

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ADA H. WIMBERLY,	:	
	:	
Appellant	:	No. 375 MDA 2013

Appeal from the Judgment of Sentence September 19, 2012  
In the Court of Common Pleas of Lebanon County  
Criminal Division No(s).: CP-38-CR-0000367-2012

BEFORE: BENDER, P.J., WECHT, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED DECEMBER 06, 2013**

Appellant, Ada H. Wimberly, appeals from the judgment of sentence entered in the Lebanon County Court of Common Pleas, challenging the sufficiency of the evidence for her jury conviction of forgery.<sup>1</sup> We affirm.

The trial court summarized the facts as follows. The victim in this case, Vicky Roman, previously lived at Appellant’s address. In May of 2009, Roman learned from her employer that her paycheck was mailed to her prior address and that the check was cashed. Lebanon City Police Detective Keith Uhrich investigated the matter and obtained a photograph from a corner

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 4101(a)(2).

store which showed Appellant, an Ivonne Delarossa, and an unidentified third woman at the register on the date and time the paycheck was cashed.

Appellant was charged with forgery as a felony of the third degree under Section 4102(a)(2), and the case proceeded to a jury trial on July 13, 2012. The jury found her guilty, and on September 19, 2012, the court imposed a sentence of twelve months' probation, costs of prosecution, a fine of \$250, and restitution of \$174.53.<sup>2</sup> Appellant filed a timely post-sentence motion seeking acquittal based on insufficient evidence. The court denied the motion on January 25, 2013, and Appellant took this timely appeal.

On February 21, 2013, the court ordered Appellant to file a Pennsylvania Rule of Appellate Procedure 1925(b) statement of errors complained of on appeal within twenty-one days, or March 14th. Appellant's counsel, of the Lebanon County Public Defender's office, did not file a 1925(b) statement until April 17th. The record does not reflect a request for nor grant of an extension of time to file this statement.

We remind counsel "that failure to timely file a Rule 1925(b) statement is the equivalent of a failure to file said statement[,]" and that "[b]oth failures constitute *per se* ineffective assistance of counsel." ***Commonwealth v. Fischere***, 70 A.3d 1270, 1275 n.2 (Pa. Super. 2013) (*en banc*). However, because in this case the trial court accepted

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<sup>2</sup> Sentencing Order, 9/27/12.

Appellant's untimely 1925(b) statement and addressed her issues in an opinion, we do not remand for the filing of a proper statement. **See id.**

We further remind counsel "that when challenging the sufficiency of the evidence on appeal, the [a]ppellant's 1925 statement must 'specify the element or elements upon which the evidence was insufficient' in order to preserve the issue for appeal." **Commonwealth v. Garang**, 9 A.3d 237, 244 (Pa. Super. 2009) (citation omitted). Appellant's 1925(b) statement raised the following claim: "There was insufficient evidence for [Appellant] to be found guilty of the charges." Appellant's Concise Statement of Matters Complained of on Appeal, 4/17/13. This statement fails to identify not only the elements Appellant wishes to challenge, but even the offenses of which she was convicted. Nevertheless, in this "relatively straightforward" case, Appellant was charged with and convicted of only one offense. **See Commonwealth v. Laboy**, 936 A.2d 1058, 1060 (Pa. 2007). Because her "1925(b) statement was intended to be a guide to the trial judge in the preparation of an opinion, and . . . in this case it accomplished that goal," we decline to find waiver. **Id.** at 1059.

Appellant's sole issue is that there was insufficient evidence to support a guilty verdict for forgery. She reasons that "[t]here was no testimony indicating that [she] was the individual who actually signed the back of the check." Appellant's Brief at 9. Instead, Appellant maintains, the testimony established only that Delarossa and another woman were at her "house prior

to arriving home from work on the date of the incident," "the unidentified third woman asked [her] to pass the check . . . since [Appellant] had a valid identification card," and that she and the other two women were in the store. **Id.** at 8-9. Appellant further maintains that the store "clerk stated that [Appellant] handed the check to him already signed." **Id.** at 9. We find no relief is due.

This Court has stated:

A claim challenging the sufficiency of the evidence presents a question of law. We must determine "whether the evidence is sufficient to prove every element of the crime beyond a reasonable doubt." We "must view evidence in the light most favorable to the Commonwealth as the verdict winner, and accept as true all evidence and all reasonable inferences therefrom upon which, if believed, the fact finder properly could have based its verdict."

Our Supreme Court has instructed: [T]he facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier 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.

In addition, "[t]he Commonwealth may sustain its burden by means of wholly circumstantial evidence, and we must evaluate the entire trial record and consider all evidence received against the defendant."

**Commonwealth v. Williams**, 73 A.3d 609, 617 (Pa. Super. 2013)  
(citations omitted).

Appellant was convicted under the following subsection of the forgery statute:

**(a) Offense defined.**—A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

\* \* \*

(2) makes, completes, executes, authenticates, issues **or transfers** any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed[.]

18 Pa.C.S. § 4101(a)(2).

The above definition does not require the actor to have signed the writing. **See id.** Thus, the question of whether there was evidence that Appellant signed the check, alone, is not dispositive of whether she committed forgery under subsection (a)(2). Instead, the act of transferring the writing may satisfy the elements of this subsection. **See id.** On appeal, Appellant concedes that the store clerk “stated [Appellant] handed the check to him already signed.” Appellant’s Brief at 9.

The victim, Roman, testified “that she did not give anyone permission to sign or cash her paycheck.” Trial Ct. Op. at 5. At trial, Appellant testified to the following. Her friends and family visit her home, even when she is not there. N.T. at 39. On the day in question, Delarossa, “a few” other

people, and the unidentified woman were in her home when she arrived there. **Id.** at 40. The woman had a check and asked Appellant to cash it for her “because Appellant had a valid identification card.” Trial Ct. Op. at 5. Although neither Appellant “nor Delarossa could identify the third woman,” Appellant “believed [she] was Roman,” but “did not attempt to confirm [her] identity.” **Id.** “[T]he check was signed when she saw it for the first time.” **Id.** Appellant “cashed the check for the woman because the woman needed money for diapers.” **Id.** Appellant “couldn’t cash the check at her bank because of an overdrawn account.” **Id.**

The court further noted,

Testimony revealed that Appellant was a regular at the Corner Store and did not have to present identification to cash checks there. It was established that Appellant was the individual who cashed the check and received the money for it. Appellant also initially said she did not get any money from cashing the check. However, at trial she admitted that the unidentified woman gave her some money after receiving the cash.

**Id.**

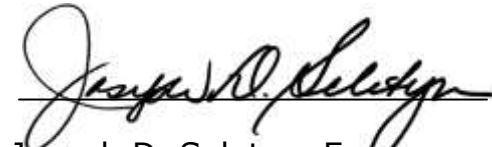
Finally, although Appellant testified at trial that the unidentified woman was already at her house with the check when she returned home, Appellant’s argument on appeal ignores the victim Roman’s testimony that her paycheck was mailed to Appellant’s address. **See** N.T. Jury Trial, 7/13/12, at 5. The jury was charged with weighing the witnesses’ testimony and was “free to believe all, part or none of the evidence.” **See Williams,** 73 A.3d at 617. Viewing the evidence in the light most favorable to the

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Commonwealth, we agree with the trial court that the evidence supports a finding that Appellant transferred the check "so that it purport[ed] to be the act of another who did not authorize that act." **See** 18 Pa.C.S. § 4101(a)(2). Accordingly, we find no relief due on her challenge to the sufficiency of the evidence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/6/2013