

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK MICHAEL BASKIN, JR.,

Defendant-Appellant.

UNPUBLISHED

September 29, 2009

No. 286878

Kent Circuit Court

LC No. 08-001401-FH

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction for identity theft, MCL 445.65. We affirm.

On December 7, 2007, defendant's girlfriend, Julisa Thompson, with whom he has a minor child, was working as a seasonal cashier at a Sears department store. Thompson submitted a rapid credit card application for a Sears credit card at her cash register during her shift. She filled out the application using personal information given to her by defendant during a telephone conversation. The social security number that Thompson entered on the application did not belong to defendant. The application was subsequently approved for a credit card under the name of a woman unknown to either defendant or Thompson. A temporary shopping pass with a bar code allowing use of this account was then printed. Defendant later arrived at the store and picked out some merchandise with Thompson. They thereafter went to Thompson's cash register in order to use the newly-opened credit account to purchase the goods. After Thompson scanned the bar code on the shopping pass and obtained purchase authorization over the telephone, the signature capture pad attached to the cash register activated. Defendant signed a name, which was not his own, on the pad in order to complete the transaction. He then tried to leave the store but was stopped by one of Sears's loss prevention employees. Subsequently, defendant was interviewed by the loss prevention manager and a police officer. Both the manager and police officer testified at trial that defendant informed them that, before signing the signature capture pad, he saw it display a woman's name. At that time, he asked Thompson what he should do. She told him to sign someone else's name in order to finalize the purchase, which he did. The police officer also testified that defendant admitted knowing that the credit account was not his when he signed the pad in order to complete the transaction and purchase the goods.

Defendant argues that there was insufficient evidence to support a finding that he had the requisite intent to defraud or violate the law when he used another person's personal identifying information to purchase the merchandise. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

MCL 445.65 provides in pertinent part:

(1) A person shall not do any of the following:

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.¹

Sufficient evidence of intent to defraud has been found under circumstances where a defendant signed a business check without authorization. *People v Susalla*, 392 Mich 387, 393; 220 NW2d 405 (1974) (The defendant signed the check absent "authority to do so, therefore he acted with fraudulent intent."). Sufficient evidence of intent to defraud also existed where a defendant signed the account holder's name on a bank withdrawal slip without authorization. *People v Van Horn*, 127 Mich App 489; 339 NW2d 475 (1983). This case presents a similar scenario.

It is undisputed that defendant signed someone else's name, and not his own, in order to complete the transaction. The loss prevention manager and the police officer who interviewed defendant both testified that defendant said that he observed a female's name on the signature capture pad, and he then signed a different female's name (the name of Thompson's cousin) as instructed by Thompson after he asked her what to do. Although Thompson testified that defendant did not ask her any questions about a woman's name appearing on the signature

¹ Defendant does not dispute that another person's name, social security number, and credit card number constitute "personal identifying information." MCL 445.63(o).

capture pad, and although there was a dispute at trial regarding whether the pad actually displayed the account holder's name, we resolve all conflicts in the evidence in favor of the prosecution and do not interfere with the jury's credibility determinations. The testimony of the loss prevention manager and police officer is sufficient to establish, beyond a reasonable doubt, that immediately before completing the purchase, defendant knew that the personal identifying information relative to the credit account did not pertain to him but to someone else. Because defendant nevertheless signed a fictitious name on the capture pad in order to complete the transaction, there was sufficient evidence to show that defendant knowingly used the credit card in order to obtain the merchandise that he picked out with Thompson. Only minimal circumstantial evidence was needed to establish that defendant possessed the intent to defraud. *Kanaan, supra* at 622. Accordingly, there was sufficient evidence presented to enable a reasonable jury to find, beyond a reasonable doubt, that defendant possessed the intent to defraud when he used the personal identifying information of another person in an attempt to obtain various merchandise. MCL 445.65.²

On the record before us, we conclude that there was also sufficient evidence to establish that defendant aided and abetted Thompson in committing identity theft. The jury was instructed in the alternative that defendant could be guilty as an aider and abettor in the identity theft. "Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense." MCL 767.39. The elements necessary to support a conviction for aiding and abetting are: "(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement." *Carines, supra* at 768 (citation omitted).

Thompson pleaded guilty to identity theft. Defendant performed acts that assisted Thompson in committing identity theft where he provided his driver's license and other information to apply for the credit card, knowingly provided a false social security number, helped select the merchandise, and where he assisted in completing the transaction by signing someone else's name on the signature capture pad. The record provides sufficient evidence

² The account was set up in the name of Yvette Didierjean, and Didierjean testified that she did not make the credit application. Defendant argues that there was no evidence that he had ever even heard the name Didierjean "much less that he had ever intended to commit identity theft against this particular individual." MCL 445.65(1) does not require the prosecution to prove that a defendant knows the victim of the identity theft or that a defendant must intend to defraud a particular person. MCL 445.65(1) only requires proof of use of the personal identifying information "of another person" with intent to defraud, which would necessarily mean anyone other than the defendant himself, and the account here was not set up in defendant's name. It matters not that defendant may not have personally known or intended to specifically defraud Didierjean in particular; it was sufficient that he knew that the personal identifying information of a person other than himself was being used in furtherance of a fraud.

showing that defendant intended the commission of the crime, and, given the evidence of the interactions and communications between defendant and Thompson, there was sufficient evidence that defendant had knowledge that Thompson intended to commit identity theft when he gave aid.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering