

[Cite as *State v. Brewster*, 2010-Ohio-2497.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JONATHAN S. BREWSTER

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09CA0018

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Coshocton County
Common Pleas Court, Case No.
08 CR 0080

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

June 2, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Jonathan S. Brewster appeals his conviction in the Coshocton County Court of Common Pleas on one count of insurance fraud in violation of R.C. 2913.47. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 23, 2007, Appellant was involved in a motor vehicle accident with another driver. Appellant left the scene of the accident on foot.

{¶3} At the time of the accident, Appellant's vehicle was insured with Illinois National Insurance Company, policy number AIG 6897212. The policy carried both collision and comprehensive coverage with a \$1,000 deductible for both types of coverage.

{¶4} On June 24, 2007, Appellant reported to Illinois National his car had been stolen, and the vehicle had sustained damage as a result thereof. Appellant did not file a stolen car report with the Sheriff's Office. Forensic evidence later revealed Appellant's vehicle had not been stolen, and he was driving at the time of the accident. Despite knowledge of the false statement, Illinois National elected to provide coverage as a collision claim.

{¶5} Section D of the policy at issue entitled "Misrepresentation or Fraud" states:

{¶6} "If **you** ***knowingly made any false statements or representations concerning a material fact or circumstance to **us** when applying for ***any coverage under this policy, **we** may void this policy."

{¶17} Appellant was charged with one count of insurance fraud, in violation of R.C. 2913.47(B)(1). Following a bench trial, Appellant was convicted of the charge and sentenced to three years of community control sanctions, including five months local incarceration, with credit for ten days served.

{¶18} Appellant now appeals the conviction, assigning as error:

{¶19} “I. THE TRIAL COURT’S JUNE 17, 2009 JUDGMENT ENTRY IS AGAINST BOTH THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.”

{¶10} For the reasons that follow, we sustain Appellant’s sole assignment of error.

{¶11} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. “The 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.” *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶12} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine “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.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541, 1997-Ohio-52. The granting of a new trial “should be exercised only in the exceptional

case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶13} Here, Appellant was convicted of insurance fraud in violation of R.C. 2913.47(B). The statute reads:

{¶14} “(B) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

{¶15} “(1) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive;

{¶16} “(2) Assist, aid, abet, solicit, procure, or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.”

{¶17} “‘Defraud’ means to knowingly obtain, by deception, some benefit for oneself or another or to knowingly cause, by deception, some detriment to another.” R.C. 2913.01(B).

{¶18} Again, the insurance policy at issue contains the following provision:

{¶19} “If **you*****knowingly made any false statements or representations concerning a material fact or circumstance to **us** when applying for ***any coverage under this policy, **we** may void this policy.”

{¶20} Upon review of the record, Illinois National elected to pay the collision claim after having knowledge of Appellant's false statements alleging theft of the vehicle. At the time Appellant made the statements, the deductible for a collision claim presented under the policy was the same amount as the deductible for a comprehensive claim presented under the policy. Appellant would have received no extra benefit under the terms of the policy as a result of the false statements. Further, Illinois National did not void the policy as it was entitled to do; rather, Illinois National elected to pay the claim under the policy as a collision claim. Given its voluntary election not to void the policy, but rather to pay the claim as a collision claim, we cannot find Illinois National suffered a detriment. Therefore, we conclude the State has not demonstrated Appellant made a written or oral material statement for any benefit pursuant to the policy with a purpose to defraud.

{¶21} Based upon the above, we find Appellant's conviction is against the manifest weight and sufficiency of the evidence; therefore, the conviction is reversed and the complaint ordered dismissed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JONATHAN S. BREWSTER

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 09CA0018

For the reasons stated in our accompanying Opinion, the judgment of the Coshocton County Court of Common Pleas is reversed and the complaint ordered dismissed. Costs waived.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ John W. Wise
HON. JOHN W. WISE