

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JENNIFER NICOLE REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

April 29, 2010

No. 288987

Washtenaw Circuit Court

LC No. 07-1148-FC

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions for insurance fraud, MCL 500.4511(1), and conspiracy to commit insurance fraud, MCL 500.4511(2). We affirm.

The facts in this case are, with one exception, not seriously in dispute. On the night of April 28, 2006, defendant, a Washtenaw County Sheriff's Deputy, was out at a bar with Ryan Stuck and Sean Hoy, both of whom were also Washtenaw County Sheriff's Deputies. All three of them arrived and departed in their own vehicles. Later that night—or possibly early the next morning—Christopher Campbell,¹ another Washtenaw County Sheriff Deputy, called defendant to ask her to pick up Hoy and take Hoy back to his home. Campbell was married, and defendant and Campbell were having a relationship. Defendant drove Hoy back to Hoy's condominium and went inside to use the bathroom. Campbell also arrived. Defendant and Campbell had an argument that became physical, and Campbell left.

Defendant then also left and, when she got to her car, she observed that the front driver-side door area was dented. Defendant concluded that, because of their recent altercation and the way in which their respective vehicles had been parked, Campbell had caused the damage. She told people that she “knew” that Campbell had done it. She confronted Campbell, who denied it but agreed to help pay for the damage, but he wanted to avoid the matter being brought to his insurer because he did not want his wife to find out. It is not disputed that defendant did not personally witness the accident.

¹ Campbell is the only actor in this matter who did not ultimately testify. He apparently pleaded no contest to insurance fraud on the basis of the same events that are at issue in this matter.

In the afternoon of April 30, 2006, defendant approached Jeffrey Harvey, another Washtenaw County Sheriff's Deputy, and asked Harvey to prepare an accident report. Such reports are called "UD10" reports. Harvey declined; he explained that he did so solely because defendant had explained that Campbell had caused the damage, and Harvey was friends with both defendant and Campbell and did not want to get involved. Later that same evening, Campbell created a UD10 that matched the incorrect version of events defendant later provided to her insurer.² Campbell gave defendant one of his business cards with an incident number written on it, and that number matched the incident number on the UD10.

Defendant contacted her insurer on May 1, 2006, to file a claim. Defendant reported that the loss had occurred on April 30, 2006, in the parking lot at the Washtenaw County Sheriff's station. She also stated that a police report had been made, and she provided the incident number matching the UD10. However, her insurer never received a copy of the UD10 itself. Critically to this case, defendant never informed her insurer about Campbell. Witnesses from the insurer explained that there was no dispute that the vehicle had been damaged, that everything paid out was entirely legitimate, and that an incorrect date and location for the loss did not affect the validity of the claim unless the inaccuracy was intentional. However, if another party was known, the insurer would have pursued that other party for compensation, or at least investigated that possibility.

This Court reviews de novo questions of law, including the proper interpretation of a statute. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997). A claim of insufficiency of the evidence is reviewed de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), but the evidence is viewed in the light most favorable to the jury's verdict to determine whether a rational trier of fact could have found the essential elements of a crime proven beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003). This Court does not weigh evidence, and it defers to the trier of fact's superior ability to evaluate the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-516; 489 NW2d 748 (1992).

Defendant was convicted of insurance fraud, MCL 500.4511(1), and conspiracy to commit insurance fraud, MCL 500.4511(2). These are statutory offenses, defined as follows:

(1) A person who commits a fraudulent insurance act under section 4503 is guilty of a felony

(2) A person who enters into an agreement or conspiracy to commit a fraudulent insurance act under section 4503 is guilty of a felony

² The only serious factual dispute is whether defendant was involved in the creation of this UD10. She was present in the same building at the time it was created, and both she and Campbell had the necessary security privileges and technical knowledge to generate one. However, she denied even knowing about it until confronted with a copy during the investigation of this matter, her insurer never received a copy of it, and there was no affirmative evidence that she had any involvement in its creation.

The relevant portions of MCL 500.4503 are as follows:

A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:

* * *

(c) Presents or causes to be presented to or by any insurer, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false information concerning any fact or thing material to the claim.

(d) Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim.

Defendant argues that none³ of the falsehoods she presented to her insurer were concerning any fact or thing material to the claim.

At issue is the fact that defendant indisputably made a claim to her insurer for damage to her car caused by an unknown other driver, despite allegedly knowing—albeit without incontrovertible proof or having witnessed it firsthand—that Campbell had been that other driver. There was ample evidence from which the jury could conclude that defendant had reason to know that Campbell was responsible, particularly including the positioning of the vehicles. More importantly, the insurer did not require its insured to conduct his or her own investigation, but simply to report what the insured knew, even if that knowledge fell short of absolute certainty. Defendant at trial spent considerable time splitting semantic hairs about the difference between “knowing” that Campbell damaged her car for the purpose of telling her friends co-workers, versus “knowing” that Campbell damaged her car for the purpose of being absolutely

³ We disagree that the prosecution or defendant’s insurer conceded that the incorrect date and location were immaterial; indeed, a witness for defendant’s insurer explained that the inaccuracies would be considered fraudulent if they were intentional. Furthermore, the combination of inaccuracies may constitute circumstantial evidence supporting the jury’s findings that defendant engaged in fraud and in a conspiracy to commit fraud. However, it was undisputed, and indeed agreed-to by the insurer’s witnesses, that the claim itself was legitimate and that the insurer did not pay any money that was not warranted by the claim. Furthermore, the only alleged harm to the insurer was the loss of its ability to recoup its expenditures because defendant failed to tell the insurer that she was aware of who damaged her car. We decline to conclude that the date and location inaccuracies were immaterial, but we decline to concern ourselves with them.

certain; but this distinction is irrelevant. The simple fact is that defendant made an insurance claim and failed to disclose her knowledge, limited though it may have been, of who might have caused the damage.

Furthermore, it is not seriously disputable that defendant omitted that information with the intent of at least deceiving her insurer, and furthermore she omitted that information pursuant to an agreement with Campbell to do so. The primary purpose may have been to ensure that Campbell's wife did not discover Campbell's involvement with defendant. But that goal was nevertheless to be accomplished in part by preventing defendant's insurer from learning about Campbell, in order to ensure that defendant's insurer would not ultimately take some action that would convey that information back to Campbell's wife. The statute defines as including a knowing omission "with an intent to injure, defraud, *or* deceive" (emphasis added). Whether or not defendant intended to cause her insurer any harm is not necessarily relevant.

The heart of defendant's argument is that Campbell's involvement in the accident was not a "fact . . . material to the claim." Defendant is incorrect. Even though the insurer's witnesses testified that they would have paid the same amount of money had they known about Campbell, the insurer would have processed the claim in a different way. In other words, it may not have been material to whether the insurer paid the claim, but it was material to how the insurer would handle the claim.

Defendant further argues that her insurer did not have any right to subrogation at the time she reported the claim, because that right to subrogation would not exist until her insurer actually paid money. This argument is irrelevant. As a general matter, a "crime is complete as soon as every element in the crime occurs." *US v Musacchio*, 968 F2d 782, 790 (CA 9, 1991). The crime of insurance fraud was complete upon defendant's presentation to her insurer of a claim that she knew contained incorrect material information, for the purpose of deceiving her insurer. Similarly, the crime of conspiracy to commit insurance fraud was complete upon reaching an agreement to do so. Whether the insurer was actually harmed at that time is not pertinent to any element of the crime, and in fact, whether the insurer was harmed *at all* is not even relevant under the statute.

The record contains ample factual support for the jury's finding that defendant committed insurance fraud and engaged in a conspiracy to commit insurance fraud.

We reject defendant's argument that the trial court erred in refusing to quash her charges. "A circuit court's decision to grant or deny a motion to quash charges is reviewed *de novo* to determine if the district court abused its discretion in binding over a defendant for trial." *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000). The district court is required to bind a defendant over for trial if the prosecution provides enough evidence to demonstrate probable cause that a felony was committed and that the defendant committed it. *Id.* at 14. We conclude that the prosecution did so. Finally, we reject defendant's argument that the jury should have been instructed on the right of subrogation. Subrogation is irrelevant to the charged offenses. More significantly, trial counsel stated that the defense was satisfied with the instructions as they were given. Therefore, there is no error to review. *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004).

Affirmed.

/s/ Alton T. Davis

/s/ Pat M. Donofrio

/s/ Cynthia Diane Stephens