

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROGER BERTRAM BARNES, JR.,

Defendant-Appellant.

UNPUBLISHED

October 19, 2010

No. 293352

Antrim Circuit Court

LC No. 09-004247-FC

Before: HOEKSTRA, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conducting a criminal enterprise, MCL 750.159i(1). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to 4 to 20 years' imprisonment. Defendant appeals as of right. Because defendant fails to establish that the prosecution failed to present sufficient evidence to prove the predicate offenses of his conviction, we affirm.

Daniel Lidster testified that, pursuant to defendant's directions, he obtained a doing-business-as (DBA) for Torch Lake Landscaping (Torch Lake), a fictitious business, from the Antrim County Clerk's office. Lidster also opened a business checking account for Torch Lake at the Alden State Bank. He deposited a small amount of cash into the account and ordered business checks. Lidster testified that defendant instructed him that the way to make money was to get some check cashiers to cash Torch Lake payroll checks at local businesses that were known not to prosecute the writing of bad checks.

Nathan Herriff testified that defendant recruited him as a check cashier and drove him to businesses to cash Torch Lake payroll checks. Defendant provided him with room and board and drugs as compensation.

From December 30, 2004, to January 5, 2005, Lidster, his wife, and Herriff presented 36 Torch Lake payroll checks, totaling over \$12,000, for payment at numerous businesses in Antrim, Emmet, Grand Traverse, Kalkaska, and Charlevoix counties. The Alden State Bank closed the Torch Lake account on January 3, 2005, because of "too many overdrafts in way too short of a period." Defendant's name did not appear on any of the checks.

On appeal, defendant argues that his conviction is not supported by sufficient evidence because there was no evidence that he cashed any of the Torch Lake checks or that his name

appeared on any of the checks as either the endorser or as the payee. The basis of defendant's claim is that the predicate offense to his conviction was the "cashing of several bad checks."

We review a claim of insufficient evidence de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). We view the evidence in a light most favorable to the prosecution to determine whether a 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), amended 441 Mich 1201 (1992).

MCL 750.159i(1) provides:

A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.

A "pattern of racketeering" must include at least two incidents of racketeering. MCL 750.159f(c). Racketeering is defined as:

committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the following:

* * *

(u) A felony violation of chapter XLI [MCL 750.248 *et seq.*], concerning forgery and counterfeiting. [MCL 750.159g.]

Defendant claims that the predicate offense for his conviction was the "cashing of several bad checks." To support his claim, he cites MCL 440.3401(1), a section of the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*, which addresses how a signature on a negotiable instrument affects a party's liability:

A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under [MCL 440.3402].

However, contrary to defendant's assertion, the predicate offense for his conviction was not the "cashing of several bad checks." Rather, the predicate offenses with which defendant was charged and the jury was instructed were (1) soliciting Herriff to commit the crime of uttering and publishing and (2) conspiring to commit or aiding and abetting the commission of uttering and publishing. The UCC signature provision is simply irrelevant to whether defendant committed these predicate offenses. Because defendant does not argue that the prosecution failed to present sufficient evidence to prove that he solicited Herriff to commit the crime of uttering and publishing or that he conspired to commit or aided and abetted the commission of uttering and publishing, the actual predicate offenses of his conviction, we affirm defendant's conviction of conducting a criminal enterprise.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens