

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D30457
W/kmb

_____AD3d_____

Argued - March 15, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2006-07537

DECISION & ORDER

The People, etc., respondent, v Daivery Taylor,
et al., appellants.

(Ind. No. 1706/N04)

Mischel & Horn, P.C., New York, N.Y. (Richard E. Mischel and Lisa R. Marlow Wolland of counsel), for appellant Law Offices of Silverman & Taylor.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Barbara D. Underwood, Roseann B. MacKechnie, and Monica Wagner of counsel), for respondent.

Appeal by the defendant Daivery Taylor and separate appeal by the defendant Law Offices of Silverman & Taylor from a judgment of the County Court, Nassau County (Brown, J.), rendered July 31, 2006, convicting them each of scheme to defraud in the first degree and offering a false instrument for filing in the first degree (four counts), after a nonjury trial, and imposing sentences. By decision and order of this Court dated October 7, 2008, the judgment was reversed (*see People v Taylor*, 55 AD3d 640). By order of the Court of Appeals dated February 26, 2009, the People were granted leave to appeal from the decision and order of this Court. The People, as limited by their brief, appealed, by permission, from so much of the decision and order of this Court as reversed so much of the judgment as convicted the defendant Law Offices of Silverman & Taylor of offering a false instrument for filing in the first degree (four counts). By order of the Court of Appeals dated February 6, 2010, the decision and order of this Court was reversed insofar as appealed from, so much of the judgment as convicted the defendant Law Offices of Silverman & Taylor of offering a false instrument for filing in the first degree (four counts) was reinstated, and the matter was remitted to this Court for further proceedings (*see People v Taylor*, 14 NY3d 727). Justices Mastro and Roman have been substituted for Justice Carni and former Justice Lifson (*see* 22 NYCRR 670.1[c]).

March 15, 2011

Page 1.

PEOPLE v TAYLOR, DAIVERY
and LAW OFFICES OF SILVERMAN & TAYLOR

ORDERED that, upon remittitur from the Court of Appeals, so much of the judgment as convicted the defendant Law Offices of Silverman & Taylor of offering a false instrument for filing in the first degree (four counts) is affirmed.

The defendant Law Offices of Silverman & Taylor (hereinafter the defendant) was convicted of four counts of offering a false instrument for filing in the first degree, based upon its filing of retainer statements with the New York State Office of Court Administration that contained false or misleading information. The element of “intent to defraud,” as articulated in the definition of the crime of offering a false instrument for filing in the first degree (Penal Law § 175.35) “refers only to a defendant’s state of mind in acting with a conscious aim and objective to defraud” (*People v Taylor*, 14 NY3d 727, 729). Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the element of intent to defraud and every other element of the crime of offering a false instrument for filing in the first degree with respect to the four counts of that crime of which the defendant was convicted (*see* Penal Law § 175.35; *Matter of Norman v Hynes*, 20 AD3d 125, 132; *People v Jacob*, 248 AD2d 638, 639; *People v Papatonis*, 243 AD2d 898, 900; *People v Chaitin*, 94 AD2d 705, *affd* 61 NY2d 683). Further, upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt against the defendant with respect to these crimes was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant’s contention that the eavesdropping evidence was inadmissible hearsay is not preserved for appellate review with respect to 5 of the 19 conversations admitted into evidence. In any event, the evidence was not hearsay, but properly admitted as part of the criminal *res gestae* (*see People v Adames*, 53 AD3d 503; *People v Thompson*, 186 AD2d 768).

MASTRO, J.P., FLORIO, BELEN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court