

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 09CA009563

Appellee

v.

ANDRE JUDSON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 06CR070726

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 22, 2010

CARR, Judge.

{¶1} Appellant, Andre Judson, appeals his conviction out of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On June 21, 2006, Judson was indicted on one count of theft in violation of R.C. 2913.02(A)(3), a felony of the fourth degree; and one count of intimidation of a victim in a criminal case in violation of R.C. 2921.04(B), a felony of the third degree. Judson entered a plea of not guilty at arraignment. The matter proceeded to trial, at the conclusion of which the jury found Judson guilty of both counts. The jury further found by special interrogatory that the value of the property stolen was \$43,000.00. The trial court sentenced Judson accordingly. Judson filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

“THE VERDICTS IN THIS CASE ARE AGAINST THE SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE AND SHOULD BE REVERSED BECAUSE THEY VIOLATE THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO.”

{¶3} Judson argues that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. This Court disagrees.

Sufficiency of the evidence.

{¶4} The law is well settled:

“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. Galloway* (Jan. 31, 2001), 9th Dist. No. 19752.

The test for sufficiency requires a determination of whether the State has met its burden of production at trial. *State v. Walker* (Dec. 12, 2001), 9th Dist. No. 20559; See, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390.

{¶5} Judson was convicted of theft in violation of R.C. 2913.02(A)(3), which states 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 *** [b]y deception[.]” R.C. 2901.22(B) states:

“A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.”

“Deprive” means to do any of the following:

“(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

“(2) Dispose of property so as to make it unlikely that the owner will recover it;

“(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.”
R.C. 2913.01(C).

{¶6} An “owner” is “any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.” R.C. 2913.01(D). The code defines “deception” as:

“knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.”
R.C. 2913.01(A).

{¶7} Judson was also convicted of intimidation of a crime victim in violation of R.C. 2921.04(B), which states, in relevant part: “No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges ***.”

{¶8} At trial, the victim, Eric Zaffer, testified that he met Judson in 2005 when mutual friends brought him to a party at Zaffer’s home. Zaffer testified that he learned that Judson worked for a mortgage company, and that Judson helped him refinance his home. He admitted that Judson’s mortgage company paid his \$7,000.00 pre-payment penalty, and that Zaffer in return wrote Judson a check for \$2,500.00. Zaffer admitted that he subsequently stopped

payment on that check because he had learned that it was unethical for a mortgage broker to ask for a kickback.

{¶9} Zaffer testified that he was earning money by scheduling medical exams and typing reports for cases referred to him by the Bureau of Workers' Compensation ("BWC"), that Judson helped him for three to four months by recruiting new doctors, and that the two of them discussed establishing a new company in Judson's name to secure referrals from BWC because BWC was investigating Zaffer for fraud for over-billing the bureau. Zaffer testified that Judson facilitated 115 exams and that Zaffer paid him in full for that work. Zaffer testified that, while he developed a business plan, he and Judson never entered into any business agreement or established this new company because Judson never recruited any doctors necessary for such a business.

{¶10} Zaffer testified that Judson proposed another business opportunity for the two of them, in which Judson would find properties in distressed areas and in need of repairs, that Zaffer would provide money to purchase and repair the properties through financing facilitated by Judson, that they would resell the properties for a profit to buyers Judson had pre-identified, and that he and Judson would split the sale profits. He testified that Judson told him it would take three to six months to "flip" a house. Zaffer testified that Judson would also obtain a financial benefit by handling the mortgages as a broker. Zaffer testified that he would have no personal contact with any sellers, and that he trusted Judson as a friend to facilitate their oral agreement. Zaffer then testified regarding specific property deals.

{¶11} Zaffer testified regarding a deal involving property located at 529 Delaware Avenue. He testified that he gave Judson three checks in September 2005, to wit: a \$5,000.00 check for a land contract on the property; a \$7,000.00 check for roof repairs; and a blank check

which Judson wrote out for \$5,000.00 for basement repairs. Zaffer testified that Judson cashed all three checks, that no improvements were ever made to that property, and that Zaffer does not now and never has owned that property. Zaffer testified that Judson told him that he had a buyer ready to purchase the property from Zaffer after the repairs had been made.

{¶12} Zaffer testified that he wrote Judson another check on October 4, 2005, for \$20,000.00 because Judson said he needed money for deposits on houses being sold at sheriff's sales. He testified that Judson returned the next day for additional checks because the check cashing store Judson used to cash checks was unable to cash a check in that amount. Zaffer testified that he gave Judson two blank checks. He testified that Judson wrote his name on one which Judson made payable in the amount of \$8,000.00. He testified that Judson made the second check payable to The Carrion Agency in the amount of \$12,000.00, so that Judson's friend there could cash it and give the money to Judson. Both checks were cashed.

{¶13} Zaffer testified that Judson asked for another check for a land contract on another property, so Zaffer gave him a signed blank check, dated for October 27, 2005. Judson made the check payable to himself for \$6,000.00. Zaffer testified that Judson said he would finance the property in Zaffer's name, and then sell it.

{¶14} Zaffer testified that Judson contacted him in November 2005 about a fourth house located at 1119 West 22nd Street in Lorain. He testified that Judson wanted to secure financing for Zaffer in the amount of \$80,000.00, so that the seller Robert Harker could "kickback" the amount in excess of his lower asking price. Zaffer testified that Mr. Harker called him to report that the deal seemed "fishy," so Zaffer called the police on March 8, 2006, because he thought Judson's deal was a scam. Zaffer testified that Judson never discussed the idea of a "kickback" in regard to the proposed purchases of property.

{¶15} Zaffer acknowledged that he signed a real estate purchase agreement on November 14, 2005, for property located at 3975 Lorain Avenue, but he noted that there was no mention of any kickback of monies financed to him.

{¶16} Zaffer testified that Judson told him that he used Zaffer's money to make bids on properties auctioned at sheriff's sales and to fix up properties to be sold for profit. Zaffer testified that he gave Judson more than \$40,000.00, that he never got any of that money back, that Judson never discussed paying Zaffer back, and that Zaffer owns no property despite their business agreement. In addition, Zaffer testified that Judson never told him that the money he gave him was stolen. In fact, Judson told him that the money was "lost" when it was put down as deposits on properties at sheriff's sales and Zaffer could not obtain the requisite financing within thirty days. Zaffer testified that when he requested that Judson return his money, Judson merely responded with "[m]ore stories. Confusion."

{¶17} Zaffer testified that he called the police on March 8, 2006, after he came to believe that Judson was perpetuating a scam. He testified that Judson left a message on his voice mail on March 10, 2006, threatening him in two ways. First, Zaffer testified that Judson said he was going to call BWC and cause trouble for Zaffer in relation to his main source of income. Second, Zaffer testified that Judson told him that his life was in jeopardy. A tape of Judson's message on Zaffer's voice mail was played in court. Judson could be heard stating, "My job's not in jeopardy; your life is."

{¶18} Terrance Shorts testified that he owned property at 3975 Lorain Avenue, Lorain, which included a house and two lots. He testified that, while he did not have a mortgage on the property, there were tax liens on the property in the amount of approximately \$2,000.00. He testified that he also needed money to pay medical bills for his ill son and make some repairs to

his property. Mr. Shorts testified that Judson was supposed to facilitate a loan for him, which he would repay, while Judson would receive a commission. Mr. Shorts understood that he would be putting his second lot up as collateral for a loan to pay for repairs to his basement, but he understood that he would get his lot back when his loan was processed. He testified that he also did not understand that he would be selling his house and then repurchasing it for a higher amount in order to get the money he needed for bills. Although he signed a real estate purchase agreement, he testified that he understood that document to be a loan application. Mr. Shorts testified that Judson arranged for the repairs on his house but that the work was shoddy. In the end, Mr. Shorts testified that he lost his side lot, that his house was sold, and that he is buying it back, none of which he understood to be the deal as presented by Judson.

{¶19} Robert Harker testified that he spoke with Judson about selling his mother's property located at 1119 W. 22nd St., Lorain. He testified that Judson had a plan to buy the property, fix it up, and sell it. He testified that their contract kept expiring and he was unable to contact Judson. Mr. Harker testified that Judson finally wrote a purchase agreement, dated for February 30, 2006, in which Judson wanted to buy the property for \$81,000.00, while Mr. Harker was only asking for \$59,000.00. He testified that Judson told him that he wanted Harker to write a check to Judson for the difference between the asking price and selling price after closing. Mr. Harker testified that he refused to sign any more purchase agreements.

{¶20} Timothy Carrion testified that he works at The Carrion Agency, an investment/insurance/real estate agency. He testified that he met Judson while they were both working at Magellan Mortgage. He testified that he cashed a \$12,000.00 check that Judson gave him which was written on Eric Zaffer's account and signed by Zaffer. Mr. Carrion testified that Judson explained that he was having "issues" with his personal bank account and asked him to

cash the check which he would use as payment for a deal he was working on. Mr. Carrion testified that he agreed to cash the check because Judson owed him \$1,000.00-2,000.00 dollars and he saw this as a way to recoup his money. He testified that he kept whatever amount Judson owed him and gave him the rest.

{¶21} Mr. Carrion explained cash back deals as those in which the property value is higher than the asking price, so the seller gets the asking price, and the buyer gets cash back on the loan he has financed. Mr. Carrion testified that such deals are not really done anymore in regard to residential properties, although they took place in 2005. He further testified that, while he never participated in such deals, he has heard of deals in which a buyer finances a cash back deal, and then resells the home to the original owner through a land contract until the owner is able to refinance. He testified that, as a loan officer, it was never his practice to take money from potential buyers and look for homes, or to make bids on land contracts on potential homes to buy. Mr. Carrion testified that the higher the amount of the loan financed, the higher the broker's commission.

{¶22} Detective Randall Baker of the Elyria Police Department ("EPD") testified that Eric Zaffer came to the EPD and filed a complaint on March 8, 2006, regarding theft. The detective testified that he was assigned to the case the next day, and he reviewed the report of the officer who took the complaint and all evidence turned in, and interviewed Zaffer, Mr. Harker, Mr. Shorts, Mr. Carrion, employees at Ace Check Cashing, and Judson.

{¶23} Detective Baker testified that Judson admitted that he approached Zaffer about an investment opportunity wherein Zaffer would provide the money and Judson would handle the buying, repairing, and reselling of property. The detective discussed each of the checks Zaffer gave to Judson in connection with their business deal. He testified that Judson identified check

number 101, dated September 9, 2005, payable to Judson in the amount of \$5,000.00. He testified the Judson reported that he cashed the check at Ace Check Cashing instead of his bank because he owed his bank money due to a bad check he had received. He testified that Judson told him that money was to start up a business to be able to “move on” any property purchases or bids he found. The detective testified that Judson said he took that money home and put it in a safe.

{¶24} Detective Baker testified that Judson identified check numbers 102 and 104, dated September 13 and 19, 2005, respectively, and payable to Judson in the respective amounts of \$7,000.00 and \$5,000.00. He testified that Judson said that he cashed both checks at Ace Check Cashing and the money was to buy properties for Zaffer. The detective testified that Judson identified check number 105, dated October 4, 2005, and payable to Judson in the amount of \$20,000.00. He testified that Judson told him that he tried to cash the check at Ace Check Cashing, which refused because the amount was too high. The detective testified that Judson returned to Zaffer to obtain two smaller checks totaling the same amount to be used to buy properties.

{¶25} Detective Baker testified that Judson identified check number 108 as the first of two replacement checks for check number 105. The check is dated October 5, 2005, and payable to Judson in the amount of \$8,000.00. The detective testified that Judson told him this money was to buy Terrence Shorts’ property at 3975 Lorain Avenue, although Judson admitted that he neither bought nor tried to buy that property. He testified that Judson explained the plan as follows: Mr. Shorts wanted \$25,000.00 for the property which had been appraised at \$60,500.00. Therefore, Mr. Shorts would receive a kickback of \$40,500.00 after the sale and then sign a land contract to buy his home back for \$65,500.00. The detective testified that Judson told him that

Mr. Shorts would write a check for that kickback amount to Judson. He testified that Judson did not explain why Mr. Shorts would agree to buy his own home back for over \$40,000.00 more than the amount for which he sold it.

{¶26} Detective Baker testified that Judson identified check number 109 as the second of the two replacement checks. The check is dated October 5, 2005, and payable to The Carrion Agency in the amount of \$12,000.00. The detective testified that Judson told him he did not want to cash another check at Ace Check Cashing and pay their ten percent fee, so he asked his friend at the agency to cash it for him. He testified that Judson said he received the full \$12,000.00 from Tim Carrion, although Mr. Carrion reported that he kept a portion for a debt owed by Judson. The detective testified that Judson said the money was to make repairs to Mr. Shorts' property he was seeking to buy for Zaffer.

{¶27} Finally, Detective Baker testified that Judson identified check number 1611, dated October 27, 2005, and payable to Judson in the amount of \$6,000.00. He believed that Judson told him that this money was also to buy property.

{¶28} Detective Baker testified that Judson told him that he put all this money received from Zaffer in a safe at his home. He testified that only during his second meeting with Judson did the defendant tell him that someone broke in to his home in late October/early November 2005 and stole the safe and all the money. The detective testified that Judson told him that, while he had planned to buy properties for Zaffer at sheriff's sales, he never did because the money was stolen. He testified that Judson said he did not report the theft to the police because he could not identify a suspect. He testified that Judson admitted he did not tell Zaffer about the theft.

{¶29} Detective Baker testified that Judson confirmed that Zaffer gave him numerous checks to invest in their house flipping business, bid on properties, and make repairs to other properties. He testified that Judson admitted that he never placed any bids on any houses and that no land contracts were ever drawn up. The detective testified that Judson admitted that he owed Zaffer approximately \$46,000.00, while Zaffer “didn’t really owe him any money.”

{¶30} Detective Baker testified that after his initial conversation with Judson, Zaffer called to report that Judson had left a threatening voice mail message on Zaffer’s phone. He testified that Zaffer allowed the police to record the voice mail message. The detective testified that Judson admitted to leaving a voice mail message for Zaffer but denied making any threats. Detective Baker testified that he did not hear Judson threaten Zaffer with harm by any specific method or manner, but he heard Judson tell Zaffer that “my job is not in jeopardy, but your life is.”

{¶31} Based on the evidence presented at trial, this Court concludes that there was sufficient evidence, when construed in a light most favorable to the prosecution, to convince an average person that Judson committed theft. The evidence indicates that Judson proposed a business arrangement with Zaffer, wherein Zaffer would provide financial resources to allow Judson to buy and improve properties and resell them at a profit. Judson, as a mortgage broker, helped Zaffer establish a line of credit so he would have access to funds to invest. Zaffer provided blank checks to Judson for down payments and repairs, so that Judson could purchase properties in Zaffer’s name and make necessary improvements to resell the properties to buyers he told Zaffer were ready and willing to buy the refurbished properties.

{¶32} The evidence indicates that Judson had purpose to deprive Zaffer of property when he continued to ask for additional checks and failed to tell him about the alleged theft of

the money. The evidence further indicates that Judson accepted numerous checks, which he cashed, without giving proper consideration in return. Zaffer testified that he never owned any property as a result of his business plan with Judson, despite having given Judson tens of thousands of dollars.

{¶33} Judson paid a check cashing business to cash the checks and took the remainder of each check home. In addition, he made one check payable to a friend who kept a portion of the money as payment for a debt owed to him by Judson. On the other hand, Judson never put any bids or down payments on any properties for Zaffer. The evidence indicates that Judson never caused Zaffer to own any properties which might have been resold for a profit. Furthermore, the evidence indicates that Judson used deception to obtain or control Zaffer's money. Judson continued to request additional checks, although he merely cashed them without using them for property purchases or repairs. As a result, the State presented sufficient evidence to allow any rational trier of fact to find that the essential elements of the crime of theft were proven beyond a reasonable doubt. See *Galloway*, supra.

{¶34} Based on the evidence presented at trial, this Court further concludes that there was sufficient evidence, when construed in a light most favorable to the prosecution, to convince an average person that Judson committed intimidation of a victim in a criminal case. The State played a recording of a message that Judson left on Zaffer's voice mail in which Judson told Zaffer that his life was in jeopardy. Accordingly, the evidence indicates that Judson used an unlawful threat to Zaffer's life in an attempt to intimidate or hinder his further prosecution of the criminal charge. Zaffer testified that Judson also told him that he was going to call BWC to report Zaffer's using Judson as the front man to continue to obtain referrals from BWC despite BWC's investigation of Zaffer for fraud. As a result, the State presented sufficient evidence to

allow any rational trier of fact to find that the essential elements of the crime of intimidation were proven beyond a reasonable doubt. See *Galloway*, supra.

Weight of the evidence.

{¶35} A review of the sufficiency of the State’s evidence and the manifest weight of the evidence adduced at trial are separate and legally distinct determinations. *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600. “While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion.” *Id.*, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook J., concurring).

{¶36} A determination of whether a conviction is against the manifest weight of the evidence, however, does not permit this Court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

“an appellate court must 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.

“Weight of the evidence concerns the tendency of a greater amount of credible evidence to support one side of the issue more than the other. *Thompkins*, 78 Ohio St.3d at 387. Further when reversing a conviction on the basis that it was against the manifest weight of the evidence, an appellate court sits as a ‘thirteenth juror,’ and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.*” *State v. Tucker*, 9th Dist. No. 06CA0035-M, 2006-Ohio-6914, at ¶5.

This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. *Thompkins*, 78 Ohio St.3d at 387.

{¶37} Judson testified in his own defense. He testified that he met Zaffer at a party at Zaffer's home and that he subsequently helped Zaffer refinance his home. Judson testified that he paid Zaffer's \$7,000.00 pre-payment penalty out of his commission, and that Zaffer paid him \$2,500.00 but stopped payment on the check. Judson testified that his bank closed his account for failure to pay a debt, so he was forced to use a check cashing business to cash any checks.

{¶38} Judson testified that he and Zaffer started a business to facilitate medical exams for BWC, that he worked with Zaffer in that business from April through December 2005, and that Zaffer failed to pay him anything for his work.

{¶39} Judson testified that he approached Zaffer with the idea to start a business buying, rehabilitating, and selling properties for profit. He testified that Zaffer agreed in July 2005 to be a "silent partner" and open a line of credit to obtain money for down payments, repairs, and general start up costs of the business. Judson testified that he helped Zaffer open a line of credit in August or September 2005, and that Zaffer wrote him checks for different investment opportunities Judson identified. Judson testified that Zaffer never put any strings or conditions on any of the checks.

{¶40} Judson explained the first deal he brought to Zaffer involving Mr. Shorts' property on Lorain Avenue as follows. Because Mr. Shorts needed money and did not qualify for refinancing, Judson got the home appraised and found a repair company who would accept Mr. Shorts' attached lot as collateral for repairs. The plan was to rehabilitate the home so that it was suitable for financing. Zaffer would finance the home for its value after repairs (\$81,000.00), and both Zaffer and Mr. Shorts would receive cash back after closing. Mr. Shorts was to be allowed to remain in the home until he could afford to obtain financing to repurchase it. Although Judson testified that Mr. Shorts signed a land contract, he did not know where that

contract was. Judson testified that this deal never came to fruition because in December 2006 he was told by a police detective not to have any further contact with Zaffer. Accordingly, Judson did not have the opportunity to present this deal to Zaffer.

{¶41} Judson testified that he discussed buying Mr. Harker's home at 1119 West 22nd Street with Zaffer, setting the price of the home for its value after repairs, and getting a kickback, or cash, at closing. He testified that Mr. Harker decided not to proceed with the deal after speaking with a police detective.

{¶42} Judson explained the deal he brought to Zaffer regarding the Delaware Avenue property. He testified that the purchase price of the home was \$85,000.00, that the company selling the home was offering \$14,000.00 cash back to the buyer, and that he (Judson) offered to let Zaffer keep those profits because he owed Zaffer money. Judson conceded that he believed that he still owed Zaffer \$46,000.00. He did not explain how the \$14,000.00 cash back constituted a profit when Zaffer would have to pay it back as part of the amount he financed to buy the property. Judson admitted that he facilitated the financing for Zaffer for this deal, although the mortgage company subsequently suspended the loan when Judson told them that the deal was off the table when the police told him to cease contact with Zaffer.

{¶43} Judson identified the various checks that Zaffer gave him. He testified that he cashed the checks at Ace Check Cashing even though that business takes a percentage of every check cashed. He testified that he did not deposit any of the checks at a bank because his account had been suspended due to checking issues. Judson admitted that he did not try to open an account with another bank.

{¶44} Judson testified that he took all the money from the checks Zaffer gave him and placed it in a safe in his home. He testified that he discovered in November 2005 that the safe

was gone when he went to get money to pay off a cousin who was attempting to extort money from him. Judson testified that he did not report the theft of the safe and its contents to the police because he suspected his cousin had taken it but he was not sure. He testified that he did not tell Zaffer that the money had been stolen because he thought Zaffer would think he was running a scam. Rather, he told him that “something bad happened.” He testified that he told Zaffer that he did not have the money but that he would get it back to him.

{¶45} Judson denied telling Zaffer that he would use his money for any specific properties. Instead, he testified that he told Zaffer that he needed certain checks to “move on” various properties, which he explained did not mean that he would buy them. He conceded that Zaffer might have believed that an attempt to “move on” a property meant an attempt to purchase it. He also testified that when he told Zaffer he needed money for a “bid,” that merely meant to obtain bids for repairs. Judson denied telling Zaffer that he could get houses for him, although he admitted that he told Zaffer that they could purchase and fix up homes, then sell them and make a profit. He admitted telling Zaffer about sheriff’s sales and subsequent interested buyers. Judson further admitted telling Zaffer that he would get double his money back on some deals. Ultimately, he admitted that he “never did move on anything,” later qualifying that he could not say “never.” Judson did not explain how he in fact “moved” on any properties for Zaffer’s benefit. In fact, he later testified that he never bought any property with Zaffer’s money and admitted that he did not do what he said he would do with that money.

{¶46} Judson testified that he was upset with Zaffer after the police questioned him about the propriety of his dealings with Zaffer. He admitted that he called Zaffer and told him that “my job isn’t in jeopardy, but your life is,” although he also admitted to initially lying to the detective about his message to Zaffer.

{¶47} Judson admitted telling Detective Baker that Zaffer did not owe him any money. He further admitted telling the detective that he owed Zaffer money. At trial, he later changed his story and testified that Zaffer in fact owes him money for work he performed in relation to their BWC business. Judson considered Zaffer's earlier testimony that he was making \$40,000.00 per year and calculated that Zaffer therefore owed him \$60,000.00, representing one-half of Zaffer's business income over a three year period. Judson concluded that, when he offsets the \$46,000.00 he owes Zaffer against what Zaffer owes him, he does not owe Zaffer anything.

{¶48} This is not the exceptional case, where the evidence weighs heavily in favor of Judson. The weight of the evidence supports the conclusion that Judson committed theft and intimidation. Moreover, this Court will not overturn the trial court's verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witness' testimony over the testimony of others. *State v. Crowe*, 9th Dist. No. 04CA0098-M, 2005-Ohio-4082, at ¶22.

{¶49} A thorough review of the record compels this Court to find no indication that the trier of fact lost its way and committed a manifest miscarriage of justice in convicting Judson of theft. Judson admitted to cashing Zaffer's checks and yet failing to use that money for the proposed and intended purposes. Instead, Judson admitted that he took all of the money Zaffer provided home and merely placed it in a safe in his apartment. Although Judson testified that someone broke into his apartment while he was out of town and stole the money, he admitted that he did not report any theft to the police. He further admitted that he did not tell Zaffer about the theft because he thought Zaffer would stop doing business with him in the belief that Judson was running a scam.

{¶50} The evidence indicates that Judson had purpose to deprive Zaffer of property when he continued to ask for additional checks and failed to tell him about the alleged theft of the money from his home out of fear that Zaffer would discontinue issuing checks. Moreover, Judson admitted that he did not use the money for the purposes for which he told Zaffer he would use it. Judson testified that he understood how Zaffer would have believed that his repeated requests for checks to “move on” properties meant that Judson was actually buying properties for Zaffer. The evidence further indicates that Judson withheld information from Zaffer regarding the alleged theft of the money from Judson’s home. Accordingly, Judson’s conviction for theft is not against the manifest weight of the evidence.

{¶51} A thorough review of the record further compels this Court to find no indication that the trier of fact lost its way and committed a manifest miscarriage of justice in convicting Judson of intimidation of victim in a criminal case. Judson admitted that he was angry after the police began investigating him in regard to his business dealings with Zaffer and that he called Zaffer and left a message in which he told Zaffer that his life was in jeopardy. Both Judson and Zaffer testified that Judson also told Zaffer that he was going to call BWC to report Zaffer’s use of Judson to continue procuring referrals from BWC despite BWC’s investigation of Zaffer for fraud. Judson knew that the theft investigation against him had just begun. Accordingly, Judson’s conviction for intimidation is not against the manifest weight of the evidence.

{¶52} This Court concludes that Judson’s convictions are both supported by sufficient evidence and not against the manifest weight of the evidence. Judson’s sole assignment of error is overruled.

III.

{¶53} Judson's assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS

DICKINSON, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶54} Mr. Judson's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Accordingly, I concur in the majority's judgment.

APPEARANCES:

PAUL A. GRIFFIN, Attorney at Law, for Appellant.

DENNIS WILL, Prosecuting Attorney, and MARY R. SLANCZKA, Assistant Prosecuting Attorney, for Appellee.