

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VELTON RAY MILLER, JR.,

Defendant-Appellant.

UNPUBLISHED

January 12, 2016

No. 324289

Cheboygan Circuit Court

LC No. 13-004724-FC

Before: RONAYNE KRAUSE, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Defendant, Velton Ray Miller, Jr., was convicted by a jury of identity theft, MCL 445.65, and stealing or retaining a financial transaction device without consent, MCL 750.157n(1). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to 365 days in jail for each conviction. Defendant appeals as of right, and we affirm.

In June 2012, the victim, Shane Bailey, quickly moved from a rental home in Grayling, Michigan, to Cheboygan, Michigan, to pursue a new career opportunity. The victim testified that, in his haste to leave the rental home, it was "very possible" that he left behind paperwork containing his banking information. Defendant and his wife, Jennie, moved into the rental home shortly after the victim's departure. Upon moving in, defendant and Jennie cleaned the residence for the landlord. In September 2012, the victim noticed several unauthorized charges to his PNC Bank checking account. He reported these unauthorized charges to PNC Bank and law enforcement, and PNC Bank began an investigation. In December 2012, the victim noticed additional unauthorized charges to his checking account. He again contacted PNC Bank and law enforcement, and then provided the Cheboygan County Sheriff's Department with a packet of information containing transaction reports for his PNC Bank account.

In its investigation, PNC Bank discovered that three of the four accounts benefited by the unauthorized withdrawals from the victim's checking account were held in defendant's name. The fourth account holder's name was "Jennifer Miller." All four of the accounts listed defendant's updated address, which also appeared on his driver's license, as the address of record. All transfers to the accounts were made by telephone payments after a caller provided the victim's checking account number.

On appeal, defendant argues that there was insufficient evidence to convict him of identity theft and stealing or retaining a financial transaction device without consent. He only contests the element of identity. “[I]dentity is an element of every offense.” *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). Defendant contends that there was insufficient evidence to support the element of identity because none of the representatives who processed the telephone payments could directly identify him as the caller, and because the prosecution did not present evidence regarding the telephone number used to make the payments.

This Court reviews sufficiency of the evidence claims de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). “[A] reviewing court ‘must consider not whether there was any evidence to support the conviction but whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt.’” *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748, amended 441 Mich 1201 (1992), quoting *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979). The Court “must view the evidence in the light most favorable to the prosecution,” *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012), and “should not interfere with the jury’s role of determining the weight of the evidence or the credibility of witnesses,” *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). “Circumstantial 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). Additionally, any factual conflicts are to be resolved in favor of the prosecution. *Wolfe*, 440 Mich at 515.

In this case, direct identification evidence was not required to establish defendant’s identity as the perpetrator because the abundant circumstantial evidence linking defendant to the benefiting accounts was more than enough to enable a rational jury to infer beyond a reasonable doubt that defendant committed the crimes. See *Wolfe*, 440 Mich at 513-514; see also *Allen*, 201 Mich App at 100. It is likely defendant had access to the victim’s banking information, he was benefited by the unauthorized transactions, and he was connected to each transaction by name or address. Therefore, we conclude that the prosecution presented “ ‘sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt.’ ” *Wolfe*, 440 Mich at 513-514, quoting *Hampton*, 407 Mich at 366.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien