

[Cite as *State v. Huff*, 2009-Ohio-5368.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92427

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT HUFF

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-500285

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

RELEASED: October 8, 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).

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Robert Huff appeals from his convictions after a bench trial on charges of theft by deception and securing writings by deception.

{¶ 2} Huff presents two assignments of error, in which he argues that neither of his convictions is supported by the manifest weight of the evidence. Upon a review of the record, this court finds his argument unpersuasive. Consequently, his convictions are affirmed.

{¶ 3} Huff's convictions result from a scheme commonly known as "mortgage fraud" that occurred in 2003 in the city of Solon, Ohio. According to the state's witnesses, the scheme unfolded in the following manner.

{¶ 4} Edward Emery owned a construction company that built homes in the city. He testified that one day, he was working in one of them when Huff approached him and began talking. Huff told Emery "he could probably sell a couple of houses that I had."¹ Huff requested a "finder's fee" for his service.

{¶ 5} Emery testified that "during the early phase of construction" of the house located at 35895 Sedge Circle, Huff "brought a young man named Robert Hawes in who [Huff] said was going to buy the house." Emery stated the understanding was that Hawes was going to perform some of the finishing work inside, then "lease purchase" the house from another man named Gerald Sizemore.

¹Quotes indicate testimony of a witness at Huff's trial.

{¶ 6} Emery testified that Huff was involved when Hawes made changes to the house, that Huff was present when “the ultimate buyer came in, [who] was Mr. Sizemore,” and that Huff “was the one that was actually bringing contracts back and forth and documentation, things like that.” Emery acknowledged the documentation listed Sizemore as the actual purchaser.

{¶ 7} Emery stated he agreed to a “purchase money mortgage” on the Sedge Circle house whereby he would accept a note from Sizemore in lieu of a down payment. Emery admitted, however, that he “discharged” the debt when the sale closed, and the discharge did not appear on the documents of the sale of the house.

{¶ 8} Gerald Sizemore testified that in 2003, with a long employment record at the Ford Motor Company as a maintenance man and a “good credit score,” he wanted to “invest in some property.” Sizemore indicated Huff facilitated his investment in property in Solon. Huff “knew the guy that couldn’t get the financing to get the house”; Sizemore identified that person as Robert Hawes.

{¶ 9} Sizemore testified that, although he had no intent to live there, he applied for the mortgage loan on the property located at 35895 Sedge Circle through a woman Huff knew named Carol Smith. Sizemore stated he himself furnished no money to obtain the loan on the property; he claimed the sale to him was “100 percent financed.”

{¶ 10} James Sims testified that he owned and operated a licensed

mortgage loan company called Country Home Mortgage of Ohio. Sims stated Carol Smith was a loan processor at his company, and he gave her “authority to do loans * * * and to charge at her discretion and to pretty much hand pick the people she wanted to secure a loan for.” In addition, he gave Smith the authority to sign his name on applications.

{¶ 11} Sims identified a loan application made by Sizemore for the Sedge Circle property. Smith had submitted the application to People’s Choice Home Lending, Incorporated (“People’s Choice”).

{¶ 12} Pam Ingalls testified that in 2003, she had been the director of quality assurance for People’s Choice. During her testimony, she reviewed Sizemore’s loan application.

{¶ 13} Ingalls noted that the appraised value of the property on Sedge Circle was \$490,000, and the loan amount requested was \$465,500. She stated the loan had closed on May 20, 2003, and had been approved in the amount of \$441,000.

{¶ 14} As Ingalls explained it, the loan to Sizemore had been approved by People’s Choice because he made a “down payment” of 5% of the appraised value of the property, and, further, “the seller and the borrower agreed that the seller would basically loan him the difference to purchase the loan.”

{¶ 15} Ingalls stated that since the application indicated the property was “owner occupied,” the interest rate her company charged was lower, because it

was a lower risk loan for People's Choice. She testified that if People's Choice had known either that the seller had ended the "purchase money" agreement with the buyer, that the buyer was not providing his own funds for the down payment, or that the buyer was not going to occupy the house, the loan would not have been made. She stated categorically that People's Choice made no loans that were 100% financed.

{¶ 16} Shirley Rogers testified that, in her capacity as such for the Regency Title agency, she acted as the escrow agent with respect to the sale of the Sedge Circle property. She indicated Sizemore's loan application had been submitted to People's Choice by the mortgage broker, Carol Smith, and People's Choice subsequently sent the "final closing package" to her.

{¶ 17} Rogers noted that the final settlement statement showed Sizemore gave a purchase money note to Emery. She explained that the lender expected the buyer to "pay this money back to the seller, because it is a part of the value of the property." Rogers admitted, however, that her escrow file contained a document "signed by Gerald Sizemore that [stated] he has executed this note mortgage to the seller in the amount of [\$]24,5[00] for the purchase of the subject property" but that the seller "forgave the debt" and "no funds were paid" to him.

{¶ 18} Rogers further admitted that her file showed that on May 9, 2003 Huff remitted an official bank check for \$26,500 from National City Bank, his financial institution, as the down payment for the Sedge Circle house. Rogers

explained, "That should mean that the person who's giving that check is the purchaser of the property who is depositing the money in the escrow account."

{¶ 19} Because Sizemore was listed as the purchaser, Rogers could not use Huff's check for the escrow account. She stated they "had to get a check that showed it coming from Mr. Sizemore."

{¶ 20} According to documents the state obtained from Bank One, the escrow company's bank, Huff's check was negotiated there on May 9, 2003. Huff's check bore the escrow company's endorsement as follows: "Converted to cashier's check * * * for Regency Title."

{¶ 21} On May 9, 2003 the same bank issued a cashier's check in the amount of \$26,500 to Regency Title. The check's "remitter" was Gerald Sizemore.

{¶ 22} Hawes testified that on May 9, 2003 Huff called him and asked for "a favor." Huff "told [Hawes] to go to the title company to go pick up a check that was going to be made out to" Hawes. When Hawes went to the title company, he provided his identification. He received a check from Regency Title made out to him in the amount of \$26,500, the same amount as Huff's original official check.

{¶ 23} Hawes testified he negotiated the check. He "kept" a little over "four grand" and returned the rest to Huff. Hawes further testified that he lived in the house for a little over a year, but "the sole responsibility" of "paying all the bills"

became too much for him. He informed Huff that he could not “afford to pay the mortgage, the everything.” Huff told Hawes “he would handle it, not to worry.”

{¶ 24} After Hawes vacated the house, the property was “deeded” from Sizemore to a third party. Solon police received a call from that third party in November 2006; “she did not know how she had become the deeded owner, and * * * was concerned that there was fraud in the transaction leading up to [her] ownership of that property.”

{¶ 25} The police investigation of the matter led to Huff’s indictment in this case. He was charged with several co-defendants, including Sizemore, Sims, Smith, and Hawes. The charges against Huff included: 1) theft by deception; 2) securing writings by deception; 3) falsification; 4) receiving stolen property; and 5) two counts of forgery.

{¶ 26} Huff’s case proceeded to a trial to the bench. After the state presented its case-in-chief, the state dismissed count 4, and the trial court granted Huff’s motions for acquittal as to counts 3, 5 and 6.

{¶ 27} At the conclusion of the case, the trial court found Huff guilty of the remaining two charges, viz., counts 1 and 2. He received concurrent prison terms of five years on each count.

{¶ 28} Huff presents the following assignments of error:

{¶ 29} **“I. Appellant’s conviction for theft by deception is against the manifest weight of the evidence.**

{¶ 30} **“II. Appellant’s conviction for securing writings by deception is against the manifest weight of the evidence.”**

{¶ 31} Huff asserts that neither of his convictions is supported by the manifest weight of the evidence adduced at trial.

{¶ 32} In analyzing a claim based upon the manifest weight of the evidence, an appellate court “reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and * * * resolves conflicts in the evidence.” *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. “A court reviewing questions of weight is not required to view the evidence in a light most favorable to the prosecution, but may consider and weigh all of the evidence produced at trial.” *Id.*, at 390 (Cook, J., concurring).

{¶ 33} More recently, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

{¶ 34} “The criminal manifest-weight-of-the-evidence standard was explained in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence’s effect of inducing belief. *Id.* at 386-387, 678

N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive-the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202.

{¶ 35} An appellate court may not merely substitute its view for that of the jury, however, because the credibility of the witnesses is a matter primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Instead, the appellate court must find that the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*, *supra* at 387. Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Id.*²

²A finding that a conviction is supported by the weight of the evidence also includes a finding that the evidence is legally sufficient to support it. *State v. Lewis*, Summit App. No. 21722, 2004-Ohio-1233, ¶6.

{¶ 36} Huff argues that the evidence failed to show he committed theft by deception or that he secured any writings by deception. He contends he neither deprived People's Choice of anything, caused People's Choice to execute any documents, exerted control over any of People's Choice's funds, nor acted in any way that was deceptive. This court cannot agree.

{¶ 37} Sims testified that Huff told him "he appeared at Regency Title with [\$]26,000," and that the money was for the "[d]own payment." Sims further stated that Huff explained, "[w]hen he got to Regency, Regency would not take it, * * * because the down payment money, the remitter had to be Gerald Sizemore and it was on a National City check," and so he "had to make it appear that it came from Sizemore as the submitter. So they had to make that arrangement to qualify * * * ."

{¶ 38} Ingalls testified that People's Choice would have rejected the loan application if the applicant was not providing his own funds for the down payment.

Thus, by presenting the down payment on the Sedge Circle property to Regency in Sizemore's place, Huff used deception to secure the loan, deprive People's Choice of the loan proceeds and to exert control over the loan proceeds because, as he told Sims, "he was helping out a friend."

{¶ 39} Thus, Huff's convictions for theft by deception and securing writings by deception were supported by the manifest weight of the evidence. *State v. Farmer*, Cuyahoga App. No. 89300, 2007-Ohio-6810; *State v. Lewis*, Summit

App. No. 21722, 2004-Ohio-1233; *State v. Houseman*, Belmont App. No. 98 BA 4; *State v. Keith* (Oct. 22, 1998), Cuyahoga App. No. 72275; cf., *State v. Quick*, Cuyahoga App. No. 91120, 2009-Ohio-2124.

{¶ 40} Huff's assignments of error, accordingly, are overruled.

{¶ 41} His convictions are affirmed.

It is ordered that appellee recover from 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.

KENNETH A. ROCCO, PRESIDING JUDGE

JAMES J. SWEENEY, J., and
LARRY A. JONES, J., CONCUR

