

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2816-CR

Cir. Ct. No. 2009CF695

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRADLEY DEBRASKA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Bradley DeBraska appeals a judgment convicting him of misappropriation of an entity's identifying information and uttering a forgery, both as a party to a crime. See WIS. STAT. §§ 943.203(2)(a), 943.38(2),

and 939.05 (2009-10).¹ He contends that there is insufficient evidence to support his conviction of the first count, misappropriation of an entity's identifying information. We affirm.

¶2 Many of the facts were stipulated at trial. DeBraska was the president of the Milwaukee Police Association. On June 14, 2004, DeBraska created a memorandum with the help of his secretary, Candy Johnson, that was retroactively dated to November 1, 1999. The memo appeared to be from John Kalwitz, who was president of the City of Milwaukee Common Council in 1999, to City Labor Negotiator Frank Forbes. The subject line of the memo was "The Global Pension Settlement." DeBraska superimposed the memo and a copy of Kalwitz's signature onto the letterhead Kalwitz used when he was president of the Common Council. The central disputed issues at trial were whether DeBraska had Kalwitz's permission to create the memo on letterhead identifying Kalwitz as president of the Common Council and, if he did, whether DeBraska knew that Kalwitz did not have authority to allow him to use the letterhead when he created the memo because Kalwitz was no longer on the Common Council.

¶3 When reviewing the sufficiency of the evidence, we look at whether "the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). "If any possibility exists that the trier

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn [the] verdict.” *Id.* “[I]t is not necessary that [we] be convinced of the defendant’s guilt but only that [we be] satisfied the jury acting reasonably could be so convinced.” *State v. Koller*, 87 Wis. 2d 253, 266, 274 N.W.2d 651 (1979). “It is the function of the [jury], and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Poellinger*, 153 Wis. 2d at 506. The jury “is the sole arbiter of the credibility of witnesses and alone is charged with the duty of weighing the evidence.” *State v. Webster*, 196 Wis. 2d 308, 320, 538 N.W.2d 810 (Ct. App. 1995).

¶4 DeBraska argues that there was insufficient evidence to support the conviction because he had Kalwitz’s permission to create the memo on Kalwitz’s Common Council letterhead to reflect a meeting they had on November 1, 1999. DeBraska contends that he and Kalwitz discussed what the memo should say, and that he sent a copy of the memo he created to Kalwitz at his home for his review, which Kalwitz then approved.

¶5 We agree with the State that this case “presented a classic clash of credibility between two conflicting witnesses” at trial. DeBraska testified that he had Kalwitz’s authorization to create the memo on Kalwitz’s letterhead and place Kalwitz’s signature on it. In direct contradiction, Kalwitz testified that he did not authorize DeBraska to create the memo and place his signature on it, and that he did not authorize DeBraska to use his letterhead from when he was president of the Common Council. Kalwitz further testified that although he received a copy of the memo, he did not realize that the memo had been created by DeBraska; he initially thought he had created it.

¶6 The task of deciding which of the two witnesses was more credible was committed to the jury. It was the jury's prerogative to believe Kalwitz's testimony over DeBraska's testimony. While the jury's assessment of the relative credibility of these two witnesses was, in itself, sufficient to support the jury's verdict finding DeBraska guilty, the jury heard other testimony that corroborated Kalwitz's version of events and thus supported its verdict. DeBraska's secretary testified that, after she helped to create the memo, DeBraska told her to "take it to your grave," which arguably evidences consciousness of guilt. And Attorney Jonathan Cermele, the attorney who represented the police union in its pension lawsuit against the City, testified that DeBraska told him not to call Kalwitz as a witness in the pension litigation, which he found strange at the time because he thought Kalwitz would be a helpful witness based on the memo. The jury could have reasonably concluded that DeBraska urged Cermele to not call Kalwitz because DeBraska was concerned that Kalwitz might disavow the memo. Viewing the evidence in the light most favorable to the verdict, as we are required to do, we conclude that there is sufficient evidence to support the conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

