

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 08CA0068-M

Appellee

v.

KAREN L. MELLERT

APPEAL FROM JUDGMENT
ENTERED IN THE
WADSWORTH MUNICIPAL COURT
COUNTY OF MEDINA, OHIO
CASE No. 08CRB00276-A

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 18, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} After learning that Karen Mellert could not afford a hotel room, William Oakes invited her to stay with him. Several weeks later, Mr. Oakes got a call from his financial advisor asking if he really wanted to give Ms. Mellert \$5000 from his retirement account, as a letter the advisor had received requested. Mr. Oakes said that he had not written the letter and reported the incident to the Wadsworth police department, who interviewed Ms. Mellert. Following that interview, the police department filed two complaints against Ms. Mellert. One alleged that she knowingly made a false statement with the purpose to commit a theft offense. The other alleged that she knowingly made a false statement with the purpose to mislead a public official in the performance of his official function. A jury convicted her of falsification with the purpose to commit a theft offense. Ms. Mellert has appealed her conviction, assigning as error that the State

failed to produce sufficient evidence to support her conviction. This Court affirms because Ms. Mellert's conviction is supported by sufficient evidence.

SUFFICIENT EVIDENCE

{¶2} Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. This Court must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced an average juror of Ms. Mellert's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶3} A jury convicted Ms. Mellert of violating Section 2921.13(A)(9) of the Ohio Revised Code. That section provides that “[n]o person shall knowingly make a false statement . . . when . . . [t]he statement is made with purpose to commit . . . a theft offense.”

{¶4} Mr. Oakes testified that he lives by himself in a three bedroom house. One evening, he had his friend Liz over, who lives at a hotel. Liz brought Ms. Mellert with her, who also lived at the hotel. When Mr. Oakes learned from Liz that Ms. Mellert could not afford to stay at the hotel any longer because she was out of money, he offered to let her stay at his house in one of the extra bedrooms.

{¶5} According to Mr. Oakes, Ms. Mellert stayed with him for six or seven weeks. She did the grocery shopping, cooked for them, and cleaned the house. Her boyfriend sometimes came by to take her out. One afternoon, however, Mr. Oakes received a call from his financial advisor asking him about a letter he had received that directed him to “cut a check for \$5,000.00 made payable to Karen L Mellert, as a gift.” The letter identified Mr. Oakes's account number and universal ID number. Mr. Oakes said the financial advisor called him about the letter

because he usually did all of his transactions by telephone and the financial advisor had never seen Ms. Mellert's name before on any of his documents.

{¶6} Mr. Oakes testified that he did not write the letter. He said he did not know Ms. Mellert's middle initial or how to spell her last name. He also said that the signature at the bottom of the letter was not his, noting that it misspelled his name. He further said that Ms. Mellert regularly used his computer and had access to his account information.

{¶7} Ms. Mellert has argued that there was only circumstantial evidence that she wrote the letter. The Ohio Supreme Court has held, however, that “[c]ircumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof.” *State v. Jenks*, 61 Ohio St. 3d 259, paragraph one of the syllabus (1991).

{¶8} The State presented sufficient circumstantial evidence for the jury to infer that Ms. Mellert had both the motive and opportunity to draft the letter. It was logical for the jury to believe that, since Ms. Mellert was the beneficiary of the intended transfer, she was the one who sent the letter to the financial advisor. This Court, therefore, concludes that Ms. Mellert's conviction is supported by sufficient evidence. Her assignment of error is overruled.

CONCLUSION

{¶9} Ms. Mellert's conviction of falsification with the purpose to commit a theft offense is supported by sufficient evidence. The judgment of the Wadsworth Municipal Court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wadsworth Municipal Court, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

THOMAS J. MORRIS, attorney at law, for appellant.

PAGE C. SCHROCK, III, attorney at law, for appellee.