STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BASIL RODANSKY, M.D.,

Defendant-Appellee.

UNPUBLISHED
December 29, 1998

No. 208351
Recorder's Court
LC No. 97-502380

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

The prosecution appeals as of right an order quashing the information and dismissing the charges of violating and conspiring to violate the kickback provisions of the Medicaid False Claims Act, MCL 400.604; MSA 16.614(4), and the Health Care False Claims Act, MCL 752.1004; MSA 28.547(104), against defendant, Basil Rodansky, M.D. We affirm.

Defendant was an employee of Health Stop Medical Centers (hereinafter, "Health Stop") Health Stop had its own laboratory and many medical tests for its patients were done "in-house." At the time of the preliminary examination, the prosecution presented evidence that defendant's monthly bonuses were calculated based upon the number of medical tests ordered for his patients. In essence, the prosecution contended that defendant received a kickback for ordering various tests covered by Medicaid and/or other health care insurance. The district court bound defendant over on a total of forty-four counts of violating and conspiring to violate the kickback provisions of the MFCA and the HCFCA.

The MFCA, which is substantially similar to the HCFCA, provides:

> A person who solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under Act No. 280 of the Public Acts of 1939, [footnote omitted] as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services is guilty of a felony, punishable by imprisonment for not more

than 4 years, or by a fine of not more than $30,000.00, or both. [MCL 400.604; MSA 16.614(4).]

The circuit court quashed the information based upon a finding that the prosecution failed to present evidence that defendant intended to receive a kickback.

The district court must bind the defendant over for trial if it finds probable cause 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.* To establish that a crime has been committed, the prosecution need not prove each element of the crime beyond a reasonable doubt, but there must be some evidence from which each element of the crime may be inferred. *People v Reigle*, 223 Mich App 34, 37; 566 NW2d 21 (1997). The requisite intent of MFCA § 4 and HCFCA § 4 is the intent to do the prohibited act, in this case receiving a kickback. *People v Motor City Hospital and Surgical Supply, Inc*, 227 Mich App 209, 215; 575 NW2d 95 (1997). Accordingly, the prosecution had to present some evidence that defendant intended to receive a kickback when he received his monthly bonuses.

We find that there was no evidence that defendant knew there was a correlation between his monthly bonuses and the number of tests he ordered; therefore, it would be impossible to show that defendant intended to receive a kickback. Put another way, defendant could not intend to receive a kickback unless he knew that his monthly check was just that. To hold otherwise would amount to a ruling that the MFCA and the HCFCA are strict liability crimes. *Id.* at 216.

The prosecution admits it was required to present some evidence that defendant knew that what he was receiving was a kickback. It argues this burden was satisfied by circumstantial evidence, i.e., evidence that the amount of the bonus check varied based upon the number of tests ordered permits an inference of knowledge. We disagree.

There was nothing in defendant's employment contract outlining the manner in which bonuses would be calculated. Those in charge of calculating the monthly bonuses never discussed with any doctor Health Stop's methodology. In fact, this information was kept highly confidential. Federal and state investigators candidly admitted there was no direct evidence establishing defendant's knowledge. The investigators also testified that at least one doctor, who was not charged, believed that her bonuses were based upon overtime hours.

In addition, the evidence belies the prosecution's assertion that defendant should have discerned that his bonuses were based upon the number of tests ordered because the amount of the bonus check directly correlated with the number of tests ordered. Health Stop's procedures were not as simplistic as the prosecution asserts.

During each month, Health Stop tracked the number of times each doctor ordered tests from a list of twenty-nine procedures. An administrative assistant testified she used a reference sheet that set forth the assigned dollar value for each procedure. She then multiplied the number of procedures a

doctor ordered in a month by that dollar amount. However, after that was done, another employee, apparently depending upon the amount of the total bonus, would reduce the bonus anywhere from fifty dollars to a few hundred dollars. Thus, the bonuses did not necessarily correspond exactly with the number of tests ordered.

Other factors employed by Health Stop in calculating the bonuses would similarly have made it difficult for a doctor to discover the clinic's methodology. Each of the twenty-nine tests tracked monthly were assigned a different dollar value. However, even the same test could be assigned a different value depending upon how the test was billed. Considering the formula used, it would be difficult for a doctor to discern a pattern.

The prosecution's theory that defendant had enough information to draw conclusions about the way his bonus was calculated presumes that defendant engaged in rather unlikely behavior. Under the prosecution's theory, defendant would have been required to keep track of the number of tests he ordered, so that he could make a comparison from month to month, and then be in a position to conclude that a correlation existed. He would have been required to do the same thing for his over-time hours so that he could rule this out as a factor affecting his bonus. Finally, he would also have to make certain correct assumptions regarding the dollar value Health Stop placed on each procedure and the dollar amount bonuses would be reduced by the office administrator. Frankly, the prosecution's argument imputes behavior upon defendant that we find to be unrealistic.

Additionally, a review of the bonus amounts defendant received shows that they varied from month to month. This pattern, or more aptly put, lack of pattern, does not support an inference that defendant knew his bonuses were related to the number of tests he ordered. Moreover, both investigators testified there was no evidence that defendant ordered unnecessary tests.

Based on this lack of evidence, we find that the district court abused its discretion in binding defendant over for trial. *Orzame, supra* at 557. Accordingly, the circuit court properly quashed the information.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff