

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHANIE SHOWELL,	§	
	§	
Defendant Below-	§	No. 497, 2004
Appellant,	§	
	§	
v.	§	Court Below - Superior Court
	§	of the State of Delaware
STATE OF DELAWARE	§	in and for Sussex County
	§	Cr. ID No. 0402003511
Plaintiff Below-	§	
Appellee	§	

Submitted: September 20, 2005
Decided: October 18, 2005

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 18th day of October 2005, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Stephanie Showell appeals from her conviction, following a jury trial, of five counts of health care fraud. She claims that the Superior Court committed reversible error by: a) admitting into evidence testimony that was purely speculative and unfairly prejudicial; b) failing to undertake the analysis required by *Getz v. State*,¹ and admitting evidence of uncharged criminal

¹ 538 A.2d 726 (Del. 1988).

conduct for an improper purpose; and c) admitting certain business records in violation of Showell's due process right to confront witnesses.

(2) From 1999 until 2004, Showell operated TIG Transportation, a company that transported Medicaid recipients and others to and from medical appointments. Several members of Showell's family worked as drivers for the company, but Showell was the only person in charge of submitting Medicaid claims for reimbursement. Electronic Data System ("EDS") was the fiscal agent for Delaware's Medicaid accounts. Transportation providers for Medicaid clients submitted bills either on paper or electronically, using software provided by EDS. Showell attended a mandatory EDS training class on November 14, 2001, to learn the proper procedures for billing.

(3) Karen Parker-Bender, an EDS employee, testified about the training class and Showell's payment requests. Louis Spahn, a special investigator with the Medicaid Fraud Control Unit of the Attorney General's Office, also testified about Showell's Medicaid reimbursement claims. Both witnesses stated that their review of Showell's reimbursement claims revealed a pattern of improper billing, such as missing transportation scheduling records, and multiple billing for escorts and mileage when the children involved were taken to the same facility in the same vehicle. Spahn also explained that the State decided not to go forward with criminal charges on all of the fraudulent claims filed by

Showell because there were “too many.” Instead, according to Spahn, the State decided to “cut it off at . . . the most blatant situations.”

(4) The Superior Court admitted records relating to claims involving Medicaid recipients Nicolette Snead and Shirley Collick. Neither person testified at trial, however, and the trial court ultimately entered a judgment of acquittal on the two counts involving Snead and Collick. The court held that the business records, alone, were insufficient to support a conviction on those counts. Showell was convicted on five of the remaining six counts.

(5) Showell argues that the Superior Court erred in admitting Parker-Bender’s testimony because it was purely speculative. Parker-Bender used various phrases such as “looks like,” “it’s basically speculation,” and “there is no way to know” when explaining the apparent over-billing. Since Showell failed to object to this testimony, this Court reviews for plain error, which is error that is “so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”²

(6) There is no plain error. Parker-Bender testified that the billings were suspect because, for example, Showell billed for two escorts when it appeared that two children from the same family were taken to a medical provider. Under those circumstances, only one escort is allowed. The bills did not

² *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)..

include required information that would have enabled Parker-Bender to determine conclusively whether the charges were permitted. The absence of proper documentation, together with other evidence from Medicaid recipients, provided a proper factual basis to assess the fraudulent nature of Showell's claims for reimbursement.

(7) Showell also complains that Parker-Bender testified that Showell's billing was "fraudulent." The lower court cured any possible prejudice from those remarks, however, by instructing the jury to disregard them.³ Accordingly, we find no merit to this contention.

(8) Showell next argues that the trial court erred when it allowed Spahn to testify that the State could have filed 2000 charges, but decided to pursue only "the most blatant situations." Again, because Showell did not object at trial, we review for plain error.⁴ Spahn's comments would not amount to plain error even if they had been elicited, as Showell argues, for the purpose of proving her propensity to commit crimes. In fact, the evidence of many improper billings was necessary to establish Showell's intent or plan to commit fraud. Although the trial court did not conduct a *Getz* analysis or give the jury a limiting instruction, we are satisfied that there was no plain error.

³ See *Capano v. State*, 781 A.2d 556, 589 (Del. 2001).

⁴ See *Wainwright v. State*, 504 A.2d at 1100 (error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.")

(9) Showell's final argument is that the Superior Court violated her Sixth Amendment rights when it admitted billing records for Snead and Collick, two Medicaid recipients who did not testify at trial. The Superior Court initially admitted the bills as business records, but later ruled that they provided insufficient evidence to sustain a conviction. Since the trial court acquitted Showell on the two counts related to those records, we need not consider whether the records should have been admitted inasmuch as any error was harmless beyond a reasonable doubt.⁵

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵*Van Arsdall v. State*, 524 A.2d 3, 11 (Del. 1987).

