

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABDELKADER HASSAN FARES,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 181654

LC No. 93-66745-FY

Before: Young, P.J., and Corrigan and Callahan,* JJ.

PER CURIAM.

Defendant was convicted of altering medical records, MCL 750.492a; MSA 28.760(1) and was sentenced to 24 months probation and ordered to pay fines and expenses. He appeals as of right and we affirm.

Defendant argues that insufficient evidence existed to support his conviction. We disagree and find that, reviewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that defendant placed misleading or inaccurate information in his patients' medical records in violation of MCL 750.492a; MSA 28.760(1). *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184, 186 (1993).

In particular, there was sufficient evidence to find that, (1) as a medical doctor, defendant qualified as a health-care provider; (2) defendant's instruction to his office staff to take EKG strips already in the files, tear them and date the extra pieces to correspond to notations in the file that indicated an EKG had been performed but lacked documentation had the effect of placing inaccurate and misleading information in the file; and (3) this misrepresentation in effect purporting to show that this diagnostic procedure was performed on a certain date demonstrated that this information related to diagnosis. Further, where defendant admitted that he instructed his staff to make the alterations, there was sufficient evidence to find that he had the requisite intent.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant's argument that there was no evidence to support the trial court's finding that EKG strips were intermingled amongst different patient's files is without merit. Although some facts were contested, the trial court, as factfinder, resolved those conflicts.

Defendant next argues that this crime is one of specific intent and that the evidence does not support finding that defendant possessed the requisite specific intent. Where defendant testified that he told his employees to alter the files, it is clear that he subjectively knew and intended that that would occur. *People v American Medical Centers of Michigan, Ltd*, 118 Mich App 135, 153; 324 NW2d 782 (1982). Thus, even if this crime is one of specific intent, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to find that element satisfied.

Defendant argues that the trial court erred by finding that he willfully committed the offense because the prosecution failed to show that he was aware of the unlawfulness of his conduct. We disagree. Defendant was charged under a statute that made his conduct a felony if it was either intentionally or willfully done. MCL 750.492a(1)(a); MSA 28.760(1)(1)(a). Use of the term "willfully" does not necessarily require that the defendant be aware of the criminality of his conduct. Rather, "willfully" connotes an evil intent or bad purpose. See, *People v Lerma*, 66 Mich App 566, 570; 239 NW2d 424, 426, (1976); *City of Detroit v Pillon*, 18 Mich App 373, 376; 171 NW2d 484, 486 (1969).

Defendant's argument that reversal is required because the court failed to make specific findings of fact as required by MCR 2.517 makes little sense where defendant admitted to the intra-file tampering necessary for a conviction and where the record demonstrates that the trial court made specific findings as to each count of which defendant was convicted.

Defendant's argument that the torn strips placed in files were not misleading or inaccurate is without merit where his actions would inherently mislead anyone looking at the file into believing that each strip was the result of a EKG test performed on the date written on the strip.

Finally, defendant raises for the first time in his reply brief the argument that he was convicted on the basis of facts not alleged in the information. This argument was improperly raised as it was not in accordance with MCR 7.212(G). Further, there has been no prejudice shown as required by MCR 6.112(F). Defendant admitted facts alleged in the information, i.e. intra-file tampering, and this admission clearly supports his conviction.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Maura D. Corrigan

/s/ Michael J. Callahan