

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1121 CR 2018
	:	
SHERRY ANN VARGSON,	:	
Defendant	:	

Criminal Law - Forgery - Tampering with Records - New Trial - Insufficiency of Evidence
- Preservation of Issue on Appeal - Required Specificity of Concise
Statement - Need to Identify the Element or Elements Upon Which the
Evidence is Claimed to be Insufficient.

1. Evidence is sufficient to support a jury verdict when it establishes each material element of the crime charged and the commission thereof by the accused beyond a reasonable doubt. Any doubt about the defendant's guilt is to be resolved by 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.
2. In determining the sufficiency of the evidence, the entire record must be evaluated and all evidence actually received - regardless of by whom presented - must be considered. In making this evaluation, as a general matter, the standard of review for sufficiency claims requires that the record be viewed in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.
3. To preserve a claim on appeal that the evidence was insufficient to sustain the verdict, the Rule 1925(b) concise statement filed by the defendant must specify the element or elements upon which the evidence was insufficient.
4. For a defendant to be convicted of the crime of forgery - an unauthorized act in writing - the Commonwealth must prove beyond a reasonable doubt the following three elements: (1) that there was a false writing; (2) that the instrument was capable of deceiving; and (3) that it was intended to defraud.
5. To prove the offense of tampering with records or identification, the Commonwealth must prove beyond a reasonable doubt the following three elements: (1) that the defendant falsified, destroyed, removed or concealed any writing or record; (2) that the defendant knew that she had no privilege to act in this way; and (3) that the defendant acted with the intent to deceive or injure another person.
6. When viewed in the light most favorable to the Commonwealth, the evidence was sufficient to support Defendant's convictions for forgery and tampering with records or identification. The evidence established that in order to prevent water service to Defendant's home from being terminated for Defendant's failure to pay utility bills, Defendant forged and falsified letters to the utility provider which purported to have

been prepared, signed and sent by Defendant's medical provider and which advised that if water services to Defendant's home were shut off, Defendant's health would be jeopardized. These letters were relied upon by the utility provider in not terminating water services to Defendant's home notwithstanding Defendant's failure to make payment.

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SHERRY ANN VARGSON,	:	
Defendant	:	
	:	
Brian B. Gazo, Esquire		Counsel for Commonwealth
Eric Wiltout, Esquire		Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – December 2, 2020

On August 6, 2019, following a two-day jury trial, Sherry Ann Vargson (“Defendant”) was found guilty of two counts of Forgery¹ and two counts of Tampering with Records or Identification,² all graded as misdemeanors of the first degree. Defendant appeals from the May 26, 2020, judgment of sentence of two years’ probation claiming the evidence at trial was insufficient to support her convictions.

PROCEDURAL AND FACTUAL BACKGROUND

As a result of Defendant’s chronic failure to pay her sewer bill - in 2016 she was over nine years behind and owed between \$8,500.00 and \$9,000.00 - Franklin Township, the municipality in which Defendant resides and to which the money was owed, sent Defendant notice by certified and first class mail in 2016 and 2018 of its intent to have the water service to her home shut off for past due bills. (N.T., 8/6/19, pp.37-38, 41-42). In response to the 2016 notice, the Township received, by fax, a letter dated October 31, 2016, purportedly from Holly Marakovits, CRNP, Defendant’s certified registered nurse

¹ 18 Pa.C.S.A. § 4101(a)(2).

² 18 Pa.C.S.A. § 4104(a).

practitioner, advising that due to Defendant's medical conditions, turning off her water would jeopardize her health. (N.T., 8/6/19, pp.39-40, 47; Commonwealth Exhibit No.1). Upon receipt of this letter and because of it, the Township did not stop service to Defendant's home. (N.T., 8/6/19, pp.39-40). The Township received a similar fax response, this one dated July 26, 2018, again purportedly from Marakovits, after mailing Defendant notice in 2018 of its intent to terminate her water service due to unpaid sewer bills. (N.T., 8/6/19, pp.42, 47; Commonwealth Exhibit No.2).

Following receipt of the July 26, 2018 letter, the Township called Marakovits' office to confirm the authenticity of the letter. (N.T., 8/6/19, p.43). Marakovits' office denied sending either letter and stated neither was authorized. (N.T., 8/6/19, pp.43-44, 48, 69). Defendant was subsequently charged with one count of forgery and one count of tampering with records with respect to each letter.

At trial, Marakovits testified that she did not prepare, sign or authorize either letter, and that neither letter was sent from her office. (N.T., 8/6/19, pp.58, 62, 68-69, 81). Further, that the two letters differed in material respects from the template used in the office for correspondence of this nature and that her signature on each letter appeared to be photocopied. (N.T., 8/6/19, pp.57-62, 66-67, 71). Marakovits also testified that whenever the office sends correspondence on behalf of a patient the office notes in the patient's file when the correspondence was sent and that no such documentation existed in Defendant's patient file for either letter. (N.T., 8/6/19, pp.62, 68).

According to Marakovits, Defendant was in her office on October 3, 2016 and July 26, 2018, the same dates appearing on the letters. On the October 3, 2016 visit, Defendant asked Marakovits if she would write a letter Defendant could use to avoid

having her water shut off. Marakovits denied Defendant's request because she did not believe Defendant's health issues would be exacerbated by not having water, but did agree to write a letter to PPL to assist Defendant in preventing her electricity from being turned off. (N.T., 8/6/19, p.79). This letter, dated the same date as the visit - October 3, 2016 - was prepared by Marakovits on the office template, signed by her, and handed to Defendant when she was in the office. (N.T., 8/6/19, pp.55-56, 74-76; Commonwealth Exhibit No.3). Marakovits explained that she was willing to provide this letter to Defendant since electricity is required for medical equipment and refrigeration of medicines, and she was under the impression Defendant had a young child living with her in the home. (N.T., 8/6/19, pp.57, 87).

The day before Defendant saw Marakovits on July 26, 2018, Defendant sent Marakovits an email again asking if Marakovits would write a letter on her behalf so her water services would not be turned off for an outstanding sewer bill of approximately \$10,000.00. (N.T., 8/6/19, pp.63-64). Marakovits referred Defendant to a social worker who worked in Marakovits' office to discuss Defendant's financial hardship with her. (N.T., 8/6/19, p.66). When Defendant appeared in the office the next day, July 26, 2018, the subject was again discussed; Marakovits told Defendant she would not write the letter. (N.T., 8/6/19, p.77). Defendant left the office "very disgruntled." (N.T., 8/6/19, p.66).

Christine Green, the Township's sewer billing clerk, testified about Defendant's history of continuously being behind in the payment of her sewer bill and described Defendant as having one of the highest outstanding overdue balances with the Township. (N.T., 8/6/19, pp.35-37, 41-42). Ms. Green also testified that she was contacted by Defendant shortly after the Township received each letter and that Defendant inquired

whether the Township had received her letters. (N.T., 8/6/19, pp.48-50). Jason Doll, the Township's chief of police, who investigated this matter on behalf of the Township, testified that Defendant acknowledged knowing about the letters and claimed they were authentic. (N.T., 8/6/19, pp.88, 92).

DISCUSSION

In reviewing a claim that the evidence is insufficient to support a conviction the standard of review is as follows:

As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by 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.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, [t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the [defendant's] convictions will be upheld.

Commonwealth v. Franklin, 69 A.3d 719, 722-23 (Pa.Super. 2013) (internal quotations and citations omitted). Importantly, "the [factfinder], which passes upon the weight and credibility of each witness's testimony, is free to believe all, part, or none of the evidence." Commonwealth v. Rantahal, 33 A.3d 602, 607 (Pa. 2011).

Commonwealth v. Sebolka, 205 A.3d 329, 336-37 (Pa.Super. 2019). “In addition, . . . the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. . . . Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered.” Commonwealth v. Fortson, 165 A.3d 10, 14-15 (Pa.Super. 2017) (quoting Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa.Super. 2011)) (original internal brackets omitted), *appeal denied*, 174 A.3d 558 (Pa. 2017).

The Crimes Code defines the crime of forgery with which Defendant was charged - an unauthorized act in writing - in relevant part, as follows:

§ 4101. Forgery

(a) Offense defined.-- A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that [s]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 the act. . . or to be a copy of an original when no such original existed. . . .

18 Pa.C.S.A. § 4101(a)(2). To establish the crime of forgery, the Commonwealth must prove beyond a reasonable doubt three elements: (1) that there was a false writing, (2) that the instrument was capable of deceiving, and (3) that it was intended to defraud. Commonwealth v. Dietterick, 631 A.2d 1347, 1353 (Pa.Super. 1993), *appeal denied*, 645 A.2d 1312 (Pa. 1994).

The Crimes Code defines the offense of tampering with records or identification, in relevant part, as follows:

§ 4104. Tampering with records or identification

(a) Writings.-- A person commits a misdemeanor of the first degree if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, or distinguishing mark or

brand or other identification with intent to deceive or injure anyone or to conceal any wrongdoing.

18 Pa.C.S.A. § 4104(a). With respect to this offense, three elements must be proven beyond a reasonable doubt by the Commonwealth: (1) that the defendant falsified, destroyed, removed or concealed any writing or record; (2) that the defendant knew that she had no privilege to act in this way; and (3) that the defendant acted with the intent to deceive or injure another person. See Pa.SSJI (Crim) 15.4104.

Additionally, to preserve a claim that the evidence was insufficient to sustain the verdict, the Rule 1925(b) concise statement filed by a defendant must specify the element or elements upon which the evidence was insufficient. Commonwealth v. Williams, 959 A.2d 1252, 1257 (Pa.Super. 2008). Here, Defendant's Concise Statement identifies the only issue to be raised on appeal as follows:

The evidence was insufficient to establish that Mrs. Vargson did make[], complete[], execute[], authenticate[] issue[] or transfer any writing so that it purports to be the act of another who did not authorize that act October 3, 2015 or on July 26, 2018 (18 Pa.C.S.A. § 4101(a)(2)), that Mrs. Vargson did falsif[y], destroy[], remove[] or conceal[] any writing or record, or distinguishing mark or brand or other identification with intent to deceive or injure anyone or to conceal any wrongdoing on October 3, 2016 or on July 26, 2018 (18 Pa.C.S.A. § 4104(a)) because witness testimony was unable to positively identify Mrs. Vargson as the person who committed Forgery or Tampering with records on either date.

See Defendant's Concise Statement of Errors Complained of on Appeal filed on August 3, 2020. From this, although we believe it clear from the foregoing recitation of the facts and the evidence presented that all necessary elements of forgery and tampering with records have been proven beyond a reasonable doubt, the precise claim of insufficiency raised by Defendant is not that the elements of each offense were not proven beyond a

reasonable doubt, but that she was not “the person who committed forgery or tampering with records on either date.”

The standard for determining the sufficiency of the evidence quoted above permits the Commonwealth to meet its burden by “wholly circumstantial evidence” provided such evidence “coupled with the reasonable inferences drawn therefrom” proves Defendant’s guilt beyond a reasonable doubt. Here, the Commonwealth proved, *inter alia*, Defendant was historically and habitually delinquent in the payment of her sewer bills; the Township sent Defendant notice of her delinquency in 2016 and 2018 and of its intent to have Defendant’s water services shut off to enforce payment; Defendant received both notices sent by the Township and requested Marakovits each time to send letters on her behalf to the Township so that her water services would not be turned off; in face-to-face meetings with Defendant, Marakovits told Defendant she would not write the letters; letters dated the same date as Defendant’s office meetings with Marakovits purportedly bearing Marakovits’ signature and stating what Defendant had requested Marakovits to write were faxed to the Township; not only did Marakovits not prepare or sign either letter, the letters were not prepared in nor were they sent from Marakovits’ office; the letters were clearly intended to deceive the Township and benefit Defendant by creating the false impression that they were written and approved by a medical provider familiar with Defendant’s medical conditions and that to terminate Defendant’s water service would jeopardize her health; Defendant knew of the existence of the letters, knew they were not authorized or signed by Marakovits or sent by her offices, and knew the letters were being sent to the Township; and Defendant, shortly after the letters were sent, checked with the Township to make sure they were received, and that the water services to her home

would not be shut off. While such evidence may not have proven to a mathematical certainty that Defendant created and sent the letters, when viewed in the light most favorable to the Commonwealth, it was sufficient to establish her direct involvement with the fake letters and to allow the jury to convict Defendant of the crimes charged. Cf. Commonwealth v. Lehman, 820 A.2d 766, 772 (Pa.Super. 2003), *aff'd*, 870 A.2d 818 (Pa. 2005), cited with approval for this principle in Commonwealth v. Bradley, 2014 WL 10790351 *6 (Pa.Super. 2014).

CONCLUSION

Based upon the Commonwealth's evidence, Defendant was the only person who requested the letters from Marakovits, knew of Marakovits' refusal, knew letters purportedly signed by Marakovits were being sent to the Township, and benefitted from them. Such evidence was sufficient to establish the identity of Defendant as the person who forged and tampered with the letters at issue. Accordingly, we find the Defendant's sufficiency claim to be without merit.

BY THE COURT:

P.J.