

[Cite as *State v. Holman*, 2010-Ohio-4886.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 93869 and 93870

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

STEPHEN HOLMAN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-500286 and CR-500288

BEFORE: Rocco, P.J., McMonagle, J., and Dyke, J.

RELEASED AND JOURNALIZED: October 7, 2010

ATTORNEY FOR APPELLANT

Patrick E. Talty
20325 Center Ridge Road
Suite 512
Rocky River, Ohio 44116-4386

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Michael E. Jackson
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Stephen Holman appeals from his convictions and the sentences imposed in two cases that were consolidated for a jury trial; the jury found him guilty of several counts of aggravated theft by deception, securing writings by deception, falsification, receiving stolen property, forgery, and telecommunications fraud.

{¶ 2} Holman presents a total of three assignments of error, claiming his convictions in each case are not supported by the manifest weight of the evidence, and the trial court abused its discretion in imposing consecutive sentences.

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

{¶ 4} Holman's convictions stem from his dealings while working as a loan officer for a mortgage broker in two real estate transactions. The state presented evidence at Holman's trial that established the existence of a complicated "mortgage fraud" scheme involving Holman and several others who ultimately became his co-defendants.

{¶ 5} Jefferey Brown, Jr. testified that upon graduating from college and gaining some experience in financing, he began "freelancing * * * as a person that invested in real estate, [and] did a lot of deals through Millennium Title Company," where he met Holman. This occurred in 2005.

{¶ 6} Holman at that time worked for Theodore Calkins, a mortgage broker at Buckeye Lending, Inc. Holman held a temporary license as a loan officer. Holman offered Brown a job, and Brown accepted. Brown then also obtained a temporary license as a loan officer at Buckeye Lending. He testified his duties involved obtaining clients for "new home loans, whether refinances or new purchases."

{¶ 7} Brown testified that Holman had moved into a new house in Solon, Ohio and "introduced" him to the builder, Edward B. Emery. Emery had some "luxury" houses that he needed to sell in order to pay off his construction loans.

In particular, one was a house on Winston Lane, worth \$725,000 and the other was a house on Flanders Drive, worth \$850,000.

{¶ 8} Karl Whittingham testified that in the summer of 2005, he met Brown at a “bar.” Whittingham mentioned he worked in advertising at a radio station, and Brown eventually asked if he had any interest in joining a “real estate investment club.”

{¶ 9} As Brown explained the “club” to Whittingham, a new home builder needed an “investor” to buy his product, and then the “investor” could sell the home at a “profit.” Whittingham expressed an interest, and continued to meet Brown socially. Brown eventually introduced Whittingham to Holman.

{¶ 10} Whittingham testified he went to Buckeye Lending and signed some “paperwork” that he understood was “an application” about his “credit worth[iness] to be a part of the investment group.” Whittingham provided a copy of his “paycheck stub,” his bank account number and other personal information.

{¶ 11} A short time later, Brown approached Whittingham with a proposal to buy the Winston Lane property. Brown indicated that he could arrange financing for Whittingham to obtain a mortgage to make the purchase, Brown would “pay the first six months of the mortgage while he stayed in the house, and then after * * * he was going to refinance the actual property into his name,” and Whittingham would receive \$10,000 as a “down payment.” Whittingham agreed.

{¶ 12} Whittingham testified Holman accompanied Brown when Brown delivered the \$10,000 check. Whittingham also testified that, although on the “Universal Residential Loan Application” (URLA) associated with the property Holman’s name was set forth as the loan officer, he did not know of URLA’s existence, he neither signed it nor provided the information it contained to Holman, and that the information it contained was inaccurate. Specifically, Whittingham’s job title and income were inflated, and his signature was forged.

{¶ 13} Brown testified that he “stated” Whittingham’s income on the URLA as an amount that would qualify for the loans, and that the “down payment” came from Fox Management, which would be repaid from the mortgage loan. Brown further testified that Holman knew what Brown was doing in his “structuring of the deal,” that Holman made a call to arrange covering a “shortage” in the deal, and that Holman’s signature was on the URLA for the Winston Lane house.

{¶ 14} Argent Mortgage Company provided a mortgage loan of \$500,000 to Whittingham to purchase the Winston Lane property. A representative testified that Argent made the loan in reliance upon Holman’s signature on the URLA and upon obtaining information that indicated Whittingham had a significant amount of money in his National City Bank account. GB Home Equity provided a mortgage to Whittingham for the balance of the Winston Lane purchase price; GB’s representative also testified the loan was made in reliance upon Holman’s signature on the URLA. Loans were made by “wire transfers.”

{¶ 15} With respect to another of Emery's houses, Brown also testified he and Holman had former "clients" who knew of "investors or buyers," i.e., persons with "good credit scores and would be looking to make money in real estate." One of these "clients" was Ike Osuji.

{¶ 16} Osuji had a friend named Ogbonnaya Edeh, a Nigerian immigrant who recently had become an American citizen. Edeh drove a taxi for a living, and lived in Cleveland. In the autumn of 2005, after Osuji introduced Edeh to Holman and Brown, Holman and Brown showed Edeh the house on Flanders Drive. Edeh indicated he wanted to purchase it.

{¶ 17} Holman also knew a man, Phillip Taylor, who owned a "rehab" business called "Classic Tango." Taylor had "verified" employment for other "investors." According to Brown, he, Holman, Osuji, and Edeh and his brother "came together" and determined that "for the deal to work," Edeh "would have to be qualified with a better income, better job." Holman introduced Brown to Taylor, and Brown asked Taylor to "put Edeh on his payroll * * * concerning a loan."

{¶ 18} Brown stated that he and Holman filled out URLAs for Edeh to obtain title to the Flanders Drive house and submitted them to a lender, viz., New Century Mortgage. According to the information on the URLAs, Edeh lived in Beachwood, Ohio, had worked as a "structural engineer" for Taylor's company for

“four years,” and earned “\$17,000 per month.” Holman later checked with Taylor to ensure Taylor “verified” Edeh’s “employment” when New Century called.

{¶ 19} As a result of the information supplied by Holman and his minions, New Century approved two mortgage loans to Edeh in the total amount of \$850,000. New Century also loaned approximately an additional \$140,000 for “upgrades” to the property to be performed by a company named “Widdershin One.”

{¶ 20} Brown testified that Widdershin One was a company owned by a man named Brian Chenowett, “a personal investor” who had a “down payment assistance program.” According to Brown, Widdershin One never performed any work on the Flanders Drive house, but accepted the \$140,000 at the closing, and provided Brown and Holman \$49,000 each for “helping get the property sold.” Osuji and Edeh also received payments after the deal closed.

{¶ 21} The scheme began unraveling in March 2006. At that time, Clinton Daniels was living in the Flanders Drive house; he had signed a “land contract” for the eventual purchase of it, and had taken in several renters to help with his monthly payments. One of his renters became suspicious that Daniels was not the actual owner, and took the matter to the Solon police. Moreover, Daniels discovered that Edeh was not paying the mortgage.

{¶ 22} The investigation of the scheme led to two separate indictments. One indictment related to the Flanders Drive house, and the other to the Winston Lane house.

{¶ 23} In CR-500286, as to Flanders Drive, Holman was indicted with ten co-defendants and was charged with five counts: aggravated theft by deception, securing writings by deception, falsification, receiving stolen property, and telecommunications fraud. In CR-500288, as to Winston Lane, Holman was indicted with three co-defendants and was charged with fourteen counts: two counts of aggravated theft by deception, two counts of securing writings by deception, two counts of receiving stolen property, two counts of falsification, four counts of forgery, and two counts of telecommunications fraud.

{¶ 24} The cases were consolidated for trial. Upon the conclusion of the presentation of the evidence, in CR-500286 (Flanders Drive), the jury found Holman guilty on each count, and in CR-500288 (Winston Lane), the jury found Holman guilty on ten of the counts, but acquitted him on the two counts of receiving stolen property and two counts of forgery.

{¶ 25} The trial court ultimately imposed prison sentences on Holman that totaled six years in each case, but ordered the sentences in the two cases to be served consecutively, for a total term of twelve years.

{¶ 26} In this appeal, Holman challenges his convictions and the sentences imposed. His appeal from his convictions in CR-500286 has been assigned

App. No. 93870, and his appeal from his convictions in CR-500288 has been assigned App. No. 93869. Holman presents the following assignments of error.

{¶ 27} In CR-500286/App. No. 93870 (Flanders Drive):

{¶ 28} **“I. The verdict of the jury finding defendant-appellant, Stephen Holman, guilty is against the manifest weight of the evidence.”**

{¶ 29} In CR-500288/App. No. 93869 (Winston Lane):

{¶ 30} **“I. The verdict of the jury finding defendant-appellant, Stephen Holman, guilty is against the manifest weight of the evidence.**

{¶ 31} **“II. Appellant was not afforded effective assistance of counsel in that trial counsel failed to raise the issue of a disproportionate sentence.”**

{¶ 32} Holman initially argues that his convictions in both cases are unsupported by the manifest weight of the evidence. In *State v. Wells*, Cuyahoga App. No. 92130, 2009-Ohio-4712, ¶¶13-15, this court set forth the analysis to be applied to Holman’s argument as follows:

{¶ 33} “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.’ *State v. Thompkins*, [78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541]. As the Ohio Supreme Court declared:

{¶ 34} “ ‘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.” * * *

{¶ 35} “ ‘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.

{¶ 36} “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.”

{¶ 37} Holman was charged with violations of R.C. 2913.02(A)(3), 2913.43, 2921.13, and 2913.05(A).

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

{¶ 39} “(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:

{¶ 40} “* * *

{¶ 41} “(3) By deception; * * *.”

{¶ 42} 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.”

{¶ 43} 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:

{¶ 44} “* * *

{¶ 45} “(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.”

{¶ 46} R.C. 2913.05(A) provides that, “No person, having devised a scheme to defraud, shall knowingly disseminate, transmit, or cause to be disseminated or transmitted by means of a wire, radio, satellite, telecommunication, telecommunications device, or telecommunications service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.”

{¶ 47} According to the testimony presented at trial, in his capacity as the loan officer for the two transactions, Holman signed off on the loan documents necessary to process the URLAs for both Edeh and Whittingham. Based upon the information those documents contained, the loans were approved and Holman was paid out of the proceeds.

{¶ 48} Holman received over \$49,000 from the Flanders Drive scheme, and his loan officer’s fee from the Winston Lane scheme. The mortgage companies’ representatives each indicated that if the company had been aware that the information on the documents or the documents themselves were false, the loans would not have been approved.

{¶ 49} Whittingham testified that he never spoke to Holman prior to signing what he believed was an application to join a real estate “investment club,” that he never provided any information to Holman regarding a loan application, that he earned a yearly wage of approximately \$60,000, and that he not only did not provide any down payment, but that his account at National City Bank never contained \$12,000.

{¶ 50} Brown, Edeh, Osuji, and Taylor all provided testimony that demonstrated Holman was the mastermind behind the schemes. The evidence demonstrated: 1) Holman knew false information and documents were provided to the mortgage companies in order to secure financing for the purchases of both houses; 2) Holman signed the URLA attesting that he obtained the information and documents from the buyer in spite of the fact that he had never spoken to Whittingham and after arranging with Taylor to verify Edeh’s employment as a “structural engineer”; 3) none of the mortgage companies would have approved the loans if Holman’s signatures were not on the URLAs; and, 4) Holman obtained money as a result of his actions. Many of the documents, monies, and fees were transferred by “wire.”

{¶ 51} 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. Of course, some of the witnesses attempted to minimize their own culpability.

{¶ 52} On the other hand, Holman's defense witness, one of his loan processors, could testify only that she placed the information provided to her on the relevant forms. This witness admitted on cross-examination that she would place Holman's electronic signature on the "template" if it were "his loan."

{¶ 53} Based upon the record, therefore, the jury did not lose its way in convicting Holman for theft by deception, securing writings by deception, falsification, and telecommunications fraud in relation to the Flanders Drive house and the Winston Lane house. Since Holman's convictions are supported by the manifest weight of the evidence, his first assignments of error in each case are overruled. *State v. Stevens*, Cuyahoga App. No. 93189, 2010-Ohio-2600; *State v. Ivy*, Cuyahoga App. No. 93250, 2010-Ohio-2463; *State v. Simpson*, Cuyahoga App. No. 92069, 2009-Ohio-6301; *State v. Huff*, Cuyahoga App. No. 92427, 2009-Ohio-5368.

{¶ 54} Holman additionally argues that his trial counsel rendered ineffective assistance because he failed to challenge as "disproportionate" the trial court's decision to impose a sentence that totaled twelve years. Holman, however, does not indicate what his sentence should be measured against to prove his point. Moreover, his argument is specious in light of trial counsel's prodigious efforts on Holman's behalf.

{¶ 55} At one point during the trial of these cases, the court commented that, should the jury convict Holman on every count, he faced a potential sentence of seventy-three and a half years. The trial court nevertheless ultimately decided that imposing prison terms on Holman of six years for each case, to be served consecutively, would appropriately comply with statutory sentencing principles. In this, the trial court acted entirely within the law and its discretion. *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-2372, 896 N.E.2d 124.

{¶ 56} Furthermore, this court notes defense counsel secured Holman's acquittal on four of the fourteen counts presented against him in CR-500288. Under these circumstances, Holman can meet neither part of the test, as set forth in *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, to show trial counsel provided ineffective assistance.

{¶ 57} Holman's second assignment of error, accordingly, is also overruled.

{¶ 58} Since none of his assignments of error has merit, Holman's convictions and sentences 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. The defendant's conviction having been affirmed, any bail pending appeal is terminated. 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

ANN DYKE, J., CONCURS
CHRISTINE T. McMONAGLE, J., CONCURS
IN JUDGMENT ONLY