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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1141

State of Minnesota,
Respondent,

vs.

Lillian Carletta Richardson,
Appellant.

Filed September 8, 2020
Affirmed in part, reversed in part, and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CR-17-16856

Keith Ellison, Attorney General, Kirsi Poupore, Krista Barrie, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D   O P I N I O N

ROSS, Judge

After a stipulated-evidence trial, the district court found that appellant Lillian Richardson led a complex, $7 million Medicaid-fraud scheme in which her family and friends improperly submitted reimbursement claims. Appealing from her convictions of racketeering and aiding and abetting theft by swindle, Richardson argues that the evidence

is insufficient to sustain her convictions and that the district court miscalculated her sentence by assigning an erroneous severity level to her racketeering conviction. We affirm in part because the evidence supports the convictions. But we reverse in part and remand for resentencing because the district court failed to make the requisite findings supporting its severity-level determination.

FACTS

Medicaid Program Background

The Minnesota Department of Human Services (DHS) administers the federal Medicaid program, which is funded by federal and state tax revenue. DHS enrolls healthcare providers who directly serve Medicaid recipients. One arm of Medicaid is the Personal Care Assistance (PCA) program, which serves patients in their homes. The patient hires a provider agency for PCA services, and the agency serves as an intermediary between the patient and DHS, contracting with individuals to provide the services directly and also contracting with DHS. Personal-care assistants document their services on timesheets, and the agency uses the timesheet data as a basis to be reimbursed by DHS.

A provider agency enrolls in the PCA program by submitting the necessary enrollment documents. The agency owners, managers, and other personnel must attend training sessions advising them how to complete the enrollment documents and informing them of the rules and laws governing PCA agencies. The Medicaid program and DHS can exclude individuals and entities from participating, and each maintains an excluded-provider list. Agencies may not employ or contract with anyone on the list, and DHS will not reimburse an agency for any services provided either by an excluded person

or by a provider that employs an excluded person. DHS informs all agency personnel of this strict excluded-person policy.

Richardson's 2013 Medicaid Exclusion

Before 2008, Lillian Richardson owned and operated PCA agency Best of Care Inc. But in 2008, DHS began withholding payments to Best of Care, suspecting that the agency had fraudulently submitted billing claims for services not performed. The state charged Richardson criminally with theft by false representation under Minnesota Statutes section 609.52, subdivision 2(3)(iii) (2008). Richardson pleaded guilty in 2012, and the district court stayed imposition of a sentence on probationary conditions. The conviction disqualified Richardson from participating in providing service in the Medicaid program in any capacity. The program placed her on the exclusion list and notified her of the five-year exclusion beginning July 18, 2013. The district court later executed a 21-month prison sentence after Richardson violated the terms of her probation, and she was released in July 2018.

Richardson's Medicaid Activities Despite Her Exclusion

Richardson flouted the exclusion by continuing to affiliate with agencies that provided Medicaid services. She assisted family members and friends to manage a bevy of PCA agencies: Abundant Hands PCA LLC, owned by sister Cherise Henry; Bridging Together LLC, owned by sister Bridgett Burrell; Caring for Angels LLC, owned by daughter Lasania Oda; Healing Hands Home Care LLC, owned by sister-in-law Deanna Williams; and Universal Home Health Care LLC, owned by relative Tonette Brackins. Each agency submitted documents to enroll in the Medicaid program. Despite their

affiliation with Richardson as both a de facto manager and excluded person, the agency owners signed a provider agreement representing that none of their respective agency's owners, managers, or employees were excluded from the Medicaid program. And when the agencies submitted written disclosures requiring them to name all managers and persons with ownership or contractual relationships with the agencies, they consistently failed to list Richardson. During this period, Richardson routinely spoke with agency owners and personnel by telephone and email, and she accepted Medicaid money that the agency owners funneled through the agencies and laundered through various bank accounts.

Charges, Convictions, and Sentence

The state charged Richardson in July 2017 with racketeering and eight counts of aiding and abetting theft by swindle. The theft-by-swindle counts fell into six-month periods between July 2013 and March 2017. The complaint alleged that Richardson, along with her agency-owning family and friends, engaged in a criminal enterprise in which the agencies defrauded Medicaid. Richardson and her codefendants allegedly swindled the Medicaid program of more than $7.7 million in funds that, because of Richardson's exclusion, the agencies were prohibited from receiving. The complaint also alleged that Richardson helped the agencies commit other fraudulent activities, including billing for medical services not performed and paying recipients illegal kickbacks. Richardson waived her right to a jury trial and agreed to a trial on stipulated evidence that detailed the circumstances just summarized.

The district court found Richardson guilty of racketeering and of all eight counts of aiding and abetting theft by swindle. It found that she was associated with an "enterprise" as defined by the antiracketeering statute and that she actively participated in the enterprise's criminal activities in multiple ways: by coordinating with her codefendants to submit fraudulent Medicaid claims; by shuffling recipients and personnel to new agencies whenever the state began investigating one agency for fraud; and by concealing her unlawful involvement with the agencies. The district court also found Richardson guilty of aiding and abetting theft by swindle because the agencies, which she assisted in managing, submitted enrollment documents falsely representing that no excluded person was involved with the agencies. The district court determined that the relevant "swindle" was not merely the agencies' submissions of claims for medical services that did not occur, but also the false representations in the enrollment documents regarding Richardson's status as an excluded person. This meant that none of the funds the agencies received during the relevant period were lawfully procured, because no agency may receive any Medicaid funds while the agency is affiliated with an excluded person.

Richardson agreed to have her racketeering conviction ranked at a severity level of nine for sentencing in exchange for the state not seeking an upward sentencing departure. The district court accepted the agreed-upon severity level and sentenced Richardson to 110 months in prison on the racketeering conviction—the presumptive sentence for a severity-level-nine conviction.

Richardson appeals.

D E C I S I O N

Richardson challenges her convictions on the notion that the evidence is insufficient, arguing that the arrangement did not constitute a racketeering "enterprise" and that the state did not prove that she intended to aid and abet theft by swindle. She argues alternatively that the district court improperly sentenced her based on a severity level of nine without making necessary findings. Only the sentencing argument prevails.

I

We reject Richardson's contention that her racketeering conviction fails for lack of evidence that she was associated with an enterprise. We review convictions facing evidence-insufficiency contentions by examining the record to see if the direct evidence, when considered in a light most favorable to the verdict, would allow a fact-finder to reach its verdict. *State v. Ferguson*, 742 N.W.2d 651, 658 (Minn. 2007). And when the direct evidence does not establish a particular element, we apply a heightened two-step review of the circumstantial evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). That is, first we identify the circumstances proved, deferring to the fact-finder's acceptance of proof of these circumstances and its rejection of conflicting evidence, and second we consider whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *State v. Anderson*, 789 N.W.2d 227, 241–42 (Minn. 2010). Applying this standard here, we are satisfied that the evidence supports the verdict.

To convict Richardson of racketeering, the state had to prove that she was "employed by or associated with an enterprise" and intentionally conducted or participated

in the affairs of the enterprise "by participating in a pattern of criminal activity." Minn. Stat. § 609.903, subd. 1(1) (2016). We address the only element that Richardson challenges—the existence of an enterprise.

Richardson argues unconvincingly that the evidence was insufficient to show that she was involved with an "enterprise." An "enterprise" may be "a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as legitimate enterprises." Minn. Stat. § 609.902, subd. 3 (2016). It must have three characteristics: (1) a "common purpose" among the people associated with the enterprise; (2) an "ongoing and continuing" organization that functions "under some sort of decision[-]making arrangement or structure"; and (3) the extension of the organization's activities beyond the underlying criminal acts "either to coordinate the underlying criminal acts into a pattern of criminal activity or to engage in other activities." *State v. Huynh*, 519 N.W.2d 191, 196 (Minn. 1994). Richardson argues that the district court found her guilty based on an incorrect definition.

Richardson particularly objects to the district court's reasoning that an enterprise "does not require an authoritarian or formal structure" but may be shown through the existence of "a loosely affiliated set of agencies carrying out a scheme with a common purpose." The district court laid out the three-part *Huynh* test, implicitly determining that the "loosely affiliated set of agencies" satisfied the three-part test for an enterprise. The *Huynh* court recognized that, although the racketeering statute regards organized crime, it applies to various entities that have an "organizational set-up, whether formal or informal."

Id. at 195–96. We therefore are unpersuaded by Richardson's urging that *Huynh* requires proof of a hierarchy. It is true that the *Huynh* court mentions "hierarchy," but it does so only in a footnote discussing the legislative history of the statute, referencing a subcommittee meeting where one witness testified as to his understanding of what an enterprise requires. *Id.* at 195 n.4. The *Huynh* holding does not require a hierarchy, however, but just "some sort" of arrangement or structure for decision-making. *Id.* at 196. A hierarchy is only one sort of arrangement for decision-making.

We are mindful that a hierarchical structure might constitute the most obvious type of enterprise. *See, e.g.*, *State v. Longo*, 909 N.W.2d 599, 606 (Minn. App. 2018) (characterizing an association having a principal operating with a "right-hand man" and other drug runners as a "clear organizational structure"). But the statutory definition also contemplates entities that are not hierarchical in nature, like, for example, partnerships. *See* Minn. Stat. § 609.902, subd. 3. Notwithstanding *Longo*'s example of one enterprise arrangement, applying the inclusive statutory language and the reasoning in *Huynh*, we are unpersuaded by Richardson's hierarchy argument.

The record amply supports the finding that the individuals and agencies here operated within "some sort" of decision-making arrangement. For example, all agency principals uniformly omitted Richardson's name from enrollment documentation and subsequent submissions that required the agencies to identify their affiliates. Given Richardson's prevalence and clear association with the agencies and their operations, it is unreasonable to infer that the omission resulted from a mere coincidence rather than a concerted (i.e., communicated) plan. Also, the agencies shared personnel, and participants

and clients were shuffled between agencies whenever one agency came under investigation—a remarkable coincidence absent some sort of decision-making arrangement directing the shuffling. These circumstances lead to only one reasonable inference, which is that the agencies operated under some form of decision-making arrangement.

Having determined that the evidence permits only one rational hypothesis—that Richardson's association of agencies functioned under "some sort" of decision-making arrangement—we easily conclude that the state presented sufficient evidence to satisfy the other elements of the *Huynh* test. The obvious common purpose was to defraud the Medicaid program, and the principals accomplished this using similar methods and schemes of both operation and detection avoidance. The organization was "ongoing and continuing" because the member agencies repeatedly submitted unauthorized and fraudulent claims for four years. Finally, the organization's activities extended beyond the primary criminal conduct of submitting unauthorized claims, extending to a pattern of criminal conduct, including billing for medical services that were never provided, paying recipients kickbacks, and laundering money to veil the illegal activities. Sufficient evidence supports Richardson's racketeering conviction.

II

The evidence also supports Richardson's convictions of aiding and abetting theft by swindle. A person commits the underlying crime "by swindling, whether by artifice, trick, device, or any other means, [to] obtain[] property or services from another person." Minn. Stat. § 609.52, subd. 2(a)(4) (2016). To support the conviction, the evidence must prove

three elements: (1) that the property owner "gave up possession of the property due to the swindle"; (2) that the swindler intended to obtain possession of the property for herself or someone else; and (3) that the action constituted a swindle. *State v. Pratt*, 813 N.W.2d 868, 873 (Minn. 2012). The evidence proves each element.

A swindle is an intentional misrepresentation or scheme to defraud another person. *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003). The agencies' submissions of false claims constituted swindles in the traditional sense; the agencies represented that they performed some services that were not actually provided, and they received unauthorized Medicaid funds as a result. The swindles went further. Richardson was excluded from participating in the Medicaid program and was placed on the exclusion list in July 2013 because of her fraudulent submission of claims during her previous ownership of a provider agency. *See* 42 U.S.C. § 1320a-7(a)(1), (i) (2012); *see also* Minn. Stat. § 256B.064, subd. 2(d) (2012) (directing the DHS commissioner to terminate a vendor's participation in the program based on the vendor's exclusion from the program). The DHS policy manual emphasizes this by indicating clearly that Richardson's agencies were precluded from Medicaid funds. It explains that "payment withholding applies to the excluded person *and anyone who employs or contracts with the excluded person*." (Emphasis added.) It adds that "[t]he exclusion applies regardless of who submits the claims and applies to all administrative and management services furnished by the excluded person." And it continues, "Providers *must report* to [the program] *any [i]ndividual or entity they find on the exclusion list*." (Emphasis added.) Because of Richardson's involvement with the agencies while she was listed as an excluded person, the agencies were prohibited from

receiving any of the Medicaid funds they received. The agencies nevertheless submitted enrollment documentation representing that no excluded provider was associated with them or would participate in their management. And they failed to list Richardson on the documents purportedly disclosing all persons owning or contracting with the agencies. These false representations facilitated the agencies' defrauding of Medicaid and constitute a swindle. We reject Richardson's assertion that the payments did not result from the misrepresentations and that the misrepresentations were merely a but-for cause too distant to prove liability. The misrepresentations caused the disbursement of money the agencies were ineligible to receive.

Richardson maintains that the misleading enrollment documents do not establish that Medicaid property was given up "due to the swindle." *See Pratt*, 813 N.W.2d at 873. We do not read *Pratt* to mean that the property transfer must result directly from the act that constitutes the swindle. The *Pratt* defendant submitted a purchase agreement and loan applications that contained false information, and mortgage lenders relied on those documents when deciding whether to extend loans. *Id.* at 871, 874. The *Pratt* court held that the false representations sufficiently supported the defendant's theft-by-swindle convictions even though the loan funds were not disbursed until the later signing of the financing documents at closing. *Id.* at 875. Similarly here, the false representations in the enrollment documents can form the basis for Richardson's aiding-and-abetting-theft convictions even though the actual transfer of Medicaid funds did not occur until the agencies later submitted claims for reimbursement. As in *Pratt*, reliance on the earlier

misrepresentations led to the eventual transfer of funds, forming an adequate basis for the aiding-and-abetting-theft convictions.

For the state to establish Richardson's guilt as an accomplice based on the underlying swindles, it had to introduce evidence that she intentionally aided, advised, hired, counseled, or conspired with the others to commit the crimes. *See* Minn. Stat. § 609.05, subd. 1 (2016). A defendant intentionally aids accomplices if she knows that the accomplices are going to commit a crime and she intends her actions to further the commission of that crime. *State v. McAllister*, 862 N.W.2d 49, 52 (Minn. 2015).

Because proof of Richardson's *mens rea* rested on circumstantial evidence, we will review her sufficiency challenge based on the following circumstances proved as implied by the verdict. Richardson frequently and continually communicated with the agency owners and personnel throughout the enterprise. Her browser history revealed multiple searches of the DHS website and multiple emails sent to the agencies' email accounts. She exchanged text messages almost daily between June 2016 and January 2017 with one of the agency's managers, informing the manager of the agency account's username and password, instructing her to mail an insurance check, asking her about mailing timesheets, and instructing her about conducting background checks of agency personnel. Richardson attempted to destroy many documents during the 45 minutes while investigators were preparing to enter the home to execute a search warrant, and once they entered they seized numerous documents, including enrollment information, payroll spreadsheets, tax documents, forms for claim reimbursement, and a notebook with the agencies' login and password information. She possessed the agencies' enrollment documents that had omitted

her involvement. Medicaid funds that had been disbursed to the agencies were transferred to various bank accounts in Richardson's name. The circumstances proved readily imply that Richardson intentionally aided, advised, hired, counseled, or conspired with others to commit the swindle, and they allow for no other reasonable inference.

We likewise reject Richardson's argument that the evidence was insufficient to support the value element of her theft-by-swindle convictions. For each of the eight charged six-month periods, the state had to prove that the value of the property stolen was greater than $35,000. *See* Minn. Stat. § 609.52, subd. 3(1) (2016). Because the agencies involved in Richardson's scheme were not entitled to any of the Medicaid funds they received, the convictions arose from all funds improperly disbursed. The state submitted evidence showing that the value of the swindled funds was considerably more than $35,000 during each time period, and Richardson does not dispute that fact. Richardson maintains instead that the evidence did not show that she *knew* that the amount her codefendants were going to swindle would exceed $35,000. Richardson cites no authority supporting her assertion that the state was required to prove she knew her accomplices would swindle a specific amount. Caselaw clarifies that the requisite intent concerns the intent to merely defraud, not an intent to steal a specific amount. *See Flicek*, 657 N.W.2d at 598 ("Theft by swindle requires the intent to defraud."); *In re Disciplinary Action Against Bonner*, 896 N.W.2d 98, 111 (Minn. 2017) ("[T]heft by swindle requires the specific intent to defraud another."). And the statute establishing the $35,000 threshold references the mere commission of the theft while it includes no reference to the actor's intent to steal property exceeding that value. But for the sake of Richardson's argument, we can assume the

validity of Richardson's premise that the state had to prove that she knew not only of the swindle but of the amount swindled. The state met this burden based on the same circumstances proved in light of Richardson's extensive communication with the agency operatives and her own receipt of part of the illegally obtained Medicaid funds disbursed to the agencies through various bank accounts in her name. We cannot accept as rational the hypothesis that Richardson was unaware of the fraud's extensive revenues, which far exceeded the $35,000 threshold in each charging period.

III

Richardson argues alternatively that the district court failed to make the necessary findings to sentence her based on a severity level nine for the racketeering conviction. The argument prevails.

The prosecutor indicated at the sentencing hearing that Richardson had agreed to a severity level of nine in exchange for the state not seeking an upward sentencing departure. The district court sentenced Richardson to 110 months in prison based on a severity level of nine, but it did not explain why it made the severity-level determination. We review a district court's determination of a severity level for an abuse of discretion. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006).

A district court must determine a defendant's sentence in part based on the severity level of the conviction offense. Minn. Sent. Guidelines 2.A, 2.C.1 (2016). The sentencing guidelines include no severity-level designation for some offenses, including racketeering. When the guidelines designate no severity level, the district court must assign one and specify its reasons. Minn. Sent. Guidelines 2.A.4 (2016). The district court may consider

certain factors, like the gravity of the conduct, the designated severity level of a similar offense, the severity level applied to other offenders for the same offense, and the severity level assigned to other offenders who committed similar conduct. *Id.* The district court considered none of these factors on the record, failing to meet the express requirement of guideline 2.A.4. Because of the requirement and because, without a related finding, we cannot determine whether the district court sentenced within its discretion, the district court's omission requires reversal. *See State v. Kenard*, 606 N.W.2d 440, 442–43 (Minn. 2000). The reason is that, in the absence of such an explanation, it is virtually impossible for a reviewing court to determine whether the sentencing court properly exercised its discretion. *See id.*

We are not persuaded otherwise by the state's contention that Richardson forfeited her right to challenge the severity-level determination because she agreed to it and did not object during her sentencing hearing. That a defendant's sentencing arrangement resulted from an agreement does not divest the defendant of the right to challenge the legality of her sentence. In the context of a sentencing departure, for example, when the state and the defendant have reached an agreement to depart upwards from the sentencing guidelines, the district court cannot rely solely on the agreement without independently determining that the circumstances warrant the departure. *State v. Misquadace*, 644 N.W.2d 65, 71–72 (Minn. 2002). Relying on an agreement by itself risks offending "the overriding principle[s] in all sentencing" of "rationality, predictability, and consistency" based on the sentencing guidelines' framework. *Id.* at 71. The same rationale applies to the determination of a severity level of an offense, and the same risks are involved by relying

only on the parties' agreement. The parties' agreement as to an offense's severity level does not relieve the district court of its obligation to make findings explaining its reasons for designating a severity level.

Rather than follow the state's alternative urging that we review the record and decide the severity level on appeal, we will follow the example of *Misquadace*, *id.* at 72. We therefore reverse the sentence with instructions on remand for the district court to resentence Richardson after making requisite severity-level findings.

Affirmed in part, reversed in part, and remanded.