-51. In addition, text message communications establish that John Marino deposited checks

endorsed by Appellant into the R1 account, and that Appellant and Marino frequently communicated about when checks would be deposited. *Id.* at 201-03. After depositing the checks, money was transferred from the R1 account to Jubillee, the Restaurant, YKT Corporation and Appellant's personal account. *Id.* at 140-51. In other words, Appellant received fraudulent training reimbursement from WEDnet, deposited the funds into the R1 corporate account, then distributed same to support the Restaurant and himself.

Each of the checks deposited into the R1 corporate account corresponded to fraudulent training invoices submitted to WEDnet.[8] Between October 27, 2014 and April 25, 2016, R1 submitted the following fraudulent invoices to WEDnet for reimbursement of employee training that never occurred: On October 27, 2014, R1 submitted an invoice from Discover Link for a total of $10,235. *Id.* at 83. On November 4, 2014, R1 submitted an invoice from Discover Link for a total of $16,900. *Id.* at 89.[9] On April 6, 2015, R1 submitted an invoice from Discover Link for 16 employees for a total of $13,520. *Id.* at 90. On April 16, 2015, R1 submitted an invoice from Discover Link for 16 employees at a cost of $445 each for a total of $7,120. *Id.* at 86-87. On June 25, 2015, R1 submitted an invoice from Discover Link for a total of $8,010. *Id.* at 88. On August 17, 2015, R1 submitted an invoice from Discover Link for a total of $8,170. *Id.* at 92. On August 31, 2015, R1 submitted an invoice from Discover Link for a total of $15,998. *Id.* at 91. On November 2, 2015, R1 submitted an invoice from Discover Link for a total of $6,880. *Id.* at 92. On November 9, 2015, R1 submitted an invoice from Discover Link for a total of $13,472. *Id.* at 91. Finally, on April 25, 2016, R1 submitted an invoice from Discover Link for a total of $29,750.

[8] We note that some checks from WEDnet represented the sum of multiple invoices submitted to WEDnet over a given time period. For example, the $27,135 used to initially fund the R1 corporate account at Peoples Security Bank was the sum of the October 27, 2014 invoice for $10,235 and the November 4, 2014 invoice for $16,900.

[9] We note Appellant was found not guilty of the Tampering with Public Records charges related to the October 27, 2014 and November 4, 2014 invoices submitted to WEDnet. Despite this, it was uncontested at trial that these invoices were fraudulent.

Id. at 93. In total, R1 received reimbursement for 57 different employees – each identified by their social security number on the grant application and invoice forms, none of whom were actual employees. *Id.* at 103. All digital communications, including applications, MOAs, and invoices were transmitted to WEDnet from a computer located in John Marino's house. *Id.* at 75–78.

Taken together, the evidence presented at trial, viewed in the light most favorable to the Commonwealth, established that Appellant and Marino started Jubillee with the intention of opening and later franchising a restaurant concept called Ahh Sheri Empanadas. Marino previously used two corporations, YKT and Pocono Developers, to defraud the WEDnet Program. When the Restaurant needed funds, Marino and Appellant conspired to revive the well-oiled scam using R1. Appellant controlled R1, Appellant's identifying information was used to establish the WEDnet account and funding contract, and Appellant's identifying information was used to establish the R1 corporate bank account, and Appellant endorsed, deposited, and communicated about WEDnet reimbursement checks and profited from the money received. As such, the evidence presented at trial amply supported the ten convictions for Tampering with Public Records.

The ten challenged convictions under 18 Pa. C.S.A. Sec. 4911(a)(2) are predicated on the submission of the fraudulent applications, MOAs, and the above-listed invoices for employee training to WEDnet. In his Concise Statement, Appellant argues "the evidence at trial was insufficient as a matter of law to sustain the conviction for each of the ten counts of the offense of tampering with public records." *See* Statement of Errors, 12/20/21, p. 2. In support, Appellant argues: 1) the MOAs and false invoices at issue were prepared by John Marino and submitted from Marino's IP address; 2) that Marino had prepared and submitted nearly identical invoices in the past for YKT Corporation and Pocono Builders; 3) that no invoices or MOAs were recovered from Appellant's home following a police search; and 4) that Marino's book keeper, Annette Saylor,

prepared the false invoices at issue. *Id.* In addition, Appellant argues he testified at trial that he never visited WEDnet's website and never submitted false invoices or MOA. *Id.* As such, Appellant concludes, "the Commonwealth presented no evidence or witness indicating that defendant prepared, submitted, processed, saw, or was made aware of the existence of any document alleged to constitute the tampered records in this matter." *Id.* In addition, Appellant asserts, without argument, that the Commonwealth "did not proceed under a theory of accomplice liability in the matter *sub judice*." *Id.* at 3.

The crux of Appellant's argument is that no evidence presented at trial placed him in Marino's home when the false invoices and MOAs were electronically transmitted via computer to WEDnet. Appellant argues that if he was not at Marino's home, he could not have made, presented or used the records within the meaning of 18 Pa. C.S.A. Sec. 4911(a)(2). Appellant stands his challenge to all ten counts of Tampering with Public Records on this argument. Thus, Appellant offers no argument why the evidence was insufficient regarding a certain date or count; rather, he presents a general argument to nullify all ten counts. As such, we will consider all ten counts jointly – if the evidence, both direct and circumstantial, is sufficient to overcome Appellant's general argument, then it will be sufficient to render Appellant's argument a nullity on all counts. With the foregoing in mind, we now jointly address Appellant's challenged convictions.

The elements of Tampering with Public Records are as follows: 1) that the Appellant made, presented or used a record or document as alleged; 2) that the document or record was false; 3) that the Appellant knew it was false; and 4) that the Appellant intended that the record or document be taken as a genuine part of information or records belonging to the government or received or kept by the government for information or record.

Regarding the first element, Appellant argues the evidence does not place him at John Marino's home at the times the relevant documents were electronically submitted to WEDnet. In addition, Appellant argues he did not prepare the documents and that same were prepared by John Marino's book keeper, Annette Saylor. Despite this, the language employed in 4911(a)(2) supports a conviction where the defendant "made, presented or used a record or document." We note that "[i]n all matters involving statutory interpretation, we apply the Statutory Construction Act, 1 Pa. C.S. §§ 1501 *et seq.*, which directs us to ascertain and effectuate the intent of the General Assembly. 1 Pa.C.S. § 1921(a); *Commonwealth v. Kingston*, 143 A.3d 917, 922 (Pa. 2016). A statute's plain language generally provides the best indication of legislative intent. *Id.* (citations omitted). Thus, "[w]here the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words." *Id.* (citations omitted).

Based on a plain reading of 4911(a)(2), the Commonwealth did not have to prove that Appellant made or prepared the relevant documents. The term "present" is defined as "to give or bestow;" while the term "use" is defined as "to put into action or service."[10] Specifically, the term "use" suggests that the fraudulent document be put into action – in this case, the action is triggering the approval of grant reimbursement funds. As such, the operative language "presented or used" requires Appellant have knowledge of the transmission of the document to WEDnet with the purpose of defrauding the Program. Simply put, the statutory language does not require that Appellant prepared the document or was present at Marino's house when the document was

[10] "Use." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/use. Accessed 11 Jan. 2022; "Present." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/present. Accessed 11 Jan. 2022.

electronically submitted.[11] Appellant's knowledge and use of the fraudulent submissions and his intention to present same to WEDnet were sufficient.

With this in mind, the direct and circumstantial evidence supports finding, beyond a reasonable doubt, that Appellant presented or used the fraudulent documents in the manner alleged. Appellant had a personal friendship with John Marino and admired his business acumen and success. Based on this, Appellant and Marino started Jubillee with the intention of opening and later franchising a restaurant concept called Ahh Sheri Empanadas. John Marino had previously used two corporations, YKT and Pocono Developers, to defraud the WEDnet Program. When the Restaurant struggled financially, Appellant used R1, a dormant corporation set up to run a cleaning business in 2007, to file fraudulent applications, MOAs and invoices to WEDnet. In addition, Appellant set up a corporate bank account at Peoples First Bank that listed his personal information and address. The R1 account was funded with a check received from WEDnet and endorsed by Appellant. Moreover, funds were solely deposited in the account from checks issued from WEDnet following the submission of fraudulent invoices for employee training that never occurred. Both Appellant and Marino deposited the fraudulently obtained checks, and both communicated via text message about the funds. In addition, the funds deposited in the account were transferred to Jubillee, the Restaurant, YKT, and Appellant's personal account.

Taken together, there is ample direct and circumstantial evidence to support finding that Appellant presented or used the fraudulent applications, MOAs and invoices. To find otherwise would offend common sense. John Marino previously defrauded the WEDnet Program. When the

[11] We note that, given the long friendship and business relationship between Appellant and John Marino, the conspiracy and fraudulent scheme in which both were involved, and Appellant's testimony that he had been to Marino's house, we believe the jury was free to infer Appellant was present at Marino's house when the relevant documents were prepared and submitted; however, given all of the direct and circumstantial evidence in this case, we do not believe this permissible inference is either necessary or controlling under 4911(a)(2). *See* N.T., Day 3, pp. 44–48.

Restaurant needed funds, Marino and Appellant conspired to revive the well-oiled scam using R1. Appellant controlled R1, Appellant's identifying information was used to establish the WEDnet account and funding contract, and Appellant's identifying information was used to establish the R1 corporate bank account. From this evidence, the jury was free to reasonably infer that Appellant had knowledge of the fraudulent submissions and intended to present or use same for the purpose of receiving employee training reimbursement from WEDnet.

Appellant's argument relies on his own trial testimony that he did not have knowledge of the WEDnet scam and that Marino acted independently. Appellant asked the jury to believe he was duped by Marino. However, the jury, in passing upon the credibility of Appellant's testimony, was free to believe all, part, or none of it. The jury was free to reject Appellant's testimony and characterization of the evidence, in whole or in part, and was likewise free to find that Appellant's testimony was outweighed by other evidence presented by trial.[12] It obviously did.

The evidence presented at trial offered a comprehensive portrait of Appellant's life during the relevant time period. Appellant wanted the Restaurant to provide a legacy for his children, and he invested substantial amounts of his own money into the endeavor. Appellant enlisted friends and family to invest, and devoted much of his spare time to working at the Restaurant. Simply put, Appellant had a lot to lose if the Restaurant failed. Marino offered an easy way out – a well-oiled scam that worked undetected for two separate companies. From this, the jury could reasonably conclude Appellant's assertion that he was duped by Marino was nothing more than an attempt to

[12] We note that the jury found Appellant not guilty on four counts of Tampering with Public Records. The not guilty verdicts align with the earliest submissions made by R1 to WEDnet, including the first round of MOAs in the fall of 2014 and the first two invoices submitted to the Program. This fact suggests that the jury did lend some weight to Appellant's testimony and may have concluded that, at the outset of the WEDnet scam but not thereafter, Appellant did not knowingly or intentionally participate in the submission of fraudulent invoices.

escape criminal responsibility.[13] Thus, the jury was well within their province as fact-finder to conclude Appellant presented or used the fraudulent invoices within the meaning of 4911(a)(2).

Regarding the second element, it is undisputed the documents or records in question were false. Next, regarding the third element, we find the trial record amply supports finding, beyond a reasonable doubt, that Appellant knew the documents or records in question were false. For the reasons previously discussed, R1 was purposefully revived to run Marino's scam and fund the Restaurant. Appellant knew the representations made to WEDnet were false, knew the employees were fictitious, and knew the trainings billed through Discover Link never occurred. As such, the third element is satisfied.

As to the fourth element, no argument is presented on this point; however, the evidence presented at trial supports finding, beyond a reasonable doubt, that Appellant intended the documents submitted be taken as a genuine part of information or records belonging to the government. The documents were submitted to a Pennsylvania Program with the purpose of receiving State grant monies. The applications, MOAs and invoices were required to enter and receive funding through the Program, and qualify as information or records belonging to the government of Pennsylvania.

Finally, we note the offenses here were charged as felonies of the third degree and require that the intent of the Appellant was to defraud. Based on the foregoing, we find that the evidence presented at trial supports, beyond a reasonable doubt, that Appellant's intent was to defraud.[14]

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[13] At the conclusion of trial, Appellant requested, and the Court provided, an ignorance or mistake of fact jury instruction. As such, the jury was free to consider the defense of ignorance or mistake of fact. N.T., Day 3, pp. 225-27. It obviously found that defense unavailing.

[14] We note that we need not reach Appellant's contention that the Commonwealth did not proceed under a theory of accomplice liability. The evidence presented at trial established, beyond a reasonable doubt, that Appellant was a principal in the WEDnet fraud, and no theory of accomplice liability was required to support the challenged convictions.

In sum, the evidence, viewed in light of the applicable standards, establishes beyond a reasonable doubt that Appellant committed all ten counts of Tampering with Public Records or Information.[15] Appellant's second assignment of error, like the first, is without merit.

For these reasons, we believe Appellant's assignments of error lack merit and the judgment of sentence should be affirmed. Nothing further remains to be determined at this time.

BY THE COURT:

JONATHAN MARK, J.

Clerk of Courts
JAN 20 '22 PM1:30

cc: Superior Court of Pennsylvania
Pennsylvania Office of the Attorney General
Attn: Bernard A. Anderson, Esq., Senior Deputy Attorney General
Timothy Tarpey, Attorney for Appellant
Lovell Rodgers, Appellant
Clerk of Courts

[15] We note the evidence at trial established with specificity, and beyond a reasonable doubt, that Appellant committed the challenged offenses on the dates alleged in each Count of the Amended Criminal Information.