

69716-1

69716-1

NO. 69716-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

LAURANCE ANTHONI,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY YU

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**BRIEF OF RESPONDENT**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

SCOTT A. PETERSON  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9000

ORIGINAL

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A. ASSIGNMENT OF ERROR ON CROSS-APPEAL

The trial court erred when it dismissed counts 4, 5, and 6 of the information as multiplicitous when each count involved a separate victim, a separate payment, and a separate investment.

B. ISSUES RAISED ON APPEAL

1. Whether the evidence of misstatements and omissions of material facts was sufficient to support the jury's guilty verdicts on counts 2, 3, 4, 5, 6, 11, and 15 when the evidence proved that appellant, who held himself out as a contractor and real estate developer, was not registered to do business as a contractor, had no experience as a real estate developer, did not own the properties he promised to develop, intended to use only 15 percent of the investor's money for development, promised security he would not or could not give, was unable to obtain permits to develop the properties, and had never completed a project?

2. Whether counts 2, 11, and 15 were barred by the 5-year statute of limitations for securities fraud when the evidence proved that appellant's lulling activities tolled the statute of limitations in those counts until a date within five years of the date the counts were filed?

3. Whether the trial court erred when it ordered appellant to make restitution for counts 2, 3, 4, 5, 6, 11, and 15 because there was

insufficient evidence to support his convictions on those counts when the evidence supporting the jury's verdicts on those counts was sufficient?

C. STATEMENT OF FACTS

After seventeen years in the construction trade as a framing contractor Laurance Anthone decided to become a real estate developer. In 2000 he incorporated a business he called "MA Quik Framing." Anthone had poor credit so was unable to obtain "traditional funding." He did not have a personal bank account, savings account, or investments. His business plan was to solicit investor money or borrow from "hard money" lenders to buy and develop properties that were difficult to develop because they were on steep hillsides or wetlands. 7RP 217-20; 8RP 38-44.<sup>1</sup>

Phillip Ross was introduced to Anthone by Ross' neighbor and Anthone employee, Robert Britten. Ross went to a presentation at Anthone's offices in Tukwila where Anthone told him about several different real estate projects in which Ross could invest. Anthone gave Ross the impression that Anthone was going to do the work. Anthone told Ross there were several buyers who were pre-qualified to purchase homes in the developments. Anthone offered Ross an investment of \$20,000 that would yield \$60,000 in three months. Ross was impressed by the plans

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<sup>1</sup> The State adopts the convention used by appellant to refer to the verbatim report of proceedings.

and pictures of the various developments Anthone had in progress. He saw "MA Quik" signs around his community. Anthone did not tell Ross about any problems with the property in which he was investing. On July 11, 2003, Ross and Anthone signed an investment agreement in which Anthone agreed to develop the property in return for Ross's investment. In the agreement Anthone promised Ross that he would receive \$60,000 on October 17, 2003. Ross gave Anthone a check for \$20,000. Anthone told Ross his investment was secured by a specific piece of real estate.

Ross did not receive his \$60,000 return of investment on October 17, 2003. He made several telephone calls to Anthone's office but was unable to reach anyone. Ross testified that he may have driven to Anthone's office after that. Ross hired an attorney to help get his investment money back. Anthone never returned any part of Ross's investment money. 3RP 141-54; Exhibits 11, 13.

Dalbir Bhuller called the phone number on an "MA Quik Framing" sign he saw on the Eden Estates property in 2003 or 2004 and spoke with Anthone. Bhuller was interested in building a house on the property and Anthone told him to come to his office for a meeting. Bhuller went to Anthone's offices and told him he wanted to buy a lot. Anthone told Bhuller he owned several properties and that his business was to develop and sell properties. Anthone told Bhuller that he could invest in the

project he saw, Eden Estates, if he found four to six other investors.

Anthone told him that each of the investors would need to invest \$60,000 in the joint venture. Bhuller believed that when the project was finished he would receive a developed lot that was ready to build although Anthone did not promise Bhuller a particular lot. Anthone told Bhuller the finished lot would be worth \$80,000 to \$85,000. Anthone offered to build a house on the lot for Bhuller for an additional \$305,000. Anthone told Bhuller the finished house and lot would be worth over \$400,000. 6RP 63-73.

Bhuller recruited Balwant Singh, Daljit Singh, Harvinder Mangat, and Sarbjit Singh to invest with him in Eden Estates. Bhuller showed them maps of the project and told them "it's going to go through, everything looks fine." The five investors met with Anthone twice. At the first meeting Anthone reiterated his plans for Eden Estates and told them it would take between six and nine months to complete the project. Anthone told Bhuller that "everything is almost done" and "I just need to pay all the fees and everything and start breaking the ground." Anthone told Bhuller that he had built several houses and showed Bhuller two houses in Madison Park he claimed he built. 6RP 73-77

At the second meeting Anthone presented the investors with a joint venture agreement. The five investors and Anthone each signed the agreement on June 1, 2004, and each investor gave Anthone \$5,000. The

investor's signatures on the joint venture agreement were notarized.

Anthone gave Bhuller a receipt for the payments. Anthone did not explain any of the risks of investing in the joint venture to the investors. Anthone told the investors that their money would be used to pay the City of Renton, for excavation, to put a road in, and for sewers. After Anthone began to tear down the house on the property Bhuller gathered \$5,000 from each of the investors for a second payment and gave it to Anthone. 6RP 77-90; Exhibits 16, 17, 18.

Bhuller went to work for Anthone after that trying to find new investors. Anthone paid him sporadically. Bhuller fielded calls and questions about the Eden Estates project from the other five investors. He told them that the project would go through. When Bhuller asked Anthone why permits weren't being issued for Eden Estates Anthone made excuses. After six or seven months the investors tried to call Anthone but his phone was disconnected. When they went to Anthone's office they found it was closed and the doors locked. Bhuller eventually arranged a meeting between Anthone and the Eden Estates investors about ten months after they made their investments. They asked Anthone to return their investment money. Anthone told them everything was fine but the city was taking longer than he thought. Anthone returned none of the investors' money. 6RP 90-105.

Balwant Singh met Anthonne through Dalbir Bhuller. Bhuller told Singh he needed five people to invest in Eden Estates. Singh testified that he and the other four investors, Daljit Singh, Harvinder Mangat, Sarbjit Singh, and Dalbir Bhuller met with Anthonne at his offices. Anthonne had maps on the walls of his office and a "huge printer." Anthonne told Singh and the other investors he didn't have the money to develop the property but if they bought five lots he could develop the property and sell the remaining four lots to make a profit. Anthonne told them he needed \$100,000 to \$150,000 to get the utilities, power, water, and road completed. Anthonne did not tell the investors about any of the risks of the project but assured them it would all be done. He told the investors that each would receive a lot ready for building when the project was finished. Singh signed the joint venture agreement along with the other four investors on June 1, 2004, and gave Anthonne \$25,000. 6RP 151-58; Exhibits 16, 19.

Singh travelled to India in 2004. When he returned he attempted to call Anthonne but was unsuccessful. Bhuller told Singh Anthonne had closed his office. When Singh was finally able to speak to Anthonne he told Singh he was working on the project. Four or five months after his investment Anthonne told Singh about permitting problems involving a fish

farm adjoining the property. Anthonne returned none of Singh's investment money. 6RP 159-67.

Trishah Bull was a planner for the King County Department of Development and Environmental Services (DDES). Bull reviewed Anthonne's application to develop Eden Estates which was not filed with DDES until September 9, 2004. Bull testified that Anthonne had "issues" providing correct information on his application and that she met with Anthonne to discuss problems with his application on July 22, 2005. Bull testified that on January 12, 2006, DDES cancelled Anthonne's application to develop Eden Estates because Anthonne had not provided requested information and because there were errors in the information he had provided. 5RP 103, 131-42, 160-61; Exhibits 55, 56, 61.

Kanwaljit Dulai learned about Anthonne's real estate investments from his brother-in-law, Dalbir Bhuller. He met with Anthonne at his offices in Tukwila with Dulai's wife and Bhuller. Anthonne showed Dulai maps for a project in the Renton Highlands. Anthonne told Dulai and Bhuller that he would build six townhomes on the property and sell them in three months and "we'll make good money." He told Dulai and Bhuller that the townhomes were "ready to build" and that he needed their money to complete the project. He told Dulai and Bhuller they would receive half of the profits from the sale of the townhomes. Anthonne talked "really big"

about his ability and experience in real estate development. Dulai and Anthone went to the property where the townhomes were to be built. Anthone told Dulai that he owned the property. Dulai asked Anthone about an existing house on the property. Anthone told Dulai not to worry because the house would be gone the next week. 5RP 59-71.

Dulai decided to invest in the project. On November 8, 2004, Dulai and his wife and Anthone signed a joint venture agreement for the development of a project called Highlands Town Homes. Under the agreement Dulai agreed to invest \$50,000 in the project. Anthone promised Dulai that the project would be completed in six months and when it was finished Dulai would be “buying [his] own airplane.” 5RP 73-80; Exhibits 26, 27.

Dulai met with Anthone several times after he invested because when he went to look at the property he saw nothing was happening. After six months passed Anthone “start[ed] disappearing from his office.” When Dulai did speak to Anthone he promised Dulai he would finish the project and Dulai wouldn’t lose his money. Dulai later discovered that Sarbjit Singh had also invested \$50,000 in the project. Dulai and Singh decided to buy the property from Anthone. Dulai gave Anthone \$10,000 to buy the property. They later discovered Anthone did not own the property. They were told by the city there were no permits in place to

develop the property. Anthonne failed to return any of Dulai's investment money. 5RP 81-93.

Paulina Chhour was introduced to Anthonne by Robert Britten, her sister-in-law's boyfriend and Anthonne employee. She met with Anthonne at his offices. At that meeting Anthonne told her that an investment of \$13,500 in one of his real estate projects would yield a return of \$73,500 in three months. Chhour and Anthonne went to the property Anthonne said he was going to develop and she saw an old house on the property. Anthonne told Chhour that he was going to knock that house down and build new houses on the property. Chhour invested \$5,000 in cash with Anthonne. On July 22, 2003, Chhour and Anthonne signed an "Investment/Profit Shareing [sic] Agreement" that described the same property in which Ross had invested. In the agreement Anthonne promised to give Chhour a deed of trust against the property. The agreement promised Chhour a closing date of October 22, 2003. Anthonne also gave Chhour a promissory note securing her investment.

Chhour did not receive the promised return in three months. When Chhour went to look at the property she saw that it hadn't changed. She called Anthonne's office and left messages with his receptionist but Anthonne did not return her calls. She sent her boyfriend to speak with

Anthone who eventually returned \$2,000 of her investment money. 5RP 24-51; Exhibits 30, 31.

Fred Wilson learned of Anthone's investment opportunities from his friend and business partner Dennis Rossignol, who told Wilson Anthone was looking for investors in real estate projects. Wilson and Rossignol met Anthone at his offices in Tukwila. Wilson saw blueprints of prospective projects on the walls. Anthone told them that he was building four homes on some property in Skyway and that for an investment of \$20,000 Wilson would receive four times that much when the project was complete. Anthone told them about other projects he had under way and that he had done this before. Wilson and Rossignol went to look at the property and saw that there was a small bulldozer on it and that the property had been cleared. 7RP 115-20.

Wilson gave Anthone a check for \$20,000. Anthone, Wilson, and Rossignol signed an "Investment and Profit Shareing Agreement" on August 1, 2003 stating that Wilson and Rossignol would receive \$65,000 on December 2, 2003. Anthone gave Wilson and Rossignol a promissory note and promised them a deed of trust against the property to secure their investment. Wilson went to the property after he invested and saw no progress on the development. Anthone did not give Wilson and Rossignol the \$65,000 as promised on December 2, 2003, but told him the date was

“extended” and that he might move their investment to another project. After Anthone failed to meet the new deadline, Wilson began calling Anthone’s cell phone. On the few times Anthone answered he made excuses. Anthone extended the completion date for Wilson and Rossignol’s project “too many times to count.” Anthone returned none of Wilson’s investment money. 7RP 121-22, 145-56; Exhibits 46, 47, 48.

Dennis Rossignol got Anthone’s telephone number from a friend who saw it on a sign. He was interested in real estate development so he made an appointment for Wilson and himself to meet with Anthone. Rossignol saw blueprints on the walls of Anthone’s offices. Anthone told Rossignol and Wilson about his various projects and offered returns of 45 to 60 percent for investments in the projects. He told them he was a builder and developer and was in the construction business. Rossignol looked at many pieces of property Anthone either said were his projects or that had “MA Quik Framing” signs on them. None of them were completed projects. After the December 2, 2003 due date for Wilson’s \$20,000 investment passed Anthone told Rossignol that the project they invested in hadn’t been started and that they were “going to get put on a different project.” Rossignol testified that “[i]t seems like months and months went by, and it just got to the point where we finally realized that we probably weren’t going to get any money out of this deal.” 7RP 168-

77. Rossignol testified that he knew they weren't going to get their money out of the investment between one and three months after it initially came due. Throughout this time Anthone made various excuses for why there was no progress on the project. 7RP 189-91.

Frederick Stauss was a real estate broker and a licensed contractor. Stauss testified that it is not legal to work as a contractor without a license. He testified that he met Anthone in 2002 when Anthone made an offer on a piece of property he owned that was difficult to develop because it was on a steep hillside. He testified that he was involved in other real estate deals with Anthone in which Anthone asked the seller to provide financing for lots that were difficult to develop. He testified that he helped Anthone attempt to sell the Eden Estates property in 2005 and that Anthone told him he needed to sell it because "he had a lot of creditors." He also testified that he helped Anthone try to sell another property in 2004 or 2005 but was unsuccessful because the property had "environmental issues." Anthone told Stauss that he "wanted to make tense [sic] of millions, not just millions." Stauss testified that he never saw Anthone complete a project. 5RP 163-66, 174-90.

Robert Britten testified that he worked for Anthone for about two and one-half years beginning in 2003. He and other Anthone employees cold-called potential investors and created investment contracts from a

form Anthone provided. Anthone promised them a percentage of the investments they brought in. Britten said Anthone's business plan was to purchase houses that were abandoned or dilapidated and move them to new lots and subdivide the original lots. There were maps and plans for various projects on the walls of Anthone's offices. Britten created a chart for Anthone that showed only 15 percent of the cash brought in was to be used for completing his projects--the rest would be used for salaries, overhead, and profit. Britten was present at meetings with investors including Chhour and Ross where Anthone said they could double their money if they invested. Britten testified that Anthone was unable to obtain permits and never completed any of his development projects. 7RP 16-58; Exhibits 51, 52.

Ray Jacobs was a licensed real estate agent and broker. He worked pre-selling properties for Anthone's business for about a year starting in 2002 or 2003. He helped Anthone draft the "Investment and Profit Shareing Agreement" Chhour signed. He also created flyers containing pictures and plans of various projects Anthone was trying to sell. Anthone had five or six different projects under way when Jacobs worked for him. Jacobs testified that he was never able to completely pre-sell any of Anthone's projects before Anthone asked him to start pre-selling a new one. Anthone talked about the millions of dollars he was going to make

from these projects. Anthone never completed or made significant progress toward completing a project during the time Jacobs worked for him. 7RP 68-100.

Pamela Bergman was the program supervisor for contractor registration for the State of Washington Department of Labor and Industries (DLI). She testified that the bond for "MA Quik Framing" was cancelled on October 27, 2002, and that Anthone's registration to do business as a contractor was suspended from that day to the present. Her search of the records at the DLI revealed that Anthone's registration to work as a contractor lapsed on June 17, 2003, for failure to file a certificate of insurance and expired on June 17, 2005. 7RP 194-200; Exhibit 64.

Mr. Anthone's deposition was taken on April 9, 2004, by the Securities Division of the Washington State Department of Financial Institutions and again on May 23, 2005, in a lawsuit. In the April 9, 2004, deposition Anthone admitted that he had poor credit and was not current in payment of his debts. He estimated that he owned 22 lots in different stages of development and said "I deal with 99.9 percent borrowed money." Anthone admitted that he purchased "difficult lots." Anthone admitted that he didn't have title in the property in which Ross invested, that it was wetlands, and that he did not give Ross a deed of trust on the

property. 8RP 39-61. In the May 23, 2005, deposition Mr. Anthone admitted that although he purchased the Eden Estates property on a real estate contract he failed to make any payments to the seller. He testified that 5 of 15 of the properties he attempted to purchase went into foreclosure. 7RP 210-21.

In his May 23, 2005, deposition Anthone was asked about the Eden Estates investors:

Q. Is there a group of five investors that are interested in purchasing five of the seven lots that you have proposed?

A. I wouldn't say they're interested in purchasing. There is five of us that are working on it.

Q. Have those persons paid you any money?

A. Yes

Q. How much?

A. Roughly \$30,000 apiece.

Q. \$30,000 apiece?

A. Um-hmm.

Q. \$150,000?

A. Yep.

Q. And that's for the right to negotiate with you?

A. Yes.

Q. Is that refundable money?

A. No.

Q. What do they get for your services?

A. My expertise.

Q. What's that?

A. Finishing the project.

7RP 213-15; Exhibit 24.

Michelle Mack, a financial examiner for the Securities Division, testified that she reviewed the records of seven bank accounts for Anthone. Mack testified that over a million dollars in deposits to Anthone's accounts came from individuals and that the single largest use of funds from the accounts was withdrawals in cash. She prepared summaries that showed little of the money Anthone collected was used to develop any property. 8RP 84-101; Exhibit 65.

After the State rested the defense moved to dismiss counts 4, 5, and 6 as multiplicitous. The court denied the motion. The court also denied Anthone's motion to dismiss counts 2, 11, 13, and 15 as barred by the statute of limitation. 8RP 113-30, 144-56. The jury convicted Anthone on counts 2, 3, 4, 5, 6, 8, 11, and 15. The jury was unable to reach a verdict on counts 13 and 14. CP 345-46. The court dismissed counts 4, 5, and 6 as multiplicitous of count 3 at a hearing on a defense motion to arrest judgment on November 29, 2012. 12RP 27-8; CP 409-10. On December 7, 2012, the court sentenced Anthone to concurrent sentences of 16 months on each remaining count. 13RP 17-18; CP 396-405. Anthone filed a timely notice of appeal. CP 412-23.

D. SUMMARY OF ARGUMENT

1. SUMMARY OF ARGUMENT ON CROSS-APPEAL

The trial court erred when it dismissed counts 4, 5, and 6 of the information as multiplicitous when each count involved a separate victim, a separate payment, and a separate investment.

2. SUMMARY OF ARGUMENT ON APPEAL

1. The evidence of misstatements and omissions of material facts was sufficient to support the jury's guilty verdicts on counts 2, 3, 4, 5, 6, 11, and 15, and counts 2, 11, and 15 were not barred by the 5-year statute of limitations for securities fraud.

2. The trial court did not err when it ordered appellant to make restitution for counts 2, 3, 4, 5, 6, 11, and 15.

E. ARGUMENT

1. ARGUMENT ON CROSS-APPEAL

- a. The Trial Court Erred When It Dismissed Counts 4, 5, And 6 Of The Information As Multiplicitous When Each Count Involved A Separate Victim, A Separate Payment, And A Separate Investment.

Dalbir Bhuller testified that when he approached Anthone to buy a lot in Eden Estates Anthone told him he couldn't sell him a lot but if he could find five investors he could complete the development and give each investor a lot worth substantially more than their investments. Bhuller

contacted members of his family and co-workers and each of them wrote a separate check to Anthonie for his investment after meeting with Anthonie. Under these facts there are five separate acts of securities fraud under RCW 21.20.010.

“Multiplicity” is the charging of a single offense in several counts. State v. Noltie, 116 Wn.2d 831, 847, 809 P.2d 190, 200 (1991). Courts determine whether charges are multiplicitous using the “unit of prosecution” analysis. See, e.g., State v. Root, 141 Wn.2d 701, 9 P.3d 214 (2000). Under this approach, “[t]he proper inquiry . . . is what ‘unit of prosecution’ has the Legislature intended as the punishable act under the specific criminal statute?” State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072, 1074 (1998). Courts apply the rule of lenity in favor of a defendant in this context only when a statute is ambiguous as to the unit of prosecution. Id. at 635-35.

In Adel, supra, the defendant was convicted of two counts of possession of marijuana for storing two quantities of marijuana in two different places:

The proper inquiry in this case is what “unit of prosecution” has the Legislature intended as the punishable act under the specific criminal statute. See Bell v. United States, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955); State v. Mason, 31 Wn.App. 680, 685-87, 644 P.2d 710 (1982). The Legislature has the power, limited by the Eighth Amendment, to define criminal conduct and set out

the appropriate punishment for that conduct. Bell, 349 U.S. at 82, 75 S.Ct. 620. The proper question for this case is what act or course of conduct has the Legislature defined as the punishable act for simple possession of a controlled substance? When the Legislature defines the scope of a criminal act (the unit of prosecution), double jeopardy protects a defendant from being convicted twice under the same statute for committing just one unit of the crime. See Bell, 349 U.S. at 83-84, 75 S.Ct. 620 (double jeopardy violated when defendant convicted on two counts of transporting women across state lines when two women were transported at the same time); In re Snow, 120 U.S. 274, 7 S.Ct. 556, 30 L.Ed. 658 (1887) (double jeopardy violated when defendant convicted on multiple counts of plural cohabitation when the cohabitation was continuous and ongoing). The unit of prosecution issue is unique in this aspect: While the issue is one of constitutional magnitude on double jeopardy grounds, the issue ultimately revolves around a question of statutory interpretation and legislative intent.

State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072, 1074 (1998).

The legislature's intent in RCW 21.20 to make each sale or offer to sell a security a separate unit of prosecution is clear. The legislature has unambiguously provided that as used in RCW 21.20.010 the term "sale" or "sell" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and that "offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. RCW 21.20.005(10). Because the Washington State Securities Act's primary policy is to protect

investors it should be construed liberally. Ito Int'l Corp. v. Prescott, Inc., 83 Wn. App. 282, 292, 921 P.2d 566, 571 (1996).

The legislature's decision to prohibit false or misleading acts in connection with the sale of "any" security in RCW 21.20.010 coupled with its definition of "sale" in RCW 21.20.005(14) to include "every" sale makes it clear that the legislature intended each separate sale of a security or interest in a security to be a separate crime. Each transaction between appellant and a victim constituted a separate crime under this definition because each was the sale of a security or a separate interest in a security. Appellant's crimes were unlike the simultaneous possession of two caches of marijuana in Adel or the continuous cohabitation of multiple wives in Snow, supra. Because the legislature intended each sale of a security or interest in a security as the unit of prosecution the charges in counts 3 through 6 were not multiplicitous. Cf. State v. Larkin, 70 Wn. App. 349, 853 P.2d 451 (1993) (Crimes against multiple victims are not merely incidental to each other, but have "independent purpose or effect" and are not subject to the doctrine of merger.)

Anthone argued successfully below that counts 3 through 6 were a single crime because the victims all signed a single investment agreement on the same date. However, as the jury was instructed, a security need not be evidenced by a written document. RCW 21.20.005(12)(a) (supp. 2006).

Therefore, whether the victims all signed the same joint venture agreement at the same time is irrelevant. Anthoné's argument raises the question of whether separate counts would have been appropriate if the investment agreement had not been committed to writing, or if he had made the same misrepresentations and omissions to each of the victims on different dates who then signed the agreement at the same time and place, or if the victims had each signed the same joint venture agreement on different dates. Under Anthoné's proposed analysis these inconsequential facts would presumably result in different units of prosecution. Cf. State v. Argo, 81 Wn. App. 552, 915 P.2d 1103 (1996) (in determining if an investment constitutes a security form should be disregarded for substance and the emphasis should be on economic reality).

Anthoné cited U. S. v. Langford, 946 F.2d 798 (11<sup>th</sup> Cir. 1991) to the court below in support of his argument that counts 3 through 6 should have been charged in a single count. Langford does not support his argument. Langford was president and chief executive of a savings and loan association. He devised a scheme to artificially inflate the share price of the savings and loan and then sold all the shares of the savings and loan at the inflated price to a single victim in one transaction. The government charged Langford with a separate count of securities fraud for each of three false statements in a proxy statement, a telephone call, and a letter made in

connection with the sale. On appeal the court held that the securities fraud charges were multiplicitous because there was only one sale or exchange of a security. Id. at 802-04.<sup>2</sup>

Here, there were multiple victims who each invested on their separate accounts. Langford does not hold that separate charges of securities fraud are multiplicitous in these circumstances. The trial court erred when it dismissed counts 4, 5, and 6 as multiplicitous of count 3.

## 2. ARGUMENT ON APPEAL

- a. The Evidence Of Misstatements And Omissions Of Material Facts Was Sufficient To Support The Jury's Guilty Verdicts On Counts 2, 3, 4, 5, 6, 11, And 15, And Counts 2, 11, And 15 Were Not Barred By The 5-Year Statute Of Limitations For Securities.

Evidence is sufficient if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt; evidence is

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<sup>2</sup> This accords with our interpretation of the parallel language of 15 U.S.C. § 77q(a) (1988). Under section 77q(a), we have held that it will avail a defendant nothing that the same scheme is incorporated in each count of the indictment. United States v. Ashdown, 509 F.2d 793, 800 (5th Cir.1975), *cert. denied*, 423 U.S. 829, 96 S.Ct. 48, 46 L.Ed.2d 47 (1975). *See supra* note 14. It is also clear from our cases that the use of the mails (or other instrumentality of interstate commerce) in conjunction with separate purchase or sale transactions clearly is sufficient to ground multiple counts. *See Ashdown*, 509 F.2d at 800; Sanders v. United States, 415 F.2d 621, 626 (5th Cir.1969). We have not yet considered, however, whether several mailings (or other instrumentalities of interstate commerce), all based on a single transaction, likewise may be charged in multiple counts. We hold that they cannot. To avoid the vices of multiplicity in securities fraud cases, each count of the indictment must be based on a separate purchase or sale of securities and each count must specify a false statement of material fact-not a full-blown scheme to defraud-in connection with that purchase or sale.

United States v. Langford, 946 F.2d 798, 803-04 (11th Cir. 1991) (footnotes omitted).

viewed in the light most favorable to the State. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A defendant claiming evidence insufficiency admits the truth of the State's evidence and all reasonable inferences that may be drawn from it. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

i. Count 2

Appellant claims that the evidence in count 2 was insufficient to support the jury's verdict because there was no evidence that he made an untrue statement of material fact or omitted to state a material fact in connection with the investment. In Count 2 investor Philip Ross testified that Anthone gave Ross the impression that Anthone was going to do the construction work on the project in which Ross invested. He testified that Anthone did not tell him about any potential problems with the property in which he invested. The "Investment and Profit Shareing Agreement" Anthone signed promised that Anthone would secure Ross's investment with a deed of trust in the property. Anthone failed to tell Ross that his registration as a contractor had been suspended nine months earlier, that

the property was a wetlands, or that he didn't own the property among other things. In his deposition, Anthonne admitted the latter two facts and that he didn't give Ross a deed of trust in the property. Nor did Anthonne tell Ross that only 15 percent of his investment money was going to be used for the project. These facts are sufficient to support the jury's verdict that Anthonne made material misstatements of fact and omitted to state material facts in connection with Ross's investment.

Anthonne also claims that count 2 was barred by the statute of limitations. "Whether a criminal impulse continues into the statute of limitations period is a question of fact for the jury." State v. Mermis, 105 Wn. App. 738, 746, 20 P.3d 1044 (2001). See also Goodman v. Goodman, 128 Wn.2d 366, 373, 907 P.2d 290 (1995) ("Whether the statute of limitations bars a suit is a legal question, but the jury must decide the underlying factual questions unless the facts are susceptible [to] but one reasonable interpretation.").

The statute of limitations for securities fraud is five years. RCW 21.20.400. However, the statute of limitations for securities fraud is tolled for so long as the defendant "lulls" the victims into a passive state of inactivity. The statute does not begin to run until the defendant's lulling acts are complete. State v. Argo, 81 Wn. App. 552, 556-68, 915 P.2d 1103 (1996). Ross invested with Anthonne on July 11, 2003. On that date

Anthone promised Ross a \$60,000 return on his \$20,000 investment on October 17, 2003. By doing so he lulled Ross into a passive state of inactivity until October 17, 2003. This evidence supports the jury's verdict that Anthone's lulling activity continued until after August 4, 2003, as required by the jury instructions. August 5, 2008, the date the charges in count 2 were filed, was therefore within the 5-year time limit of the statute of limitations for securities fraud as found by the jury. The statute of limitations for securities fraud did not bar the crime charged in count 2.

ii. Counts 3 – 6

Appellant argues that the evidence for counts 3 through 6 was insufficient to support the jury's verdicts because there was no evidence that he made an untrue statement of material fact or omitted to state a material fact in connection with the investments. In support of his claim appellant states that he never told any of these investors that he had permits and that two of the investors did not testify so there is no evidence of what he told them.

Dalbir Bhuller testified that when he met with Anthone to purchase a lot in Eden Estates Anthone told him that if he found others willing to invest \$60,000 he could complete the project and each would receive a lot. Anthone offered to build a house for Bhuller on his lot. Bhuller found

four other investors in the Sikh community who met with Anthonie and signed a joint venture agreement on June 1, 2004. At those meetings Anthonie told them “everything is almost done” and that he just needed “to pay all the fees and everything and start breaking ground.” Anthonie admitted in a deposition that the Eden Estates investors each gave him \$30,000 for his “expertise” to develop the project. Anthonie did not tell the investors that he had yet to apply with DDES for permits for the project, that he had not made payments to the seller to purchase the Eden Estates property, that he was not registered to work as a contractor, or that he intended to use only 15 percent of their investment money for the project, among other things. Balwant Singh testified to substantially the same facts as Bhuller, and Kanwaljit Dulai testified that Anthonie made nearly the same pitch to him to induce his investment in the Renton Highlands project in count 8. Those facts are sufficient to support the jury’s verdict that Anthonie made material misstatements of fact and omitted to state material facts in connection with those investments. They also provide strong circumstantial evidence to support the jury’s verdict that Anthonie made the same misrepresentations and omissions to the other Sikh investors who did not testify.

iii. Count 11

Anthone argues that the evidence in count 11 was insufficient because the victim in that case, Paulina Chhour, was not specific about what he said to her that was a misrepresentation of a material fact. Chhour testified that Anthone told her that an investment of \$13,500 in one of his developments would yield a return of \$73,500 in three months. She went to the property Anthone said he was going to develop and saw an old house which Anthone said he would “knock down” before building new houses on the property. Chhour testified that Anthone gave her a promissory note to secure her investment. The investment agreement Chhour signed described the same project in which Philip Ross had invested and promised Chhour a deed of trust against the property to secure her investment. Anthone admitted during a deposition that the property Ross had invested in was difficult to develop because it was wetlands and that he didn’t own the property. Anthone told Chhour none of these things. Nor did he tell her he was not registered to do business as a contractor, that his personal finances would not permit him to honor the promissory note, or that only 15 percent of her investment money was going to be used for the project, among other things. These facts are sufficient to support the jury’s verdict that Anthone made material

misstatements of fact and omitted to state material facts in connection with Ms. Chhour's investment.

As in count 2, Anthone claims that count 11 was barred by the statute of limitations. The jury must decide whether a defendant's lulling activity tolls the statute of limitations to bring his conduct within the limitations period. Mermis, Goodman, supra. The 5-year statute of limitations for securities fraud is tolled during periods of "lulling" activity by the defendant. Argo, supra. Chhour invested with Anthone on July 22, 2003. On that date, Anthone promised Chhour that she would receive the \$73,500 return on her investment on October 22, 2003. By doing so he lulled Chhour into a passive state of inactivity until October 22, 2003. This evidence supports the jury's verdict that Anthone's lulling activity continued after October 15, 2003, as required by the jury instructions. The charge in count 11 was filed on October 14, 2008. Therefore, the charges were filed within the 5-year time limit of the statute of limitations for securities fraud when tolled for Anthone's lulling activity. The statute of limitations for securities fraud did not bar the crime charged in count 11.

iv. Count 15

Anthone argues that the evidence for count 15 is insufficient to support the jury's verdict because there is no evidence he misled the victim in that count, Frederick Wilson, as to a material fact. Wilson

testified that Anthone told him that he was building four houses on some property in Skyway, and that for an investment of \$20,000 Wilson would receive four times that much when the project was complete. Anthone told Wilson that he had other projects under way and that he had done this before. Wilson and Anthone signed an "Investment/Profit Sharing Agreement" on August 1, 2003, in which Anthone promised to give Wilson a deed of trust against the property to secure his investment and to pay Wilson his return on December 2, 2003. Anthone did not tell Wilson that he was not registered as a contractor, had no experience as a developer, or that he had never completed a project, among other things. Nor did he tell Wilson that only 15 percent of his investment money was going to be used for the project. These facts are sufficient to support the jury's verdict that Anthone made material misstatements of fact and omitted to state material facts in connection with Wilson's investment.

As in counts 2 and 11, Anthone claims that count 15 was barred by the statute of limitations because there was no evidence of a misstatement or omission of material fact after January 7, 2004. Wilson testified that Anthone did not pay him on December 2, 2003, as promised but told him the date for payment was extended and that he might move his investment to another project. Wilson said Anthone extended the completion date for the project "too many times to count." Wilson's friend and co-investor,

Dennis Rossignol, corroborated Wilson's testimony and testified they realized that they weren't going to get their money from the investment within one to three months after December 2, 2003, during which time Anthone continued to make excuses for why there was no progress. Anthone's excuses during this three-month period constitute lulling. Argo, supra. This evidence was sufficient to support the jury's verdict that Anthone's lulling activities continued after January 7, 2004, as required by the jury instructions. The charges in count 15 were filed on January 5, 2009. Count 15 was therefore not barred by the statute of limitations.

b. Restitution

Anthone argues that because the evidence was insufficient to support the jury's verdicts on counts 2, 3, 4, 5, 6, 11, and 15 the court's restitution order for those counts should be vacated. However, when considered in a light most favorable to the State, the evidence was more than sufficient to support his convictions on those counts. The court did not err in ordering Anthone to make restitution for those counts.

F. CONCLUSION

For these reasons the court's ruling dismissing counts 4, 5, and 6 as multiplicitous of count 3 should be reversed, Laurance Anthone's

convictions on counts 2, 3, 11, and 15 should be affirmed, and the case should be remanded for resentencing.

DATED this 19<sup>th</sup> day of December, 2013.

Respectfully submitted,

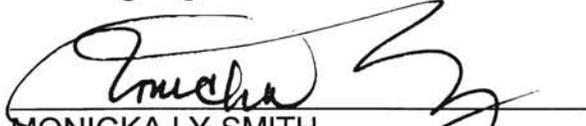
DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
SCOTT A. PETERSON, WSBA #17275  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the appellant, at Nielsen Broman & Koch PLLC, 1908 E. Madison Street, Seattle, WA 98122-2842, containing a copy of the **Brief of Respondent**, in STATE V. LAURANCE ANTHONE, Cause No. 69716-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
MONICKA LY-SMITH  
Done in Seattle, Washington

12/20/13  
Date