

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090037
Plaintiff-Appellee,	:	TRIAL NO. B-0703473
vs.	:	<i>JUDGMENT ENTRY.</i>
CLAYTON NEEL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Clayton Neel, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of tampering with evidence and tampering with records.

Neel was a Cincinnati police officer assigned to District 4. He was the district’s “property runner,” and his duties included transporting paperwork from the district to the city prosecutor’s office and to the police division’s traffic unit.

Neel and Samuel King were members of the same fraternal organization. In the early morning hours of January 12, 2007, Cincinnati Police Officer Kathy Thompson arrested King for operating a vehicle under the influence of alcohol (OVI). In conjunction with the arrest, Thompson seized King’s driver’s license and attached it to the OVI citation. King was released, but the citation ordered him to appear in Hamilton County Municipal Court on January 17, 2007.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

On January 29, 2007, Thompson saw King driving his car. Knowing that King's license had been seized, Thompson pulled him over and discovered that the license had been returned to him. After extensive interrogation, King stated that Neel had returned the license.

In the meantime, King had reported to municipal court on the date listed on the OVI citation, but his case was not on the docket. An investigation undertaken at District 4 revealed that the paperwork for King's OVI prosecution was missing and had not been delivered to the necessary entities for prosecuting the case.

After King had been rearrested for OVI, the paperwork from the original arrest inexplicably appeared on the desk of a supervisor for the police division's traffic unit.

In response to questioning from the police division's internal-affairs unit, Neel admitted to having given the license to King. He stated that another officer in District 4 had given him the license to return to King, but he denied any knowledge of how the OVI paperwork had been misplaced.

A jury found Neel guilty of tampering with evidence and tampering with records, and the trial court sentenced him to 120 days in jail and community control.

In his first three assignments of error, Neel argues that his convictions were based on insufficient evidence and were against the manifest weight of the evidence. We address the assignments together.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> To reverse a conviction

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<sup>2</sup> *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>3</sup>

R.C. 2921.12(A)(1), governing tampering with evidence, provides that “[n]o person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall \* \* \* [a]lter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation.” R.C. 2913.42(A)(1), governing tampering with records, states that “[n]o person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall \* \* \* [f]alsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record.”

In this case, the convictions were in accordance with the evidence. Neel admitted to having returned the license to King. Furthermore, his admitted return of the license to King, his relationship with King, and his access to the OVI paperwork provided ample circumstantial evidence that he had concealed the paperwork in an attempt to hamper King’s OVI prosecution. Although Neel denied taking the paperwork and attempted to implicate another officer in the improprieties, we cannot say that the jury lost its way in finding him guilty.

In his fourth and final assignment of error, Neel argues that the trial court erred in overruling his motion for a mistrial. He contends that a mistrial was warranted when, in response to a jury question, the trial court informed the jury that

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<sup>3</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

it could find Neel guilty of tampering based upon the misappropriation of either the driver's license or the OVI paperwork and reports. Neel contends that the indictment had treated the items as a "package," thus requiring the state to prove that he had tampered with each item.

A decision regarding a motion for a mistrial lies within the discretion of the trial court and will not be disturbed absent an abuse of that discretion.<sup>4</sup>

In this case, we find no abuse of discretion. The indictment stated that Neel had tampered with items "to wit: OVI paperwork and reports, including an Ohio driver's license." Thus, the language concerning the driver's license merely provided an example of the records or documents that had allegedly been tampered with; it did not indicate that the items were inseparable. And the alteration or concealment of any single item was sufficient to support a conviction under the tampering statutes. Under these circumstances, the trial court's answer to the jury question was accurate. We overrule the fourth assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on February 24, 2010  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>4</sup> *State v. Grimes*, 1st Dist. No. C-030922, 2005-Ohio-203, ¶42.