STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 18, 2013
v	No. 308307 Ogemaw Circuit Court
DAVID ANTHONY RITCHIE, Defendant-Appellant.	LC No. 11-003639-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v	No. 313216 Ogemaw Circuit Court
DAVID ANTHONY RITCHIE, Defendant-Appellant.	LC No. 11-003640-FH

Before: OWENS, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

A jury convicted defendant David Ritchie of larceny and conducting a criminal enterprise for his role in a string of thefts of lawn mowers, farm equipment, recreational vehicles, and various other expensive items. On appeal, defendant complains only that the prosecutor presented insufficient evidence that he participated in the theft ring for "financial gain," a necessary element of the criminal enterprise charge. Defendant's girlfriend and accomplice specifically testified that defendant "sold" the stolen property, supporting this challenged element. We affirm.

I. BACKGROUND

In the summer of 2010, defendant, Brian Greene, and Fabian Loonsfoot[1] planned and executed several heists at heavy equipment and sporting vehicle vendors in Shiawassee, Houghton, Ontonagon, and Ogemaw counties. The thefts were conducted professionally with the perpetrators masking security devices, wearing latex gloves, and using special "skeleton" keys that could start any type of riding farm equipment. Defendant's girlfriend, Misr Abdur-Rahim, assisted in the offenses but later brokered a deal in exchange for her testimony. At trial, the prosecutor presented evidence regarding the volume of property stolen and recovered and defendant's methods in conducting the complex thefts. Defendant was so proud of his prowess that he boasted to the trial court bailiff, "This is just the tip of the iceberg, if they only knew how much stuff I have really stolen." Defendant also admitted that "he was guilty as sin." Defendant told the bailiff details of his criminal enterprise, such as that "he always wore latex gloves" so he "would not leave evidence," "he rarely works with the same people twice in a row," and "it is very easy to hire somebody to be a driver, pay them cash and let them go."

II. ANALYSIS

We review de novo challenges to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "[A] court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Further, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

In order to find defendant guilty of conducting a criminal enterprise in violation of MCL 750.159i, the prosecution must prove beyond a reasonable doubt that:

> (1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain. [*People v Martin*, 271 Mich App 280, 321; 721 NW2d 815 (2006).]

[1] Greene and Loonsfoot were tried jointly with defendant but their convictions are not at issue in this appeal.

Defendant challenges the sufficiency of the evidence only as to the final element—that the larcenies "were committed for financial gain."

At trial, the most damaging evidence was presented through Abdur-Rahim's testimony. In relation to the end goal of the criminal enterprises, the following colloquy occurred between the prosecutor and the witness:

> *Q.* And are you familiar with what happens to the property once it is stolen?
>
> *A.* Yes.
>
> *Q.* And what happens to it?
>
> *A.* It is sold.
>
> *Q.* And by whom?
>
> *A.* By David Ritchie.[2]

The prosecutor attempted to elicit information regarding the flow of the funds and process of the sales but defendant objected and prevented Abdur-Rahim from providing additional details, either inculpatory or exculpatory. The court ultimately required the prosecutor to drop the line of questioning. Despite defendant's own interruptions, the jury was left with the clear-cut answer that defendant stole property to sell it. This was direct evidence that defendant committed the larcenies for financial gain. The lack of potential explanatory or exculpatory testimony in this regard was caused by defendant's own actions and he may not now harbor that as an appellate parachute. *People v Shuler*, 188 Mich App 548, 551-552; 470 NW2d 492 (1991). See also *Phinney v Verbrugge*, 222 Mich App 513, 537; 564 NW2d 532 (1997) ("Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence.").

The prosecutor also presented significant circumstantial evidence from which the jury could infer defendant's financial motives. The victims of the thefts testified that not all of the stolen property was recovered, suggesting that it had already been sold. The complexity and cost of the larcenies, including the time and mileage involved in preparing and executing the offenses,

[2] Abdur-Rahim also testified that Greene was "often" at defendant's home because "[h]im and David Ritchie, they did business together. They made money off of each other."

supports that the parties intended to sell rather than keep the goods for personal use. Viewed in the prosecutor's favor, the evidence sufficed to establish that defendant acted with an eye toward financial gain.

Affirmed.

/s/ Donald S. Owens
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens