

[Cite as *State v. Simpson*, 2009-Ohio-6301.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92069

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BETTIE SIMPSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

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

BEFORE: Boyle, J., Kilbane, P.J., and Stewart, J.

RELEASED: December 3, 2009

JOURNALIZED:

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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).

MARY J. BOYLE, J.:

{¶ 1} In October 2007, defendant-appellant, Bettie Simpson, was one of several people charged in a 270-count indictment involving a large mortgage fraud scheme. The indictment alleged, inter alia, that the defendants took part in a pattern of corrupt activity, theft by deception, securing writings by deception, forgery, uttering, fraud, falsification, and receiving stolen property.

Simpson was charged with 20 counts relating to two properties purchased by a single buyer (four counts of theft, four counts of securing writings by deception, four counts of forgery, four counts of forgery and uttering, and four counts of receiving stolen property). Simpson was ultimately convicted of two counts of receiving stolen property relating to third-party down payments that she provided to the buyer, unbeknownst to the lender. She now appeals her convictions, raising only one assignment of error for our review, namely, that her convictions are against the manifest weight of the evidence. Finding no merit to her claim, we affirm.

Procedural History

{¶ 2} Due to the complexity of the issues, the trial court bifurcated the counts into separate trials. In the trial, which began in June 2008, Simpson's case was tried to a jury with codefendants, Clarissa Foster (Simpson's daughter) and Corrietha J. Wells. It is after this trial that Simpson was convicted of the two counts of receiving stolen property at issue

in this appeal. Foster was convicted of 20 counts of securing records by deception, receiving stolen property, and theft by deception. Wells was convicted of 44 counts of theft, securing writings by deception, forgery, uttering, and receiving stolen property.

{¶ 3} Prior to the commencement of the second trial, Wells pled guilty to 22 additional counts. This court upheld Wells's convictions in *State v. Wells*, 8th Dist. No. 92130, 2009-Ohio 4712.

{¶ 4} The second trial against Foster and Simpson began on August 25, 2008. Foster was found guilty of 44 counts of securing records by deception and receiving stolen property. Simpson was found not guilty of 30 counts of theft, forgery, uttering, and receiving stolen property. Foster's appeal is a companion case to Simpson's. See *State v. Foster*, 8th Dist. Nos. 91977 and 92223.

{¶ 5} The trial court sentenced Simpson to three years of community control, and ordered that she pay \$1,000 in restitution to Argent Mortgage ("Argent"), the lender who was deceived by the third-party down payment scheme.

Background Facts

{¶ 6} The facts at trial had very little to do with Simpson. Indeed, as the trial court stated during Simpson's Crim.R. 29 argument, "I'm looking for — Ms. Simpson — and I understand I have to review this most favorably

to the state, her name was hardly mentioned throughout this whole trial.” The trial court ultimately granted Simpson’s Crim.R. 29 motion regarding eight counts of forgery and forgery and uttering. But with respect to charges of theft by deception, securing writings by deception, and receiving stolen property, the trial court ordered that “[t]he others, though barely, they do survive.”

{¶ 7} The first trial (the only one at issue here since Simpson was found not guilty in the second trial) related to mortgage fraud involving nine properties. The state presented 13 witnesses. One witness was from the prosecutor’s office, one from the Ohio Department of Commerce, one from Argent, and one sergeant from the sheriff’s department. Nine other witnesses testified, eight of whom had already pled guilty and agreed to testify against Foster, Wells, and Simpson. These witnesses included mortgage brokers, loan officers, title agents, escrow officers, and sellers and buyers of properties.

{¶ 8} Essentially, the facts presented established that Ace Home Loans, Inc. (“Ace”), a mortgage broker company, would facilitate deals between buyers and sellers and find a lender for the buyer. Licensed loan officers at Ace, including Wells, would falsify buyer’s financial information on loan applications that were submitted to the lender, Argent.

{¶ 9} Kelli Black, a loan processor who worked for Wells, testified that when she filled out buyer's loan applications, she made up the "information out of thin air." She created fictitious bank accounts and money amounts in those bank accounts, choosing an approximate amount that buyers had to have before lenders would approve their loan (enough to cover the closing costs and down payment). The buyers had no such bank accounts or money in them. Wells knew that Black was doing this, and as the licensed loan officer, signed and verified the documents as true.

{¶ 10} Neil Wolf, the owner and president of Ace, testified that Argent required "five percent of the purchase price" to come from the buyer's own funds. He explained that buyers who did not have enough funds could obtain third-party down payment assistance, where a third party would front the money for the down payment and closing costs. After the transaction closed, the seller was then required to pay back that amount to the third party, plus a \$500 service fee, from the seller's proceeds. Wolf admitted that he did not disclose these "grant programs" to the lender. He further admitted that he did not disclose the information because "[i]f the lender found out that they were using down payment assistance that wasn't properly disclosed, they would have never closed the transactions." He explained that down payment assistance programs are legal if they are disclosed to the lender.

{¶ 11} Rajesh Gupta, a seller of properties, testified that he agreed to take less money (essentially the down payment amount that would be fronted by the third party) when Wells informed him that she had a single buyer who would buy three of his properties. He also agreed to pay Wells a finder's fee of \$1,000 per property.

{¶ 12} Foster owned Shaker Title Services Corporation ("Shaker Title"). Shaker Title processed the title work and handled the closing for buyers purchasing property through Ace and obtaining loan funds from Argent. Simpson was the officer manager at Shaker Title.

{¶ 13} Koretia Williams, an escrow officer at Shaker Title, testified that Wells would notify her when she had a buyer who needed third-party down payment assistance. Williams would then obtain the money from different companies providing such payments. One such company was WBS Diversified Management Services, Inc. ("WBS"), which was owned by Simpson and her husband, Willie Simpson (who was not indicted).

{¶ 14} Foster and Williams would complete settlement statements (HUD-1 form), required for closing real estate transactions. On the buyer's settlement statement, required by the lender, Shaker Title representatives would fraudulently report that the down payment and closings costs were paid by the borrower, when actually, the money came from various third parties.

{¶ 15} Williams testified that when Wells notified her that a buyer needed down payment assistance, Williams would tell Simpson the buyer's name and the amount the buyer needed for the down payment. Simpson would obtain a certified check from either her personal bank account or WBS's bank account in the amount requested, and have the bank place the buyer's name on the check after "purchased by." Simpson would then give the check to Williams. Neither Simpson's name nor the name of her company, WBS, would be on the check. After the real estate transaction closed and Shaker Title received the loan funds from Argent, Shaker Title would disperse the funds. The seller's settlement statement verified that it was the seller's responsibility to pay the down payment funds back to WBS, along with the \$500 service fee. Shaker Title, responsible for dispersing the funds, would wire the necessary amount into Simpson's account.

{¶ 16} On two occasions, Shaker Title wired the down payment funds plus the service fee into Simpson's account one day before she actually obtained the official check from the bank.

Manifest Weight of the Evidence

{¶ 17} A challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence,

but nevertheless conclude that the judgment is against the weight of the evidence. *Id.*, citing *State v. Robinson* (1955), 162 Ohio St. 486, 487.

{¶ 18} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as a “thirteenth juror,” and, after “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.” *Thompkins*, *supra*, at 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶ 19} Simpson was convicted of two counts of receiving stolen property under R.C. 2913.51(A). This statute 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.”

{¶ 20} Simpson does not raise any issue with respect to the property being obtained “through the commission of a theft offense.” She also does not contend that she did not provide third-party down payment assistance to

buyers. Indeed, she concedes the evidence proved she did so. She maintains, however, that the evidence did not show that she had knowledge or reasonable cause to believe that the property was obtained by theft. She claims, “[n]othing in this case showed that she had reasonable cause to believe that these transactions were not appropriate.” She therefore maintains that “the jury lost its way in returning verdicts of guilty on the receiving stolen property counts.”

{¶ 21} Although there was limited evidence presented involving Simpson, we cannot find that the jury lost its way in finding that she had knowledge or reasonable cause to believe that the service fee she earned in providing down payment assistance to buyers was obtained through the commission of a theft offense.

{¶ 22} This court has held that, “absent an admission by a defendant, whether there was reasonable cause for a defendant to know if an item was stolen can only be shown by circumstantial evidence.” *State v. Prater*, 8th Dist. No. 80678, 2002-Ohio-5844, ¶9, citing *State v. Hankerson* (1982), 70 Ohio St.2d 87, 92.

{¶ 23} The phrase “reasonable cause to believe” as it is used in R.C. 2913.51(A), imposes a duty upon those coming into contact with possibly stolen items to examine fully and use all facts accessible in order to determine whether the property was stolen. *Guy v. McCartney*, 7th Dist. No. 00JE7,

2002-Ohio-3035, ¶25, citing *State v. Bundy* (1985), 20 Ohio St.3d 51, 53. Thus, “[a] person may not blindly enter into a tainted transaction and escape the consequences by a later claim of ignorance.” *State v. Reinke* (Oct. 7, 1992), 9th Dist. No. 2099, citing *Bundy* at 53.

{¶ 24} Williams testified that Simpson sometimes acted as a “closer.” Williams explained that a “closer” just “explains the papers and notarizes it.” Anyone who was a notary could be a “closer.” Although there were only two escrow officers at Shaker Title who could sign the closing papers, Foster and Williams, any number of people could notarize the documents. Thus, by notarizing final closing documents, Simpson certainly had access to the buyer’s settlement statements indicating that the money she fronted to the buyer was actually “cash from borrower.”

{¶ 25} Moreover, in 2004, before Simpson started WBS, Foster obtained third-party down payment assistance from her friend, Debora Cofer. Cofer explained that she found out about third-party down payment assistance companies through Wells and Foster. There is no question that Wells and Foster knew they were deceiving lenders through these third-party companies. Cofer began providing third-party down payments for buyers using Shaker Title to close their transactions. Foster was a signatory on Cofer’s company’s checking account. Cofer provided 40 to 50 third-party down payments before Foster suddenly stopped using her sometime in 2004. The

record reveals that Simpson and her husband began WBS in the fall of 2004 and began providing down payment assistance to buyers using Shaker Title to close their transactions.

{¶ 26} With Simpson being Foster's mother, an office manager at Shaker Title and a notary who would review closing documents and notarize signatures on the documents, we cannot find that the jury clearly lost its way by finding that Simpson knew or had reasonable cause to believe that the service fee she earned on the transaction was obtained through theft. It is our view that the record in this case supports the inference that Simpson knew or had reasonable cause to believe that the property was obtained by theft.

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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., CONCURS;
MELODY J. STEWART, J., CONCURS IN JUDGMENT ONLY