COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2020 CR 01028**
vs.	:	**Judge McBride**
DAVID UIBLE	:	**DECISION/ENTRY**
Defendant	:	

Joel King, Special Prosecutor for Clermont County, Senior Assistant Attorney General, 441 Vine Street, 1600 Carew Tower, Cincinnati, Ohio 45202.

R. Scott Croswell, Attorney for the Defendant, 1208 Sycamore Street, Cincinnati, Ohio 45202.

This cause came before the court for trial on October 25 and 26, 2021. At the close of the presentation of evidence, the renewal of the defendant's Crim.R. 29 motion, and closing arguments of counsel, the court took the matter under advisement. By separate decision, the court has denied the defendant's Crim.R. 29 motion.

Upon consideration of the record of the proceedings, the evidence presented for the court's consideration, the stipulation of the parties, the arguments of counsel, and the applicable law, the court now renders this written decision.

PROCEDURAL POSTURE

The defendant David Uible was indicted on December 10, 2020 on ten (10) criminal counts as follows: Count 1, tampering with evidence pursuant to Section 2921.12(A)(1) of the Revised Code, a felony of the third degree; Count 2, forgery pursuant to Section 2913.31(A)(1) of the Revised Code, a felony of the fifth degree; Counts 3 through 7, forgery pursuant to Section 2913.31(A)(3) of the

Revised Code, felonies of the fifth degree; and Counts 8 through 10, falsification pursuant to Section 2921.13(A)(3) of the Revised Code, misdemeanors of the first degree.

The original indictment indicated that all ten counts occurred "in Clermont County, Ohio." Subsequently, on April 14, 2021, the state filed a motion to amend Counts 1, 2, and 3 of the indictment pursuant to Criminal Rule 7(D). The motion requested deletion of the language "in Clermont County, Ohio" from these three counts and to replace it with the language "in Hamilton County and/or Clermont County but properly venued in Clermont County, Ohio in accordance with section 2901.12 of the Revised Code of Ohio."

At a trial setting conference held on the record on April 15, 2021, defense counsel indicated that he had no objection to the amendment of the indictment. Therefore, the motion to amend the indictment was granted by the court, and the indictment was formally amended by entry filed May 3, 2021.

On October 22, 2021, the defendant, both in writing and on the record in open court, waived his right to a trial by jury, the written waiver having been filed with the court on that date. The court found that the defendant had knowingly, intelligently, and voluntarily waived his right to a jury trial, and the entry making this finding was filed on October 25, 2021.

FINDINGS OF FACT

The state called five witnesses: Greg Simpson, Ken Hare, Kendall Lemley, David Johnson, and Bernard Boerger. The parties stipulated that State's Exhibits 1, 2, 3, and 4 were true and accurate copies of chaser cards received by the persons to whom they were addressed, as would have been the testimony of the four addressees, and that these exhibits required no further authentication. Admitted as evidence without objection were State's Exhibits 1 through 4 as discussed above, as well as State's Exhibits 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, and 32.

The following facts were presented at trial and were not disputed. Prior to the primary election originally scheduled for March 17, 2020, the central committee of the Clermont County Republican Party (hereinafter referred to as "CCRP") endorsed candidates for the seats that would be contested in the November 2020 general election. A "slate card" showing that these persons were the endorsed candidates of the CCRP, the party's office address, and the name of its Chairman, Greg Simpson, was prepared and approved by the party's executive committee in accordance with the endorsement requirements set forth in the local party's constitution.

Copies of the slate card were made for distribution at the polls and in some mailings, and also the slate card was posted on the party's website. From the website, the slate card could be downloaded by any person. In fact, the party encouraged its members to copy the card and share it with colleagues, family members, and friends.

Upon cross-examination, according to Simpson, the executive committee voted January 22, 2020 to authorize the slate card. At that time, a motion was made by the defendant to send the slate card and a letter advising county Republicans that a different slate was being distributed by the Ohio Republican Central Committee and that the state party's endorsements differed from the CCRP endorsements with respect to a number of candidates. The defendant indicated that he would pay for this mailing or recover the costs of the letter at a later date from the CCRP. That motion passed the executive committee.

Due to the COVID-19 concerns, the primary election scheduled for March 17, 2020 was moved back to April 28, 2020.

The defendant David Uible is a past chairman of the CCRP and in 2020 was a member of its central committee. He was running for a contested office in the 2020 primary and was endorsed by the CCRP, and his name appeared on the CCRP's slate card. A different candidate for the office the defendant was seeking was endorsed by the state party organization, and that person's name was shown on the state party's slate card.

In March, after the primary was rescheduled, the defendant and the party chairman, Greg Simpson, had conversations regarding approval for, and preparation of, a "chaser card." A "chaser card" is a postcard having space for an address and postage on one side and, essentially, the slate card on the other side. The local board of elections handles requests for absentee ballots. In the spring of 2020 there were increased requests for such ballots due to the pandemic. The local political parties are provided by the county board of elections with the names and addresses of persons who have requested absentee ballots for the two major parties. Party organizations will frequently send chaser cards to the persons on these lists, timed to be delivered, as closely as possible, to the dates these persons will receive their absentee ballots from the board of elections. Thus, they "chase" the ballot and are referred to as "chaser cards."

A meeting of the executive committee of the Clermont County Republican Party was scheduled for April 1, 2020, to consider the request for approval of the printing and mailing of chaser cards as recommended by the defendant. That meeting was postponed and never rescheduled.

On his own, the defendant contacted several printers to obtain bids for chaser cards. One of the printers, Ken Hare, had done printing for the party in the past and knew the party's requirement of first obtaining the approval from the executive committee. When he received an email request from the defendant for printing of the cards, Hare talked with Greg Simpson and, as a result of that conversation, he didn't take the job.

Kendall Lemley, co-owner of a printing company franchise, Minuteman Printing, responded to the pricing request from the defendant, submitted bids to the defendant, and agreed to do two jobs in March and early April, 2020. One was a large 11 by 6 postcard mailing for the defendant's personal campaign. The other was a 6 by 4 chaser card. The political information on the chaser card (according to the testimony of Simpson) was the very same format as the slate card approved by the CCRP on January 22, 2020. For the 11 by 6 postcard, the defendant paid Lemley by credit card and asked Lemley to keep the card on file for future orders. For the 6 x 4 chaser card, the defendant left

his personal check which he asked Lemley to hold as it would likely be replaced by a CCRP check. The defendant later paid cash when he met Lemley in a Home Depot parking lot to take receipt of the first batch of chaser cards.

Bernard Boerger, the detective sergeant for investigations in the Clermont County Sheriff's Office, subsequently received a complaint from Simpson regarding possible mail fraud. Boerger testified that this was not the normal type of fraud case he was used to dealing with. He contacted the Dalton Avenue postal inspector to try to familiarize himself with mail fraud statutes. At one point in the investigation, he advised Simpson in a telephone conversation that the case should first be referred to the Ohio Election Commission and that the commission would then decide whether or not to refer the matter for prosecution.

During the course of his investigation, Boerger had several conversations with the defendant. The first recorded conversation was on April 9, 2020, and is contained in State's Exhibit 25. In that conversation, the defendant lied to Boerger by agreeing that he (defendant) had no knowledge of the chaser cards actually being ordered, paid for, or distributed.

The next recorded calls (State's Exhibits 26 and 27) are calls made while Boerger was with Lemley at the Minuteman Press location. The first call was from Boerger to the defendant with Lemley listening. In that conversation, the defendant lied to the investigator saying that he did not place an order with Minuteman Press for the Republican Party postcards. State's Exhibit 27 is a call from the defendant to Lemley about five minutes later in which the defendant told Lemley that "if Boerger doesn't show up with a search warrant you're OK with saying to him that you are doing the one job, not the 4 by 6, OK?"

From the testimony of both Lemley and Minuteman Printing employee David Johnson, it is clear that some Minuteman Press printing files regarding the 4 by 6 chaser card were destroyed at the request of the defendant.

STANDARD OF REVIEW

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt on each and every element of each crime charged.[1] R.C. 2901.05(E) describes reasonable doubt as follows:

> "'Reasonable doubt' is present when the [trier of fact], after * * * carefully consider[ing] and compar[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs."

LEGAL ANALYSIS

The Ohio Revised Code sections under which the defendant was indicted on the ten counts read as follows:

Count 1 is a charge of tampering with evidence contrary to and in violation of R.C. 2921.12(A)(1) and 2921.12(B). Those sections read as follows:

> (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
> (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation; * * *
> (B) Whoever violates this section is guilty of tampering with evidence, a felony of the third degree. * * *[2]

Count 2 is a charge of forgery contrary to and in violation of R.C. 2913.31(A)(1) and 2913.31(C)(1)(b). Those sections read as follows:

---

[1] R.C. 2901.05(E).
[2] R.C. 2921.12(A)(1) and (B).

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:
(1) Forge any writing of another without the other person's authority;
* * *
(C)(1)(b) Except as otherwise provided in this division or division (C)(1)(c) of this section and subject to division (C)(1)(d) of this section, forgery is a felony of the fifth degree. * * *[3]

Count 3 is a charge of forgery contrary to and in violation of R.C. 2913.31(A)(2) and 2913.31(C)(1)(b). Those sections read as follows:

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following: * * *
(2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed; * * *
(C)(1)(b) Except as otherwise provided in this division or division (C)(1)(c) of this section and subject to division (C)(1)(d) of this section, forgery is a felony of the fifth degree. * * *[4]

Counts 4 through 7 are charges of forgery contrary to and in violation of R.C. 2913.31(A)(3) and 2913.31(C)(1)(b). Those sections read as follows:

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following: * * *
(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged. * * *
(C)(1)(b) Except as otherwise provided in this division or division (C)(1)(c) of this section and subject to division (C)(1)(d) of this section, forgery is a felony of the fifth degree. * * *[5]

Counts 8 through 10 are charges of falsification contrary to and in violation of R.C. 2921.13(A)(3) and 2921.13(F). Those sections read as follows:

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies: * * *
(3) The statement is made with purpose to mislead a public official in performing the public official's official function. * * *

---

[3] R.C. 2913.31(A)(1) and (C)(1)(b).
[4] R.C. 2913.31(A)(2) and (C)(1)(b).
[5] R.C. 2931.13(A)(3) and (C)(1)(b).

> (F) Whoever violates division (A) *** (3) *** of this section is guilty of falsification. Except as otherwise provided in this division, falsification is a misdemeanor of the first degree. ***[6]

Multiple terms contained in these statutes are statutorily defined. Two of the definitions involve the *mens rea* or mental state of the defendant at the time of the alleged act or acts. These are the terms purposely and knowingly. Pursuant to R.C. 2901.22(A), a "person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature."[7]

Additionally, a person acts "knowingly" when:

> "* * * the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact."[8]

Most mental elements of a crime are rarely proven by direct evidence. As such, the fact finder looks to the surrounding facts and circumstances to determine the defendant's criminal intent.[9] Furthermore, people are "presumed to have intended the natural, reasonable and probable consequences of their voluntary acts."[10]

The forgery counts also involve three terms that have been statutorily defined in Ohio: defraud, forge, and utter. R.C. §2913.01(B) defines defraud as meaning "...to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." Subsection (G) of this statute defines forge to mean "...to fabricate or create, in whole or

---

[6] R.C. 2921.13(A)(3) and (F).
[7] R.C. 2901.22(A).
[8] R.C. 2901.22(B).
[9] *State v. Garner*, 74 Ohio St.3d 49, 60, 656 N.E.2d 623 (1995).
[10] *State v. Piesciuk*, 12th Dist. Butler No. CA2004-03-055, 2005-Ohio-5767, citing *Garner*, 74 Ohio St.3d 49.

in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce, or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct." The term utter is defined in subsection (H) of this statute to mean "...to issue, publish, transfer, use, put or send into circulation, deliver, or display."

Each of the ten crimes set forth in the indictment have specific elements which must be proved, by evidence beyond a reasonable doubt, in order for the trier of fact to make a finding of guilty.

One element that must be established by evidence beyond a reasonable doubt in as to each count in a criminal trial is the element of venue.

"The Ohio Constitution, Article I, Section 10, provides an accused the right to 'a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.'"[11] In its interpretation of the element of venue, the Ohio Supreme Court has stated: "A conviction may not be had in a criminal case where the proof fails to show that the crime alleged in the indictment occurred in the county where the indictment is returned."[12]

"The General Assembly has given the state considerable flexibility with respect to establishing venue when the state cannot determine the precise location at which the offense took place. See, e.g. R.C. 2901.12(G), which allows for an offense that was committed in any of two or more jurisdictions to be charged in any of those jurisdictions."[13]

The state's attempt to make use of this flexibility is demonstrated in its motion to amend indictment filed herein on April 14, 2021. That pleading clearly indicates that the state expected to present evidence that elements of venue as to Counts 1, 2, and 3 of the indictment took place in both Clermont and Hamilton Counties.

---

[11] *State v. Hampton*, 134 Ohio St.3d 447, 451, 2012-Ohio-5688, 983 N.E.2d 324, ¶19.
[12] *State v. Nevius*, 147 Ohio St. 263, 71 N.E.2d 258 (1947).
[13] *Hampton*, 983 N.E.2d 324 at ¶23.

R.C. 2901.12(G) reads as follows: " When it appears beyond a reasonable doubt that an offense or any element of an offense was committed in any of two or more jurisdictions, but it cannot reasonably be determined in which jurisdiction the offense or element was committed, the offender may be tried in any of those jurisdictions."[14]

The Ohio Supreme Court has stated that "...it is not essential that the venue of the crime be proven in express terms, provided it be established by all the facts and circumstances in the case, beyond a reasonable doubt, that the crime was committed in the county and state as alleged in the indictment."[15]

The issue presented is whether or not the State satisfied its burden of proving the essential element of venue as to each of the ten counts in the indictment. Clearly, the State established that at all times relevant to the matters contained in the indictment, the defendant was a member of the CCRP and was running in a primary election for a political office encompassing Clermont County and other counties or parts of other counties. The defendant's actions were in furtherance of the CCRP slate of candidates including his own candidacy.

However, the telephonic evidence does not specify the defendant's location when his voice was recorded. The court cannot speculate as to the county and state in which he was located when he engaged in these conversations. It possibly could have been Clermont County or Hamilton County or anywhere else in the world. The state did not establish any location for the defendant.

Email transmissions from the defendant also are non-specific as to the defendant's location when he transmitted these communications.

As to two recorded telephone conversations, one side of the conversations was at the Minuteman Press location in Anderson Township. There is, however, absolutely no testimony as to which county Anderson Township is located in, and the court will not speculate that it is Hamilton

---

[14] R.C. 2901.12(G).

[15] *State v. Dickerson*, 77 Ohio St. 34, 82 N.E. 969 (1907, paragraph one of the syllabus).

County – there may well be other Anderson Townships in Ohio, Kentucky, and other states. The record is devoid of evidence of the defendant's location during the calls recorded at Minuteman Press. If the court believed any crime occurred during one or both of those conversations, then it would have to speculate as to venue.

State's Exhibits 1 through 4 are chaser cards showing names and addresses of the recipients. No address contains a county name. Some post office addresses such as "Milford" can be addresses in three different counties, as can post office addresses such as "Cincinnati." The court will not speculate that these cards were posted to addresses in Clermont County.

In *State v. Headley* (1983), 6 Ohio St.3d 475, 453 N.E.2d 716, the Ohio Supreme Court held that "although it is not a material element of the offense charged, venue is a fact which must be proved in criminal prosecutions unless it is waived by the defendant."[16] In the case at bar, the defendant did not make such a waiver. It is true that the defendant consented to the state's requested amendment to Counts 1, 2, and 3 of the indictment. But the indictment, itself, is not evidence. And the evidence presented to this court did not establish either Clermont County or Hamilton County as being proper venues for the action. Telephone records, cellular phone tower records, and forensic computer analysis could have provided relevant evidence to establish venue, but none was provided to this court.

In the presentation of its case in chief, the state presented no evidence as to where the defendant initiated and received telephonic and email communications, nor where the investigating officer initiated and received telephone communications (other than his one location, testified to as being in Anderson Township). A more thorough investigation could perhaps have provided the state with sufficient evidence to satisfy jurisdictional and venue challenges.

---

[16] See also, *State v. Draggo*, 65 Ohio St.2d 88, 451, 418 N.E.2d 1343 (1981); *State v. Gribble*, 24 Ohio St. 2d 85, 263 N.E.2d 904 (1970),and *State v. Nevius*, 147 Ohio St. 263, 71 N.E.2d 258 (1947).

Clearly, there is insufficient evidence that the Clermont County Court of Common Pleas is the proper jurisdiction and venue for this action. In fact, as to venue, there is no evidence at all to sustain a conviction of any of the ten counts in the indictment.

This is not just a decision based on a technicality. It is essential under the law that it be proven by the state, beyond a reasonable doubt, that crime was in fact committed in the county and state alleged. Courts are not permitted to simply infer facts which are required to be proven by the state. Even if judicial notice would have been permitted in this case, the issue was not even raised by the state until final arguments when it was no longer appropriate for the court to take judicial notice. Nor was the court ever requested to take judicial notice.

Additionally, the state's case also presents insufficient evidence that the defendant committed forgery. Having the slate card printed in essentially the same form as approved by the CCRP was not a fabrication or a spurious writing as defined in the statute. As to fraud, there was no evidence that the defendant caused some detriment to another and he certainly received no financial gain.

It is certainly possible that there was a violation of the election laws by the manner in which this slate card was printed and publicized. However, the state never charged the defendant with a violation of an election law.

Because the venue requirement was never met, the court will not address the charges of tampering with evidence and falsification on their merits, other than to note that it was fairly well acknowledged by both sides during the trial that the defendant made statements that were false and engaged in conduct leading to the destruction of chaser cards that interfered with the preliminary investigation that was taking place by law enforcement.

CONCLUSION

The defendant is acquitted of the ten counts in the indictment.

IT IS SO ORDERED.

DATED: 12-8-21

Judge Jerry R. McBride