

[Cite as *State v. Baker*, 2009-Ohio-4188.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-080157
		C-080159
Plaintiff-Appellee,	:	TRIAL NOS. B-0701835
		B-0706253
vs.	:	
		<i>DECISION.</i>
ERNEST BAKER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: August 21, 2009

*Joseph T. Deters*, Prosecuting Attorney, and *Ronald W. Springman, Jr.*, Assistant  
Prosecuting Attorney, for Plaintiff-Appellee,

*Michaela Stagnaro*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

**MARK P. PAINTER, Judge.**

{¶1} Back in the wild days of the booming real-estate market, inflated appraisals, overlending based on mortgages people could not realistically afford—that is, almost yesterday—defendant-appellant Ernest Baker took advantage of the freewheeling climate to perpetrate numerous swindles.

{¶2} In separate cases joined for trial, Baker was found guilty by a jury of seven charges: four counts of theft<sup>1</sup> and a single count of forgery,<sup>2</sup> passing a bad check,<sup>3</sup> and tampering with records.<sup>4</sup> And he was acquitted of an additional three counts of theft<sup>5</sup> and one count of forgery.<sup>6</sup> He was sentenced to eight years' incarceration. We affirm six of the seven convictions, but we must reverse the conviction for passing a bad check, thus whittling his sentence to seven years.

{¶3} On appeal, Baker challenges his convictions on the grounds that the trial court erred in (1) allowing irrelevant and prejudicial evidence, (2) convicting him against the weight and sufficiency of the evidence, and (3) overruling his motions for relief from joinder, suppression of evidence, and a new trial. His arguments, as they relate to all but his bad-check conviction, are meritless, and we affirm the remaining convictions.

***I. A Confidence Man***

{¶4} Baker held himself out as a successful real-estate developer and advisor, when, in fact, he fraudulently took investors' money and used it for the unintended purposes of buying cars, flowers, and other personal items wholly

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<sup>1</sup> R.C. 2913.02(A)(3).

<sup>2</sup> R.C. 2913.31(A)(3).

<sup>3</sup> R.C. 2913.11.

<sup>4</sup> R.C. 2913.42(A)(1).

<sup>5</sup> R.C. 2913.02(A)(3).

<sup>6</sup> R.C. 2913.31(A)(3).

unrelated to business or real estate. Baker met women on Internet dating websites where users create a profile in hopes of attracting would-be suitors. On these websites, Baker characterized himself as a successful businessman who bought and sold real estate and remodeled houses.

{¶5} Baker would gain the confidence of women he met on the Internet and then would ask them for money to invest in real estate, while promising enormous returns on their investments, jobs and commissions, or long-term commitments. The evidence showed that Baker, after having built a trusting relationship, had solicited an \$80,000 investment from Rhonda White and a \$20,000 investment from Marcia Garrison. Baker then purchased homes for no money down in White's name, using her credit. In Garrison's case, he did nothing and kept the money.

{¶6} White could not afford the mortgage payments on the homes, and they all were foreclosed on. The money that Baker took from Garrison was never used to buy her a home or to invest in real estate.

***II. It's All in the Details—A Case for Joinder***

{¶7} Baker first argues that the trial court improperly joined the criminal cases into one trial. He argues that he was prejudiced by the joinder of the two cases, and that the court should have held separate trials for each case. Not so. The charges in both cases were inextricably related, and the facts showed a common course of criminal conduct—Baker had essentially stolen from White and Garrison to pay his creditors.

***III. Rhonda White***

{¶8} Baker met White online through a matchmaking service. White liked Baker. Baker's online profile claimed that he was a general contractor who could do

anything, a Christian, and a father. He also claimed that he could help people build financial independence through real-estate investment—what a catch!

{¶9} White and Baker grew close—they would talk on the phone daily and would email each other regularly. White informed Baker that she wanted to sell her house in Florida and buy a home in Ohio. Though they had only been conversing for a week, Baker offered to facilitate the transactions, and he arranged for her Florida home to be painted and for other minor repairs to be made in preparation for the sale. Baker told White that he felt good about their relationship, and he also revealed that he had already picked out a diamond ring for the next woman he would marry. The trap was set.

{¶10} Baker told White that he invested in real estate through his company EB and Associates, which, Baker claimed, had two employees. Baker likewise offered to find a home for White in Ohio, and he then sent her the home-loan prequalification documents. It is highly unlikely that Baker could ever have been approved for these home loans—even in what was then a highly loose lending climate—because his credit was ruined, and he was on probation for passing bad checks.

{¶11} White then informed Baker that she needed a house that could accommodate her oldest child, who has cerebral palsy. At the time, White had already become emotionally involved with Baker by virtue of their email and telephone communications, and she trusted him.

{¶12} White testified that she had filled out the home-loan prequalification documents, and that she had trusted Baker to help her find a home that she could afford with her limited income and periodic child-support payments. Baker then asked White to give him \$30,000 for investment purposes, to cover closing costs and a down payment, and to help White qualify for a home. Baker told White that the investment would yield \$20,000 to \$25,000 per month, and that she could also work

for his company, earning between \$7,000 and \$10,000 monthly. White was initially skeptical. But a trip to Cincinnati to see Baker would change that.

{¶13} In July 2006, White and her children visited Cincinnati. White and Baker met, and Baker immediately put on his show. He made extravagant overtures and tried to impress White with the cars and houses that he owned. After her arrival, Baker took White to dinner, showed her homes that his company owned, and suggested that White buy one of the company-owned houses. When White questioned Baker on how she would be able to afford such an expensive house, Baker replied, “Creative financing.”

{¶14} During her stay in Cincinnati, Baker continued to woo White. He raised the possibility of marriage again. He took White and her children to a dining and recreational establishment where he gave them a significant amount of money to play games. And he continuously bragged about the success of his business, often displaying large amounts of cash.

{¶15} On White’s last day in Cincinnati, Baker took the family to church, and he finally convinced White to give him a \$30,000 check. Again, the money was supposed to go towards a home and real-estate investment, and Baker reiterated that, after her investment, White would make between \$7,000 and \$10,000 a month in salary.

{¶16} Baker then began to steer White toward a particular home that he owned. She did not care for it because it was not appropriate for her disabled child, and because it was too expensive. But Baker again told White that she could afford the home through both “creative financing” and her job with his company.

{¶17} After White returned to Florida, Baker informed her that he had found another house for her, and he sent her pictures of the home. White liked it, and Baker arranged for all of the loan documents to be gathered and completed. Baker sent the documents to White, and she filled in the blanks and signed them. White

then wrote a letter, on Baker's instructions, to the mortgage broker, stating that her monthly income was \$7,827, which reflected not her actual income but the income Baker had represented that his company would pay her. White did not tell the broker that she was not earning that much money quite yet.

{¶18} White bought the house for \$375,000, with no money down. Baker attended the closing and reviewed the documents as White blithely signed each one. None of the \$30,000 was used to purchase the home. The monthly payment was \$2,500, and White believed that she would be able to afford this payment when she began to earn her monthly income from Baker's company.

{¶19} At this point, all was well. Baker and White seemingly had a good relationship, and Baker continued to assure White that she had made a good purchase and that money was forthcoming. Baker continued his marriage talk, along with a proposition that White buy another, larger house.

{¶20} White quickly sold her Florida home for a profit of \$63,000. Baker immediately asked for another \$50,000 for investment purposes. White agreed and wrote a check to EB and Associates. White testified that she had given Baker the money because she had loved and trusted him.

{¶21} From late 2006 to early 2007, Baker gave White a few thousand dollars, and he also made a small contribution to White's January mortgage payment. White continued to ask when she would get paid, telling Baker that she needed money. She got none. Instead, Baker told White that he needed more money to invest, but White was cashed out. In fact, she had to remove her children from a private school because she could not pay the tuition. Baker did do some household repairs, but nothing of substance. And when White again asked about her monthly income, Baker blamed others and said that some real-estate deals had fallen through, and that money was forthcoming. Baker would tell the same tale of "impending deals" to others as well.

{¶22} Around the time that White was asking Baker for money and help, Baker asked White to use her credit to buy another house in Florida. Baker told White that she could buy the house, make money on the purchase by renting the house, and then later resell it for a profit. He also said that the income from the Florida purchase would help pay for her Ohio home. On these inducements, White bought a Florida home for \$345,000. One of the documents indicated that White had paid \$14,904.09 in closing costs, but White testified that she had not actually paid any money.

{¶23} In late January, White had not been paid, nor had she made a dime on any “investment,” and her trust in Baker waned. Despite her diminished faith, White agreed to purchase yet another home in Florida. Baker assured White that this home would be a surefire deal, and that he could quickly resell the home at a substantial profit. White purchased this home for \$680,000, and once again Baker negotiated the deal, and White blithely signed the documents. One document indicated that White had paid \$50,223.76 at closing, but White testified that she had neither brought money to the closing nor made a down payment on the home.

{¶24} In early February, Baker continued to assure White that the three home purchases would yield a profit. But later that month, the house of cards crashed down when a mortgage broker telephoned White and told her that Baker would not be paying the mortgages on any of the three properties and asked her how she would make the monthly payments. Around that time, White realized that she had been taken, and she also learned that Baker was married. White then contacted the police and told her story.

{¶25} At the time of trial, all three houses either had been foreclosed on or were in the process of foreclosure. White testified that Baker had taken her money and used it to buy and repair a car for himself and to buy cars and flowers for other

women “investors.” Baker had borne no risk on any of the loans, and the risk of default and failure had fallen squarely on White.

{¶26} A later investigation revealed that Baker had used White’s \$30,000 check as an initial deposit to open a business checking account. The account was opened in late July, and 30 days later, there was a balance of \$18.88. A short time later, the account was overdrawn.

#### *IV. Marcia Garrison*

{¶27} Marcia Garrison owns a private school licensed by the state of Ohio. Though she owns the school, she receives very little income, other than a monthly \$1,000 social-security benefit that accrued at the death of her husband.

{¶28} Garrison lived in a condominium in Cincinnati. She had the unfortunate occasion to meet Baker through her friend Melissa Rogers, who also happened to be a girlfriend of the married Baker. Though Baker was married, he was living with Rogers and their two children at that time. On meeting Garrison, Baker told her that he remodeled houses for a living. Later, Baker moved out of Rogers’s condominium, but he would often return to visit his children. On one such occasion, Baker struck up a conversation with Garrison. He told her that his business was thriving, and that he was earning over a million dollars a year. Garrison told Baker that she wanted to buy a ranch house so that she could accommodate both herself and her aunt.

{¶29} Baker told Garrison that he could get her an acceptable house if she gave him \$50,000. Garrison did not have that much money, but she was able to get \$20,000 as a gift from her aunt, which she then gave to Baker in two \$10,000 cashier’s checks. Baker and Garrison agreed that, in exchange for the \$20,000, Baker would get Garrison a ranch home, and that she would (somehow) have \$5,000 per month in income from



the house, half of which would be used to pay the mortgage, and the remainder of which would go to Garrison as income. Baker agreed that the arrangement would last for 48 months, at which time the house would be paid off. At that point, Garrison could either continue the arrangement or get her \$20,000 investment back.

{¶30} Before Garrison gave Baker the \$20,000, she insisted that the agreement be memorialized in writing. Baker drafted an agreement acknowledging that he had received a \$20,000 “loan” on October 13, 2006, and that it was payable in 60 days in the amount of \$30,000.

{¶31} Garrison was not pleased with the language in Baker’s contract because she believed the money was for a house and was not a loan. The two finally agreed on language that indicated that, in exchange for the money, “EB and Associates, Ernie Baker, will have a house for [Garrison] to move into respectfully [sic]. [And the] contract can be extended for the purpose [sic] of a home for at least 48 months for the purpose of paying off the home at the rate of \$2,500 per month.”

{¶32} We are unsure what the terms of the Baker/Garrison agreement were. But we are sure that Garrison did not get a house, and that she did not get her money back. Instead of investing the money, Baker immediately shifted the funds and used the money to buy a Jeep Liberty for someone else.

#### ***V. The BMW Theft and a Forged Check***

{¶33} In November 2006, Baker bought a 2003 Land Rover. Baker gave the BMW Store a company check from EB and Associates, but he asked the dealership to hold it for a week. The account the check was drawn on was closed, but Baker, of course, did not tell the BMW Store. Baker said that he would exchange the check for a cashier’s check a few days later, when a real-estate deal was supposed to be completed.

{¶34} The BMW Store allowed Baker to drive away in the Land Rover in exchange for the check. The BMW Store’s representative testified that, because Baker was a well-spoken “businessman” from Indian Hill (a very ritzy residential area), and because he had given the BMW Store a check that (the dealership thought) later would be good, he was allowed to take immediate possession of the Land Rover.

{¶35} After the BMW Store had contacted Baker multiple times about paying for the Land Rover, Baker finally came in, apologized, and paid. On that day, Baker purchased a BMW convertible, and on the next day, he returned and bought a Chevrolet Silverado pickup—he said that he wanted to buy the BMW for a friend and to buy the Silverado to replace an older truck that had been used to drive to job sites. To make these purchases, Baker began by apologizing profusely for the delay in paying for the Land Rover, and he then promised to pay for the BMW and the Silverado in a more timely fashion. Again Baker gave the BMW Store company checks from EB and Associates and asked that they be held for a few days. And again he was allowed to take immediate possession of the vehicles. And again Baker did not pay on time—or ever.

{¶36} Weeks passed, and Baker had not paid the BMW Store. Baker apologized for the delay and told the BMW Store that he would sell stock to get the money, and the dealership gave him more time to pay.

{¶37} Meanwhile, still owing for the previous two vehicles, Baker bought yet another car from the BMW Store—a 1995 Honda Accord that he purchased for another friend. This car was old and relatively cheap, and had many miles on it. Evidently catching the looniness of the real-estate market, the BMW Store allowed Baker once again to take immediate possession without payment. And yet again, Baker did not pay.

{¶38} With the BMW, the Silverado, and the Accord payments still owed by Baker, the BMW Store began trying to collect on his account. Phone calls went unreturned, and when contact with Baker was made, he lied to, manipulated, and

deceived the dealership time and time again. Finally, Baker claimed that he was closing on property and would have the money soon. Evidently the deal fell through, but Baker told the dealership to cash the company checks that he had originally told the dealership to hold and indicated that the funds were available. But when the dealership tried to cash the checks, it learned that the account had been closed the entire time.

{¶39} These checks were written on a business account that had been opened at JP Morgan Chase in May 2006. Baker had Carla Clark, one of his “employees” (who was also romantically involved with Baker), open the account under the name EB and Associates, Inc., and Clark was the authorized signer on the account. Baker did not want to open the account or to be a signer because he was on probation for passing bad checks. And Clark insisted that she be the only signer on the account because Baker had previously overdrawn their joint account at U.S. Bank, and she did not want her credit further ruined by Baker overdrawing on the JP Morgan Chase account.

{¶40} In June 2006, the account was changed to EB and Associates, LLC, and Clark was still the signer on the account. When Baker gave the BMW Store the checks for the BMW and the Silverado, Clark was still the sole signer on the account, and she testified that she had never signed those checks. Baker had forged her signature.

{¶41} Baker never paid for the vehicles, but the Silverado was returned to the BMW Store’s lot. Later, the dealership was contacted by a woman living in Canada named Mary Jean Emery, who, not coincidentally, had also “invested” with Baker. Emery told the BMW Store that she had received the BMW as a gift from Baker, and that she had the title to the vehicle, even though the original title was still in the accounting office of the dealership because Baker had never paid for the vehicle. The BMW was also eventually returned to the dealership.

*VI. Tampering With Records*

{¶42} Later investigations revealed that the title to the BMW that Emery said she had possessed was, in fact, a duplicate title. A duplicate is issued in Ohio only when the original has been lost, stolen, or destroyed, and it cancels out the original title.

{¶43} The BMW Store, in anticipation of Baker's payment, and to help facilitate a quick transaction, changed the original title to reflect that Baker was the owner, but Baker never had physical possession of this original title—the dealership possessed it the entire time.

{¶44} In January 2007, Baker went to the Hamilton County Clerk of Court and signed a form swearing that the title to the BMW had been lost, even though it had not. The duplicate title was later canceled.

*VII. Passing Bad Checks to the Florist*

{¶45} In December 2006, Baker telephoned Deborah Hyams, owner of Our Flowers and Baskets, and ordered 72 roses, a teddy bear, and chocolates to be sent to Emery in Canada. Baker paid with a credit card.

{¶46} Baker bought more flowers later that month, paying in cash.

{¶47} After building a rapport with the flower shop, Baker asked to set up an account so that he could send Emery flowers weekly. The shop agreed and gave Baker \$200 in credit. When he had exhausted the credit, the flower deliveries stopped until he paid.

{¶48} In February 2007, Baker was all revved up for Valentine's Day, and he decided that he would outdo himself. Hyams calculated that Baker's order would cost \$1,067, and she told him that such a large order would have to be paid for up

front and in full. Baker gave Hyams a postdated check for \$1,067, and he asked her not to cash the check until the following Friday.

{¶49} Hyams held the check, and when she attempted to cash it, it was, of course, returned for insufficient funds.

#### VIII. Joinder

{¶50} Baker first argues that these cases were prejudicially joined for trial. Generally, if the charged offenses are of the same or similar character, are based on two or more transactions connected together, or are parts of a common scheme or course of criminal conduct, then the offenses can be joined for trial.<sup>7</sup> Joinder of charges is preferred because it facilitates judicial economy, consistent results, and witness convenience.<sup>8</sup>

{¶51} We note the intricate web in which Baker weaved his cons. The basic scheme involved Baker's stealing, under the guise of "investment," from various women to pay his own debts, which were wholly unrelated to the purpose for which the money was supposed to be used. Baker stole from women through a common investment scheme that had often been proposed after a romantic or emotional relationship had evolved; and he then spent the money on himself or sometimes other women. We also note that Baker's scheme was to hold himself out as a businessman who had been very successful in his real-estate investments. The record is replete with common criminal activity that closely linked each case, and the cases were properly joined. And we further note that the jury obviously followed all the evidence of the different charges, acquitting Baker of several of them. We overrule Baker's first assignment of error.

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<sup>7</sup> See Crim.R. 8(A); *State v. Hamblin* (1988), 37 Ohio St.3d 153, 524 N.E.2d 476.

<sup>8</sup> See *State v. Webster*, 1<sup>st</sup> Dist. Nos. C-070027 and C-070028, 2008-Ohio-1636, ¶31, citing *State v. Lott* (1990), 51 Ohio St.3d 160, 163, 555 N.E.2d 293; *State v. Brotherton*, 1<sup>st</sup> Dist. Nos. C-050121 and C-050122, 2006-Ohio-1747, ¶17, citing *State v. Thomas* (1980), 61 Ohio St.2d 223, 225, 400 N.E.2d 401.

*IX. Motion to Suppress*

{¶52} Baker next argues that his suppression motion was improperly denied. In support of this assignment of error, Baker alleges that his arrest warrant was not supported by probable cause, and that his arrest was unlawful because the arresting officer had acted outside of her jurisdiction. Not so.

{¶53} Baker first asserts that he was the titled owner of the BMW at the time the warrant was issued.

{¶54} Officer Wobser submitted an affidavit and complaint for Baker's arrest to the Hamilton County Clerk of Courts, who issued the warrant. In Ohio, clerks of court are authorized to issue an arrest warrant if the petitioning complaint or affidavit is supported by probable cause.<sup>9</sup> The determination of probable cause is based on the averments in the complaint or affidavit. To challenge the factual averments in the complaint, the burden is on the defendant to make a preliminary showing that the affiant made false statements knowingly and intentionally or with a reckless disregard for the truth.<sup>10</sup>

{¶55} At the suppression hearing, Baker failed to present evidence that Officer Wobser had made false statements in the petitioning complaint. And because he failed to make this showing, he has waived his right to challenge the finding of probable cause. That notwithstanding, we are convinced that the complaint alleged sufficient facts to constitute probable cause to issue the warrant; and there is no indication that Officer Wobser knowingly or intentionally made any false statement.

{¶56} Baker next argues that Officer Wobser acted outside her jurisdiction when she arrested him in Warren County. But an officer may pursue and arrest a

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<sup>9</sup> Crim.R. 4(A)(1).

<sup>10</sup> *State v. Townsend* (Sept. 14, 1990), 4<sup>th</sup> Dist. No. 1618, citing *Franks v. Delaware* (1978), 438 U.S. 154, 98 S.Ct. 2674.

defendant in any Ohio county when that officer has an arrest warrant.<sup>11</sup> Baker also argues that Officer Wobser failed to bring him to a magistrate or court in Hamilton County as required by R.C. 2935.02. Even if this is true, a violation of this section of the Revised Code does not implicate the constitutional protection afforded by the exclusionary rule.<sup>12</sup> Baker's assignment of error alleging that the trial court erred in overruling his suppression motion is meritless.

***X. Admission of Irrelevant and Prejudicial Evidence***

{¶57} Baker also contends that testimony from multiple witnesses that his company was not registered with the Ohio Secretary of State, the Ohio Bureau of Workers' Compensation, or the Ohio Department of Taxation, was irrelevant and prejudicial. Baker failed to object to the testimony at trial, and he has thus waived all but plain error.<sup>13</sup> Under the plain-error standard, we will not reverse a conviction unless, but for the error, the outcome of the proceedings clearly would have been different.<sup>14</sup>

{¶58} Our review of the record convinces us that the testimony was relevant and nonprejudicial, and that, in any event, the outcome would not have been different absent the testimony. Having a bogus company was part of Baker's grand scheme to defraud others. We see no prejudice in the state's showing that the company was indeed bogus. We overrule this assignment of error.

***XI. Sufficiency and Weight of the Evidence***

{¶59} In case number B-0701835, Baker was charged with five counts of theft,<sup>15</sup> one count of forgery,<sup>16</sup> and one count of passing a bad check.<sup>17</sup> Specifically, Baker was

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<sup>11</sup> R.C. 2935.02.

<sup>12</sup> See *State v. Jones*, 121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464, ¶21.

<sup>13</sup> *State v. Brown*, 10<sup>th</sup> Dist. No. 05AP-962, 2006-Ohio-4594.

<sup>14</sup> *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032, ¶71, reconsideration denied, 108 Ohio St.3d 1513, 2006-Ohio 1329, 844 N.E.2d 857.

<sup>15</sup> R.C. 2913.02(A)(3).

<sup>16</sup> R.C. 2913.31(A)(3).

<sup>17</sup> R.C. 2913.11.

charged with two counts of theft against White, one count of theft against Garrison, one count of theft against the BMW Store, and one count of theft against Terrilynn Knight, who had been unfortunate enough to have coincidentally met Baker and given him \$9,000 to “fix her credit rating” (whatever that means), at Baker’s suggestion, through underhanded means. He was convicted on four theft counts and was acquitted of the theft from Knight. The forgery count was based on Baker’s unauthorized signature on the check given to the BMW Store for the BMW, and the bad-check count was for the postdated check that he had given the florist—and he was convicted of both.

{¶60} In case number B-0706253, Baker was indicted for two counts of theft.<sup>18</sup> One involved Sarah Littleton, another girlfriend of Baker’s and, later, a mother of his child, whom he had met through a dating website, and to whom he had given the Honda Accord only after she had given him money for the vehicle. The other theft charge included the BMW Store and concerned the Honda Accord (the fourth vehicle they let him have), and the jury acquitted him of both counts of theft. Baker was also indicted for forging<sup>19</sup> another check, this one made payable to the BMW Store for the Honda Accord and for tampering with records<sup>20</sup> for illegitimately obtaining a duplicate title for the BMW. He was acquitted on the forgery charge, but was found guilty of tampering with records.

{¶61} Baker challenges the weight and sufficiency of the evidence used to convict him. When reviewing the sufficiency of the evidence to support a criminal conviction, we must examine the evidence admitted at trial in the light most favorable to the state. We must then determine whether that evidence could have convinced any rational trier of fact that the essential elements of the crime had been proved beyond a reasonable doubt.<sup>21</sup>

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<sup>18</sup> R.C. 2913.02(A)(3).

<sup>19</sup> R.C. 2913.31(A)(3).

<sup>20</sup> R.C. 2913.42(A)(1).

<sup>21</sup> See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.



{¶62} A review of the weight of the evidence puts the appellate court in the role of a “thirteenth juror.”<sup>22</sup> We must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>23</sup> A new trial should be granted only in exceptional cases where the evidence weighs heavily against the conviction.<sup>24</sup>

### *XII. Thefts from White and Garrison*

{¶63} We reject Baker’s sufficiency and weight claims concerning the thefts from White and Garrison. The record is replete with evidence to support the charges. The record overwhelmingly shows that Baker obtained money from both White and Garrison by deception.

{¶64} Baker also contends that the state failed to show that he had no intention to repay the money or to perform under the contracts. In this respect, Baker could not have had the requisite intent to repay the money or to perform because there was no reasonable expectation that he would make any legitimate money: Baker regularly and systematically deceived people to obtain money, and made outlandish promises that he could not have reasonably expected to fulfill. As far as we can tell, Baker never made a legitimate dollar from any of these transactions; and he cannot have reasonably intended to repay when the money he had been using to pay off creditors had been conned from others. Baker had basically been paying Paul by conning Peter.

{¶65} The evidence also showed that Baker had obtained the BMW from the BMW Store through deception; but Baker argues that he could not have been

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<sup>22</sup> See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

<sup>23</sup> *Id.*, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211.

<sup>24</sup> *Id.*

convicted of theft when the title to the vehicle was in his name. We are not convinced. Baker obtained the vehicle and the later “lost”-title certificate through deception. The BMW Store never transferred physical possession of the title to Baker; it held onto the title pending payment. A certificate of title is not necessarily determinative of ownership of a motor vehicle.<sup>25</sup> Baker never owned the BMW; the BMW Store did. Baker deceived the dealership by giving it bad checks that had been written on closed accounts: writing a check on an account one knows to be closed is evidence of intent to deceive.<sup>26</sup> The evidence supported the jury’s finding that Baker had obtained the BMW by deception as prohibited by R.C. 2913.02.

{¶66} The evidence likewise supported his conviction for forging the check that he gave to the BMW Store. The signer testified that, though her name appeared on the check, the signature was not hers.

### ***XIII. The Florist Check***

{¶67} But we must reverse Baker’s bad-check conviction. In *State v. Edwards*, the court confirmed the general rule that when a payee knows that a check is not collectible at the time it is tendered, there can be no crime of passing a bad check.<sup>27</sup> According to the florist, Baker gave her a postdated check and asked her to hold it until Friday—when the funds would be available. That transaction was an extension of credit that relied on the debtor’s ability to pay. When the person accepting the check knows that it is not good, there can be no intent to defraud, as the check itself signifies nothing except evidence of a debt.

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<sup>25</sup> *State v. Rhodes* (1982), 2 Ohio St.3d 74, 442 N.E.2d 1299.

<sup>26</sup> See *State v. Lyons* (Oct. 13, 1993), 5<sup>th</sup> Dist. No. CA-476; R.C. 2913.11.

<sup>27</sup> *State v. Edwards* (2001), 141 Ohio App.3d 388, 395, 751 N.E.2d 510; *State v. Creachbaum* (1971), 28 Ohio St. 2d 116, 119-120, 276 N.E.2d 240; *State v. Cote* (1991), 62 Ohio Misc. 2d 202, 204, 594 N.E.2d 198; *State v. Rudd* (1988), 55 Ohio Misc. 2d 1, 2, 562 N.E.2d 955.; *State v. Harris* (1982), 7 Ohio Misc. 2d 43, 44, 455 N.E.2d 539. But, see *State v. Jones*, 12<sup>th</sup> Dist. No. CA2006-11-198, 2008-Ohio-865; *State v. Widener*, 2<sup>nd</sup> Dist. No. 1684, 2007-Ohio-429.

*XIV. Tampering*

{¶68} We affirm Baker’s tampering-with-records conviction. The evidence showed that Baker had signed a form swearing that the original title to the BMW had been lost, when he knew that it had not been lost. He knew that he had not paid, and he needed a title to impress yet another “investor.” He tampered with records, and the conviction was proper.

*XV. New Trial*

{¶69} Finally, Baker argues that he should have been granted a new trial because new evidence had been discovered. New-trial motions are not to be granted lightly.<sup>28</sup> We review a trial court’s decision on a new-trial motion under an abuse-of-discretion standard.<sup>29</sup>

{¶70} In support of the new-trial motion, Baker claimed that a witness had testified that the Honda Accord had been sold for \$4,000, when it, in fact, had been sold for \$2,000. So?

{¶71} Baker was acquitted of the theft of the Honda Accord (the fourth vehicle he conned the BMW Store out of). The “newly discovered” evidence could not have made him any more not guilty of that offense—and it was not probative of the crimes for which Baker was convicted. The trial court properly overruled Baker’s new-trial motion.

*XIII. Conclusion*

{¶72} The jury was entitled to believe the state’s witnesses, they did, and his convictions were not against the weight and sufficiency of the evidence, except with respect to the bad-check charge. We reverse that conviction and remand this case to

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<sup>28</sup> *Crim.R. 33; Toledo v. Stuart* (1983), 11 Ohio App.3d 292, 465 N.E.2d 474.

<sup>29</sup> *State v. Petro* (1947), 148 Ohio St. 505, 76 N.E.2d 370, syllabus.

the trial court so that it can enter a judgment of acquittal on that charge. All of Baker's other assignments of error are meritless, and the trial court's judgment is, in all other respects, affirmed.

Judgment affirmed in part and reversed in part, and cause remanded.

**HILDEBRANDT, P.J., and CUNNINGHAM, J., concur.**

*Please Note:*

The court has recorded its own entry this date.

