

No. 1-10-2194

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	APPEAL FROM THE
)	CIRCUIT COURT
Plaintiff-Appellee,)	OF COOK COUNTY
)	
v.)	
)	No. 07 CR 24313 (03)
ANDREW LEWIS,)	
)	HONORABLE
Defendant-Appellant.)	CLAYTON J. CRANE,
)	JUDGE PRESIDING.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Salone and Justice Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in admitting testimony as circumstantial evidence of defendant's knowledge. The witness's testimony was relevant and probative of the question of defendant's intent, and the probative value of the testimony substantially outweighed any prejudicial effect.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Andrew Lewis

(Lewis) was found guilty of theft over \$500,000 and money laundering from American Brokers

Conduit (ABC) for property located at 1228 West 33rd Place, Chicago, Illinois. He was

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acquitted of theft from Mortgage Investment Leading Associates (MILA) for property at 1529 South State Street, Chicago, Illinois. The trial judge sentenced Lewis to six years' imprisonment. On appeal, Lewis argues: (1) the testimony of witness Ron Hardgrove about the rules and regulations of the Illinois Department of Financial and Professional Regulation required from real estate brokers was irrelevant; (2) Hardgrove's testimony was prejudicial; and (3) the admission of Hardgrove's testimony was harmful because the evidence of Lewis's guilt was not overwhelming. We conclude that the trial court properly admitted Hardgrove's testimony as a lay witness, and that the testimony was relevant and not unduly prejudicial. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Lewis was an Illinois licensed real estate agent and broker since 2004. Lewis owned a real estate business named Lewis Real Estate. On December 7, 2007 Lewis was indicted for his participation in a mortgage fraud scheme where he was accused of securing fraudulent mortgage applications. Lewis was tried jointly with codefendants Durrel Castile (Castile), Melody Delgado (Delgado), and Michael Smith (Smith). Prior to trial, codefendant Alexander Yates (Yates) entered a plea agreement.

¶ 5 The charges against Lewis stemmed from mortgages obtained in Delgado's name. Delgado's mortgages were used to purchase two properties in Chicago: 1529 South State Street, with a loan from (MILA), and 1228 West 33rd Place, with a loan from (ABC). Lewis was the real estate agent and broker for the sellers of the two properties, and was accused of working with Delgado to fraudulently obtain mortgages, taking inflated commissions and then paying a kick-

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back to codefendants Smith, Delgado, Castile, and Yates.

¶ 6 Castile worked as a loan officer at Grand Mortgage Corporation, with which ABC did business. On May 9, 2006, ABC received a primary loan application for a mortgage in the amount of \$548,000 for the property located at 1228 West 33rd Place, and then a secondary loan application in the amount of \$137,000. Both applications were signed by Delgado and Castile. The applications specified Delgado intended to use the property as her primary residence, that her employer was "MB Dental Lab" since May 7, 2003, and her monthly salary was \$15,700. The owner of MB Dental, Inc., Mike Belanos, testified that from 2003 to 2008, he had six or seven employees, none of which were Delgado. Belanos denied the authenticity of his signature on the bottom of Delgado's employment verification form. According to the HUD-1 form, the sellers were Mark and J. Adair Putnam (the Putnams), and the buyer Delgado. The contract price was \$685,000, and defendant, named as Lewis Realty, received a \$66,000 commission. No seller concessions or buyer's incentives were listed on the HUD-1 form, which was signed by Delgado, and the Putnams, and notarized.

¶ 7 Mark Putnam testified on behalf of the State that he hired Lewis to serve as the realtor to sell his property at 1228 West 33rd Place. The sale price on the listing agreement was \$630,000, and they agreed Lewis would receive a six percent commission. Lewis presented the Putnams with a contract on June 13, 2006, with Delgado listed as the buyer. This contract listed an earnest deposit of \$1,000 and a sales price of \$685,000. Mark Putnam testified Lewis called him and said the buyer wanted \$50,000 in funds over and above the asking price. Lewis wanted to know whether Mark Putnam would write a check to Delgado after the closing, but Putnam

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declined. Lewis said he could take extra funds as a commission and give the buyer a check for the additional \$50,000.

¶ 8 The closing was held October 10, 2006. Mary Winkler, an escrow agent at PNTN, the title company that conducted the closing, testified on behalf of the State. She testified that the HUD-1 form indicated Delgado brought a cashier's check for \$8,627.52 and that \$66,000 went to defendant's Lewis Realty as commission. Lynn Wanner, custodian of records for LaSalle Bank in 2006, also testified on behalf of the State. Wanner identified Lewis's checking account file. Wanner testified that there was a deposit in the amount of \$66,000 to Lewis's savings account on October 10, 2006, the closing date for the property located at 1228 West 33rd Place. Wanner also testified about a withdrawal on the same day of \$8,650 which was used to purchase a cashier's check payable to PNTN and listing Delgado as the remitter. On October 11, 2006, there was a \$17,625 wire transfer to Chicago Custom Construction, an account linked to codefendant Yates; a \$45,255 wire transfer to codefendant Smith; and a \$34,115 wire transfer to Premier Financial Service, linked to codefendant Castile, its president.

¶ 9 The State also called Ron Hardgrove as a witness. Hardgrove was a licensed real estate broker who worked as the director of real estate in the Illinois Department of Financial and Professional Regulation, real estate division. Hardgrove oversaw the department that regulated all real estate licenses, appraisal licenses, auction licences, home inspector license, and time share land sale registrations. He testified that real estate agents gain their licenses only after going through 45 hours of education, after which they apply for a license and take a state exam administered by an exam company. The examination covers the subjects of license law, practice

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contracts and conveyances, property and real property, land descriptions, and finance. Regarding broker's commission, Hardgrove testified,

"We have several sections in our act that require licensees to disclose any and all type compensation related to a transaction to the parties of the transaction, particularly the ones they represent and to any other lawful party. To their specific client, [brokers] would be by contract what they're going to be paid. If it's a seller and listing contract, [a commission] it's disclosed in the listing contract that the brokerage fee is x. Now at that point, a licensee, salesperson licensee differentiates from the brokerage in that person doesn't have to say to the client exactly what my take is from the brokerage. I can be doing it for free to the brokerage or I can be doing it for all the money. But the point of [sic] it's any other compensation that would not be disclosed in the contract would have to be disclosed by that agent and by that brokerage. It's a duality responsibility."

Hardgrove further testified that real estate agents and brokers must comply with certain rules and regulations in order to maintain their licenses, including prohibiting agents from sharing their commissions with unlicensed individuals who are not a party to the transaction. Any buyers' incentives and commission sharing must be disclosed on the HUD-1 statement. Moreover, he testified that real estate agents and brokers are apprised of legal, financial and agency issues.

¶ 10 Lewis testified on his own behalf that as a licensed agent and broker, he was familiar with the rules governing real estate in Illinois and knew buyers' incentives must be disclosed on the HUD-1 form. Lewis testified he did not know that he was required to disclose to the lender that he would give money back to the buyer from his commission check. Lewis further testified that

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he first listed the 1228 West 33rd Place property on April 17, 2006, on the multiple listing service for \$785,000, and that he ran advertisements in New Chicago Homes magazines to no avail. He stated he held an open house in May 2006, which Yates attended. Lewis claimed not to know that Yates was a mortgage broker at the time. Lewis testified Yates introduced himself as the president of Executive Real Estate Consulting and that he did not know Yates owned Chicago Custom Construction. Lewis stated that Yates told him he had an investor interested in the property, and that Yates called codefendant Smith. Smith came to the property and told Lewis that he was interested and asked about other available houses. Lewis testified he told Smith he would have to get back to him. Two days later, Yates contacted him and told him his buyer was willing to pay full price for the property, as long as the Putnams, the seller, paid two years' worth of principal, interest, taxes, and insurance (PITI) amounting to \$95,000. Lewis testified that he presented this deal to Putnam, who rejected the offer. Lewis claimed Putnam made a counteroffer of \$54,000 or \$4,500 for 12 months. The counteroffer was not immediately accepted.

¶ 11 Lewis testified that the Putnams' property went under contract June 16, 2006, with Delgado as the buyer. The agreement provided for the Putnams to pay Delgado \$4,500 per month for 12 months of PITI, amounting to a buyer's incentive of \$54,000. Lewis testified that even though he received \$66,000 in commission, he only kept \$12,000 and admitted to purchasing a \$8,650 cashier's check for Delgado in order to pay the title company for the closing costs. He admitted the HUD-1 statement did not indicate that he paid Delgado's closing costs, even though the money came from his bank account. Lewis also stated he wired \$45,000 to co-

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defendant Smith, at Delgado's request. He testified he was not involved with the financing of the property, and that Delgado did not give him any earnest money.

¶ 12 At the conclusion of trial, Lewis was convicted by the jury of theft of over \$500,000 and money laundering from ABC, for the property located at 1228 West 33rd Place. 720 ILCS 5/16-1(a)(2) (West 2006) (theft). 720 ILCS 5/29B-1(a)(1)(B)(ii) West (2006) (Money laundering). He was acquitted of theft from MILA, for the property at 1529 South State Street. 720 ILCS 5/16-1(a)(2) (West 2006) (theft). Lewis filed a motion for a new trial, arguing that the trial court erred in allowing Hardgrove to testify concerning Illinois rules and regulations governing brokers and agents. The trial court denied the motion. On July 2, 2010, Lewis was sentenced to six years' imprisonment, merging the money laundering count with a count for theft. Lewis filed a motion to reduce his sentence, which was denied. This timely appeal followed.

¶ 13

DISCUSSION

¶ 14 The principal issue in this appeal is whether the trial court abused its discretion in admitting the testimony of Hardgrove as circumstantial evidence of Lewis's knowledge that his actions were wrong. Evidentiary rulings are reviewed against an abuse of discretion standard. *People v. Morales*, 2012 IL App (1st) 101911, ¶ 22. The admissibility of evidence at trial is a matter within the sound discretion of the trial court, and that court's decision may not be overturned on appeal absent a clear abuse of discretion. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). Such an abuse of discretion will be found only where the trial court's decision is " 'arbitrary, fanciful or unreasonable' " or " 'where no reasonable man would take the view adopted by the trial court.' " *Id.*

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¶ 15 Lewis claims that it was error to introduce Hardgrove's testimony because: (1) his testimony was irrelevant to whether Lewis committed theft; (2) the probative value of Hardgrove's testimony was outweighed by its prejudicial effect; and (3) the admission was harmful because the evidence of Lewis's guilt was not overwhelming.

¶ 16 First, Lewis argues that Hardgrove's testimony was as an expert witness and therefore irrelevant. Lewis claims this is because Hardgrove was in court to testify about what the civil rules and regulations of the Illinois Department of Financial and Professional Regulation (IDFPR) require of brokers and Realtors.

¶ 17 At trial, Lewis objected to Hardgrove's testimony, arguing it was tantamount to expert testimony. In Illinois, a lay witness may testify to knowledge or observations, but "[g]enerally may not give his opinions or interpretations of those observations." *People v. Donegan*, 2012 IL App (1st) 102325, ¶ 41. In considering the admissibility of lay witness opinion testimony, Illinois courts have referred to Rule 701 of the Federal Rules of Evidence. *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 35. Rule 701, Opinion Testimony By Lay Witnesses, provides as follows:

“If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” *Id.*, Fed. R. Evid. 701 (eff. Jan. 1, 2011).

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In this case, Hardgrove's testimony appears to meet Rule 701's standard for admissibility as he testified about what the rules and regulations require from brokers and realtors who are licensed in Illinois. His testimony was rationally based on the perception and experience of the witnesses and was helpful in determining of a material fact as issue. The record shows the trial court overruled Lewis's objection to Hardgrove's testimony, explaining that Hardgrove was not testifying as to his opinion about rules and regulations, but about the rules and regulations themselves. The record reflects this was indeed the nature of Hardgrove's testimony. Therefore, we find that the trial court did not abuse its discretion in overruling Lewis's objection and admitting Hardgrove's testimony.

¶ 18 Second, Lewis argues, in the alternative, that even if Hardgrove's testimony is relevant, it was more prejudicial than probative. In order to prove Lewis committed theft by deception, the State had to show that Lewis knowingly obtained control over property exceeding \$500,000 in value and intended to deprive the owner permanently of the use of benefit of the property. 720 ILCS 5/16-(a)(2) (West 2006). The State correctly contends the test to determine the admissibility of evidence is whether that evidence is relevant. "Relevant" evidence is that which has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. *Morales*, 2012 IL App (1st) 101911, ¶ 39. The State was entitled to argue Lewis violated standards of dealing for real estate brokers and that his testimony was relevant to show Lewis possessed a wealth of knowledge about mortgage fraud, as is required by brokers and agents to become licensed in Illinois. Intent may be inferred from surrounding circumstances and may be proved by

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circumstantial evidence. *People v. Moreira*, 378 Ill. App. 3d 120, 129 (2007). Hardgrove's testimony was relevant to circumstantially prove Lewis's intent. To establish Lewis's knowledge that his actions were wrong, the State called Hardgrove to testify as a witness on the subject of mortgage fraud in its entirety. We do not find Hardgrove's testimony about the civil rules to be prejudicial precisely because the testimony, taken in its entirety, illustrated the standards and scope of knowledge of all agents and brokers. More pointedly, Hardgrove testified generally about what is required of brokers and agents to become licensed in Illinois and what rules and regulations they are responsible for knowing; therefore, Lewis, a licensed real estate agent would have been held responsible for knowing these standards. The regulations Hardgrove testified about show how Lewis's violation tends to demonstrate Lewis had the requisite state of mind to commit theft by deception. Specifically, Hardgrove testified that real estate agents and brokers obtain a license only after taking and passing both a course and a State exam on the rules and regulations governing agents or brokers.

¶ 19 We agree with the State that Hardgrove's testimony did not amount to propensity evidence and was not cumulative. It was not presented for the purpose of showing defendant's propensity to commit the crime of theft by deception. The testimony was presented to outline the standards real estate brokers and agents are held to. As a result, the State was substantially able to later show Lewis had knowledge that his failure to disclose the buyer's incentives and his participation in the theft by deception violated those standards. Hardgrove did not give an opinion about whether or not Lewis's actions were proper. Lewis argues that Hardgrove's qualifications are unfairly prejudicial in that it gives the jury the impression of authority. This

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argument would be persuasive if Hardgrove testified to mistakes Lewis made in his dealings.

However, because Hardgrove only outlined Illinois standards for brokers and agents, and suspended any judgment about Lewis's actions, we do not find his testimony to be prejudicial.

¶ 20 We find that the trial court did not abuse its discretion in allowing Hardgrove's testimony over Lewis's objection.

¶ 21 **CONCLUSION**

¶ 22 For the reasons set forth herein, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.