

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RITA RAPHAEL JABRO-MARROGHI, D.D.S.,

Defendant-Appellee.

UNPUBLISHED

February 1, 2007

No. 265413

Ingham Circuit Court

LC No. 05-000096-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PLYMOUTH ROAD DENTAL, P.C.,

Defendant-Appellee.

No. 265414

Ingham Circuit Court

LC No. 05-000095-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals as of right from the circuit court's orders granting defendants' motions to quash the information. We affirm the dismissal of the four counts that plaintiff had elected to withdraw, but reverse the dismissal of the six counts upon which plaintiff wished to proceed, and remand. This case is being decided without oral argument in accordance with MCR 7.214(E).

Defendants were charged with presenting false claims to the Medicaid system, in violation of MCL 400.607(1). Because the counts and charges are identical as to both, and because the individual defendant is the sole shareholder of the corporate one, we refer to defendants collectively without differentiation.

The Medicaid system enrolls providers of dental services, who agree to submit invoices to Medicaid in accordance with applicable rules and procedures. A participating dentist is provided a manual setting forth those rules and procedures, and is given a provider number. A participant is also provided with such information as procedure codes, and their definitions, to

guide the submission of invoices in the proper form and with the necessary information. Defendants are enrolled in this program.

Plaintiff asserted that defendants submitted ten invoices, involving two patients, for dental work or services that were not performed as billed. Plaintiff's expert, a general dentist, testified at the preliminary examination that his examinations of the two patients in question brought to light discrepancies between defendants' descriptions of work done and what actually had been done. The expert detailed several instances of finding no evidence of restorations ostensibly done, or where restorative work actually done was less extensive than the records indicated.

Plaintiff asked the district court to bind defendants over for trial on six of the ten counts originally charged. The district court concluded that defendants "submitted invoices to Medicaid that charged for services not performed," that they "knew or should have known such double-billing was fraudulent," and that the evidence supported "a determination that there is probable cause to believe each crime alleged was committed and that each defendant committed each of the crimes . . .". The district court bound defendants over for trial on all ten counts.

Before the circuit court, plaintiff withdrew four charges. Defense counsel challenged the remaining counts on the ground that "the alleged over billings might . . . have been nothing more than mistakes," and that the evidence did not show a pattern of such errors sufficient to establish the knowledge element required for a Medicaid fraud prosecution.

The circuit court apparently agreed, and dismissed all charges. The court held that "it's pretty elementary that you can draw an inference from facts but you cannot draw an inference from an inference," then cited a 1942 case for the proposition. The court elaborated: "What we have is an inference about what was done in August of 2001 from proven facts from a somewhat earlier time. And then from that, we draw another inference and we draw another inference. That is impermissible. The magistrate could not do that."

"This Court reviews for an abuse of discretion both a district court's decision to bind a defendant over for trial and a trial court's decision on a motion to quash an information." *People v Fletcher*, 260 Mich App 531, 551-552; 679 NW2d 127 (2004). A defendant must be bound over for trial if, at the conclusion of the preliminary examination, probable cause exists to believe that the defendant committed the crime. *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). "Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense charged." *Id.*, citing MCL 766.13; MCR 6.110(E). Guilt need not be established beyond a reasonable doubt, but there must be evidence of each element of the crime charged, or evidence from which the elements may be inferred. *People v Flowers*, 191 Mich App 169, 179; 477 NW2d 473 (1991).

As an initial matter, we note that the circuit court's concern that the district court drew inferences from inferences was misplaced. Although earlier caselaw did indeed hold that inferences may not be drawn from other inferences, our Supreme Court expressly overruled those precedents and abolished that rule. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Accordingly, "if evidence is relevant and admissible, it does not matter that the

evidence gives rise to multiple inferences or that an inference gives rise to further inferences. The . . . test is . . . “logical relevance.” *Id.*, citing MRE 401.

Among the elements of Medicaid fraud is that “the accused knows the claim is false, fictitious or fraudulent.” *Orzame, supra* at 558. MCL 400.602(f) defines “knowing” and “knowingly” as meaning “that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a [M]edicaid benefit.” The statute adds, “Knowing or knowingly does not include conduct which is an error or mistake unless the person’s course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.”

Defendants emphasize that there are but six incidents at issue, adding up to only hundreds of dollars in dispute, and insist that this is not sufficient to show a systematic or persistent tendency to cause inaccuracies. We disagree, noting that in the procedural context of this case, the trial court needed to find only a reasonable ground of suspicion, not guilt beyond a reasonable doubt, as the issue appealed from was whether to continue or to dismiss the proceedings.

We find that the evidence in this case supports a finding of probably cause, because the record suggests a reasonable fact finder could find there were six instances of purposeful deceit. The number of instances and remarkably small dollar amounts at issue do not of themselves render the charged errors honest mistakes. “[I]f a defendant contractually agrees to abide by billing procedures and has access to the applicable manuals and documentation controlling those procedures, deviations from the established procedures are presumed to be intentional or provide evidence that the defendant knew the submitted claims were false.” *Orzame, supra* at 560. Accordingly, practitioners who “have used billing codes that did not accurately represent the actual services rendered . . . are presumed to be ‘in possession of facts under which [they are] aware or should be aware of the nature of [their] conduct.’” *Id.* at 562 (bracketed interpolations in the original). “[C]laims submitted for . . . services not performed[] qualify as fraudulent claims.” *Id.*

The latter statements comport with the principle that “circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.” *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). And it is not necessary for the prosecution to disprove every reasonable theory of innocence. See *Hardiman, supra* at 424.

Because plaintiff produced evidence that defendants submitted several invoices for services beyond what was actually performed, and because the district court was free to draw all reasonable inferences from the evidence, including inferences built in part on other such inferences, we conclude that the circuit court erred in dismissing the six counts upon which plaintiff sought to proceed.

We additionally reject the argument that no false billings may be imputed to the individual defendant. The parties do not dispute that the individual practitioner’s initials appear on the pertinent records; that fact, plus her sole ownership of the defendant business entity, suggest that Dr. Jabro-Marroghi may be held responsible for the errors.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper