

[Cite as *State v. Wells*, 2009-Ohio-4712.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92130

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CORRITHA J. WELLS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-496662

BEFORE: Jones, J., Kilbane, P.J., and Sweeney, J.

RELEASED: September 10, 2009

**JOURNALIZED:
ATTORNEY FOR APPELLANT**

Michael P. Maloney
24441 Detroit Road
suite 300
Westlake, Ohio 44145

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

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Appellant-defendant, Corriitha J. Wells, appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND THE FACTS

{¶ 2} On October 31, 2007, Corriitha J. Wells (“Wells”) was indicted on 263 counts, including a pattern of corrupt activity, commonly referred to as R.I.C.O., relating to mortgage fraud involving 38 properties. Pursuant to R.C. 2941.04, the lower court bifurcated these counts such that the state proceeded against Wells on offenses relating to nine properties.

{¶ 3} These offenses included nine counts of theft, in violation of R.C. 2913.02 (A)(3), felonies in the fifth degree; nine counts of securing writings by deception, in violation of R.C. 2913.43(A), felonies in the fifth degree, except one felony in the third degree; nine counts of forgery, in violation of R.C. 2913.31(A)(2), felonies in the fourth degree, except one felony in the third degree; nine counts of forgery and uttering, in violation of R.C. 2913.31(A)(3), felonies in the fourth degree; and eight counts of receiving stolen property, in violation of R.C. 2913.51(A), felonies in the fifth degree.

{¶ 4} On June 11, 2008, after a six-day trial, Wells was found guilty on all 44 counts. On August 21, 2008, Wells was sentenced to a total of seven years in prison and ordered to pay \$100,000.00 in restitution. Following her conviction, appellant was faced with a series of trials on the remaining charges. Rather than

go to trial on these counts, she pled guilty to an amended indictment with 22 additional counts. Appellant filed this timely appeal of her conviction in this case.

{¶ 5} According to the facts, Wells was an employee and licensed loan officer at Ace Home Loans, Inc. (“Ace”). Her license was issued by the Ohio Department of Commerce. As a licensed loan officer, Wells processed home loan applications for home purchasers. After the loan applications were completed, Wells would send them to the lender, Argent Mortgage for approval and then funding. Wells falsified documents and charged improper fees in order to generate funds for her benefit.

Assignments of Error

{¶ 6} Wells assigns five assignments of error on appeal:

{¶ 7} “[1.] The trial court erred in denying appellant’s Criminal Rule 29 Motion for Acquittal when there was insufficient evidence to prove the elements of theft and receiving stolen property.

{¶ 8} “[2.] Appellant’s convictions for theft and receiving stolen property were against the manifest weight of the evidence.

{¶ 9} “[3.] The trial court erred in denying appellant’s Criminal Rule 29 Motion for Acquittal when there was insufficient evidence to prove the elements of securing writings by deception.

{¶ 10} “[4.] The trial court erred in denying appellant’s Criminal Rule 29 Motion for Acquittal when there was insufficient evidence to prove the elements of forgery.

{¶ 11} “[5.] The indictment in appellant’s case was defective for failing to assert a culpable mental state.”

LEGAL ANALYSIS

{¶ 12} Due to the substantial interrelation between appellant's first two assignments of error, we shall address them together. Specifically, appellant argues in her first two assignments of error that the lower court erred in denying her rule 29 motion for acquittal for theft and receiving stolen property. Appellant further argues that the state failed to present sufficient evidence, and her convictions were against the manifest weight of the evidence.

Sufficiency of the Evidence and Manifest Weight

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

{¶ 14} In evaluating a challenge to the verdict based on the manifest weight of the evidence, a court sits as the thirteenth juror and intrudes its judgment into

proceedings that it finds to be fatally flawed through misrepresentation or misapplication of the evidence by a jury that has “lost its way.” *Thompkins*, supra, at 387, 678 N.E.2d 541. As the Ohio Supreme Court declared:

“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.’ * * *

“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.*

{¶ 15} 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.

Theft and Recieving Stolen Property

{¶ 16} In the case at bar, Wells was charged with nine counts of theft in violation of R.C. 2913.02(A)(3). R.C. 2913.02(A), theft, provides the following:

“(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:

“(1) Without the consent of the owner or person authorized to give consent;

“(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

“(3) By deception; * * *.”

{¶ 17} Wells was also charged with eight counts of receiving stolen property in violation of R.C. 2913.51. R.C. 2913.51 reads in relevant part, “No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.”

{¶ 18} Here, Wells argues that she is not guilty of theft by deception because Argent did not lose anything in the transactions. We find Wells argument to be without merit. In order for Wells to be found guilty of theft by deception the State must show whether the act of theft occurred; however, it is irrelevant whether or not there was loss to the victim. R.C. 2913.61(A); *Echels v. State*, 20

Ohio St. 508 (Syllabus: (1) Where goods are taken with felonious intent, the felony lies in the very first act of removing them, and (2) When the offense largely is once completed, by a sufficient taking and removal, it will not be purged by a return of the property, though the possession be retained by the thief but for a moment.); *State v. Mayes*, (May 24, 1979), Cuyahoga App. No. 38929; *State v. Dancy*, (July 19, 1979), Cuyahoga App. No. 39216; *State v. Spillane*, (October 24, 1991), Cuyahoga App. No. 59279.

{¶ 19} A review of the evidence demonstrates Wells is indeed guilty of theft and receiving stolen property. Kelli Black (“Black”) was a loan processor for Ace. Black worked for Wells as a loan processor, under her guidance and direction. Black assisted Wells in filling out loan applications. Black testified that Wells made misrepresentations as to the dollar amounts and other information on certain loan applications. Black further testified that Wells knew these were misrepresentations. In addition, Wells completed and signed several of the documents, verifying that the information was accurate.

{¶ 20} The lender directly funded two fraudulent loans for properties that Wells purchased, 10002 Parkview and 1771 Eddy Road. In these cases, Wells retained the funds, commissions, and fees derived from the fraudulent transactions. With regard to seven other properties, the lender funded loans based upon this fraudulent information knowingly supplied by Wells and her assistant.

{¶ 21} Tammy Carnes, a witness for Argent, testified that Argent relies upon the accuracy of the information provided by the broker on loan applications. After a loan is funded, Argent sells the loans in packages to investors. If Argent finds out, after the fact, that the loan information is not accurate as reported on the 1003 form, or the down payment obligations are false, Argent is obligated under its contract with the investor to repurchase the loans. Accordingly, Argent is left with the liability or loss that can potentially be incurred from the fraudulent transactions.

{¶ 22} Neal Wolf (“Wolf”), a loan officer at Ace, testified that Wells intentionally misled lenders to believe that buyers were providing down-payments when these payments were actually coming from private third-parties. Wells knowingly facilitated these third-party down-payments in an effort to obtain loans. Koretia Williams, a loan closer at Shaker Title, testified that she had a conversation regarding the down-payment program with Wells. Wells stated that she would “let [her] know when third party money was needed.”¹ Debora Cofer, a third- party down-payment provider, testified that Wells set up third-party down payment “services” for home purchasers. Cofer testified that the buyer would purchase a property and the funds that were needed at closing would then go to Shaker Title. Once closing was complete, the seller would authorize repayment of the funds out of the seller’s proceeds plus a fee, usually around \$500.00.

¹Tr. 65.

{¶ 23} In each of these cases, the lender granted loans and released funds based on both the fraudulent information and deceptive down-payments to unqualified individuals. Sgt. Eugene Sharpe of the Cuyahoga County Sheriff's Office investigated mortgage fraud allegations against Ace and Omega Investments ("Omega"). Omega is an investment company owned and operated by Wells. Sgt. Sharpe testified Omega received a \$1,000.00 consulting fee for each of the properties involved in this case. In addition, he testified that the down-payments for each of the properties did not come from the borrowers.

{¶ 24} In summary, Black testified that Wells submitted false information with regard to the nine properties in this case. Tammy Carnes of Argent, testified that Argent relied on the signatures of the borrower and broker that the information was truthful. Wolf testified that Wells showed a pattern of intentionally misleading lenders into believing that the home purchasers were the ones providing the down-payment funds when the money was actually coming from private third-parties. Williams, Cofer, and Sgt. Sharpe provided additional testimony regarding improper third-party down payments and fees.

{¶ 25} Accordingly, we find the evidence legally sufficient to sustain the trial court's convictions for theft and receiving stolen property. When the evidence is viewed in a light most favorable to the state, we find that all essential elements of appellant's convictions were proven beyond a reasonable doubt. Moreover, nothing in the record demonstrates that the trial court lost its way in convicting appellant.

{¶ 26} Accordingly, appellant's first and second assignments of error are overruled.

Securing Writings by Deception

{¶ 27} R.C. 2913.43 defines securing writings by deception. R.C. 2913.43(A) provides the following: "(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."

{¶ 28} Wells argues in her third assignment of error that the trial court erred because there was insufficient evidence to prove the elements of securing writings by deception. More specifically, Wells argues that some of the loan applications were completed and signed by Black. Wells therefore claims that she is not guilty of securing writings by deception. However, Black testified that she never acted alone in any of these transactions, she was always acting under the instructions of Wells. Moreover, Wells failed to provide any case law to support her argument. In addition, a review of the record demonstrates that the trial court instructed the jury on the definition of securing writings by deception.² The trial court instructed the jury that "encumber" means to make property subject to a charge, liability, or burden such as mortgage, security, interest, easement, restriction, limitation of use, lien, or other obligation.³ In this case, Wells was

²Tr. 914.

³Tr. 916.

guilty of securing writings by deception when she knowingly caused Argent to disburse the loan proceeds through deception.

{¶ 29} Accordingly, appellant's third assignment of error is overruled.

Forgery

{¶ 30} Appellant argues in her fourth assignment of error that there was insufficient evidence to prove the elements of forgery.

{¶ 31} R.C. 2913.31 Forgery; forging identification cards, subsection (A), provides the following:

“(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

“(1) Forge any writing of another without the other person's authority;

“(2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;

“(3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.”

{¶ 32} Similar to her argument concerning the writings by deception charge, Wells argues here that she is not guilty of forgery because some of the fraudulent documents were signed and/or completed by Black.

{¶ 33} The lower court jury instructions provided that forgery included a definition of “facilitating” within the meaning of R.C. 2913.31.⁴ “Facilitating was

⁴Tr. 920.

defined as ‘helping, promoting, assisting or aiding.’ Id. At trial, Wells did not object to the use of this definition. The use of this definition of facilitating when charging a jury was upheld in *State v. Rhodes*, Butler App. No. CA2003-12-332, 2004-Ohio-6659, at _20.

{¶ 34} The evidence demonstrates that Wells provided knowledge, guidance, instruction, and direction to her assistant, Ms. Kelli Black, in completing and signing the fraudulent loan applications in question. Wells’s active involvement in facilitating the forgeries constitutes the crime.

{¶ 35} Accordingly, Wells’s fourth assignment of error is overruled.

Culpable Mental State

{¶ 36} Appellant argues in her fifth assignment of error that the indictment failed to assert a culpable mental state and was therefore defective. More specifically, Wells argues that the indictment is defective because the charging sections in the statutes under which she was convicted contain no culpable mental state.

{¶ 37} The Ohio Rules of Criminal Procedure reflect the principle that an indictment that fails to include all the essential elements of an offense is a defective indictment. Crim.R. 7(B) provides that an indictment must include a statement that “the defendant has committed a public offense specified in the indictment. * * * The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved.” *State v. Colon*, 118 Ohio St.3d 26.

{¶ 38} However, contrary to appellant’s argument, a review of the 87 page indictment under which Wells was convicted demonstrates that the State properly set out the required mens rea, where applicable, for each count charged.⁵

{¶ 39} Theft, R.C. 2913.02(A), provides that “[n]o 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* * *” (Emphasis added) This section sets forth “knowingly” as the required mens rea for theft.

{¶ 40} In *State v. Moore*, addressing the *Colon* issue, the court stated: “[T]he indictment for theft * * * included the mens rea necessary for a conviction on a charge of theft, which requires that the offender act knowingly.” *State v. Moore*, Franklin App. No. 07AP-914, 2008-Ohio-4546. Here the indictment sets forth knowingly in the indictment under each count for theft. Therefore, appellant’s argument has no merit in regard to theft.

{¶ 41} Securing Writings by Deception, R.C. 2913.43(A), provides that “[n]o person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.” R.C. 2913.01(A) defines “deception” as “knowingly deceiving another or causing another to be deceived by any false or misleading representation,* * *or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression another* * *” An act that involves deception under R.C. 2913.01(A),

⁵See Indictment, pp 12-87.

therefore, requires the State to prove Wells acted “knowingly.” Here, the State’s language tracked the language of the statute for securing writings by deception. Accordingly, appellant’s argument has no merit in regard to securing writings by deception.

{¶ 42} Forgery and uttering are addressed in R.C. 2913.31(A)(2) and (3), respectfully. R.C. 2913.31(A) provides that “[n]o person, with *purpose* to defraud, or *knowing* that the person is facilitating a fraud, shall do any of the following

{¶ 43} * * *” (Emphasis added.) This section and mens rea apply to both forgery and uttering. The section sets forth “purpose” or “knowing” as the required mens rea of forgery and uttering.

{¶ 44} In *State v. Musselman*, Montgomery App. No. 22210, 2009-Ohio-424, the court addressed the *Colon* issue with regard to the statute:

Upon review, we find no merit in Musselman’s sixth assignment of error and no violation of *Colon*. Turning first to counts three through forty-eight of Musselman’s indictment, which charged him with forgery and record tampering, we agree with the State that his indictment included the required mental state. Counts three through thirty-six charged Musselman with forgery in violation of R.C. 2913.31(A)(3). The indictment tracked the language of the statute, and each count alleged that Musselman, ‘with purpose to defraud, or knowing that he was facilitating a fraud, did utter, or possess with purpose to utter, any writing * * * which he knew to have been forged.’ Thus, the forgery counts alleged the proper culpable mental state.

{¶ 45} In the case at bar, the State’s indictment sets forth the required mens rea for forgery and uttering by tracking the language of the statute. Accordingly, Well’s argument is without merit as it applies to forgery and uttering.

{¶ 46} Receiving Stolen Property, R.C. 2913.51(A) provides that “[n]o person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.” This section sets forth “knowing” as the required mens rea of receiving stolen property. The State’s indictment tracks the exact language of R.C. 2913.51. Therefore, the mens rea element necessarily is included in an indictment for this offense. Well’s argument is without merit.

{¶ 47} Accordingly, appellant’s fifth assignment of error is overruled.

{¶ 48} Judgment affirmed.

It is ordered that appellee recover of 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.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR