

[Cite as *State v. Ivy*, 2010-Ohio-2463.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93250

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAVON C. IVY

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

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

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

RELEASED: June 3, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Jerome Emoff
55 Public Square, Suite 950
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Michael E. Jackson
Assistant County Prosecutor
The Justice Center
1200 Ontario Street, 8th Floor
Cleveland, OH 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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Lavon Ivy, appeals the judgment of the Cuyahoga County Court of Common Pleas convicting her of multiple crimes related to mortgage fraud. For the reasons stated below, we affirm.

{¶ 2} On January 31, 2007, Ivy and five co-defendants were indicted on 14 counts relating to mortgage fraud with regard to the sale of a property in Oakwood Village, Ohio. A jury found Ivy guilty of theft by deception in violation of R.C. 2913.02; securing writings by deception in violation of R.C. 2913.43; four counts of forgery in violation of R.C. 2913.31; two counts of telecommunications fraud in violation of R.C. 2913.05; receiving stolen property in violation of R.C. 2913.51; and falsification in violation of R.C. 2921.13.

{¶ 3} The trial court sentenced Ivy to an aggregate term of three-years imprisonment and three-years of postrelease control. The court also ordered Ivy to make restitution in the amount of \$21,021.48.

{¶ 4} On appeal, Ivy raises a single assignment of error.

{¶ 5} “I. The Evidence At Trial Was Insufficient To Sustain A Conviction, Or, In The Alternative, The Verdict Was Against The Manifest Weight Of The Evidence.”

{¶ 6} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence

admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.

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.

{¶ 7} The manifest weight of the evidence standard of review requires us to review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, 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. Otten* (1986), 33 Ohio App.3d 339, 340, 515 N.E.2d 1009. The use of the word "manifest" means that the trier of fact's decision must be plainly or obviously contrary to all of the evidence. This is a difficult burden for an appellant to overcome because the resolution of factual issues resides with the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. The trier of fact has the authority to "believe or disbelieve any witness or accept part of what a witness says and reject the rest." *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548.

{¶ 8} Ivy was convicted of six separate criminal offenses. However, in her argument she identifies neither a particular offense by name, nor the statutory elements of the offenses that she claims the state failed to prove. Instead, Ivy argues generally that there is no evidence of fraud or deception on her part. She contends that the state failed to prove that she was responsible for any disputed or misleading information in the real estate transaction. Our review, therefore, is limited to whether the state's evidence was sufficient to prove the essential element of "deception" in Ivy's convictions and, whether the convictions are against the manifest weight of the evidence.

{¶ 9} The following facts were established by the evidence presented at trial. In April 2004, Eugene Jones decided to sell his deceased mother's house located in Oakwood Village, Ohio. An inspection by the Oakwood building department disclosed that the building was "uninhabitable" and had numerous code violations that needed to be repaired before the property could be sold. Jones decided to sell the property in an "as is" condition, with the buyer assuming the violations and making the necessary repairs before taking occupancy.

{¶ 10} Kenneth Oneal agreed to purchase the property from Jones for \$90,000 and to assume the violations. Oneal testified that he contacted Ivy, a licensed real estate agent and licensed appraiser, to take care of the

transaction. Ivy prepared a purchase agreement reflecting the \$90,000 selling price that was signed by Jones on August 20, 2004. Two days later, Oneal met with Ivy and signed the purchase agreement. At that meeting, Oneal asked Ivy to handle the financing arrangements. He told her he needed a loan with no down payment and sufficient funds to pay the purchase price and the costs of repairing the home. He provided her with a copy of two pay stubs from his security job showing his income was \$1,800 per month. At a later meeting, Ivy had Oneal prepare and sign letters referencing past credit “derogatories” and showing his income as \$5,300 per month. Oneal admitted the letters were false and said that he signed them because Ivy told him to.

{¶ 11} New Century Mortgage approved a \$132,000 loan for Oneal to purchase the property, conditioned on Oneal making a \$42,000 down payment. This approval was based upon: 1) a loan application showing Oneal’s income as \$5,287 per month, 2) a purchase agreement between Jones and Oneal showing a \$165,000 purchase price for the property, 3) a copy of a National City Bank (“NCB”) cashier’s check for \$42,000 for a down payment, and, 4) a property appraisal performed by Ivy showing the property in good condition and valuing it at \$165,000.

{¶ 12} All of the financial information on these forms was false. The income figure, sales price, and appraisal value were all inflated. The

cashier's check was a sham. A representative from NCB testified that the check was not an NCB document, that NCB never issued the document, and that it was missing a number of key elements found on any official NCB cashier's check. Oneal testified that he did not sign the purchase agreement showing the \$165,000 price, made no down payment to Jones, and never had \$42,000 in his NCB account.

{¶ 13} The loan was arranged through M&S Investments, a mortgage brokerage company. Jones testified that Ivy contacted him and told him that Imani, the company he thought was handling the deal, was no longer involved and that she had someone else who could finance it. Jones was contacted by Phillip Stevens, a broker with M&S Investments, who told Jones he was handling the financing. Oneal testified that he had never heard of, or communicated with, Stevens before the closing.

{¶ 14} The real estate closing took place at Beachwood Title on October 29, 2004. The buyer and seller settlement statements, prepared by the closing agent, reflected the false information. Jones and Oneal appeared at different times to sign the documents. Jones testified that he had previously questioned Ivy about the \$165,000 purchase price and she told him it was written that way to obtain the necessary financing. The seller's settlement statement also provided that \$25,581.48 was to be dispersed to PTOT Enterprises for repairs made to the property. Jones testified that he was not

aware of any company by that name, that he had not authorized anyone to work on the property and, that no repairs had been made to the property. Jones testified he was not concerned about the incorrect information on the document because he thought the numbers had to do with financing, and that was between Oneal and Ivy. Jones said he signed the papers because the amount of money he received at closing, \$63,000, was about the amount of money he expected to get from selling the house for \$90,000 and paying off the existing mortgage.

{¶ 15} At closing, Oneal received a check for \$9,950. Based upon the amount of the loan, he said he expected to receive much more money to cover the work necessary to bring the house up to code. When he confronted Ivy about the remainder of the money, she told him that PTOT Enterprises received the balance of the money at closing at the lender's request. She said that the only way they could get the loan was if PTOT did the repair work.

{¶ 16} Ivy challenges the sufficiency of the state's evidence. She argues that there is no evidence that she was responsible for the \$165,000 purchase price. She points out that both the buyer and the seller testified to an agreed price of \$90,000, but admitted signing documents reflecting the higher price. She contends that the best evidence of the final purchase price is the documentation signed by the parties reflecting the \$165,000 price. She also

contends that the lender did an independent appraisal and arrived at the same figure. We are not persuaded.

{¶ 17} Both Jones and Oneal testified that the actual purchase price of the property was \$90,000. Both testified that the higher price on the documents came from Ivy, who explained to them that showing a higher price was necessary in order to obtain financing. Oneal testified that he falsely stated his income at Ivy's direction, again to obtain financing. The state's expert witness testified that Ivy's \$165,000 appraisal was inflated because, at the time of appraisal, the necessary repairs had not been made. The appraisal also reflected incorrect higher selling prices for comparable properties. The expert testified that because of the code violations on the property, an accurate appraisal would have been \$130,000. He gave his expert opinion that the lender's appraisal was most likely an in-house "bench appraisal" based solely upon the information provided by Ivy. He testified that it would not be customary for the lender to send someone out to view the property.

{¶ 18} Ivy also claims there is no evidence that she had any interest in PTOT Enterprises, a company owned by her father. She argues that the testimony of Kathleen Oneal, the wife of the property purchaser, that she "understood" Ivy had an interest in PTOT, is not proof of actual interest. This argument is not supported by the record.

{¶ 19} In addition to Mrs. Oneal's testimony, Lillie Hicks, the Oakwood Village building department secretary, identified Lavon Ivy as the person who came in to register her company, PTOT Enterprises, as a contractor to do work in Oakwood Village. Oneal also testified that Ivy sent a letter to a basement waterproofing company about doing work at the property. He said the letter was sent from PTOT Enterprises and identified Ivy as president of the company.

{¶ 20} Ivy further argues that she only assisted in the loan application process and that there is no evidence that she was responsible for any of the misinformation in the application. However, both Jones and Oneal testified that Ivy was responsible for arranging the financing. She knew that there was no down payment in the deal. She was responsible for the inflated income and property appraisal amounts. She was aware of the code violations and failed to list them on the appraisal form submitted with the loan application. She also failed to disclose her interest in PTOT Enterprises.

{¶ 21} We also find no merit to Ivy's contention that the absence of in-court identification is fatal to the state's claims against her. As previously mentioned, Lillie Hicks, the Oakwood Village building department secretary, identified Lavon Ivy in court as the person who came in to register PTOT Enterprises as a contractor to do work in the village. Additionally,

identity was never an issue in the case. Ivy did not deny being involved in the sale of the property. Rather, she denied any wrongdoing related to her involvement.

{¶ 22} Ivy also challenges the credibility of the state's witnesses. Both Jones and Oneal admitted to pleading guilty to falsification for their part in the scheme. They accepted plea agreements that reduced the charges against them in return for their testimony against Ivy and the other co-defendants. The trial court instructed the jury that accomplice testimony should be subjected to grave suspicion and weighed with great caution. The jury also heard that Kathleen Oneal and Lillie Hicks are sisters, and that the Oneals lost the house in foreclosure and have pursued civil damages against Ivy and some of the other co-defendants. The jury heard all of these things and still chose to believe at least some of the witnesses' testimonies. This is within the jury's prerogative. Our review does not convince us that this is one of those cases where the jury clearly lost its way or where the evidence weighs heavily against conviction.

{¶ 23} The state's evidence was sufficient to establish that Ivy knowingly engaged in a mortgage fraud scheme involving the use of a fraudulent appraisal, doctored loan documents, inflated buyer's income, and fraudulent "proof" of repairs. The lender, New Century Mortgage Company, granted the loan and released the funds based upon this fraudulent

information. Ivy received some of the funds on behalf of PTOT Enterprises, a company in which she had an interest. Accordingly, we find there was sufficient evidence to support the convictions against appellant, and the convictions are not against the manifest weight of the evidence. Ivy's single assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR