

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OMAR SUMPTER,

Defendant-Appellant.

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UNPUBLISHED

September 23, 2010

No. 291886

Wayne Circuit Court

LC No. 07-024027-FH

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

Defendant Omar Sumpter appeals as of right his jury conviction of obtaining more than \$20,000 by false pretenses, MCL 750.218(1) and (5)(a), identity theft, MCL 445.65(1)(a) and MCL 445.69(1), second-degree money laundering, MCL 750.411k and MCL 750.411n(1), and conspiracy to commit false pretenses or second-degree money laundering, MCL 750.157a(a). The trial court sentenced him to serve concurrent prison terms of one to ten years each for his false pretenses, money laundering, and conspiracy convictions, and to serve one to five years for the identity theft conviction. Because we conclude that there were no errors warranting relief, we affirm.

Defendant's convictions arise from his involvement in a scheme in which he aided his brother, Nelson Sumpter, in selling a home owned by Shirley Snyder without her knowledge or consent.

**I. OTHER ACTS EVIDENCE**

Defendant first argues that the trial court erred in allowing the prosecutor to introduce improper other acts evidence. Specifically, he argues that the prosecutor should not have been permitted to present evidence concerning other fraudulent real estate deals that Nelson Sumpter arranged. This Court reviews a trial court's evidentiary decisions for an abuse of discretion. *People v Smith*, 456 Mich 543, 549-550; 581 NW2d 654 (1998).

In considering the admissibility of evidence of other acts, a trial court must first determine whether the evidence is being offered for a proper purpose—that is, for a purpose other than to show the defendant's propensity to act in conformance with a given character trait—and then must determine whether the evidence is relevant to an issue of fact of

consequence at trial. Finally, if the trial court determines that the evidence is admissible for a proper purpose and relevant, it must then determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice in light of the availability of other means of proof. *People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000).

The evidence in this case supported the view that Nelson Sumpter was the person primarily involved in arranging for the fraudulent sale of the Snyder property. At trial, defendant's theory of the case was that he was merely present at the closing; accordingly, the principal issue at trial was whether he participated in his brother's scheme to fraudulently sell the Snyder property. Although there was evidence that defendant introduced his brother to Snyder and that he was involved in obtaining some of Snyder's personal documents, which assisted Nelson Sumpter in proceeding with his illegal scheme, defendant denied intentionally assisting his brother in any plan to fraudulently sell the Snyder's home. The evidence that defendant was involved in other illegal transactions with his brother was relevant to negate his claim of innocence by showing that he assisted his brother using a plan or system, and to show absence of mistake. Thus, the evidence was offered for proper purposes under MRE 404(b)(1), and was relevant to material issues of fact (his knowledge and intent). Further, the evidence had considerable probative force because of the absence of other available evidence to assist the jury in fully comprehending defendant's role in facilitating his brother's illegal activities.

Further, while the evidence was certainly damaging to the defense, it was not unfairly prejudicial in the sense of being inflammatory or having a tendency to distract the jury from the issues before it. Additionally, the trial court twice cautioned the jury that the other acts evidence could be considered only to show defendant's purpose, intent or plan, and lack of mistake, and that it could not be considered to show that he was a bad person who was likely to commit crimes. Consequently, the trial court did not err in admitting this evidence.

## II. SUFFICIENCY OF THE EVIDENCE

Defendant next argues that he was improperly convicted of money laundering because the evidence was insufficient to allow the jury to find that the \$30,000 he received from his brother's company was related to the proceeds of the fraudulent sale of the Snyder property. He also argues that there was insufficient evidence to support his convictions for obtaining money by false pretenses, identity theft, and conspiracy to commit money laundering or false pretenses.

This Court reviews challenges to the sufficiency of the evidence by reviewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find every element of the crime proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268; 380 NW2d 11 (1985). The resolution of credibility disputes is within the exclusive province of the trier of fact and this Court will not resolve such disputes anew on appeal. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Likewise, circumstantial evidence and reasonable inferences arising therefrom can constitute satisfactory proof of the elements of an offense. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991).

The prosecutor's theory at trial was that defendant aided and abetted his brother in obtaining money by false pretenses and committing identity theft and money laundering. To convict a defendant under an aiding and abetting theory, the prosecution needs to show that the defendant performed acts or gave encouragement that aided or assisted in the commission of a crime, and that he either intended to commit the crime or knew that the principal intended to commit the crime at the time he gave aid or assistance. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993). The amount of aid or assistance given is immaterial as long as it had the effect of inducing or encouraging the crime. *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974). Mere presence, even with knowledge that an offense is about to be committed, is insufficient to establish guilt as an aider or abettor. *People v Youngblood*, 165 Mich App 381, 386; 418 NW2d 472 (1988). Minimal circumstantial evidence of intent is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

In *People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001), our Supreme Court identified the elements of a taking by false pretenses under MCL 750.218: "(1) a false representation as to an existing fact; (2) knowledge by [the accused] of the falsity of the representation; (3) use of the false representation with an intent to deceive; and (4) detrimental reliance on the false representation by the victim." Here, the evidence showed that defendant feigned an interest in purchasing the Snyder property for substantially more than the listing price, which a jury could reasonably infer was intended to prompt the victim to act in pursuit of the offer. He then passed the deal on to his brother. Nelson Sumpter signed a purchase agreement with Snyder and scanned her driver's license into his laptop computer. Nelson Sumpter then used the signature from Snyder license to create a power of attorney for himself. He also used her license to reassure the notary at the title company that Snyder's signature on the power of attorney was legitimate so that she would notarize the signature despite Snyder not being present. That power of attorney enabled Nelson Sumpter to fraudulently sell Snyder's home without her knowledge. Defendant also obtained a copy of Snyder's judgment of divorce, which the title company used to obtain a quitclaim deed from her ex-husband. At the closing, the proceeds of the sale were distributed to Nelson Sumpter's companies. The entire transaction was facially legitimized by recording documents that defendant helped obtain, including the deed from Snyder's ex-husband, the deed to the buyer, the power of attorney, and Snyder's judgment of divorce. Defendant received a \$25,000 check after his brother signed a purchase agreement with Snyder, and another \$5,000 just before the documents were recorded.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a reasonable jury to find beyond a reasonable doubt that defendant knowingly made a false representation to the victim (that he wanted to purchase her home), and that he made the representation with the intent to deceive—that is, for the purpose of obtaining copies of Snyder's license and her divorce judgment, which assisted Nelson Sumpter in creating a false power of attorney and in fraudulently selling Snyder's home. Further, the evidence shows that Snyder relied on defendant's false representation of interest in her home and that her reliance caused her to provide him with the materials he requested. This reliance ultimately resulted in the fraudulent sale of her home, which was worth more than \$20,000. Accordingly, there was sufficient evidence to support defendant's conviction for obtaining more than \$20,000 through false pretenses.

MCL 445.65(1) criminalizes certain conduct with regard to the use of another's identifying information:

(1) A person shall not do any of the following:

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.

(ii) Commit another unlawful act.

In this case, the evidence supported an inference that defendant knowingly assisted his brother in obtaining Snyder's identifying information (her driver's license) with the intent to assist him in fraudulently selling Snyder's home. Nelson Sumpter used the signature on Snyder's license to create a fraudulent power of attorney, which he then used to fraudulently sell her home. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a reasonable jury to find beyond a reasonable doubt that all elements of identity theft were proven under an aiding and abetting theory.

The prosecution also charged defendant with second-degree money laundering. See MCL 750.411k and MCL 750.411n(1). This statute provides:

(1) A person shall not knowingly receive or acquire a monetary instrument or other property that constitutes the proceeds or substituted proceeds of a specified criminal offense with prior actual knowledge of both of the following:

(a) The monetary instrument or other property represents the proceeds or substituted proceeds of a criminal offense.

(b) The receipt or acquisition of the proceeds or substituted proceeds meets 1 or more of the following criteria:

(i) It will aid that person or another person in promoting or carrying on the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.

(ii) It is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or to avoid a transaction reporting requirement under state or federal law. [MCL 750.411k.]

Under MCL 750.411j(g)(xix), a "specified criminal offense" includes a taking by false pretenses in violation of MCL 750.218. The violation of MCL 750.411k constitutes second-degree money laundering "if the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation is \$10,000.00 or more and the violation involves either of the following:"

(a) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.

(b) The violation is committed with the intent to do 1 or more of the following:

(i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.

(ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law. [MCL 740.411n(1).]

In this case, defendant feigned an interest in purchasing Snyder's home and then passed the transaction to his brother, who signed a purchase agreement with Snyder on June 30, 2006. On July 17, 2006, Nelson Sumpter's company caused the bank to issue defendant a check for \$25,000. Nelson Sumpter fraudulently sold Snyder's home in September 2006, and two of his companies received checks for more than \$64,000 each. The sale documents were recorded on January 18, 2007. On January 5, 2007, Nelson Sumpter's company caused the bank to issue another check to defendant for \$5,000.

Viewed in a light most favorable to the prosecution, a reasonable jury could infer that the \$30,000 that defendant received were the substituted proceeds of a criminal offense (the fraudulent sale of Snyder's home), and that the form and timing of the two payments was designed to disguise the nature of the transaction and the source and ownership of the funds. Thus, there was sufficient evidence to support his conviction for second-degree money laundering.

Lastly, the jury convicted defendant of conspiracy to commit a taking by false pretenses or second-degree money laundering. "Conspiracy is a specific-intent crime, because it requires both the intent to combine with others and the intent to accomplish the illegal objective." *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). The statute requires proof of "an agreement to commit a prohibited offense." *Id.* at 629 n 19. Thus, the prosecutor had to prove that the intended future conduct included all elements of the substantive crime. *Id.*

Viewed in a light most favorable to the prosecution, the above evidence was sufficient to enable a reasonable jury to find beyond a reasonable doubt that defendant entered into an agreement with his brother to fraudulently sell Snyder's home and that he was paid \$30,000 for his efforts. The evidence was sufficient to support the conspiracy conviction.

### III. DEFENDANT'S STANDARD 4 SUPPLEMENTAL BRIEF

Defendant also raises several issues in a pro se supplemental brief, filed under Supreme Court Administrative Order No. 2004-6, Standard 4, none of which have merit.

First, he argues that there was insufficient evidence at his preliminary examination to bind him over for trial on the charged offenses. However, any error in binding over a defendant is rendered harmless by the presentation of sufficient evidence to convict at trial. *People v Moorer*, 246 Mich App 680, 682; 635 NW2d 47 (2001). As previously discussed, there was sufficient evidence at trial to convict him of the charged offenses. Therefore, any error in his bind over would not warrant relief.

Defendant also argues that his convictions are against the great weight of the evidence. Defendant raised this issue in an oral motion at sentencing, which the trial court denied. We review the trial court's decision for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Defendant essentially argues that it was illogical and unfair to convict him of the charges on the basis of what he describes as flimsy evidence and skilled storytelling. We disagree with defendant's characterization of the evidence. The evidence did not preponderate so heavily against the jury's verdict that it resulted in a serious miscarriage of justice. *People v Lemmon*, 456 Mich 625, 635, 642, 647; 576 NW2d 129 (1998).

Defendant next argues that he and his brother<sup>1</sup> were singled out for prosecution in violation of the Equal Protection Clause. "The equal protection guarantee requires that persons under similar circumstances must be treated alike; it does not require that persons under different circumstances be treated the same." *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999). Further, a prosecutor has discretion in deciding who to prosecute and what charges to bring. *Oakland Co Prosecuting Attorney v 46th Judicial Dist Judge*, 76 Mich App 318, 331; 256 NW2d 776 (1977). "The principle of separation of powers restricts judicial interference with the prosecutor's exercise of this executive discretion." *In re Hawley*, 238 Mich App at 512. "Selectivity in the enforcement of laws is not a violation of the Federal constitution as to equal protection unless it is based upon race, religion or some other arbitrary classification." *Oakland Co Prosecutor*, 76 Mich App at 331. "Intentional or purposeful discrimination will not be presumed and there must be an affirmative showing of clear and intentional discrimination." *Id.*

A defendant claiming a violation of equal protection must show that he was singled out for prosecution while others similarly situated were not prosecuted for the same conduct. *In re Hawley*, 238 Mich App at 513. Additionally, the defendant must show that the selection of who to prosecute was based on an impermissible ground such as race, sex, religion, or the exercise of a fundamental right. *Id.* In this case, defendant has not made either showing. Although defendant contends that the scheme to fraudulently sell the victim's home could not have been accomplished without the cooperation of others, the evidence indicates that the involvement of others was peripheral, and that the other persons who played various roles in the real estate transaction were not aware of the actual circumstances. Defendant has failed to show that he and his brother were singled out for prosecution while others similarly situated were not, or that the decision to prosecute was based on impermissible reasons.

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<sup>1</sup> Nelson Sumpter was tried separately and was convicted of several similar offenses.

Defendant lastly argues that he was unjustly and unconstitutionally convicted and urges this Court to carefully examine the facts and arrive at its own disposition of this case. Defendant cites no relevant law in support of this argument. This Court may not usurp the jury's role in evaluating the evidence. *Lemmon*, 456 Mich at 646-647. As previously indicated, there was sufficient evidence to support each of defendant's convictions, and those convictions are not against the great weight of the evidence. Accordingly, we reject this claim of error.

There were no errors warranting relief.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Mark J. Cavanagh  
/s/ Michael J. Kelly