[Cite as *State v. Davis*, 2012-Ohio-1394.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio — Court of Appeals No. WD-10-077

Appellee — Trial Court No. 2009CR0528

v.

Christopher Davis — **DECISION AND JUDGMENT**

Appellant — Decided: March 30, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Melissa A. Schiffel and David E. Romaker, Jr., Assistant Prosecuting Attorneys, for appellee.

Brian D. Smith, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas that found appellant guilty, following trial to a jury, of one count of complicity to insurance fraud, one count of complicity to theft and one count of engaging in a pattern of corrupt activity with a specification that at least one of the incidents of corrupt activity

was a felony of the first, second or third degree. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} The following undisputed facts are relevant to the issues raised on appeal. Royal Treatment Urgent Care ("Royal Treatment" or "clinic") opened in August 2003 in Perrysburg, Wood County, Ohio, and was operated by Dr. Stacey Royal. Appellant, Royal's husband, worked in the office as the "operations manager." In its early years of operation, Royal Treatment employed Patricia Oberhaus and Charlene Murphy as medical billers at different times. During the years relevant to this matter, appellant and the couple's two daughters lived on Plum Leaf Lane in Toledo. It is unclear from the record whether Dr. Royal lived at the same Toledo address, although there was testimony that the doctor used Plum Leaf Lane as her address.

{¶ 3} Sometime in 2007, FrontPath Health coalition, a medical insurance company, contacted the Ohio Department of Insurance ("ODI") and expressed concern that bills submitted by Royal Treatment were excessive and possibly for services not rendered. As a result, in 2008, ODI investigator Beth McCloskey began looking into the billing operations of Royal Treatment. As the investigation progressed, McCloskey learned that the majority of claims submitted to several different insurance companies by Dr. Royal were for the doctor herself, appellant and their two children. McCloskey discovered approximately 300 dates of service over a four-year period just for appellant and his two children. Thereafter, the ODI executed a search warrant at the offices of Royal Treatment. (The exact date the warrant was executed is not clear from the record.)

Upon searching the medical office, McCloskey was unable to locate any patient files or records to substantiate the many treatment claims regarding appellant or his two children, with the exception of one "nearly empty" file that was labeled with one daughter's name, and contained brief information on some lab work that had been done.

{¶ 4} On November 9, 2009, appellant was indicted on one count of complicity to insurance fraud in violation of R.C. 2913.47(B)(1) and 2923.03(A)(2), one count of complicity to theft in violation of R.C. 2913.02(A)(3) and 2923.03(A)(2), and one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), with a specification that at least one of the incidents of corrupt activity was a felony of the first, second or third degree. The incidents of corrupt activity were set forth as insurance fraud and theft. The enterprise, for purposes of R.C. 2923.31, was defined to include Stacey Royal, Christopher Davis and Royal Treatment Urgent Medical Care. As to "Incident One," the indictment stated

> On or about October 11, 2004 and continuing through July 7, 2009, Dr. Stacey Royal did submit claims for payments to insurers Medical Mutual of Ohio, United Health Care, Anthem Blue Cross/Blue Shield, and Michigan Blue Cross/Blue Shield for her family member: Christopher Davis (D.O.B. 2/9/76). Dr. Royal submitted claims for Christopher Davis for more than 180 treatments and office visits during this time period for services excluded by the insurers' coverage.

The indictment specified that appellant "committed further incidents of corrupt activity as alleged in Counts One and Two of the Indictment."

{¶ 5} Appellant withheld entering a plea pending a competency evaluation. The matter was set for a competency hearing on January 15, 2010. At the competency hearing, the report submitted by the Court Diagnostic and Treatment Center indicated that its evaluation was inconclusive. Accordingly, the trial court found that further investigation was warranted and appellant was ordered to undergo a 20-day inpatient evaluation at the Northwest Ohio Psychiatric Hospital. At a second competency hearing held on February 26, 2010, the trial court found appellant competent to stand trial. Appellant entered a not guilty plea to all counts.

{¶ 6} The case proceeded to a jury trial on September 13 and 14, 2010, and the following evidence was presented.

{¶ 7} Patti Hammerle testified that she worked for Blue Cross/Blue Shield of Michigan ("BCBS") in the corporate financial investigations department. Hammerle stated that when she was contacted by Beth McCloskey with the Ohio Department of Insurance and asked to provide records for all billings submitted by Royal Treatment, she and one of the company's analysts assembled a spread sheet with the requested information. The records revealed that appellant and his two children were subscribers on a BCBS contract through appellant's employment with the State of Michigan Department of Corrections and that claims had been submitted by Royal Treatment for treatment provided to appellant and the children by Dr. Royal. Hammerle stated that

pursuant to BCBS policy, a physician may not bill the company for treatment provided by the physician to his or her own family members.

{¶ 8} Charlene Murphy testified that she has worked in the medical billing profession for 26 years and worked as a medical biller for Royal Treatment for seven or eight months. Murphy did not specify the exact dates of her employment with Royal Treatment. After Murphy was hired, she and appellant attended a medical billing seminar together, which was one of the factors that led Murphy to believe that appellant was familiar with the clinic's billing software. Murphy's responsibilities included entering patients' charges into the billing software but she did not transmit the claims electronically to the insurers because Dr. Royal told her she would do it herself. At times, appellant would observe Murphy while she entered the charges into the system. Murphy testified that "a lot of the time" appellant would ask her why she did not enter a "higher code" for a particular treatment that had been rendered. Murphy testified that billing at a higher code was synonymous with billing for a higher-priced service; her understanding was that only the treating physician could change the existing code to a higher level. She testified further that any time a claim was rejected by one of the insurers Dr. Royal would personally resubmit it. Murphy stated that, compared with her other jobs in medical billing, the billing process at Royal Treatment was not "normal," in that at the other offices, "[the] doctor and the operational manager never had their hands in it like they did at Royal Treatment."

{¶ 9} Patricia Oberhaus testified that she was hired by appellant in April 2005 to process billing for Royal Treatment. At that time, she had previous experience in medical billing. Oberhaus explained that there is a point at which a "batch" of billings, or claims, that have been entered into the system for transmittal to the insurer is "saved" and cannot be altered. While working for Royal Treatment, Oberhaus was never permitted to "save" the day's billings to the point at which they could not be altered, or to transmit them to the insurer. Therefore, whenever she finished working on a batch of claims the data remained capable of being altered. Oberhaus testified to her understanding that it is not proper for a physician to submit an insurance claim for treatment of his or her own child. At times, Oberhaus would be called away from her task of entering claims to answer the phone or speak with a patient and, upon returning to the billing, would see that the forms she was working on had been put away.

{¶ 10} ODI healthcare fraud investigator Beth McCloskey testified as to her investigation of Royal Treatment after the agency was contacted by FrontPath. McCloskey, who specializes in fraud committed by healthcare providers, originally became involved with an investigation of fraud charges brought against Dr. Royal and through that investigation became familiar with claims data submitted by appellant. When McCloskey examined the claims data submitted to various insurers by Royal Treatment, she saw that a "large number" of claims submitted by the clinic were for appellant and his two children. McCloskey discovered that at least half, and in some cases all, of those claims were on behalf of the doctor's family members. McCloskey

stated that the number of claims specifically for Dr. Royal's family members tended to be a much higher percentage than what was normally expected from one family, "let alone [the doctor's] own family." McCloskey also found insurance claims submitted by Dr. Royal and paid on behalf of the doctor's parents and her sister as well as for several members of appellant's immediate family. McCloskey testified that some insurance policies contain exclusions for claims billed for a doctor's family members if the doctor is the treating physician. McCloskey also learned that Royal Treatment provided health insurance to its employees, which covered appellant, the two children, and one of appellant's nephews who also was listed on some payroll documents. She also learned that at the same time appellant worked for Royal Treatment, he was employed by the Michigan Department of Corrections and through that job received insurance with Michigan Blue Cross/Blue Shield.

{¶ 11} Eventually, McCloskey was able to see the Royal Treatment premises when a search warrant was executed, sometime during 2008. At the time of the search, the office appeared to have "very little patient flow." Upon searching the office, McCloskey found "a few" patient files. There were no files for appellant or for one of his children. A file labeled with the other child's name contained some lab testing documents, some of which had appellant's and the other child's names on them. The file "was not voluminous" and did not contain any progress notes written by the treating physician. McCloskey stated that patient files are one piece of evidence that can indicate

what services were rendered and whether those services are reflective of bills submitted to the insurance company.

{¶ 12} At trial, the parties stipulated to the authenticity and admissibility of several state's exhibits as follows: records and summaries of claims processed by Dr. Royal and submitted to Medical Mutual of Ohio with a summary of those records; insurance claims, checks and vouchers for all claims submitted to United Health Care by Dr. Royal with a summary of those claims processed for patients Chris Davis and the two children; and insurance claims, checks and vouchers for claims submitted by Dr. Royal to Michigan and Anthem Blue Cross/Blue Shield with a summary of those claims processed for patients Chris Davis and the two children.

{¶ 13} On September 14, 2010, the jury found appellant guilty of all three counts. It is from that judgment that appellant appeals.

{¶ 14} Appellant sets forth the following assignments of error:

> I. The State failed to produce sufficient evidence to convict the Defendant-Appellant of the complicity to commit insurance fraud, complicity to commit theft, and engaging in a pattern of corrupt activity, violating due process.
>
> II. The Defendant-Appellant's convictions are against the manifest weight of the evidence.

{¶ 15} "Sufficiency" of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime.

State v. Thompkins, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence to support a criminal conviction, an appellate court must

> examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 16} A conviction that is based on legally insufficient evidence constitutes a denial of due process, and will bar a retrial. *Thompkins*, *supra*, at 386-387.

{¶ 17} In contrast, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, *supra*, at 387. In making this determination, the court of appeals sits as a "thirteenth juror" and, after "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*, *supra*, at 386, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 18} Appellant's first and second assignments of error will be addressed together as both can be resolved by examining the evidence presented at trial as summarized herein.

{¶ 19} Appellant was found guilty of one count of complicity to insurance fraud in violation of R.C. 2913.47(B)(1), a third-degree felony, which provides, in relevant part:

> (B) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:
>
> (1) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive * * *.

{¶ 20} Appellant was also found guilty of one count of complicity to theft in violation of R.C. 2913.02(A)(3), a fourth-degree felony, which provides, in relevant part, "(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: * * * (3) By deception * * *."

{¶ 21} Finally, appellant was found guilty of one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), a first-degree felony, which provides, in relevant part, "(A)(1) No person employed by, or associated with, any enterprise shall

conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt."

{¶ 22} In Ohio, a person is guilty of complicity to commit an offense if he acts "with the kind of culpability required for the commission of an offense" while aiding another individual in committing the principal offense. *See* R.C. 2923.03(A)(2).

{¶ 23} As to the charge of complicity to commit insurance fraud, appellant asserts that the state failed to provide an eyewitness who saw appellant send the billing information electronically to any of the insurance companies and that appellant therefore could not be convicted of aiding Dr. Royal in committing the principal offense of processing fraudulent claims. Appellant also asserts that the state did not show that he was aware of Dr. Royal's actions with regard to billing or that he benefitted financially from any of the funds reimbursed by the insurance companies.

{¶ 24} The evidence produced at trial, however, indicates that appellant was involved on a regular basis in the clinic's billing process. According to Charlene Murphy's testimony, appellant attended one billing seminar with her and told her he had attended another in order to familiarize himself with medical coding and billing. Murphy testified that appellant took a "hands-on" approach to the billing process, sometimes watching over her shoulder, and did not allow her to finalize any of the batches of billing forms and transmit them to the insurer. It appears that appellant was involved in all phases of the billing process, at times suggesting that Murphy enter codes for more costly procedures than those indicated on the super-bills or for treatments that had not been

provided. At other times, appellant instructed Murphy and Oberhaus not to complete and transmit the bills. Appellant also handled patient disputes regarding charges.

{¶ 25} McCloskey's investigation of Royal Treatment revealed, at a minimum, 298 dates of service submitted between July 5, 2004, and July 7, 2009, for appellant and his two children. Evidence in the form of voluminous records of charges submitted to three different insurers reveals hundreds of charges for treatment rendered primarily to appellant over a five-year period.

{¶ 26} Between October 2004, and July 2006, Royal Treatment billed Medical Mutual of Ohio for 61 doctor visits, 42 of those for appellant and the remainder for his two children. The evidence further shows 90 dates with services billed to Michigan Blue Cross/Blue Shield for appellant between July 2004, and July 2009. The 90 dates of service reflect more than 150 claims for various services rendered.

{¶ 27} The evidence also reflects that Royal Treatment submitted 63 claims to United Health Care ("UHC") for separate treatments provided to appellant on September 26, 2006, and 126 claims for treatment on October 10, 2006. Additional claims were submitted to UHC for treatment provided to appellant on 46 separate dates between October 18, 2006, and April 29, 2008. The number of procedures for which Royal Treatment billed the company on those dates total in the hundreds. Additionally, Royal Treatment submitted claims to UHC for over 480 procedures on behalf of one of the children on 37 dates between September 15, 2006, and April 29, 2008. Claims were

submitted on behalf of the other child for 30 dates between September 15, 2006, and April 26, 2008, for a total of 462 separate procedures.

{¶ 28} As far as the specific claims, the evidence reveals, for example, charges submitted for such implausible events as eleven office visits, four injections and two urinalyses for appellant all occurring on September 18, 2006. Claims were submitted on behalf of appellant for 12 injections and 14 airway procedures provided on October 10, 2006. And on July 9, 2007, Royal Treatment billed for seven eye exams ostensibly given to appellant on that date.

{¶ 29} Further, as McCloskey testified, there was no patient file for appellant containing documentation of the various services alleged to have been provided. The only patient file McCloskey was able to locate was for one of the children and contained nothing more than a few reports regarding lab work.

{¶ 30} Finally, appellant argues that he "lacks the mental competence to carry out an insurance fraud of this magnitude." However, as set forth above, prior to trial appellant underwent a series of evaluations of his mental competence. One examiner believed that appellant was "malingering." Despite some evidence that appellant struggled academically in school when he was younger and may have a below average IQ, the state presented evidence that appellant attended at least two medical billing seminars and handled much of the billing for Royal Treatment. Based on the reports of several mental health professionals, the trial court determined that appellant was competent to stand trial. The evidence does not support an argument that appellant was

mentally incapable of carrying out a scheme of insurance fraud such as occurred in this case.

{¶ 31} Therefore, based on the foregoing, we find that the state presented sufficient evidence from which the jury could have found appellant guilty of complicity to insurance fraud.

{¶ 32} Next, in support of his claim that the state failed to present sufficient evidence to support a conviction of conspiracy to theft, appellant argues that proceeds from the insurance payments were deposited in various accounts in Dr. Royal's name only. Therefore, appellant asserts, he was not able to exert control over any of the funds.

{¶ 33} The record contains evidence that Dr. Royal and appellant were in fact married. Witnesses testified that appellant and Dr. Royal identified themselves to others as husband and wife, that they were the parents of two children, and that the doctor and appellant listed the same Toledo location as their home address. Witness McCloskey testified that in the process of investigating this matter, she reviewed insurance enrollment forms, tax documents and payroll documents which indicated that the doctor and appellant were married. In addition, witness Charlene Murphy testified that Dr. Royal referred to appellant as her husband. Based on the foregoing, it was reasonable for the jury to infer that both Dr. Royal and appellant exerted control over the funds received as a result of the fraudulent insurance claims submitted by Royal Treatment. Accordingly, this argument is without merit.

{¶ 34} Finally, appellant asserts that the charge of engaging in a pattern of corrupt activity was not proved because the state failed to provide sufficient evidence as to the first two counts of the indictment. However, based on our findings as to the first two charges, this argument is without merit. Appellant's actions as set forth above spanned a period of more than four years and included fraudulent submissions to various insurance companies for nearly 300 dates of service. Appellant was employed by and associated with the enterprise operating as Royal Treatment Urgent Care and his actions as proved by the state at trial were sufficient evidence from which the jury could find him guilty of engaging in a pattern of corrupt activity. Finally, based on our findings above, we conclude that the state proved the specification attached to this count, which requires that at least one of the incidents of corrupt activity was a first, second or third-degree felony, since complicity to insurance fraud is a third-degree felony.

{¶ 35} This court has thoroughly considered the entire record of proceedings in the trial court and the testimony as summarized above. We therefore find that the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of complicity to insurance fraud, complicity to theft and engaging in a pattern of corrupt activity. *See Jenks*, 61 Ohio St. 3d at syllabus, 574 N.E.2d 492.

{¶ 36} As to appellant's argument under his second assignment of error, as this court has consistently affirmed, the trier of fact is vested with the discretion to weigh and evaluate the credibility of conflicting evidence in reaching its determination. It is not

within the proper scope of the appellate court's responsibility to judge witness credibility. *State v. Hill*, 6th Dist. No. OT-04-035, 2005-Ohio-5028, ¶ 42. Further, based on the testimony summarized above and the law, this court cannot say that the jury clearly lost its way or created a manifest miscarriage of justice by finding appellant guilty of the charges against him. *Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541. Accordingly, the jury's verdict was not against the manifest weight of the evidence.

{¶ 37} Based on the foregoing, appellant's first and second assignments of error are not well-taken.

{¶ 38} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE