STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 23, 2010
v	No. 289835 Wayne Circuit Court
NELSON SUMPTER, Defendant-Appellant.	LC Nos. 08-002791-FH; 08-002794-FH; 08-004315-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
V	No. 292814 Wayne Circuit Court
NELSON SUMPTER, Defendant-Appellant.	LC No. 08-002789-FH

Before: MURPHY, C.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of a total of 41 counts in four separate cases that were consolidated for trial. In LC No. 08-002789-FH (Docket No. 292814), he was convicted of two counts of uttering and publishing, MCL 750.249, two counts of forgery, MCL 750.248, and one count each of false pretenses over $20,000, MCL 750.218(5)(a), second-degree money laundering, MCL 750.411n, and identity theft, MCL 445.65. In LC No. 08-002791-FH (Docket No. 289835), he was convicted of ten counts of uttering and publishing, eight counts of forgery, four counts of false pretenses over $20,000, and one count each of second-degree money laundering and identity theft. In LC No. 08-002794-FH (Docket No. 289835), he was convicted of two counts of uttering and publishing, two counts of forgery, and one count each of false pretenses over $20,000, second-degree money laundering, and identity theft. In LC No. 08-004315-FH (Docket No. 289835), he was convicted of two counts of false pretenses over $20,000 and one count of second-degree money laundering. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 9-1/2 to 25 years for each conviction. He appeals as of right in each of his four cases. We affirm in each case.

I. BACKGROUND

Defendant's convictions arise from a series of fraudulent real estate transactions involving property located in Detroit. Three of the consolidated cases involve schemes whereby defendant acquired personal information and an electronic signature from property owners and then used that information to prepare fraudulent powers of attorney that were used to sell the owners' properties without their knowledge or consent. In each instance, the purchaser obtained a mortgage loan and the proceeds were disbursed to companies owned or controlled by defendant. In two instances, the title company made a disbursement by issuing a check that was payable to the property owner, but defendant cashed the check at a check-cashing business by endorsing it after the forged endorsement of the property owner. In the fourth case, evidence was presented that defendant was involved in selling the same real property to two different purchasers within one week. Again, mortgage loan proceeds were diverted to a company owned by defendant.

II. SEARCH WARRANTS

A. PROBABLE CAUSE

Defendant first argues that a September 20, 2007, search warrant for his home, vehicle, and computer was invalid because it was not supported by probable cause. Although defendant contends that he preserved this issue by challenging the validity of the warrant in a pretrial motion to suppress that was denied on August 28, 2008, the record discloses that the September 20, 2007, warrant was not a subject of the motion to suppress and that the trial court's August 28, 2008, opinion did not address whether there was probable cause to support any search warrant. Although the trial court recognized that defendant had raised a challenge to a warrant on the ground that "it stated no probable cause for his arrest nor did it have an affidavit attached," the court declined to further consider that issue because defendant failed to specify which warrant he was contesting. Thus, the record does not support defendant's claim that this issue was preserved below. In addition, it is impermissible for a party to enlarge the record on appeal, *People v Williams*, 241 Mich App 519, 524 n 1; 616 NW2d 710 (2000); see also *People v Seals*, 285 Mich App 1, 21; 776 NW2d 314 (2009), and *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008), and this Court previously denied defendant's motion to expand the record on appeal to include the search warrants and affidavits that are the bases for his argument on appeal. See *People v Sumpter*, unpublished order of the Court of Appeals, entered February 17, 2010 (Docket Nos. 289835 and 292814). Thus, the September 20, 2007, warrant and affidavit are not properly before this Court for review.

Even if this issue was properly before us, we would reject defendant's request for relief. Because the record does not indicate that defendant timely challenged the September 20, 2007, search warrant in the trial court, this unpreserved issue is subject to review for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); see also *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). Although it appears that defendant raised this issue in a posttrial motion for a new trial, raising the issue at that late stage was insufficient to preserve a claim that evidence should have been suppressed before trial. To the extent defendant also challenges the trial court's decision denying his motion for a new trial, such a decision is reviewed for an abuse of discretion. *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008). But issues of law, such as statutory questions and the application of

a constitutional standard to uncontested facts, are reviewed de novo. *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). We review any factual findings made by the trial court for clear error. *Id.*

There is no merit to defendant's argument that the September 20, 2007, search warrant and affidavit failed to pass constitutional muster. Defendant's reliance on *Paramount Pictures Corp v Miskinis*, 418 Mich 708; 344 NW2d 788 (1984), is misplaced because defendant was not compelled to produce evidence of any kind, let alone evidence of personal records. The execution of the search warrant did not violate defendant's Fifth Amendment privilege against self-incrimination or Const 1963, art 1, § 17, even if the seized records were personally incriminating to defendant. *Id.* at 725-731.

Defendant has also failed to show that the warrant was invalid because it was issued without probable cause. The Fourth Amendment requirement of probable cause considers whether there is probable cause that contraband or evidence of a crime will be found in a particular place. *People v Keller*, 479 Mich 467, 475; 739 NW2d 505 (2007). "Probable cause exists when the facts and circumstances would allow a reasonable person to believe that the evidence of a crime or contraband sought is in the stated place." *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009); see also *People v Darwich*, 226 Mich App 635, 639-640; 575 NW2d 44 (1997). An affidavit must be read in a commonsense and realistic manner. *People v Unger*, 278 Mich App 210, 244; 749 NW2d 272 (2008). The issuing magistrate's task is to make a practical and commonsense determination whether, considering all of the circumstances set forth in the affidavit presented, including the veracity and bases of knowledge of persons supplying hearsay to the affiant, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Keller* 479 Mich at 475. A reviewing court need only ask if a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause to issue a warrant. *Mullen*, 282 Mich App at 21.

In this case, although the affiant, Wayne County Sheriff's Deputy Allen Cox, provided little information concerning his law enforcement experience in the fraud unit, his affidavit indicated that he was conducting a fraud investigation that involved contact by himself or other members of the fraud unit with multiple homeowners and banking institutions, various documents that were used to trace real estate transactions from homeowners to a title company, and, ultimately, deposits to various bank accounts. The affidavit included detailed information describing how defendant had obtained personal information and signatures from homeowners, none of whom knowingly executed a power of attorney authorizing defendant to act on their behalf. Deputy Cox also described how proceeds from transactions handled by the title company, Original Title Agency, Inc., were traced to business and personal bank accounts, and he also provided specific information regarding defendant's arrest on September 19, 2007, while driving a vehicle that contained checkbooks for businesses that were associated with him. Because the cell phone that defendant possessed contained an Ann Arbor address and information indicated that defendant's dependent resided at that address, and because proceeds from real estate transactions were linked to personal accounts, there was a substantial basis for finding probable cause to believe that additional evidence of the fraudulent real estate scheme would be found at that address. Thus, defendant has not established any constitutional error based on the probable cause requirement.

Defendant has also failed to show a violation of MCL 780.653. Under that statute, the facts set forth in an affidavit for a search warrant need only show that an unnamed person spoke with personal knowledge of the information and that the person is either credible or that the information is reliable. *People v Hawkins*, 468 Mich 488, 501; 668 NW2d 602 (2003). It could be inferred from the information in the affidavit that Deputy Cox acquired personal knowledge of the documents used in the real estate transactions and the information known by unnamed homeowners who were crime victims. Crime victims are presumably reliable. *People v Dowdy*, 211 Mich App 562, 567; 536 NW2d 794 (1995). Thus, there is no basis for finding that the requirements of the statute were not satisfied.[1]

Further, we are not persuaded that the September 20, 2007, search warrant is overly broad, vague, or amounts to a "general warrant." The warrant authorized a search for various items, stored on a computer or otherwise, related to the sale and purchase of real estate, as well as the proceeds or substituted proceeds from the sales. The affidavit was sufficiently specific to pass constitutional muster. *Unger*, 278 Mich App at 245; see also *People v Hellstrom*, 264 Mich App 187, 192-193; 690 NW2d 293 (2004) (purpose of the particularity requirement is to provide reasonable guidance to the executing officers regarding the items to be seized).

In sum, defendant has not established any error, plain or otherwise, associated with the September 20, 2007, search warrant and affidavit, and thus has not shown that any trial evidence should have been excluded as the fruit of the search of the Ann Arbor residence or the computer obtained from that residence. Further, absent any constitutional or statutory infirmity, defendant's attempt to restate this claim as a general due process claim is unavailing. Cf. *People v Blackmon*, 280 Mich App 253, 261; 761 NW2d 172 (2008).

Defendant generally asserts that other affidavits and search warrants were "similarly defective," but he does not discuss the substance of any other warrants or supporting affidavits, the evidence seized, or even the identities of the places searched. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Thus, defendant has abandoned any challenge to other affidavits and warrants.[2]

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[1] Although we do not find that MCL 780.653 was violated, we note that any violation of the statute would not require suppression of the seized evidence as the officer acted reasonably and in good faith. *Hawkins*, 468 Mich at 512-513.

[2] Further, to the extent defendant argues in his pro se Standard 4 brief that there was no probable cause to issue search warrants that were executed at various banks and at Original Title, defendant has not established that he has standing to challenge these searches. The state and federal constitutional protections against unreasonable search and seizures are personal rights. *People v Gadomski*, 274 Mich App 174, 178; 731 NW2d 466 (2007). A defendant has no standing to challenge a search of businesses, such as banks, because there is no reasonable expectation of privacy in information that he and others expose to third parties. *Id.* at 178-179.

B. SUPPRESSION OF SEARCH WARRANTS

We next consider defendant's claims involving the delay in providing him with copies of the search warrants and affidavits, which were initially suppressed by the issuing magistrate. It is undisputed that defendant eventually received copies of the affidavits and warrants in January 2008, more than nine months before trial. In August 2008, the trial court denied defendant's motion to suppress evidence based on the alleged delay in providing him with the affidavits and warrants, finding that defendant was not prejudiced by the delay. On appeal, defendant argues that the delay in providing the search warrants and affidavits affected his constitutional rights to confrontation, a speedy trial, and due process.[3] We disagree.

First, the record does not disclose that defendant timely challenged the suppression of the search warrants on the ground that it affected his Sixth Amendment right of confrontation. "An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground." *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). At most, defendant untimely raised the Confrontation Clause issue in his motion for a new trial. Therefore, we review this unpreserved issue for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763.

The Sixth Amendment's Confrontation Clause guarantees a defendant the right "to be confronted with the witnesses against him" US Const, Am VI. Therefore, testimonial statements of witnesses who are unavailable for trial are generally inadmissible unless a defendant had a prior opportunity for cross-examination. *People v Bryant*, 483 Mich 132, 138; 768 NW2d 65 (2009). A primary interest secured by the Confrontation Clause is the defendant's right to cross-examine witnesses, but that right is not unlimited. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). A defendant does not have a right to cross-examine a witness on irrelevant issues, but he should be permitted a reasonable opportunity to test the truthfulness of testimony. *Id.*

Here, there is no claim that the search warrants themselves were admitted at trial, and defendant does not dispute that he received the search warrants in January 2008, more than nine months before his trial. Under the circumstances, defendant has not established any violation of his confrontation rights. There is no basis for concluding that defendant was deprived of an opportunity to cross-examine any witness. To the extent defendant also suggests that this issue implicates the prosecutor's due process obligation to disclose material exculpatory or impeachment evidence, *People v Lester*, 232 Mich App 262, 281; 591 NW2d 267 (1998), his argument is equally unavailing. Defendant's mere assertion that he was not privy to the prosecutor's evidence is insufficient to establish error. *Kelly*, 231 Mich App at 640-641.

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[3] Defendant argues in his pro se Standard 4 brief that the delay in providing him with the affidavits and search warrants violated MCL 780.654 and, therefore, any evidence seized pursuant to the warrants should have been suppressed at trial. However, even assuming that there was a statutory violation, defendant has failed to establish any basis for applying the exclusionary rule to this statutory violation. *People v Sobczak-Obetts*, 463 Mich 687, 710; 625 NW2d 764 (2001).

Although defendant also presented a speedy trial claim in connection with this issue, both at trial and in his motion for a new trial, the record does not support his claim that the suppression of the search warrants and affidavits until January 2008 violated his right to a speedy trial because the delay affected the memories of witnesses. The time for evaluating a Sixth Amendment speedy trial claim begins with the date of the defendant's arrest. *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006). If the delay is less than 18 months, the defendant must prove prejudice. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999). Here, the delay between defendant's arrest in each of the four cases and defendant's trial was approximately 13 months. Therefore, defendant had the burden of establishing prejudice. The only prejudice alleged by defendant was that the delay could affect the memories of witnesses. However, defendant has not identified any factual basis for finding that the memories of any witnesses were affected. On the contrary, in denying defendant's motion for a new trial, the trial court specifically found that none of the witnesses had claimed any memory problems. Accordingly, defendant failed to establish any violation of his right to a speedy trial.

Finally, defendant's due process claim is based on the alleged violations of his rights to confrontation and a speedy trial. Because there is no merit to those claims, defendant's due process claim cannot succeed.

III. INVESTIGATIVE SUBPOENAS

Defendant next argues that he was deprived of due process because of the prosecutor's wrongful use of investigative subpoenas. We disagree. The prosecutor's use of investigative subpoenas is governed by MCL 767A.1 *et seq.* "MCL 767.4(1)(a) and (f) make clear that only the person at whom the subpoena was directed can challenge the subpoena under MCL 767A.1 *et seq.*" *Gadomski*, 274 Mich App at 181; see also *People v Earls*, 477 Mich 1119; 730 NW2d 241 (2007). Therefore, as the trial court properly determined, defendant lacks standing to challenge the prosecutor's issuance of investigative subpoenas to third parties.

Defendant's reliance on *People v Pruitt*, 229 Mich App 82; 580 NW2d 462 (1998), to advance a contrary argument is misplaced. The narrow question in *Pruitt* was whether the defendant had a right to compel discovery of witnesses' statements given pursuant to investigative subpoenas before the preliminary examination, *id.* at 83-84, not whether any investigative subpoena should have been issued in the first instance. Here, defendant does not raise any discovery issues related to witness statements and it is clear from the record that defendant was provided with copies of witness statements, because he relied on investigative subpoena transcripts as support for his pretrial motion to suppress the testimony of the subpoenaed witnesses.

Given defendant's lack of standing to pursue his claim of statutory error with respect to the other witnesses, defendant's unpreserved general due process claim also fails. Further, any violation of MCL 767A.1 *et seq*. would not require suppression under the exclusionary rule. *Earl*, 477 Mich at 1119. Thus, defendant has not established any error that so infected the trial with unfairness as to make his resulting convictions a denial of due process. *Blackmon*, 280 Mich App at 262.

IV. OTHER EVIDENTIARY ISSUES

A. LAPTOP COMPUTER

Defendant challenges the trial court's refusal to permit him to turn on his laptop computer at trial. The record indicates that defendant sought to turn on his computer at trial primarily to demonstrate its functionality; therefore, this argument presents an evidentiary issue. We review preserved evidentiary issues for an abuse of discretion. *Unger*, 278 Mich App at 216. "A trial court may be said to have abused its discretion only when its decision falls outside the principled range of outcomes." *Blackston,* 481 Mich at 460.

Demonstrative evidence is admissible where it aids a fact-finder in reaching a conclusion on a matter material in the case. *Unger,* 278 Mich App at 247. It must also satisfy traditional grounds for relevancy and probative value in light of policy considerations for the administration of justice. *Id*.

In this case, the trial judge also served as the trier of fact and found no need for a demonstration of how the computer functions when it was turned on. Thus, defendant failed to establish that a demonstrative purpose was necessary. Further, defendant did not present any basis for questioning the accuracy of either the disk copy of documents produced from an image on the hard drive, or any paper documents printed from the disk copy, which were admitted at trial. Under MRE 1003, "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." The trial court was also advised that there was a risk that data could be lost if the computer was turned on. Under these circumstances, the trial court did not abuse its discretion in denying defendant's request to turn on the computer at trial.

Defendant also argues that his inability to turn on the computer deprived him of his due process right to present a defense, but the right to present a defense is not absolute, as a defendant must still comply with established rules of procedure to assure fairness and reliability in the ascertainment of guilt or innocence. *People v Hayes*, 421 Mich 271, 279-280; 364 NW2d 635 (1984). The application of a rule of evidence contravenes due process "if it infringes on a defendant's substantial interest or significantly undermines a fundamental element of his or her defense." *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005). Although defendant accurately asserts that the prosecutor did not offer into evidence everything on the computer, the trial court made sure that defendant was provided with an entire copy of the imaged hard drive. Further, the record indicates that defendant was given an opportunity to acquire additional data from the hard drive before trial, but did not choose to do so or request assistance in acquiring such data. The only missing data suggested by defendant at trial were alleged purchase agreements pertaining to some of the cases, but it is clear from the trial court's decision that the presence or absence of a purchase agreement was not material to the court's determination of defendant's guilt or innocence. Moreover, the prosecutor stipulated to the fact central to defendant's defense, namely, that Rochell Copeland, Billy Baker, and Shirley Snyder provided the signatures on defendant's computer for the power of attorney documents. Under these circumstances, defendant has not established that his inability to turn on the computer violated his right to due process.

B. DEFENDANT'S STANDARD 4 BRIEF

In his Standard 4 brief, defendant argues that the admission of the laptop computer and the disk copy of information obtained from the hard drive violated MCL 600.4703a, MRE 803(6), and his constitutional rights to confrontation and due process.

Because defendant did not raise the statutory claim below, our review of that issue is limited to plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763. MCL 600.4703a is part of the forfeiture provisions in Chapter 47 of the Revised Judicature Act. The statute imposes certain duties on a seizing agency when a computer is seized for a violation of MCL 752.791 *et seq.* In this case, there is no indication that defendant's computer was seized for violating MCL 752.791 *et seq.* Thus, defendant has not shown that MCL 600.4703a is applicable and, accordingly, has not demonstrated a plain error.

Defendant has also failed to establish that admission of the computer contravened MRE 803(6), or his constitutional rights of confrontation or to due process. Further, because the record indicates that defendant considered the computer to be material to his defense, defendant's substantial rights were not affected by its admission. *Carines*, 460 Mich at 763. The disk copy of the documents produced from the image of the computer's hard drive was admitted only after defendant and his advisory counsel had an opportunity to review it and informed the trial court that they were "okay" and "fine" with it. By affirmatively representing to the trial court that he had no issue with the admission of the disk copy, defendant waived any claim that it should have been excluded. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). A waiver, as distinguished from a forfeiture that arises from a failure to object, extinguishes any error. *Id.* at 215.

In his Standard 4 brief, defendant also challenges the admissibility of various paper documents that were admitted at trial on the ground that the trial court did not require the prosecutor to comply with MRE 803(5) and (6). Defendant argues that this evidentiary error violated his constitutional rights of confrontation and to due process. We conclude that defendant waived any claim concerning the authenticity of documents within the group of exhibits that were admitted as exhibits 1 to 162 by affirmatively representing to the trial court during Betsy Hogan's testimony that there was no need for the prosecutor to establish a foundation for the documents. *Carter*, 462 Mich at 215-216. But because authenticated exhibits must still satisfy other evidentiary standards, such as relevancy and hearsay rules, *People v Jenkins*, 450 Mich 249, 260; 537 NW2d 828 (1995), we shall consider whether defendant has established any improper use of the evidence. Because defendant did not raise his evidentiary challenges below, our review is limited to plain error affecting defendant's substantial rights. MRE 103(d); *Carines*, 460 Mich at 763.

We disagree with defendant's argument that the prosecutor was required to establish the applicability of a hearsay exception for the payoff invoice that was admitted as part of the closing documents for the sale of Copeland's property. Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). The payoff invoice indicated that $61,805 was owed to a company owned by defendant. However, it was the prosecutor's theory at trial that the invoice was a false statement. Because the evidence was not offered for its truth, it was not hearsay and, accordingly, there was no need to establish a hearsay exception.

Defendant's argument regarding the power of attorney documents is similarly unavailing. Those documents, on their face, indicate that they were signed by Copeland, Baker, and Snyder, who appointed defendant to act as their attorney in fact for the purpose of selling specific property. Although the documents establish the statements made, the prosecutor offered other evidence to establish the falsity of the statements. Because the prosecutor clearly did not offer the documents to prove the truth of the matters asserted, they were not hearsay.

We also reject defendant's hearsay challenges to the two checks in the amounts of $79,210 and $77,089, respectively. The documents contained the endorsement signatures of both defendant and Baker. But the prosecutor's theory at trial was that Baker did not sign the checks. Where a check is introduced to show utterance of a forged instrument, the hearsay rule is not implicated. *People v Parm*, 15 Mich App 303, 305; 166 NW2d 536 (1968). Further, the portion of the check made out by defendant is not hearsay because it is defendant's own statement. MRE 801(d)(2)(A); see also *United States v Johnson*, 28 F3d 1487, 1498-1499 (CA 8, 1994). Sam Munaco confirmed at trial that defendant signed the checks in his presence. Therefore, defendant has not established that the checks presented any hearsay concerns.

Although the Internal Revenue Service forms completed by Munaco for the currency transactions would be hearsay if offered to prove the truth of the matters asserted, it is not clear that a hearsay exception could not have been established if a proper objection was made at trial. The exception for business records in MRE 803(6) is based on the inherent trustworthiness of business records. *People v McDaniel*, 469 Mich 409, 414; 670 NW2d 659 (2003). In any event, because Munaco also testified regarding the currency transactions, defendant has not shown that any error affected his substantial rights. *Carines*, 460 Mich at 763.

We decline to consider defendant's challenges to the Snyder purchase agreements for the sale of the Glynn Court property to Omar Sumpter in May 2006, and to defendant on July 1, 2006. We note that a contract has "legal reality independent of the truth of any statements contained in it." *Kepner-Tregoe, Inc v Leadership Software, Inc*, 12 F3d 527, 540 (CA 5, 1994). Defendant's cursory claim of plain error relative to the purchase agreements is insufficient to invoke our review. *Kelly*, 231 Mich App at 640-641. Further, defendant has not shown any basis for concluding that admission of any of the documents implicated his right of confrontation. *Bryant*, 483 Mich at 138. Finally, defendant's due process claim fails because the alleged evidentiary errors are not constitutional in nature. *Blackmon*, 280 Mich App at 259.

We also decline to address defendant's challenge in his Standard 4 brief to the admissibility of the closing package for the July 1, 2008, sale of the Hessel property, which was admitted as exhibit 168, for failure to adequately identify the particular information in the closing package that defendant claims is hearsay or should be treated as raising constitutional concerns. *Kelly*, 231 Mich App 640-641.

Lastly, we find no merit to defendant's argument in his Standard 4 brief that the trial court impermissibly considered "special knowledge" regarding handwritten signatures. The court's observation that some variation in handwritten signatures would naturally be expected was based on common sense. Although a fact-finder may not rely on special knowledge, it is appropriate to consider common sense and everyday experience when evaluating evidence. *People v Simon*, 189 Mich App 565, 569; 473 NW2d 785 (1991). In addition, there is nothing to indicate that this extrinsic information affected the trial court's conclusion that defendant forged

each of the four power of attorney documents for Baker's properties by applying a signature that Baker had provided on defendant's computer. Even defendant agreed in his testimony that "if you understand the technology then you would know that it's not necessary for him to sign four separate times. I mean that would be redundancy."

V. VENUE

Defendant also argues that he was deprived of due process because he was required to stand trial in Wayne County. We review de novo a trial court's determination that venue was proper. *People v Houthoofd*, ___ Mich ___; ___ NW2d ___, issued July 31, 2010 (Docket Nos. 138959 and 138969), slip op at 9.

The general venue rule is that a defendant should be tried in the county where an offense is committed. *Id*, slip op at 9. "[E]xcept as the [L]egislature for the furtherance of justice has otherwise provided reasonably and within the requirements of due process, the trial should be by a jury of the county or city where the offense was committed." *People v Lee*, 334 Mich 217, 226; 54 NW2d 305 (1952).[4]

MCL 762.8 provides that "[w]henever a felony consists or is the culmination of 2 or more acts done in the perpetration thereof, said felony may be prosecuted in any county in which any 1 of said acts was committed." Under this statute, "it is the *act* that constitutes the felony–rather than its effects–that gives rise to venue." *Houthoofd*, ___ Mich ___, slip op at 15 (emphasis in original); see also *People v Webbs*, 263 Mich App 531, 534; 689 NW2d 163 (2004) (the act must be done in perpetration of the crime).[5]

In this case, defendant relies only on the fact that the closings for the various real estate transactions occurred in Oakland County to argue that venue was improper in Wayne County. As explained, above, however, venue is proper in a given county if *any* act in the perpetration of a charged crime was committed in that county. Here, the charged offenses were based on several acts that extended beyond the closings for the property transactions. Defendant makes no effort to discuss the various acts that formed the bases for his 41 convictions. His cursory treatment of this issue is insufficient to properly invoke this Court's review. *Kelly*, 231 Mich App at 640-641; see also *People v Petri*, 279 Mich App 407, 413; 760 NW2d 882 (2008) (defendant may not leave it to this Court to search the record for a factual basis to sustain or reject his position).

In any event, the Court in *Houthoofd*, ___ Mich ___, slip op at 21-22, determined that criminal venue is inherently procedural in nature and, therefore, is subject to MCL 600.1645, which provides that "[n]o order, judgment, or decree shall be void or voidable solely on the

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[4] Although defendant relies in part on the Fifth and Fourteenth Amendments in support of his venue argument, our Supreme Court in *Lee*, 334 Mich at 224, noted that provisions of the federal constitution, which require criminal trials to take place in the state and district where the crime was committed, only apply to federal prosecutions.

[5] *In Houthoofd*, ___ Mich ___, slip op at 13, our Supreme Court agreed with this Court's analysis of MCL 762.8 in *Webbs.*

ground that there was improper venue." Under MCL 600.1645, a criminal defendant's conviction "cannot be vacated solely on grounds of improper venue." *Houthoofd*, __ Mich __, slip op at 22. The Court also determined that a preserved venue claim is subject to review under MCL 769.26, which provides that a defendant who advances a claim of nonconstitutional error has the burden of establishing "a miscarriage of justice under a 'more probable than not' standard in order to warrant reversal." *Houthoofd*, __ Mich __, slip op at 20-21. This generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. *Id.* at 20. Earlier case law, which required that a conviction be reversed if venue was not proven beyond a reasonable doubt, was abrogated by statute. *Id.* at 23. Here, assuming without deciding that venue in Wayne County was improper for some offenses, the associated verdicts were not void or voidable solely on the grounds of improper venue, nor did the verdicts represent a miscarriage of justice, as there was no prejudice to defendant. Defendant has not shown "that it is more probable than not that the outcome of the trial [on these offenses] would have been different had he been prosecuted in another county[.]" *Id.* at 21. Therefore, reversal is not warranted.

VI. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecutor failed to present sufficient evidence to convict him of the charged offenses. We review de novo the sufficiency of the evidence at a bench trial. *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). Due process commands a directed verdict of acquittal where trial evidence is insufficient to sustain a conviction. *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). An appellate court "reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of a crime. *Unger*, 278 Mich App at 223. "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

Here, defendant's argument is primarily directed at his convictions for false pretenses over $20,000. MCL 750.218(1) provides, in pertinent part:

> A person who, with the intent to defraud or cheat makes or uses a false pretense to do 1 or more of the following is guilty of a crime punishable as provided in this section:
>
> (a) Cause a person to grant, convey, assign, demise, lease, or mortgage land or an interest in land.
>
> (b) Obtain a person's signature on a forged written instrument.
>
> (c) Obtain from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.

If the "[l]and, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of $20,000.00 or more," the person is guilty of a felony. MCL 750.218(5)(a).

In general, the elements of the offense are "(1) a false representation concerning an existing fact, (2) knowledge by the defendant of the falsity of the representation, (3) use of the representation with intent to deceive, and (4) detrimental reliance on the false representation by the victim." *People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997). A false statement of promise or intention may not form the basis of the conviction. *Id*. at 38. Further, the offense cannot be based on a misrepresentation of a future event. *People v Dewald*, 267 Mich App 365, 371 n 1; 705 NW2d 167 (2005). But where several false representations are made, the fact that one or more of them may refer to future events does not preclude a conviction so long as the conviction rests on misrepresentations of past or existing facts. See *People v Cage*, 410 Mich 401, 405; 301 NW2d 819 (1981), and *People Segal*, 180 Mich 316, 319; 146 NW 644 (1914).

Here, defendant was convicted of eight counts of false pretenses over $20,000. With respect to Copeland's property (LC No. 08-002789-FH), defendant's characterization of Copeland as the victim is consistent with the trial court's decision. The trial court found the false pretense to be defendant's representation that he met with Copeland to purchase her property and that she was injured by the loss of ownership of the property and the sales proceeds. As a matter of law, however, a forged deed is insufficient to convey title, even where a purchaser claims to be a bona fide holder of title. See *Special Prop VI LLC v Woodruff*, 273 Mich App 586, 591; 730 NW2d 753 (2007). Further, the record reflects that the prosecutor's theory at trial was that defendant committed the false pretenses offense by obtaining two checks for his companies, in the amount of $61,508.82 each, by falsely creating liabilities. The prosecutor argued that defendant used Kathleen Marinelli to obtain a mortgage loan to purchase the property, and then succeeded in having Original Title disburse the loan proceeds to his companies based on the false liabilities and by falsely claiming that he had authority to act on behalf of Copeland. The trial court's findings of fact indicate that it found each of the relevant facts necessary to establish the prosecutor's theory beyond a reasonable doubt, including the existence of the "phony invoices."

Examined in the proper context, we disagree with defendant's claim that the offenses were based on misrepresentations of a future event. The material misrepresentations related to present facts, i.e., the existence of liabilities to defendant's companies, which were satisfied by disbursements from the mortgage loan proceeds. Defendant has failed to show that the evidence was insufficient to establish the elements of the offense.[6]

We also reject defendant's challenges to the sufficiency of the evidence for the two forgery convictions under MCL 750.248, which were based on defendant's forgery of the power

[6] To the extent that the trial court misinterpreted the relevant false representations as occurring at the beginning of the transaction, when defendant met with Copeland, rather than at the closing, when false invoices were used to obtain the mortgage loan proceeds, the error was harmless because defendant was not prejudiced. *Lanzo Constr Co*, 272 Mich App at 476.

of attorney and deed documents, or the related uttering and publishing convictions under MCL 750.249. Forgery includes any act that makes an instrument appear to be what it is not. *People v Susalla*, 392 Mich 387, 392; 220 NW2d 405 (1974). The essence of forgery is the falsification of the instrument. *People v Hogan*, 225 Mich App 431, 435; 571 NW2d 737 (1997). In this case, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant falsified each document with the intent to injure or defraud another person. Only minimal circumstantial evidence is required to establish defendant's state of mind. *Dewald*, 267 Mich App at 372.

The injury or fraud arose from the uttering and publishing of the power of attorney and warranty deed. "One commits the crime by uttering or publishing a false, forged, altered, or counterfeit record, deed, or instrument, whether it is an original or a copy." *People v Cassadime*, 258 Mich App 395, 399; 671 NW2d 559 (2003). "To utter and publish means to offer something as if it is real, whether or not anyone accepts it as real." *People v Harrison*, 283 Mich App 374, 381; 768 NW2d 98 (2009). Viewed in a light most favorable to the prosecution, the evidence established that defendant presented the forged power of attorney and deed, as real, to Original Title to complete the sale of the property to Marinelli and acquire the mortgage loan proceeds. A rational trier of fact could infer from the evidence that defendant uttered and published the instruments with an intent to injure or defraud.

The evidence was also sufficient to support defendant's conviction for identity theft. MCL 445.65(1) provides, in pertinent part:

> 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[7] of another person to do either of the following:
>
> (i) Obtain credit, goods, services, money, property, ...
>
> (ii) Commit another unlawful act.

[7] "Personal identifying information" means:

> [A] name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information. [MCL 445.63(o).]

Consent is an affirmative defense to a charge of identity theft, but a defendant must prove by a preponderance of the evidence that he "acted with the consent of the person whose personal identifying information was used, unless the person giving consent knows that the information will be used to commit an unlawful act." MCL 445.65(2)(d). Here, although Copeland testified that she permitted defendant to copy her driver's license and social security card, her testimony established that she did not consent to her personal identifying information being used to create and present fraudulent documents to obtain proceeds from the unauthorized sale of her property. Copeland testified that defendant told her that he would purchase her house if she gave him permission to have it appraised, which she did, but that she did not hear from defendant again. This evidence was sufficient to establish that defendant was not acting with Copeland's consent when he sold her property. The evidence was sufficient to support defendant's conviction for identity theft.

We also reject defendant's claim that there was insufficient evidence to establish second-degree money laundering with respect to the transaction involving the sale of Copeland's property. The evidence that defendant obtained mortgage loan proceeds by false pretenses is sufficient to establish that defendant knowingly received proceeds or substitute proceeds of a specified criminal offense. See MCL 750.411k(1)(a), and MCL 750.411j(g)(xix). Further, the evidence that defendant created false invoices or liabilities to have the mortgage loan proceeds directed to his companies was sufficient to establish that the receipt or acquisition of the proceeds was done with an intent to conceal that the source of the proceeds was linked to the fraudulent power of attorney and the false pretenses offense. MCL 750.411n(1)(b)(ii). Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant committed second-degree money laundering.

In LC No. 08-002791-FH, involving the sale of Baker's four properties, defendant was convicted of ten counts of uttering and publishing, eight counts of forgery, four counts of false pretenses over $20,000, and one count each of second-degree money laundering and identity theft. The offenses were similar to those involving Copeland's property and similar evidence was presented to establish the offenses, except that two uttering and publishing convictions were based on evidence that defendant received checks payable to Baker as disbursements at the closings for two of the fraudulently sold properties, and cashed those checks at a check-cashing business. According to Munaco, defendant was accompanied by a man whom he identified as Baker when he appeared to cash the checks. In addition, unlike Copeland, Baker testified that he signed "on the computer." Baker testified that defendant told him that he wanted to make sure that he was not an imposter. Like Copeland, Baker denied signing the power of attorney documents or authorizing anyone to produce them. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions.

We reach this same conclusion with respect to the convictions arising from the sale of Snyder's property in LC No. 08-002794-FH. Defendant was convicted of the same seven offenses that he was convicted of in the case involving Copeland's property, and similar evidence was presented in both cases, except that Snyder had a real estate agent and testified that she signed a purchase agreement to sell the property to defendant. However, Snyder denied authorizing defendant to sell her property to a third party, or receiving any of the proceeds from defendant's sale of the property to Paul Rhoads using a fraudulent power of attorney.

Finally, in LC No. 08-004315-FH, defendant was convicted of two counts of false pretenses over $20,000 and one count of second-degree money laundering. Although the two real estate transactions in that case did not involve a fraudulent power of attorney, the evidence showed that defendant arranged for two different investors to purchase the same property in July 2005. The first sale was made to Marzen Baldonado on July 1, 2005, and the second sale was made to David Ferrand on July 8, 2005. In both instances, the plan was for defendant to collect land contract payments for the property so that the investor could pay the mortgage loan. Similar to the other three cases, the prosecutor's false pretenses theory was that each transaction was intended to obtain mortgage loan proceeds by having the title company disburse the proceeds to a company owned by defendant based on falsified liability claims. The money laundering charge was based on defendant's use of a company to conceal the source of the proceeds. Examined in this context, we reject defendant's claim that the evidence was insufficient to support any of his three convictions.

VII. GREAT WEIGHT OF THE EVIDENCE

Defendant also challenges his convictions on the ground that they are against the great weight of the evidence. We disagree. A court has discretion to grant a new trial if a verdict is against the great weight of the evidence. *Lemmon,* 456 Mich at 634-635. We review a trial court's denial of a motion for a new trial for an abuse of discretion. *Id.* at 648 n 27. The trial court "may grant a new trial only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *Id.* at 627. "Conflicting testimony and questions of witness credibility are generally insufficient for granting a new trial." *Unger,* 278 Mich App at 232. The evidence in these cases did not preponderate so heavily against the trial court's verdicts that it would be a miscarriage of justice to allow defendant's convictions to stand. The trial court did not abuse its discretion in denying defendant's motion.

VII. OTHER ISSUES

Defendant raises two other issues in his pro se Standard 4 brief, neither of which have merit.

First, defendant argues that the district court erred in denying his motion to suppress evidence and to dismiss at the preliminary examination the cases involving the fraudulent power of attorney documents. The preliminary examination is not a constitutionally based procedure and, therefore, any improperly admitted evidence is subject to the harmless error standard in MCL 769.26. *People v Hall,* 435 Mich 599, 603-604, 613; 460 NW2d 520 (1990). The proper focus is on whether an alleged error affected the trial. *People v McGee,* 258 Mich App 683, 685; 672 NW2d 191 (2003); see also *People v Moorer,* 246 Mich App 680, 682; 635 NW2d 47 (2001). Considering that defendant had the opportunity to raise issues concerning whether evidence should be suppressed after his bindover to circuit court, we find no basis for relief. Indeed, to properly preserve an evidentiary issue for appeal, it should be presented to and addressed in the circuit court after the bindover decision. See *People v Coy,* 243 Mich App 283, 286-287; 620 NW2d 888 (2000).

Second, defendant questions the propriety of Deputy Cox being named as the complaining witness for the complaint in LC No. 08-004315-FH. Because defendant did not

preserve this issue below, he has the burden of showing a plain error affecting his substantial rights. *Carines*, 460 Mich at 763.

"'The primary function of a complaint is to move the magistrate to determine whether a warrant shall issue,'" *People v Higuera*, 244 Mich App 429, 443; 625 NW2d 444 (2001) (citation omitted), but it is not necessary that the complaint contain factual allegations establishing probable cause for an arrest. MCL 764.1d ("A complaint shall recite the substance of the accusation against the accused[,] [and it] . . . *may* contain factual allegations establishing reasonable cause"). (Emphasis added.) The magistrate may also consider the complainant's sworn testimony or affidavit, which may be based on personal knowledge, information and belief, or both. MCL 764.1a. Regardless, a defendant is entitled to a preliminary examination before an information is filed at which the magistrate determines whether there is probable cause for charging the defendant with the crime. See *People v Burrill*, 391 Mich 124, 130-131; 214 NW2d 823 (1974). The sole remedy for an illegal arrest is the suppression of evidence obtained as a result of that arrest. *People v Rice*, 192 Mich App 240, 244; 481 NW2d 10 (1991).

Because there is no statutory prohibition against a law enforcement officer serving as a complaining witness, defendant has not shown any defect in the complaint. Further, defendant has not shown that his arrest was illegal. Moreover, even if there was a basis for finding that defendant's arrest was illegal, defendant's failure to identify any evidence that was obtained as a product of his arrest is fatal to his claim that application of the exclusionary rule is required. In sum, defendant has not established a plain error affecting his substantial rights.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro