

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 21, 2013

v

TAMIKA ROCHELLE LLOYD,

Defendant-Appellant.

No. 309464
Macomb Circuit Court
LC No. 2011-000630-FH

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of identity theft, MCL 445.65. Defendant was sentenced to 18 months of probation. We affirm.

I. FACTUAL BACKGROUND

The victim, Dawn Walker, discovered that an unknown address, 27594 Parkview Boulevard, apartment 214, was on her DTE electric bill in December 2009. The victim lived in St. Clair Shores, she did not know anyone residing at the Parkview complex, and she had never given anyone permission to use her personal information to obtain electrical services there. When the victim telephoned DTE to make a fraud report, she was told that “somebody had called and turned on the services using [the victim’s] name and Social Security number.” The victim subsequently filed a police report.

After receiving the victim’s report, the police contacted the manager of the apartment complex and requested information about the tenant residing in apartment 214. Defendant was the only tenant named on the lease. While the police called defendant and left a message, defendant never returned the phone calls. An assistant manager of Parkview testified that before defendant could move in, she was required to have the electricity placed in her name and provide the confirmation numbers to the apartment complex. Parkview, however, only had the confirmation numbers without knowing the name attached to the account. The assistant manager also testified that defendant’s lease commenced on December 17, 2009. An identity fraud specialist for DTE testified that the electrical services for apartment 214 were placed in the victim’s name on December 17, 2009, based on a request that was most likely made over the telephone. The caller provided the exact telephone number that defendant provided in her employment verification form to Parkview.

On January 13, 2010, the electricity for apartment 214 was taken out of the victim's name and reverted to Parkview's name. The assistant manager spoke with defendant about the outstanding electricity bill for February and March 2010, and defendant said she had thought the electricity was in her name. The assistant manager told defendant that if she brought in previous bills with her name on it, they could contact DTE about the issue. Defendant never brought in the bills and instead reimbursed Parkview for the outstanding bill.

Although the electrical services were not in defendant's name, DTE began sending the bills to defendant, and the bills were paid. On April 12, 2010, there was a request to place apartment 214's electrical services in the name of Shimbu Barua. Because of the fraud allegations, the fraud specialist investigated this request. When Parkview verified that Barua was not a tenant, the request was cancelled and the electric bills continued to be sent to defendant. On May 25, 2010, defendant finally requested that the electricity be transferred to her name, although she was initially denied because she had an outstanding balance of \$270.52 and a deposit owing.

After the prosecution rested, defendant moved for a directed verdict, which the trial court denied. The jury subsequently found defendant guilty of identity theft, MCL 445.65. Defendant filed a motion for a new trial or a judgment of acquittal pursuant to MCR 6.431(B) and (D), which the trial court also denied. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

“Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt.” *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). This Court reviews “de novo a challenge on appeal to the sufficiency of the evidence.” *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal quotations and citations omitted). “All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). However, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

B. Analysis

MCL 445.65(1)(a), in relevant part, provides:

(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.

“Personal identifying information” is defined as “a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person’s financial accounts, including, but not limited to, a person’s name, address, telephone number” or “social security number” MCL 445.63(q).

In the instant case, the evidence sufficiently established that defendant used another’s personal information to obtain services. MCL 445.65(1)(a)(i). It is undisputed that someone contacted DTE and requested that the electricity for apartment 214 be placed in the victim’s name. Defendant’s name was on the lease for apartment 214, she signed the lease the same day the electricity was placed in the victim’s name, and she provided the apartment complex with confirmation numbers for the electricity for the apartment. After the victim discovered the fraud, the bills were sent to defendant, and they were paid. While defendant told the assistant manager that she thought the electricity was in her name, she declined to show the manager former bills with her name on it and instead reimbursed the apartment complex for the bills. Then, in April 2010, someone contacted DTE and requested that the electrical services for apartment 214 be placed in the name of Shimbu Barua. Only after this request was denied did defendant finally contact DTE to have the electricity placed in her name, despite an outstanding balance with DTE.

As noted above, all evidence is viewed in a light most favorable to the prosecution and conflicts in the evidence are resolved in favor of the prosecution. *Tennyson*, 487 Mich at 735; *Unger*, 278 Mich App at 222. Thus, a reasonable jury could have concluded that defendant resided in apartment 214 and contacted DTE to have the electricity placed in the victim’s name. While it is true that there is no direct evidence establishing that it was defendant who called DTE on December 17th, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (quotation marks and citation omitted). Such evidence includes the fact that the telephone number the caller provided to DTE matched the telephone number defendant provided as her place of employment. A jury also could have reasonably inferred that because defendant’s name was on the lease and the bills addressed to defendant were paid, it was defendant alone who benefitted and orchestrated the identify theft of the victim.

In regard to intent, MCL 445.65 requires that a defendant act with the intent to defraud or to violate the law. “[B]ecause of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998). Here, the victim testified that she did not know defendant and did not authorize the use of her name to obtain electrical services at Parkview apartments. Thus, a rational jury could infer that defendant acted with an intent to defraud the victim, as the victim was completely unaware of defendant’s actions and did not authorize them. Moreover, MCL 445.65 does not

require proof of the manner in which the personal identifying information was acquired, and courts may not read anything into unambiguous statutes. *People v Patton*, 285 Mich App 229, 234; 775 NW2d 610 (2009). Therefore, we find that defendant's conviction was supported by sufficient evidence.

III. MOTION FOR NEW TRIAL/DIRECTED VERDICT OF ACQUITTAL

A. Standard of Review

Next, defendant argues that the trial court erred in denying her motion for a new trial and directed verdict of acquittal, MCR 6.431(B), (D). "We review for an abuse of discretion a trial court's decision to grant or deny a new trial." *People v Terrell*, 289 Mich App 553, 558-559; 797 NW2d 684 (2010). "An abuse of discretion occurs when the trial court's decision is outside the range of principled outcomes." *Id.* "This Court reviews de novo a trial court's decision on a motion for directed verdict to determine whether the prosecutor's evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt." *People v Martin*, 271 Mich App 280, 319-320; 721 NW2d 815 (2006).

B. Analysis

Defendant argues that the trial court erred in denying her motion because the evidence adduced at trial preponderated so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. However, defendant offers nothing more than conclusory statements that echo the above challenge to the sufficiency of the evidence.¹ Further, as stated above, the evidence established that defendant signed a lease for apartment 214 the same day the electricity was placed in the victim's name, and defendant provided the apartment complex with confirmation numbers verifying that she had obtained electricity. Also, the person who requested that the electricity be placed in the victim's name provided the same telephone number that defendant disclosed was her employer's number. Defendant also failed to provide the apartment complex with past bills with her name on it, and when bills were sent to defendant after the fraud was discovered, they were paid. Considering that all the evidence at trial indicated that defendant used the victim's personal identifying information to obtain services, MCL 445.65, the trial court did not err in denying defendant's motions.

IV. CONCLUSION

¹ "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001) (quotation marks and footnote omitted).

There was sufficient evidence that defendant committed identity theft and the trial court did not err in denying her motion for a new trial and directed verdict of acquittal. We affirm.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan