

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 20, 2012

v

NANCY ANN ASHENHURST-GALLINA,

Defendant-Appellant.

No. 309450
Eaton Circuit Court
LC No. 09-020404-FH

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of filing a false or fraudulent Uniform Commercial Code (UCC) financing statement, MCL 440.9501(6).¹ We affirm.

This case arises from an eviction hearing before District Court Judge William J. Sutherland and a criminal prosecution against defendant for filing a false or fraudulent financing statement in connection with the eviction proceeding. During the eviction proceeding, a false UCC financing statement was filed naming Judge Sutherland as a debtor. The financing statement named defendant and her daughter as secured parties, and the collateral was the property defendant was occupying. The financing statement called for treble damages for an illegal foreclosure. No one contests that the financing statement was false or fraudulent. However, defendant argues there was insufficient evidence to support a finding that she either filed the financing statement herself or caused it to be filed.

This Court reviews de novo a claim of insufficient evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Ericksen*, 288 Mich App at 196. Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

¹ The trial court sentenced defendant to three years' probation and to 100 hours of community service in lieu of 60 days in jail.

The text of the charging statute, MCL 440.9501(6), reads:

A person shall not knowingly or intentionally file a false or fraudulent financing statement with the office of the secretary of state under subsection (1)(b) or (2). In addition to any other penalty provided by law, a violation of this subsection is a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both. If the person is convicted of the violation, the court may find that the financing statement is ineffective and may order the office of the secretary of state to terminate the financing statement and may order restitution.

The prosecution established that defendant's brother filed the financing statement. Defendant and her daughter were listed as the secured party on the financing statement. Defendant attempted to present a copy of the financing statement to Judge Sutherland just two days after it had been filed. Moreover, a petition for Judge Sutherland to recuse himself because of the false financing statement was filed with the court and signed by defendant's husband, "POA for defendant." During a hearing, defendant referred to the financing statement as "our UCC financing statement" and stated that "we had filed it because the action was going on here." Viewing these facts in the light most favorable to the prosecution, a jury could find beyond a reasonable doubt that defendant caused the financing statement to be filed.

Defendant also argues that there is insufficient evidence that she violated MCL 449.9501(6) because the document filed should not have been accepted by the Secretary of State under the UCC filing guidelines because it was clearly a "joke filing." This argument is unpersuasive. MCL 440.9501(6) states only that a person may not file "a false or fraudulent financing statement." It does not state that the false or fraudulent statement must otherwise be sufficient. Indeed, a financing statement may be filed without being effective. See MCL 440.9506. Regardless of any alleged insufficiencies, the statement involved in this case was both fraudulent and was filed. That is precisely the activity prohibited by MCL 440.9501(6).

Affirmed.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens