

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LEE ROLLER,

Defendant-Appellant.

UNPUBLISHED

April 13, 1999

No. 206466

Lake Circuit Court

LC No. 96-003244 FH

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Defendant appeals as of right her conviction after a jury trial of false pretenses with intent to defraud over \$100, MCL 750.218; MSA 28.415. The trial court sentenced defendant to three years' probation and 180 days in jail, providing that defendant serve sixty days, with the remaining 120 days to be served at the court's discretion. We affirm.

In March 1996, defendant met with a bond agent to arrange a \$50,000 bond for her son's release from jail. The bond agent explained that he needed some real estate as collateral to secure the bond. Defendant pledged as collateral a parcel of property, approximately forty-two acres in Baldwin County, referred to at trial as the "Brunson estate," on which she resided. Defendant told the bond agent that she had purchased the property on land contract from Otis and Valerie Crawford. Although the bond was issued, the bond agent subsequently obtained information that caused him to question defendant's ownership of the Brunson estate, and requested that defendant provide him with a copy of the land contract under which she claimed ownership. When defendant failed to do so, the bond agent returned defendant's son to jail. Eventually, after she was charged with the instant felony, defendant produced a land contract, dated March 29, 1989 and purportedly signed by the Crawfords, that allegedly conveyed to defendant and her husband the Brunson estate.

Defendant raises several arguments challenging the sufficiency of the evidence supporting her conviction. In reviewing the sufficiency of the evidence presented at trial in a criminal case, we view the evidence in a light most favorable to the prosecution and determine whether a rational factfinder could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *People v*

Wolfe, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

The elements of false pretenses over \$100 are: (1) the defendant must have used a pretense or made a false statement relating to either past or present, then-existing facts and circumstances; a pretense is any statement, device, trick, document, writing or object that is false; (2) at the time she made or used the pretense, the defendant must have known it to be false; (3) at the time she made or used the pretense, the defendant must have intended to defraud or cheat someone; (4) the person alleged to have been defrauded must have relied on the false pretense made by the defendant; (5) in so relying, that person must have suffered the loss of some money or other valuable thing; and (6) the property that was taken must have had a fair market value that exceeded \$100 at the time of the obtaining of the property. *People v Peach*, 174 Mich App 419, 422-423; 437 NW2d 9 (1989).

Defendant first contends that insufficient evidence existed to prove that she made any false representation because she never affirmatively stated that there were no legal obstacles to her ownership interest in the property she offered as collateral. However, defendant's argument is without merit; sufficient evidence existed from which a jury could have found that defendant made a false statement to the bond agent regarding her ownership of the Brunson estate. The bond agent testified that when he and defendant met to arrange bond for defendant's son, defendant told him that she owned the Brunson estate, having purchased it on land contract from the Crawfords. Otis and Valerie Crawford both testified that they had owned the Brunson estate since the late 1970's, and denied that they had ever entered a land contract or otherwise conveyed the Brunson estate to anyone. They further denied ever authorizing anyone else to convey the Brunson estate or to sign their names on a conveyance of any kind. They explained that they had agreed to let defendant rent the property, but denied entering any land contract with her. The Crawfords both testified that the signatures of their names on defendant's alleged land contract were not in their handwriting. A forensic document examiner also testified that the signatures on defendant's land contract were not in the Crawfords' handwriting. Accordingly, we conclude that a rational jury could have concluded beyond a reasonable doubt that defendant falsely represented to the bond agent her interest in the Brunson estate. *Wolfe, supra; Peach, supra* at 422.

Next, defendant claims that because that the bond agent canceled the bond agreement and returned defendant's son to jail, the prosecutor failed to prove that defendant obtained anything of value from the bond agent. In this case, defendant received a service, the execution of her son's bond. *People v Evans*, 434 Mich 314, 320 n 3; 454 NW2d 105 (1990). Defendant and the bond agent had agreed that the bond agent would post a \$50,000 bond for the release of defendant's son if defendant paid the bond agent a fixed fee of \$5,000. The bond agent testified that the agreement provided that his \$5,000 premium would be fully earned on the release of defendant's son from jail. This contractually fixed fee established the value of the bond agent's services at \$5,000. See *Plunkett & Cooney, PC v Capitol Bancorp Ltd*, 212 Mich App 325, 331; 536 NW2d 886 (1995) (in the context of the attorney-client relationship, where a fixed-fee agreement exists, the value of the services that the attorney has agreed to render has been established). We find this evidence sufficient to support a rational jury's conclusion beyond a reasonable doubt that defendant received from the bond agent services valued at more than \$100. *Wolfe, supra; Peach, supra* at 423.

Defendant also contends that any misrepresentation regarding her interest in the Brunson estate qualifies as a misrepresentation concerning future events because the collateral would only become an issue if a breach of the bond occurred, and that no evidence established that she misrepresented a past or present fact. However, in offering defendant the Brunson estate as collateral, defendant misrepresented that her then-existing ownership interest in the property was undisputed. That defendant would not have to foreclose on the collateral unless a breach of the bond occurred at some point in the future does not negate the fact that defendant misrepresented her then-existing, present ownership status regarding the collateral at the time she secured the bond agent's services. *Peach, supra* at 422. Therefore, we conclude that defendant's argument is without merit.

Lastly, defendant argues that insufficient evidence existed to prove that the bond agent relied on her misrepresentation regarding her ownership of the Brunson estate. Defendant insists that the bond agent instead relied on defendant's promise to pay \$5,000 in agreeing to execute her son's bond. Our review of the record reveals that the bond agent testified that he informed defendant that in addition to the fee, his company required real estate as collateral to secure any bond over \$25,000, and that without the real estate as collateral he could not have executed her son's bond. Viewing the bond agent's testimony in the light most favorable to the prosecution, we conclude that a rational jury could have found beyond a reasonable doubt that the bond agent relied on defendant's misrepresentation in executing her son's bond. *Wolfe, supra; Peach, supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Hilda R. Gage