2014 IL App (1st) 13-1200-U

First Division
Order filed: May 12, 2014

No. 1-13-1200

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 11CR 7988
BRENT BICKHAUS,	)	Honorable James B. Linn,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Connors and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The charge of financial institution fraud, though based upon a statute that was subsequently repealed, was kept alive throughout the defendant's case under the general savings clause of the Statute on Statutes (5 ILCS 70/4 (West 2010)); the defendant's contentions under the "honest services" doctrine were not addressed, where the finding of guilt was premised upon his participation in a scheme to defraud a financial institution under the first clause of the statute; the defendant failed to provide a sufficient record to support his claim that he was not proven guilty of defrauding a financial institution; the indictment for money laundering sufficiently apprised him of the charge against him; and he was proven guilty of money laundering beyond a reasonable doubt.

¶ 2 The defendant, Brent Bickhaus, was charged by indictment with financial crimes conspiracy and financial institution fraud under the Illinois Financial Crime Law (IFCL) (720 ILCS 5/16H-1, 720 ILCS 5/16H-45 (West 2010)), and money laundering (720 ILCS 5/29B-1(a)(1.5)(B) (West 2010)). Following a bench trial, he was acquitted on the conspiracy charge, but convicted of financial institution fraud and money laundering, and sentenced to concurrent respective terms of four years' imprisonment.[*] He now appeals, contending (1) his conviction for financial institution fraud must be reversed because the IFCL was repealed after his indictment; (2) alternatively, he was not shown to be a fiduciary engaging in a transaction involving bribery or a kickback, as required to establish the offense of deprivation of "honest services" under the case of *Skilling v. United States*, 561 U.S. 358, 130 S. Ct. 2896, 2931, 177 L. Ed. 2d 619 (2010); (3) the alleged fraud victim, Gateway Funding Diversified Mortgage Services, LP (Gateway), was not a financial institution under section 16H-25; (4) his indictment for money laundering was fatally deficient; and (5) he was not proven guilty of money laundering beyond a reasonable doubt. For the reasons that follow, we affirm.

¶ 3 As a preliminary matter, we point out that the record is devoid of any of the trial exhibits entered in evidence in this case. These documents included the title files for the alleged fraudulent sales, which evidenced the transactions and communications between the parties that were central to the trial court's determination of the defendant's guilt. It was the defendant's burden as appellant to provide this court with a sufficient record to permit a meaningful review

[*] Although the defendant has inexplicably failed to raise this issue on appeal, the mittimus in this case reflects an additional conviction of the charge of financial crimes conspiracy with a concurrent sentence of four years' imprisonment. As the circuit court clearly acquitted the defendant of this charge, we will order that the mittimus be corrected to reflect this acquittal.

of his assignments of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 459 N.E.2d 958 (1984). Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994) states that the record on appeal must contain the entire common-law record, including "documentary exhibits offered and filed by any party." In the absence of a complete record, a reviewing court will resolve all insufficiencies against the appellant and will presume that the trial court's ruling had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391–92. Accordingly, in reviewing this case, we accept at face value all assertions and inferences regarding these exhibits which are consistent with the trial court's factual findings.

¶ 4 On May 23, 2011, the defendant and six co-defendants, Gayle Tracy, Catherine Denwood, Frances McCormick, Richard Simmons, Lorenzo Crooks, and Mark Schwarzbach, were charged with financial crimes conspiracy, financial institution fraud, and money laundering for their participation in an elaborate scheme to procure fraudulent mortgage loans, engage in staged purchases of real estate, and then profit from the loan proceeds. The scheme involved three properties, all of which were held in residential land trusts by Tracy, and one of which was co-owned in a trust by the defendant. All three properties were "sold" over a period of less than six months. Denwood and McCormick posed as straw buyers, purchasing the property in name only based upon fraudulent loan applications which vastly overstated their assets. Crooks was a loan originator at Gateway, the mortgage company for each of the three sales. Simmons, though not a licensed realtor, served as intermediary between the buyers, sellers, and Crooks. Each of the closings were conducted by Great Lakes Title Company, owned by Schwarzbach. This appeal involves the sale of one of the properties, co-owned by the defendant and Tracy, which was located at 5601 S. May Street (May St. property). The evidence demonstrated that the defendant and Tracy received large payouts on the sale of the May St. property from the

proceeds of a loan obtained by Denwood from Gateway, and then provided kickbacks to Schwarzbach and Crooks for their assistance in facilitating the transactions.

¶ 5 Count IX of the indictment was directed against the defendant and five of the co-defendants under section 16H-25(1) of the IFCL. 720 ILCS 5/16H-25(1) (West 2010). It alleged that in April 2010, they committed the offense of financial institution fraud as follows:

> "as part of a single intention and design, they knowingly executed or attempted to execute a scheme or artifice to defraud a financial institution, to wit: they attempted to or knowingly submitted false or misleading statements to the lender, Gateway Funding Diversified, LP, designed to induce the lender to fund the real estate closing by means of bank wire transfer."

¶ 6 The indictment further provided "that a scheme or artifice to defraud also includes a scheme or artifice to deprive a financial institution of the *intangible right to honest services*." (Emphasis added.) See 720 ILCS 5/16H-25 (West 2010).

¶ 7 The defendant moved for a bill of particulars with regard to multiple counts of the indictment, including Count IX. The State responded, in relevant part, that Wells Fargo bank "was deprived of the opportunity to service a loan that was obtained lawfully and honestly, free from any fraud or false representations," while Chase Bank, Bank of America, Wells Fargo, and TCF Bank were "deprived of honest services," because they were deprived of the opportunity to conduct financial transactions free from fraud.

¶ 8 In its motion to dismiss, the defendant contended that, (1), with regard to the alleged deprivation of the right to honest services, the State failed to allege the existence of a fiduciary relationship between the defendant and the financial institutions; (2), section 16H-25 was unconstitutional in light of the Supreme Court's holding in *Skilling v. U.S.*, 561 U.S. 40 (2010);

and (3), section 16H-25 had been repealed effective July 1, 2011. The trial court denied the motion, and the defendant proceeded to a joint bench trial along with co-defendant Tracy.

¶ 9 Apart from the documents evidencing the communications and transactions between the parties, the case against the defendant consisted primarily of the testimony of Schwarzbach, who testified pursuant to a plea arrangement, and Crooks.

¶ 10 Schwarzbach testified that, at the time of the alleged offenses, he was the owner of Great Lakes Title and had one employee, Sonia Alvarez. Schwarzbach already knew the defendant and Tracy because he had worked with them at another title company 10 or 12 years prior to the offenses, and also because the defendant currently had an office in the same building as Great Lakes. Schwarzbach testified that the defendant had worked as a loan officer. The State introduced the loan application for the May St. property, which, according to Schwarzbach, identified Crooks as the loan originator who conducted a face-to-face interview with Denwood, the prospective borrower. The application stated that Denwood possessed assets in the amount of $202,843 which were held at TCF Bank under "account number 9055."

¶ 11 On April 30, 2010, the closing for the May St. property was held at Great Lakes. Schwarzbach testified that it was Great Lakes' responsibility to send the closing documents to the lender, including the HUD-1 settlement statement, so that the lender could then provide the loan funds. Schwarzbach described the HUD-1 as a summary of all funds to be received and disbursements to be made as part of the closing. According to Schwarzbach, the HUD-1 statement was notarized and executed by Denwood as the buyer, Gateway as the lender, and the "5601 S. May Street Trust" (May trust) as a seller. The defendant was shown to be the trustee of the May trust. The HUD-1 statement listed the sales price for the property as $340,000, of which Denwood was required to tender $78,091 at the closing, and the loan amount as $272,000.

Schwarzbach testified that upon receiving the funds from a buyer, Great Lakes would normally deposit them into the bank.

¶ 12 Schwarzbach next identified disbursement checks which the sellers had directed to be issued from the sale's proceeds at the time of the closing. The disbursements included a check payable to Simmons, and a second check payable to "Werks of Chicago," apparently owned by one of the co-defendants, in the amount of $58,493. These checks were listed on Great Lakes' own disbursement summary, although they had not been reflected on the HUD-1 statement. On May 3, 2010, a cashier's check in the amount of $78,091 was deposited by Great Lakes into its account at Harris Bank. This amount, which the HUD-1 statement showed as the amount due from the buyer at closing, was withdrawn from an account at TCF bank which the parties stipulated was held by Tracy. In addition, Great Lakes' disbursement summary also indicates that it wired only $239,841 to the May trust, instead of the $331,584, which was listed on the HUD-1 statement as the seller's proceeds from the closing. Finally, the State introduced a notarized trustee's deed, executed by the May St. trust, which designates Denwood as grantee and the defendant as trustee. Schwarzbach admitted that, also on May 3, 2010, the defendant wrote him a check in the amount of $5,000, which contained the notation "5601 May" on the memorandum line. Schwarzbach denied knowing what the check was for, but on further inquiry by the court, he indicated that, if he had to guess, it was for closing costs.

¶ 13 Crooks was a loan originator at Gateway and participated in each of the three alleged sales. Crooks testified that his job consisted of gathering loan application documents from the buyer and submitting them for loan processing and potential approval by the underwriter. He indicated that, according to Denwood's loan application, she held assets in the amount of $202,843 at TCF Bank. Crooks acknowledged that it would have been imperative to know in

advance that Denwood's actual assets proved to be closer to $2,000, rather than $202,843, because this would have rendered her unqualified for the loan. Crooks testified that the affidavit of occupancy indicated that Denwood intended to move into the May St. property after closing.

¶ 14 Crooks testified that Gateway paid him exclusively on commission for each loan he closed and that he received such payments by direct deposit. According to Crooks, there were no circumstances under which he would receive payment from a seller for the loan he obtained for a buyer; nonetheless, he then admitted receiving a wire transfer immediately after the May St. closing in the amount of $3,500, from the defendant's company, Bi-Walls. Crooks testified that Gateway serviced its own loans, but that it also transferred or assigned loans to other individuals or institutions. At the closing, Gateway disclosed that it did not service the type of loan given for the May St. property, and that loan could be subsequently assigned. The evidence established that the loan was assigned to Wells Fargo bank shortly after closing. Crooks testified that he was unaware of any situation in which a seller would provide a down payment for a buyer other than in the case of a seller concession. With regard to the May St. property, Crooks identified a statement in the disclosure of income and seller concessions averring that no incentives or concessions were made to induce the transaction.

¶ 15 Anthony Calkins was Gateway's regional manager at the time of the alleged sales. He testified that, in the process of evaluating a mortgage loan for approval, Gateway relied upon the accuracy and veracity of the information furnished by the borrower as to her income and assets. Gateway did not perform the actual closings, but instead would collect proof of identification from the borrower, along with the executed documents, including the HUD-1 statement, from the title company. After receiving these items, Gateway would wire the loan funds to the title company for disbursement. According to Calkins, there would be no situation where Gateway

would fund a loan for which the seller had paid the buyer's down payment. Nor would Gateway fund a loan where it had knowledge that disbursements were being made that were not included on the HUD-1 statement. Calkins could not envision any scenario where, as in the case of the May St. closing, it would be acceptable for the loan originator to be paid by the seller, or where the loan originator would have received a payment not listed in the HUD-1 statement.

¶ 16 The State also presented evidence demonstrating a similar chain of events surrounding the closings of the other two properties. Loans were obtained based upon false representations of inflated assets, property held in trust by Tracy was "sold" to McCormick as a straw buyer, Tracy provided money for down payments while not disclosing this fact to the lenders, and disbursements were subsequently made to third parties, rather than the seller, in contravention of the representations on the HUD-1 statements.

¶ 17 Sonia Alvarez was the closing agent for Great Lakes for all three sales. According to her testimony, each of the three sellers were residential land trusts. At the closing on the May St. property, Denwood was required to bring a $78,091 down payment which had to be turned over to Schwarzbach before the loan funds could be released. Alvarez was unaware of any situation in which, as in this case, the seller would be permitted to pay the down payment for the buyer after the closing. Further, Alvarez was unaware of any situation where the loan funds would be released prior to receipt of the buyer's funds. Alvarez was familiar with the defendant's business, Bi-Walls, because it was in the same building as Great Lakes. Alvarez testified that Bi-Walls was in the business of purchasing homes and remodeling them.

¶ 18 Nadya Soto testified that she is the keeper of records for TCF Bank, where Denwood opened an account in July 6, 2009, with a beginning balance of $2,359. In the period until April of 2010, the balance in that account remained below $3000. On September 1, 2010, a deposit of

$1,500 was made into the account from R & R Investments. On October 6, 2010, a check from "Werks of Chicago" was deposited in the amount of $4,000. The parties stipulated that R & R was owned by Tracy.

¶ 19 Following arguments, the court acquitted the defendant and Tracy on the charge of conspiracy, but found them guilty of financial institution fraud and money laundering. In pronouncing the guilty finding, the court noted that there was "very little dispute" about the facts of this case and "quite a bit of documentation" establishing circumstantially exactly what had transpired in the fraudulent scheme. The court found there was "not a doubt" that the defendant and Tracy had arranged to produce money at the closings in order to secure loans for buyers who would otherwise not have been qualified borrowers. The court further stated:

> "There is not a question in my mind that Tracy and [the defendant] were using subterfuge, dishonesty, and deception to accomplish the profits that they got in this case, and these profits are illegal, and that has been shown to me beyond a reasonable doubt."

¶ 20 The defendant filed a motion for a judgment of acquittal under sections 116-1 and 116-2 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/116-1, 116-2 (West 2010)), arguing, *inter alia*, that Count IX of the indictment was void for failing to sufficiently apprise him of the charge of financial institution fraud, and that the State failed to prove him guilty beyond a reasonable doubt. The court denied the motion, and following a hearing, sentenced the defendant to concurrent terms of 4 years' imprisonment. He now appeals.

¶ 21 The defendant raises several challenges directed at his indictment and conviction for financial institution fraud. The version of section 16H-25 of the IFCL in effect at the time of the defendant's conviction provided as follows:

> "A person commits the offense of financial institution fraud when the person knowingly executes or attempts to execute a scheme or artifice:
>
> (1) to defraud a financial institution; or
>
> (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution, by means of pretenses, representations, or promises he or she knows to be false.
>
> For the purposes of the Section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a financial institution of the *intangible right to honest services*." 720 ILCS 5/16H-25 (West 2010) (Emphasis added.)

¶ 22 First, the defendant asserts that his conviction must be vacated on the basis that this statute was repealed during the pendency of his case. After the defendant was indicted on May 23, 2011, the legislature repealed section 16H (Pub. Act 96-1551 (eff. July 1, 2011)). A revised version of the law was later passed, which eliminated the provision of section 16H-25 pertaining to the intangible right to honest services. See 720 ILCS 5/17-10.6(c) (eff. January 1, 2013). The State does not dispute that the section was repealed, but contends that the charge against the defendant is preserved under the general saving clause of section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2010)). We agree with the State.

¶ 23 Section 4 provides, in relevant part, as follows:

> "No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, *** or in any way whatever to affect any such offense or act so committed or done, *** before the new

law takes effect, save only that the proceedings thereafter shall conform *** to the laws in force at the time of such proceeding." 5 ILCS 70/4 (West 2010).

¶ 24 Under the plain and ordinary language of section 4, the charge against the defendant remained valid because the offense alleged was committed long before the effective date of the legislation repealing section 16H-25. *People v. Glisson*, 202 Ill. 2d 499, 782 N.E.2d 251 (2002). The defendant asserts, however, that a distinction exists in this case because, at the time the section was repealed, it was not immediately replaced by a "new law" as stated in the first line of section 4, but was repealed outright. Thus, the case against him should have "stopped in its tracks."

¶ 25 This very argument was rejected in *Glisson*, where the court determined that it wholly disregards the last sentence of section 4, which extended the provision to cover "all repeals," whether occurring in the law enacting a new provision upon the same subject matter, or in any other law. *Glisson*, 202 Ill. 2d at 505-06. The court concluded, after examining the language of section 4, that only procedural changes to the law will be given retroactive application by the savings clause. *Glisson*, 202 Ill. 2d at 507. Since the defendant's argument is clearly addressed to the substantive part of the statute, his argument fails.

¶ 26 The defendant next seeks reversal on the basis that the financial fraud indictment included a charge of "honest services" fraud, which the Supreme Court greatly restricted in the case of *Skilling v. United States*, 561 U.S. 358, 130 S. Ct. 2896, 2931, 177 L. Ed. 2d 619 (2010), on the basis that it was unconstitutionally vague. The defendant posits that the *Skilling* decision was the impetus behind our legislature's repeal of section 16H. *Skilling* involved a challenge to a provision included in the federal wire-fraud statute which, similar to section 16H-25, proscribes "any scheme or artifice to deprive another of the intangible right of honest services."

(See 18 USCA §1346.) The Court refrained from striking down the entire provision, but restricted the scope of section 1346 to bar only fraudulent schemes involving bribes and kickbacks. *Skilling* 561 U.S. 358, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010). According to the defendant, his conviction cannot stand because the State failed to prove that he paid a bribe or kickback to anyone in this case. The defendant further argues that, under *Skilling,* the State was required to establish that the bribes or kickbacks were committed "by fiduciaries," and that there was no proof that he had a fiduciary relationship with any of the institutions allegedly defrauded.

¶ 27 This contention was pursued exhaustively in the trial court both by Tracy and the defendant. However, we need not address the issue of whether *Skilling* applies to bar the honest services charge in this case. Rather, the record establishes that the trial court based its finding of guilt upon the first section of the indictment, alleging, under section 16H-25(1), that the defendants knowingly executed "a scheme or artifice to defraud a financial institution," by obtaining funds through false pretenses. In rendering its decision, the court noted that the defendant and Tracy had sophisticated backgrounds with regard to the mortgage business, and that it was proven, "beyond a reasonable doubt," that both defendants had employed "subterfuge, dishonesty, and deception" to obtain the illegal profits that they enjoyed in this case. The court further found that there was "not a doubt" that the defendant, along with Tracy, had arranged to produce money necessary at the closing to secure loans for buyers who would otherwise not have been qualified. We note that the defendant has raised no challenge on appeal to the sufficiency of the evidence underlying these findings.

¶ 28 As a final basis for reversal of his fraud conviction, the defendant argues that Gateway did not qualify as a "financial institution" under the statute. The defendant's sole support for this position is a concession made by the Assistant State's Attorney during post-trial proceedings.

There, the State admitted that its bill of particulars had excluded Gateway from a list of financial institutions allegedly defrauded, because "under the statute [Gateway] is not considered a financial institution." Instead, the State argued, the list contained a series of banks, including the bank holding the escrow for the title funds, the "banker that was used by Gateway," and the "various banks of the parties that were used to create the cashier's checks that were fraudulently produced as buyers' funds" at each of the transactions. These banks unquestionably qualified as financial institutions under the statute.

¶ 29 On appeal, however, the State maintains that Gateway did in fact qualify as a financial institution, because it operated as a mortgage "lender" for the closing. Alternatively, the State contends that the defendant defrauded Wells Fargo, which was ultimately assigned the fraudulently-obtained loan, in addition to the other banks listed in its bill of particulars that were used to conduct fraudulent financial transactions in furtherance of the defendant's scheme.

¶ 30 First, we hold that the State's concession that Gateway was not a financial institution constituted a binding judicial admission. In general, a judicial admission is a statement made during a judicial proceeding or in a pleading or other document filed with the court. *Elliott v. Industrial Comm'n,* 303 Ill. App. 3d 185, 187, 707 N.E.2d 228 (1999); *Williams Nationalease, Ltd. v. Motter,* 271 Ill. App. 3d 594, 597, 648 N.E.2d 614 (1995). In order to constitute a judicial admission, the statement must be deliberate, clear, and unequivocal, and made by a party about a concrete fact within that party's knowledge. *Elliott,* 303 Ill. App. 3d at 187. A statement by an attorney may constitute a judicial admission (*Lowe v. Kang*, 167 Ill. App. 3d 772, 521 N.E.2d 1245 (1988); see also *People v. Howery*, 178 Ill. 2d 1, 41, 687 N.E.2d 836 (1997)), and may operate to bind his client on an issue of liability. See *Lowe,* 167 Ill. App. 3d 772; *Standard Management Realty Co. v. Johnson,* 157 Ill. App. 3d 919, 924-25, 510 N.E.2d 986 (1987).

However, the statement must be evaluated based upon the circumstances of the case, and must be given a meaning consistent with the context in which it is found. *Standard Management Realty*, 157 Ill. App. 3d at 925. Although there are no cases considering an attorney's statement in a context identical to this case, in *Lowe* we held that an attorney's admission of liability can properly constitute a judicial admission. *Lowe*, 167 Ill. App. 3d 772; *cf. Howery*, 178 Ill. 2d at 42 (prosecutor's comments in rebuttal did not amount to judicial admission negating *mens rea*, where they were merely responses to defendant's statement of subjective belief.)

¶ 31 In this case, the State clearly and unequivocally admitted that Gateway was intentionally omitted from its list of financial institutions, and that, instead, the banks were the financial institutions it had alleged and shown to be defrauded. This remained the State's theory throughout the trial court proceedings. It cannot now assert a contrary position, involving questions of law and fact, for the first time on appeal.

¶ 32 Alternatively, the State maintains that it also proved that the defendant defrauded Wells Fargo, the bank to which the mortgage loan was assigned shortly after the closing. The State points to testimony by Crooks, that Gateway had disclosed to the defendants at the closing that it did not service the type of loan issued for the May St. property. Therefore, the State argues, the defendants effectively knew that the loan would ultimately be assigned, sold, or transferred to a bank.

¶ 33 As stated above, the defendant was charged and convicted under section 16H-25(1), which requires proof that he "knowingly executed a scheme or artifice to defraud a financial institution." As there is no precedent interpreting the elements of section 16H-25, it is appropriate for this court to turn for guidance to a comparable federal statute and the case law interpreting it. *People v. Barner*, 383 Ill. App. 3d 356, 360, 890 N.E.2d 724 (2008); *People v.*

Childress, 338 Ill. App. 3d 540, 553, 789 N.E.2d 330 (2003). The language of 16H-25(1), under which the defendant was convicted, is virtually identical to that of section 1344(1) of the federal bank fraud statute, which criminalizes, in relevant part, any "scheme or artifice to defraud a financial institution" by means of false pretenses. 18 USCA § 1344 (West 2010).

¶ 34 In prosecutions under section 1344(1), the government is required to provide proof of the defendant's specific intent to defraud a bank or other financial institution. *United States v. Thomas*, 315 F. 3d 190 (3d Cir. 2002). The purpose of section 1344(1) is to protect the federal government's interest as an insurer of financial institutions (see, e.g., *United States v. Laljie*, 184 F.3d 180, 189 (2d Cir. 1999)), and as such, though the financial institution need not be the immediate victim of the fraud, it must be shown to have been an actual or intended victim. *Id.*, citing *United States v. Barrett*, 178 F.3d 643, 646-48 (2d Cir.1999). Stated another way, the government must establish that the defendant engaged in a pattern or course of conduct designed to deceive a financial institution into releasing property, "'with the intent to victimize that institution by exposing it to actual or potential loss.'" *Laljie*, 184 F. 3d at 189, quoting *United States v. Stavroulakis*, 952 F.2d 686, 694 (2d Cir. 1992) ; *United States v. Rodriguez*, 140 F. 3d 163, 167-68 (2d Cir. 1988). Specific intent to defraud may be established by circumstantial evidence. *Lincoln Nat. Life Ins. Co. v. Silver*, 966 F. Supp. 587, 612 (N.D. Ill. 1995).

¶ 35 Based upon the record before us, we must reject the defendant's argument that he was not proven to have defrauded a financial institution. As indicated above, the trial court made clear findings that the defendant, who possessed a great amount of experience in the mortgage business, knowingly took part in a scheme to obtain a loan from a bank under false pretenses, engage in a staged sale of his property, and then pocket the loan proceeds, personally providing payoffs to those facilitating the scheme. At the closing, the defendant was informed by Crooks,

another participant in the plan, that Gateway would not be servicing the loan. The loan was in fact assigned, shortly after closing. The State asserted in the trial court that it had shown that specific banks, including Wells Fargo, TCF, and Chase, were provided false information by the defendants in order to procure funds, including cashier's checks, to effectuate the sale and transfer of the property. This supports the conclusion that the defendant "executed a scheme or artifice to defraud a financial institution" under section 16H-25(1). As the defendant has failed to provide this court with the necessary documents to question the basis of any of these findings, we must presume that they are supported by the record. *Foutch*, 99 Ill. 2d 389.

¶ 36 The defendant next argues that his conviction for money laundering must be reversed, because the indictment failed to adequately apprise him of the nature of the charge against him, and he was not proven guilty beyond a reasonable doubt. We address each argument in turn.

¶ 37 The defendant concedes that he failed to challenge the charge for money laundering in his motion to dismiss and that he made the argument for the first time in his motion for judgment of acquittal. When a defendant disputes the sufficiency of his indictment for the first time in his post-trial motion, the indictment will stand, as long as it apprised him of the offense charged with sufficient specificity (1) to enable the preparation of his defense, and (2) to permit him to plead the conviction as a bar to a future prosecution arising from the same conduct. 725 ILCS 5/116-2(c) (West 2010).

¶ 38 Count XV of the indictment alleged that, on or about May 3, 2010, the defendant "transported, transmitted, or transferred *** a monetary instrument, US (sic) currency in the amount of $3,500, knowing or having reason to know that the financial transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property," in violation of section 29B-1(a)(1.5)(B) of the money

laundering statute. 720 ILCS 29B-(a)(1.5)(B) (West 2010). The language parallels that of the statute, which defines the offense as transporting, transmitting or transferring "a monetary instrument *** knowing, or having reason to know, that the financial transaction is designed in whole or in part *** to conceal or disguise" the nature, location, source or control of the criminally derived property.

¶ 39 In support of his argument that the indictment was fatally defective, the defendant relies upon *People v. Fields*, 339 Ill. App. 3d 689, 791 N.E.2d 686 (2003), and the cases cited therein. See *People v. Gerdes*, 173 Ill. App. 3d 1024, 527 N.E.2d 1310 (1988); *People v. Yarbrough*, 162 Ill. App. 3d 748, 516 N.E.2d 607 (1987); *People v. Lyda*, 27 Ill. App. 3d 906, 327 N.E.2d 494 (1975). However, these cases all involved appeals from the denial of pre-trial motions to dismiss, and accordingly were reviewed under the more stringent standards set forth in section 111–3(a) of the Code. See 725 ILCS 5/111–3(a) (charge must state name of accused, date and county of offense, statutory provision, and nature and elements of offense.) Additionally, *Fields* is distinguishable because the indictment there failed to identify two key elements of the charged offense, including the alleged illicit transaction. See *Id.*, at 693.

¶ 40 Here, the indictment clearly set forth the date of the offense, as well as the monetary transaction involved, the transfer of $3,500 in currency. This was sufficient to apprise the defendant of the offense charged and to act as a bar to any future prosecution based upon that monetary transfer. The defendant's remaining arguments on this issue are not addressed to the indictment itself, but directed to the proof adduced at trial. Accordingly, those arguments are unpersuasive.

¶ 41 The defendant last contends that he was not proven guilty of money laundering beyond a reasonable doubt. We disagree.

¶ 42 When faced with a challenge to the sufficiency of the evidence, our task is to determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins,* 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005).

¶ 43 The defendant claims that "there is absolutely no evidence" in the record to prove that the $3,500 paid to Crooks three days after the closing constituted the proceeds of illegal activity. According to the defendant, there was no paper trail shown or bank records presented to show the illicit source of the money paid to Crooks or to anyone else in this case.

¶ 44 Initially, the assertion that this case lacked a paper trial or bank records strains credulity, when the record indicates that there was a loan file in excess of 300 pages plus well over 200 pages of bank records, none of which were included in the record filed by the defendant. Additionally, though the defendant claims it is unknown where the $3,500 paid to Crooks came from, it appears that the parties stipulated below that this check was sent by wire transfer directly from Bi-Walls, the defendant's corporate account. The timing of the wire transfer payment, in addition to Crooks's role in facilitating the purported sale of the defendant's property, provides circumstantial evidence from which the court could properly have found that the payment derived from the sale proceeds. The remainder of the defendant's argument, like the above assertion, relies upon evidence presented at trial, which this court does not have the benefit of reviewing. Accordingly, we find no basis to disturb the trial court's finding of guilt. *Foutch,* 99 Ill. 2d at 391-92.

¶ 45 For the foregoing reasons, we affirm the judgment of conviction entered against the defendant. The mittimus will be corrected to delete the conviction and sentence for financial

crimes conspiracy (720 ILCS 5/16H-45 (West 2010)), as the defendant was acquitted of this charge.

¶ 46 Affirmed; mittimus corrected.