

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELO SURVERO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 30, 2011

No. 296211

Jackson Circuit Court

LC No. 08-005068-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERESA MARIE WILSON,

Defendant-Appellant.

No. 300294

Jackson Circuit Court

LC No. 08-005067-FH

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Following a joint jury trial, defendant Williams was convicted of conducting a criminal enterprise, MCL 750.159i(1), four counts of false pretenses over \$20,000, MCL 750.218(5)(a), and making a false income tax return, MCL 205.27(1)(c). Defendant Wilson was convicted under an aiding and abetting theory of conducting a criminal enterprise, MCL 750.159i(1), and two counts of false pretenses over \$20,000, MCL 750.218(5)(a). Defendant Williams was sentenced as a third habitual offender, MCL 769.11, to serve concurrent prison terms of 8 to 40 years for the criminal enterprise conviction, 8 to 20 years on each false pretenses conviction, and 3 to 10 years on the income tax conviction. Defendant Wilson was sentenced as a second habitual offender, MCL 769.10, to serve concurrent prison terms of 30 months to 20 years for the criminal enterprise conviction and 30 months to 10 years on each false pretenses conviction.

Defendant Williams appeals as of right. Defendant Wilson appeals by leave granted.¹ We affirm in all respects.

I. BASIC FACTS

Defendants' convictions arose as a result of a mortgage fraud scheme they conducted in the Jackson area. At trial, the prosecution presented evidence related to three home sales in which defendant Williams acquired ownership of the home, placed a fraudulent construction lien on the property, then sold the home to a third party at an inflated price while arranging for financing of the property at the inflated price. The prosecution also presented evidence related to a fourth home sale where defendant Williams was not directly involved with the buyer and seller, but had directed the transaction and obtained money from the sale. Defendant Williams's involvement in the foregoing mortgage fraud scheme served as the basis for his conviction for conducting a criminal enterprise. In addition, the prosecution presented evidence that defendant Williams had provided false information on his state tax return which resulted in his obtaining a tax refund in error.

Defendant Wilson's convictions for false pretenses were based on her involvement in two of the home sales described above. Defendant Wilson acted as the title agent for those sales. In that capacity, she prepared paperwork for the lenders, notarized the closing documents, and distributed funds related to the sale. The paperwork prepared by defendant Wilson failed to disclose a lien defendant Williams had fraudulently placed on one of the homes. In addition, defendant Wilson arranged to have funds disbursed directly to defendant Williams, rather than to the sellers of the respective properties. The paperwork related to the wire transfer was not included in the title company's files, as was the general practice of the office. In addition, the prosecution introduced at trial evidence that defendant Williams had provided defendant Wilson with several checks valued between \$100 and over \$500. Defendant Wilson's former employer testified it is never appropriate for a closing agent to receive money from a party involved in a transaction. Similar to defendant Williams, defendant Wilson's involvement in the mortgage fraud scheme served as the basis for her conviction for conducting a criminal enterprise.

II. SUFFICIENCY OF THE EVIDENCE

Defendants first argue that their convictions for false pretenses and the resulting conviction for conducting a criminal enterprise were not supported by sufficient evidence presented at trial. We disagree.

In reviewing a sufficiency of the evidence claim, we must apply a de novo standard. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Due process prohibits a criminal conviction unless the prosecution establishes guilt of the essential elements of a criminal charge beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d

¹ *People v Wilson*, unpublished order of the Court of Appeals, entered February 18, 2011 (Docket No. 300294).

73 (1999). Circumstantial evidence and the reasonable inferences it engenders are sufficient to support a conviction, provided the prosecution meets its burden of proof. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). A reviewing court must examine the evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that each element of the crime was proven beyond reasonable doubt. *Hawkins*, 245 Mich App at 457. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The essential elements that must be established beyond a reasonable doubt to sustain a conviction for false pretenses are “(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.” *People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001).

Both defendants challenge the sufficiency of the evidence as to the fourth element of false pretenses. Defendants specifically allege that the fourth element requires the prosecutor to produce evidence of an actual loss, and that the prosecutor established no such loss in the instant case because the respective lenders testified at trial that the loans at issue here were sold to other entities, thereby making the lenders whole. In effect, defendants argue that the detrimental reliance element of a false pretenses charge requires a permanent and, in this case, the lenders suffered no financial loss. We find this argument to be, at best, disingenuous.

The evidence presented at trial established that the lending institutions made loans in amounts in excess of the true value of the respective properties. In addition, the lenders’ representatives testified that the loans would not have been made if accurate information had been provided on the loan applications. Moreover, there was evidence that several persons involved in these fraudulent transactions benefited financially as a result of these loans. A wire transfer of substantial value was transferred into defendant Williams’s bank account and defendant Wilson received over one thousand dollars from defendant Williams. Thus, if the jury accepted the lenders’ testimony, at the moment the loans were funded the lenders had detrimentally relied on a false representation, thereby constituting the fourth element. The jury’s verdict indicates that it did accept the lenders’ testimony. In our view, the evidence more than adequately established the fourth element of “detrimental reliance on [a] false representation.” *Bearss*, 463 Mich at 627. Even if the lenders were subsequently “made whole” by subsequent transfers of the mortgages, this does not eliminate the fact that the lenders would not have made the loans in the first place absent the false representations on the part of defendants. We find it illogical to argue that there is no loss here simply because the defrauded lenders later sold the fraudulent loans before the discrepancies were discovered. In addition, a number of witnesses testified that the institutions suffered the possibility of the reversal of the subsequent transactions and the possibility of sustaining actual loss due to the fraudulent representations. Therefore, defendant’s contention that the course of events actually made the lenders whole because they subsequently transferred the mortgages is incorrect.

We also conclude that the language of the false pretenses statute does not support defendants’ argument. “When interpreting statutes, our goal is to give effect to the intent of the Legislature by reviewing the plain language of the statute.” *People v Perkins*, 473 Mich 626, 630; 703 NW2d 448 (2005). MCL 750.218(1) states that one is guilty of the crime of using false

pretenses to defraud if, among other things, he or she obtains money using a false pretense with the requisite intent. However, there is nothing in the statute that requires a *permanent* deprivation. If we were to accept defendants' theory, one who would otherwise be guilty of obtaining money by false pretenses would be able to avoid criminal responsibility simply by refunding the money that was obtained, either personally or by some other means. This cannot be what the Legislature intended.

In connection with her general claim that the evidence was insufficient to support her convictions, defendant Wilson also makes the argument that we cannot sustain her convictions because the prosecution presented insufficient evidence at trial to establish that she knowingly aided and abetted defendant Williams's conduct of making a false pretense. We disagree.

Defendant Wilson's challenge essentially constitutes an argument that the prosecution only used circumstantial evidence to prove her guilt. However, circumstantial evidence and the reasonable inferences it engenders are sufficient to support a conviction. *Nowack*, 462 Mich at 400. At trial, the evidence demonstrated that defendant Wilson prepared all of the paperwork for closings related to defendant Williams's business and that that paperwork failed to disclose a construction lien in at least one sale. In addition, the evidence demonstrated that defendant Wilson arranged to have money transferred by wire to defendant Williams's bank account, rather than to the seller's; and the paperwork detailing that transaction was not kept on file, contrary to the office's regular procedures. Also, defendant Wilson personally received several payments from defendant Williams, which her employer testified was not permissible. Finally, one witness at trial overheard the two defendants talking about the need to have the liens "done" before the mortgages. All of the foregoing served as a basis for a reasonable jury to infer that defendant Wilson was involved in and aware of defendant Williams's scheme to defraud the lending institutions.

We also reject defendant Wilson's further argument that her conviction should be reversed because the prosecution failed to establish that she improperly received checks from defendant Williams or that her actions were otherwise illegal. In essence, defendant is asserting that the prosecutor had to disprove a theory consistent with defendant Wilson's innocence. However, the prosecution need not disprove all theories consistent with a defendant's innocence when a case is based on circumstantial evidence but must instead prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991).

Finally, we reject defendant Wilson's argument that no reasonable jury could find that false pretenses in excess of \$20,000 had occurred because the lending institutions received a security interest in the homes. Defendant Wilson's discussion fails to account for the construction lien filed prior to the mortgage in relation to one of the properties at issue,² or the

² Because these funds were subsequently transferred to defendant Williams's credit union account, and Williams then spent the funds, the loss corresponding to the amount of the

fact that the appraisal for other property had inflated the value of the home by more than \$20,000.

Taken as a whole and viewed in a light most favorable to the prosecution, the evidence the prosecution presented below and the reasonable inferences stemming from that evidence were sufficient to support defendants' respective convictions for obtaining money in excess of \$20,000 by false pretenses. *Hawkins*, 245 Mich App at 457. Because evidence supported these convictions, defendants' argument that sufficient evidence did not support their respective convictions for conducting a criminal enterprise must also fail.

III. JURY INSTRUCTIONS

A. LESSER INCLUDED OFFENSE

Defendants also argue the trial court improperly denied their joint request to instruct the jury on a necessary included lesser offense of false pretenses under \$200. We disagree.

Generally, a trial court's decision on a request for a jury instruction on a lesser offense is reviewed de novo. *People v Walls*, 265 Mich App 642, 644; 697 NW2d 535 (2005). However, we review a trial court's determination whether an instruction is applicable to the facts of the case for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). In addition, reversal is only warranted if refusal to instruct on the included lesser offense undermined the reliability of the verdict. *People v Hawthorne*, 474 Mich 174, 181-182; 713 NW2d 724 (2006); *Gillis*, 474 Mich at 140 n 18. An instruction on a necessarily included lesser offense "is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). A necessarily included offense is one that must be committed as part of the greater offense. *Bearss*, 463 Mich at 627.

Similar to the arguments made in relation to the other issues raised on appeal, defendants rely heavily on the testimony of the lenders' representatives that the loans at issue here were subsequently transferred to other entities. Based on this testimony, defendants assert the jury could have concluded the amount of money obtained was less than \$200. Again, defendants' argument is based on the misconception that the law of false pretenses requires a permanent deprivation. Moreover, we conclude the trial court was correct in finding that the requested instruction was inapplicable in the instant case. The trial court rejected defense counsels' argument that the requested instruction was applicable because the amount at issue was in dispute and instead concluded that the dispute was related to whether the loan had been obtained by fraud. Our review of the record demonstrates there was no testimony that could lead a reasonable juror to conclude that any of the fraudulently obtained loans were for an amount less

construction lien could be accurately said to have occurred at the time of the issuance of the mortgage.

than \$200 or that such an instruction would be appropriate even if the lenders' security interests could be said to "mitigate" the amount of their losses, as suggested by defendant Wilson. Thus, the trial court did not abuse its discretion in finding that the requested instruction was inapplicable to the instant case.

B. SUPPLEMENTAL INSTRUCTION

Defendants rely on the same reasoning to argue the trial court provided an inaccurate supplemental instruction. We disagree.

We generally review claims of instructional error de novo but evaluate a trial court's determination regarding whether an instruction is accurate and applicable to a case for an abuse of discretion. *Gillis*, 474 Mich at 113. A criminal defendant is entitled to have a properly instructed jury consider the evidence against him. *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). Jury instructions "must not exclude material issues, defenses, and theories that are supported by the evidence." *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998). A trial court is authorized to give additional instructions, as appropriate, after the jury begins deliberations. MCR 6.414(H).

Defendant Williams argues the supplemental instruction provided to the jury was improper because it essentially directed a guilty verdict and misstated the law. In contrast, defendant Wilson argues the supplemental instruction was defective because it allowed the jury to find causation, loss, and a victim the law does not recognize. We disagree with both positions.

We have reviewed the supplemental jury instruction and conclude it did not direct the jury that it must find that the loans at issue here were made as a result of false pretenses or that the loans otherwise would not have been made. Instead, the supplemental instruction clearly directed the jury that *if* it reached those findings, the issuance of the loans constituted detrimental reliance. Consequently, the jury was not stripped of its responsibility to weigh the evidence and determine the credibility of the witnesses.

The argument that the instruction constituted a misstatement of the law and allowed the jury to find causation, loss, and a victim that the law does not recognize is based on the assertion that a showing of a permanent loss is required in order to sustain a conviction for false pretenses. As we previously discussed in detail, this position is without merit.

C. FALSE PRETENSES INSTRUCTION

Defendant Wilson further claims that the trial court's instruction on false pretenses failed to accurately state the law. We disagree. We generally review claims of instructional error de novo. *Gillis*, 474 Mich at 113. Jury instructions must include "all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence." *People v Fennell*, 260 Mich App 261, 265; 677 NW2d 66 (2004).

Defendant's discussion of this issue incorporates by reference the position asserted concerning the law of false pretenses, namely that no loss occurred in the instant case because the lending institutions recouped the amount of the loans. As discussed above, this position is without merit. To the extent that defendant is asserting that the instruction failed adequately to

convey that there must be a showing of causation, we disagree. The plain language of the instruction clearly states that the loss suffered by the victims must have been caused “by relying on” a false pretense. Accordingly, we reject defendant’s assertion that the trial court improperly instructed the jury concerning the prosecution’s burden of proof with regard to the crime of false pretenses.

IV. SENTENCING

Defendant Williams individually argues that he is entitled to resentencing based on the position that a permanent loss is a necessary element of false pretenses. We disagree.

We review a sentencing court’s decision for an abuse of discretion and must determine whether the record evidence adequately supports a particular score. *People v Wilson*, 265 Mich App 386, 397; 695 NW2d 351 (2005). Questions of statutory interpretation are reviewed de novo. *People v Schaub*, 254 Mich App 110, 114-115; 656 NW2d 824 (2002).

Defendant Williams specifically challenges the assessment of ten points under OV 9 (number of victims), as well as the assessment of ten points under OV 16 (property obtained, damaged, lost, or destroyed). OV 9 requires the assessment of ten points when two to nine people were placed in danger of physical injury or loss of life, or where 4 to 19 victims were placed in danger of property loss. MCL 777.39(1)(c). OV 16 requires the assessment of ten points when property valued in excess of \$20,000 is obtained, damaged, lost, or destroyed. MCL 777.46(1)(b). Defendant Williams conceded at the sentencing hearing that his conviction for tax fraud resulted in one victim but also argued there were no other victims based on the lenders’ testimony that the fraudulently obtained loans were sold to other entities. We disagree. As set forth in more detail above, the lenders’ subsequent conduct did not negate the fact that the loans would not have been issued in the first place but for the intentional use of false pretenses to obtain the funds. In addition, as discussed above, the amount obtained through fraud exceeded \$20,000. Thus OV 16 was properly scored. MCL 777.46(1)(b). Moreover, OV 9 requires only that 4 to 19 victims were placed in *danger* of property loss. MCL 777.39(1)(c). Thus, this statute does not require an actual loss, much less a permanent one. We also note that the crime scored for purposes of sentencing was defendant’s conviction for conducting a criminal enterprise. Thus, given the transactional nature of this offense, see MCL 750.159f(c); MCL 750.159i, the scoring can properly take into account the victims of each of defendant’s separate underlying fraudulent acts even under the offense-specific approach to scoring sentencing guidelines outlined in *People v McGraw*, 484 Mich 120, 126-128; 771 NW2d 655 (2009).

V. ARRAIGNMENT

Defendant Williams also individually argues he is entitled to a new trial because he was not arraigned before the circuit court. We disagree.

An issue is not properly preserved for appellate review unless it was raised before and decided by the trial court. *People v Eccles*, 260 Mich App 379, 385; 677 NW2d 76 (2004). Defendant concedes this issue is unpreserved. We review unpreserved issues for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, a defendant must establish that (1) an error

occurred; (2) the error was plain, and (3) the error affected the defendant's substantial rights, i.e., it affected the outcome of the lower court proceedings. *Id.* Moreover, even if all three requirements were satisfied, reversal is only warranted in cases where the error resulted in the conviction of an actually innocent defendant, or the error seriously compromised the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 763-764.

"The purpose of an arraignment is to provide formal notice of the charge against the accused." *People v Waclawski (After Remand)*, 286 Mich App 634, 704; 780 NW2d 321 (2009). Generally, a defendant must be arraigned on the information. MCR 6.113(A). Our Supreme Court has held that the failure to arraign a defendant on the information warrants the reversal of the defendant's convictions. *Grigg v People*, 31 Mich 471, 472-473 (1875). However, automatic reversal is not required where the trial occurs "as if all formalities had been complied with." *People v Weeks*, 165 Mich 362, 365; 130 NW 697 (1911). Here, defendant Williams does not argue that the trial itself was affected by the failure to hold a circuit court arraignment or that he would have presented an alternate defense had the arraignment been held. Thus, automatic reversal is not required.

We also reject defendant Williams's argument that the harmless error standard should not be applied in this case because the failure to hold an arraignment is part of "systematic denial of rights." MCR 6.113(E) authorizes the elimination of the arraignment procedure in certain circumstances.³ The failure to arraign defendant Williams was the result of Jackson Circuit Court's electing to pursue this elimination. Here, defendant was represented by counsel, does not argue that he was not provided with a copy of the information, and does not argue that the court rule authorizing this practice is invalid. Therefore, he has not shown he is entitled to relief.

Affirmed.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

³ MCR 6.113(E) provides, "[a] circuit court may submit to the State Court Administrator . . . a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information."