

[Cite as *State v. Stevens*, 2010-Ohio-2600.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93189

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PHILLIP STEVENS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-491340

BEFORE: Rocco, P.J., Blackmon, J., and Stewart, J.

RELEASED: June 10, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Phillip Stevens appeals from his convictions after a jury found him guilty of theft by deception, securing writings by deception, and falsification.

{¶ 2} Stevens presents two assignments of error, claiming his convictions are not supported by either sufficient evidence or the manifest weight of the evidence.

{¶ 3} After a review of the record, this court cannot agree with Stevens's claims. Consequently, his convictions are affirmed.

{¶ 4} Stevens's convictions stem from his involvement as a mortgage broker in a real estate transaction. The state presented the following evidence at Stevens's trial.

{¶ 5} In May 2004, after his mother's death, Eugene Jones decided to sell her property with minimal cost to himself. The property, a ranch-style house on approximately an acre-and-a-half, was located in Oakwood Village, Ohio.

{¶ 6} After Oakwood Village performed a point-of-sale inspection, Jones learned the property required a great many repairs in order to be transferred. The village inspector pronounced the house "uninhabitable."¹ Jones decided to sell the property "as is."

¹Quotes indicate testimony of a witness at trial.

{¶ 7} In August 2004, Kenneth and Kathleen Oneal approached Jones and indicated they were interested in purchasing the house. Jones wanted \$100,000 for it, but agreed to accept the Oneals' offer of \$90,000 as long as they would make the repairs required by the village. The Oneals told Jones they knew of a "real estate agent" named Lavon Ivy² who would "come out and inspect the house and she would do everything that needed to be done to get the deal done."

{¶ 8} Kenneth Oneal then met with Ivy and asked her to arrange for him to obtain financing for the purchase. He informed her he needed money for both the purchase and the necessary repair work; he could not make any down payment.

{¶ 9} Ivy contacted Jones, arranged a time to "take pictures" of the house, and eventually presented him with a purchase agreement. On August 20, 2004, Jones went to the office of "Imani Mortgage" in Beachwood, where he signed the original purchase agreement; by its terms, Jones agreed to sell the property to Kenneth Oneal for \$90,000 with no money down.

{¶ 10} Oneal signed the same agreement two days later. The agreement stated the closing date as "45 days" after the seller had signed.

{¶ 11} Sometime later, Ivy contacted Jones and informed him that the closing date was postponed; she was not "going to do the deal through" Imani

²According to the record, Ivy sometimes called herself Lavon Ruderson.

Mortgage “because she had someone else who would finance” the purchase. Ivy also indicated to Jones that, in order to get the purchase financed, the purchase price of the property had to be listed as \$165,000 rather than \$90,000; it was his understanding “that the bank wouldn’t finance a smaller amount.”

{¶ 12} The record reflects that on September 1, 2004, “Lavon C. Ruderson, CREA,” prepared an “Appraisal of Real Property” located at 25349 Tryon Road in Oakwood Village, Ohio for Stevens’s company, M & S Investments and Service. In this document, the “sale price” of the property was stated as “\$165,000,” the “indicated value by sales comparison approach” was set forth as “\$165,000,” and the “indicated value by cost approach” was set forth as “\$238,731.”

{¶ 13} The appraisal report also indicated that there was “no external or functional obsolescence noted,” and the property was “appraised in an as is condition.” The document contained photographs of the various parts of the property. These photographs demonstrated no obvious flaws, even though none of the problems previously noted by the village housing inspector at that time had been corrected.

{¶ 14} At around this time, Oneal signed some documents Ivy presented to him “in order to get the loan” for the purchase. He acknowledged signing a declaration that he “made \$5300 a month” from his job as a security guard, although he actually made only \$1800 a month.

{¶ 15} In October 2004, Jones received a telephone call from Stevens, who held a mortgage broker's license from the state of Ohio. Stevens introduced himself to Jones as "the guy who's going to finance" Oneal's purchase. Stevens seemed confused about Jones's status in the transaction; after Jones told Stevens he was the seller, Stevens told Jones to contact him if he "could use his services."

{¶ 16} On October 4, 2004, New Century Mortgage Company ("NCM") received a "FastQual" from Stevens for the purchase of the Tryon Road property by Kenneth Oneal. NCM's representative testified that a "FastQual" is a document used in the mortgage industry by mortgage brokers to "lock in" confirmation of a loan percentage rate; the broker would follow up by submitting the rest of the paperwork necessary for the processing of the loan.

{¶ 17} NCM's representative further stated that as the mortgage broker for the purchase of the property, Stevens's role was to "work[] with the borrower"; it was his responsibility to gather the borrower's personal information and to ask for supporting documentation, "a pay stub, W-2, tax returns." Stevens also "order[ed] the appraisal."

{¶ 18} Shortly thereafter, NCM received a completed "Uniform Residential Loan Application" ("URLA") requesting a mortgage loan for Kenneth Oneal in the amount of "\$132,000," which was 80% of "\$165,000," the stated value of the Tryon Road property. Stevens signed the application as the "interviewer" of the

“borrower” Kenneth Oneal. “Ruderson’s” appraisal accompanied the application.

{¶ 19} The URLA listed Oneal’s monthly income as \$5287, and his “Liquid Assets” included an account at National City Bank that contained “\$42,000.” Although Oneal’s signature did not appear on the URLA, nothing about the information the document contained alerted NCM’s underwriter that anything about the application was questionable.

{¶ 20} NCM approved a mortgage loan to Oneal. On October 14, 2004, Beachwood Title Agency sent an acknowledgment to Stevens that, pursuant to his instructions, it would prepare the closing documents for the transaction. These included settlement statements for the seller and the buyer.

{¶ 21} With respect to verifying the buyer’s ability to meet the terms of the mortgage loan, Stevens “faxed” copies of items required by NCM to the title agency. A copy of what purported to be a cashier’s check drawn on Oneal’s National City Bank account in the amount of \$42,000 indicated that Oneal had put the money into escrow as a down payment toward the purchase of the property.

{¶ 22} When Jones signed the settlement statement on October 28, 2004, he received a total, after “payouts” to various entities, of \$63,000 for his mother’s property. According to the disbursements summary relating to the transaction, Stevens received a broker’s fee in the amount of \$5280.

{¶ 23} Oneal was dismayed to find that he received a total in cash of \$9,950.55 as a disbursement from the transaction, because he had expected more money to make repairs on the house. Ivy indicated to him that a “part of the loan” was for her father’s construction company “to fix the house.”

{¶ 24} However, the promised repairs were not made. The Oneals later discovered that over \$25,000 of a disbursement from the mortgage loan went to Ivy’s father’s company. They additionally discovered that Stevens was listed as their mortgage broker. Kenneth Oneal testified that prior to early 2005, he had never either heard of or spoken to Stevens.

{¶ 25} The Oneals instigated an investigation of the transaction that eventually resulted in the indictment in this case. Stevens was charged with several co-defendants, including Ivy and her father. Three of the counts pertained to Stevens, and charged him with theft by deception, securing writings by deception, and falsification.

{¶ 26} After hearing the state’s evidence, the jury found Stevens guilty of the charges. The trial court ultimately sentenced him to two years of community control sanctions.

{¶ 27} Stevens challenges his convictions with two assignments of error.

“I. The verdicts were against the manifest weight of the evidence[.]

“II. The evidence below was legally insufficient to sustain verdicts of guilty of the offenses of the offenses [sic] of theft (R.C. 2913.02),

securing writing by deception (R.C. 2913.43(A)) and falsification (R.C. 2921.13)[.]”

{¶ 28} In these assignments of error, Stevens argues that his convictions are unsupported by either sufficient evidence or the manifest weight of the evidence. This court recently set forth at length the analysis to be applied to Stevens’s arguments as follows:

{¶ 29} “A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 30} “In evaluating a challenge to the verdict based on the manifest weight of the evidence, a court sits as the thirteenth juror and intrudes its judgment into proceedings that it finds to be fatally flawed through misrepresentation or misapplication of the evidence by a jury that has ‘lost its

way.’ *Thompkins*, supra, at 387, 678 N.E.2d 541. As the Ohio Supreme Court declared:

{¶ 31} “Weight of the evidence concerns “the inclination of the greater amount of credible evidence offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.” * * *

{¶ 32} “The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.’ *Id.*

{¶ 33} “In *State v. Bruno*, Cuyahoga App. No. 84883, 2005-Ohio-1862, we stated that the court must be mindful that the weight of the evidence and the credibility of witnesses are matters primarily for the trier of fact. A reviewing court will not reverse a verdict where the trier of fact could reasonably conclude from substantial evidence that the prosecution proved the offense beyond a

reasonable doubt. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. Moreover, in reviewing a claim that a conviction is against the manifest weight of the evidence, the conviction cannot be reversed unless it is obvious that the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Garrow* (1995), 103 Ohio App.3d 368, 370-371, 659 N.E.2d 814.” *State v. Wells*, Cuyahoga App. No. 92130, 2009-Ohio-4712, ¶13-15.

{¶ 34} Stevens was charged with violations of R.C. 2913.02(A)(3), R.C. 2913.42, and R.C. 2921.13.

{¶ 35} R.C. 2913.02(A)(3), theft, states that:

{¶ 36} “(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

{¶ 37} * *

{¶ 38} “(3) By deception; * * *.”

{¶ 39} R.C. 2913.43, in relevant part, states: “(A) No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.”

{¶ 40} R.C. 2921.13(A) states that no person “shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

{¶ 41} “(8) The statement is in writing and is made with purpose to induce another to * * * extend to or bestow upon the offender any * * * valuable benefit * * * , when the person to whom the statement is directed relies upon it to that person’s detriment.”

{¶ 42} According to the testimony presented at trial, in his capacity as the mortgage broker for the transaction, Stevens provided the loan documents necessary to process Oneal’s application. Based upon the information those documents contained, the loan was approved and Stevens’s fee was paid out of the proceeds.

{¶ 43} Stevens received a fee of over \$5000. NCM’s representative stated that if NCM had been aware that the documents were false, NCM would not have approved the loan. Oneal testified that he never spoke to Stevens prior to signing the settlement statement, that he never provided any information to Stevens regarding the loan application, that he only earned a monthly wage of \$1800, and that he not only did not provide any down payment, but that he never had an account at any financial institution that contained \$42,000.

{¶ 44} Since the evidence demonstrated: 1) Stevens provided false information and documents to NCM in order to secure financing for the purchase

of the property; 2) Stevens signed the URLA attesting that he obtained the information and documents from the buyer in spite of the fact that he had spoken only to the seller and had never had any contact with Oneal; 3) NCM would not have approved the loan if Stevens presented NCM with truthful information; and 4) Stevens obtained his fee as a result of his actions, Stevens's convictions for theft by deception, securing writings by deception, and falsification are supported by sufficient evidence. *State v. Foster*, 185 Ohio App.3d 117, 2009-Ohio-6213, 973 N.E.2d 227; *State v. Simpson*, Cuyahoga App. No. 92069, 2009-Ohio-6301; *State v. Wells*, supra.

{¶ 45} Similarly, the jury acted within its prerogative to believe the testimony of the state's witnesses. Each witness testified at length, each was thoroughly cross-examined, and each presented a story consistent with the others' testimony and with the documentary evidence presented. Thus, Stevens's convictions also find support in the manifest weight of the evidence. *State v. Simpson*, supra; *State v. Huff*, Cuyahoga App. No. 92427, 2009-Ohio-5368.

{¶ 46} Stevens's assignments of error, accordingly, are overruled.

{¶ 47} His convictions are affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
MELODY J. STEWART, J., CONCUR