STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1510

State of Minnesota,
Respondent,

vs.

Bridgett Ann Burrell,
Appellant.

Filed November 9, 2020
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CR-17-16837

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

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Frisch, Judge.

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

FRISCH, Judge

Following a court trial, the district court found appellant guilty of one count of racketeering, Minn. Stat. § 609.903, subd. 1(1) (2016), and eight counts of aiding and abetting theft by swindle over $35,000, Minn. Stat. §§ 609.05, subd. 1, .52, subd. 2(a)(4)

(2016), due to her participation in a complex Medicaid-fraud scheme. Appellant argues that the evidence is insufficient to sustain her convictions and contests the sentencing severity level assigned by the district court to her racketeering conviction. We affirm.

FACTS

The state alleges that appellant Bridgett Ann Burrell and her codefendants fraudulently acquired payments from the Medicaid program, which is administered by the Minnesota Department of Human Services (DHS). Medicaid funds personal care assistant (PCA) programs in which patients hire agencies to coordinate PCA services, the agencies contract with individual PCAs to provide services, the PCAs submit timesheets to the agencies, and the agencies obtain reimbursement from DHS. To enroll in the PCA programs and become eligible for reimbursement, the agencies must submit enrollment documents affirming that the agencies do not employ or contract with any providers that have been excluded from the Medicaid program.

The relevant events begin with the activities of codefendant Lillian Richardson. *See State v. Richardson*, No. A19-1141, 2020 WL 5361101 (Minn. App. Sept. 8, 2020) (affirming racketeering and theft-by-swindle convictions), *pet. for review filed* (Minn. Oct. 8, 2020). In July 2012, Richardson pleaded guilty to theft by false representation for submitting false claims for PCA services in order to defraud the Medicaid program. Richardson was consequently banned from participating in Medicaid, Medicare, and other federal health-care programs for a minimum of five years beginning July 18, 2013.

Notwithstanding Richardson's status as an excluded provider, she assisted in the enrollment, management, control, and billing of numerous PCA agencies, receiving tens

of thousands of dollars in compensation for this work. From July 2013 to March 2017, these agencies regularly submitted false claims employing the same scheme that led to Richardson's 2012 conviction. By the time the state fully uncovered the scheme, the agencies had obtained over $7.7 million in reimbursement through the activities directed by Richardson.

Burrell and others facilitated Richardson's involvement. Knowing that Richardson's participation would preclude the agencies from obtaining payments, Burrell and others concealed Richardson's participation by submitting documents falsely affirming that no excluded persons were involved in the agencies, providing Richardson access to email accounts, and laundering money to compensate Richardson for her assistance. As agencies came under investigation, Richardson, Burrell, and others coordinated the movement of employees and recipients to new agencies in order to continue the fraudulent billing scheme. Nearly half of the purported clients ultimately participated in two or more of the agencies.

Although Burrell was not the "main driver" of the operation, she was involved in five of the agencies and held a leadership role in relation to all other individuals except Richardson. The district court found that the scheme would not have been as coordinated and successful without Burrell's participation. Participants relied on advice from both Richardson and Burrell to coordinate the concealment of assets, provide false names, and hide Richardson's involvement in the scheme during investigative interviews.

On June 10, 2017, Burrell and Richardson discussed whether the state was building a case against the agencies and gathering letters from the agencies to disguise Richardson's

involvement. After learning that an employee of one of the agencies was planning to consent to an investigative interview, Richardson directed Burrell to persuade the employee to conceal Richardson's involvement.

The state charged Burrell with one count of racketeering and eight counts of aiding and abetting theft by swindle of an amount over $35,000. Following a stipulated-evidence court trial, the district court found Burrell guilty on all counts.

Because racketeering is not ranked in the Minnesota Sentencing Guidelines, the parties each proposed to the district court a sentencing severity level. The district court issued a memorandum and order ranking the offense at level nine, ultimately imposing an executed prison sentence of 74 months. This appeal follows.

D E C I S I O N

Burrell argues that the evidence is insufficient to support her convictions because the state failed to establish the requisite structure for a racketeering enterprise and presented insufficient evidence to prove that she aided and abetted theft by swindle. She further contends that the district court improperly ranked the racketeering offense at a severity level of nine. Because the record supports Burrell's convictions and the district court did not abuse its discretion in ranking the offense, we affirm.

I. The evidence supports Burrell's conviction for racketeering.

Burrell first argues that the district court applied an incorrect definition of "enterprise" when finding her guilty of racketeering and that the state failed to present evidence to establish an enterprise under the correct definition.

When evaluating the sufficiency of the evidence, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from" those facts permit a reasonable conclusion of guilt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.* But whether a defendant's conduct meets the definition of a particular offense presents a question of statutory interpretation reviewed de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

The district court found the existence of an enterprise based on circumstantial evidence. When reviewing a conviction based on circumstantial evidence, we apply a two-step analysis. First, we identify the circumstances proved, viewing conflicting evidence in the light most favorable to the verdict. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). We next determine "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 599 (quotation omitted). In making this determination, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt. *Id.*

Before the district court, Burrell argued that the state did not prove the existence of an enterprise within the meaning of the racketeering statute because an enterprise cannot be found where authority is shared between codefendants. The statute defines an "enterprise" as "a sole proprietorship, partnership, corporation, trust, or other legal entity" or an "association, or group of persons, associated in fact although not a legal entity."

Minn. Stat. § 609.902, subd. 3 (2016). An enterprise is characterized by (1) a common purpose among its members; (2) an ongoing and continuing organization, "with its members functioning under some sort of decisionmaking arrangement or structure"; and (3) activities that "extend beyond the commission of 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).

The district court concluded that "though the typical case of racketeering does involve a clear and authoritarian structure, it does not *require* a clear and authoritarian structure. Rather, there may be a loosely affiliated set of agencies carrying out a scheme with a common purpose." Burrell disputes this conclusion, arguing that the district court was required to find the existence of a hierarchical organization. But the statutory definition specifically contemplates entities, such as partnerships, that are nonhierarchical in nature. *See* Minn. Stat. § 609.902, subd. 3. And where a group is "associated in fact," the structure of the organization may be informal. *See Huynh*, 519 N.W.2d at 196. For example, *Huynh* did not require a strict hierarchy but only "some continuity of structure and personnel."[1] *Id.* at 197.

Even so, the district court here found a structure that was hierarchical in nature. The district court found that participants relied on advice from Richardson and Burrell to

[1] Burrell argues that *Huynh* mentions a "hierarchy," but this reference only appears in a footnote discussing the statute's legislative history. 519 N.W.2d at 195 n.4. Burrell also cites *State v. Longo*, in which the enterprise had "a clear organizational structure, with [the defendant] as the principal" and another individual as his "right-hand man." 909 N.W.2d 599, 606 (Minn. App. 2018). However, *Longo* does not establish that such a structure is the only type of arrangement that may constitute an enterprise.

coordinate a scheme that "involved several layers, all focused on a goal of procuring unjustified payments." The district court described four layers to this scheme:

> The lowest level of this scheme involved allegedly disabled individuals verifying receipt of personal care services that were never rendered. The second level required personal care attendants to verify that personal care services had been provided regardless of whether or not services had actually been rendered. The third level involved multiple businesses, and the owners of these businesses, submitting requests to the state for payment of these personal care services which were never rendered. Defendant Bridgett Burrell was a member of this third group. Finally, at the top of the structure, Defendant Lillian Richardson directed and coordinated the illegal activities necessary to keep the scheme in operation.

The record otherwise shows an ongoing, coordinated scheme with a common purpose and activities extending beyond the commission of the predicate criminal acts in order to further perpetuate the scheme. *See id.* at 196. All agency principals uniformly omitted Richardson's name from documents that required the agencies to identify their affiliates. Considering Richardson's continuous involvement with the agencies and leadership role, as well as the number of participants involved, it is unreasonable to infer that the omission was a coincidence rather than a coordinated plan. Further, the agencies shared not only personnel but also participants and clients, and transferred these various individuals between agencies to avoid investigation. On this record, the only reasonable inference is that the agencies operated under a coordinated decisionmaking arrangement. The district court found that Burrell had a leadership role in this scheme, subordinate to

Richardson. Accordingly, we see no error by the district court in its finding that the scheme contained the requisite structure for a racketeering enterprise.[2]

II. The evidence supports Burrell's conviction for aiding and abetting theft by swindle.

Burrell next argues that her convictions should be reversed because the evidence is insufficient to support her convictions for aiding and abetting theft by swindle, the predicate offenses to her racketeering conviction.

The crime of theft by swindle occurs when a person "by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person." Minn. Stat. § 609.52, subd. 2(a)(4). Accordingly, the elements of theft by swindle are: (1) the owner gave up possession of the property due to the swindle, (2) the defendant intended to obtain possession of the property, and (3) the defendant's act was a swindle. *State v. Pratt*, 813 N.W.2d 868, 873 (Minn. 2012). The elements of aiding and abetting are "(1) that the defendant knew that h[er] alleged accomplices were going to commit a crime, and (2) that the defendant intended h[er] presence or actions to further the commission of that crime." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted).

Burrell first argues that, even if there were swindles, the state did not prove that DHS paid out money "due to the swindle[s]." We recently rejected the same argument raised by her codefendant. *Richardson*, 2020 WL 5361101, at *4. To be sure, the supreme

[2] Burrell also argues that the district court "misinstructed itself" on the definition of an "enterprise." Although she frames this as an alternative argument, it is premised on the same contentions that we reject herein.

court affirmed a theft-by-swindle conviction based on a similarly attenuated chain of causation in *Pratt*. There, the defendant prepared fraudulent purchase agreements and loan applications, and uncontroverted evidence established that mortgage lenders relied on such documents when deciding whether to extend loans. 813 N.W.2d at 871-72. In standard practice, once a lender agreed to extend a loan, a title company often facilitated closing and disbursed funds received from the lender. *Id.* at 872. The *Pratt* court held that the false representations on the purchase agreements and loan applications supported the defendant's theft-by-swindle convictions notwithstanding this chain of causation. *Id.* at 875. Here also, the false enrollment documents may form a basis for theft by swindle even though the actual transfer of Medicaid funds did not occur until the agencies later submitted claims for reimbursement.

Burrell further contends that the state failed to prove specific intent to swindle over $35,000, the amount that increases the maximum allowable penalty for the offense. Minn. Stat. § 609.52, subd. 3(1) (2016). She does not explain why the evidence was insufficient, cite any caselaw directly supporting her argument, or provide substantive legal analysis. It is true that intent to defraud is an element of theft by swindle. *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003). But caselaw shows that the requisite intent concerns the intent *to defraud*, not an intent to steal a specific amount. *See id.* ("Theft by swindle requires the intent to defraud."); *see also 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."). Burrell's knowledge and intent concern the act of theft by swindle rather than the amount swindled.

Further, the circumstantial evidence supports a finding that Burrell intended to aid and abet the swindles of amounts greater than $35,000. The evidence shows that Burrell helped lead a coordinated scheme that generated over $7 million over the course of four years. The district court made detailed findings as to the amount swindled for each six-month period and found that during each such period, the enterprise received hundreds of thousands of dollars from DHS based on the misrepresentations of Burrell and her associates. Burrell does not present an alternative hypothesis. Given the volume of participants and claims involved and the amount of money consistently received over each six-month period, it is not reasonable to infer that she lacked knowledge and intent to contribute to the transfer of hundreds of thousands of dollars every six months. The evidence is sufficient to support the necessary intent.

III. The district court did not abuse its discretion in ranking the racketeering offense.

Burrell challenges the district court's ranking of the racketeering offense at a severity level of nine for the purpose of sentencing. When sentencing a defendant on an unranked offense, a district court must assign the offense a severity level. Minn. Sent. Guidelines 2.A.4 (Supp. Nov. 2016). Relevant factors include, but are not limited to: (1) the gravity of the specific conduct underlying the unranked offense; (2) the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense; (3) the conduct of, and severity level assigned to, other offenders for the same unranked offense; and (4) the severity level assigned to other offenders who engaged in similar conduct. *Id.*; *State v. Kenard*, 606 N.W.2d 440, 443 (Minn. 2000). We review a

severity-level determination for an abuse of discretion. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006). Here, we conclude that the district court properly applied the *Kenard* factors when ranking the offense.

The gravity of the specific conduct

First, the record demonstrates the severity of Burrell's conduct. The district court found that Burrell played a key role in this scheme, holding a leadership role with respect to other participants except Richardson. The scheme itself was large and complex, involving over $7 million and numerous co-conspirators. Further, the money targeted by the enterprise was meant for vulnerable and sick individuals.

The severity level assigned to any ranked offense whose elements are similar to those of the unranked offense

The district court also considered the severity of ranked offenses with similar elements. Because her convictions do not involve violence or gang activity, Burrell argues that she is entitled to a lower severity ranking than the defendant in *Huynh*, who received a similar ranking after threatening to kill the victim and his family.[3] *See Huynh*, 519 N.W.2d at 198. When affirming that ranking, however, the supreme court noted that the penalties for racketeering are similar to penalties for first-degree assault and stated that

[3] The racketeering offense in *Huynh* was ranked at level eight, but the ranking there is not directly analogous to the current ranking grid. *Compare* Minn. Sent. Guidelines IV (Supp. 1992) (providing a presumptive sentence of 86 months of imprisonment for a level-eight offense when a person has a criminal-history score of zero), *with* Minn. Sent. Guidelines 4.A (Supp. Nov. 2016) (providing a presumptive sentence of 86 months of imprisonment for level-nine offense when a person has a criminal-history score of zero).

"[t]he legislature clearly intended to punish severely those persons who engage in racketeering." *Id.*

Burrell further argues that her conduct is more analogous to that of other financial crimes. She cites the crime of financial exploitation of a vulnerable adult, which—like racketeering—is punishable by up to 20 years in prison. *Compare* Minn. Stat. § 609.52, subd. 3(1), *with* Minn. Stat. § 609.2335, subd. 3 (2016) (providing for penalty under section 609.52). When the amount involved is over $35,000, the guidelines assign a severity level of seven for that offense. Minn. Sent. Guidelines 5.B. And identity theft involving over $35,000 is ranked at severity level of eight. *Id.*

But the district court found the racketeering at issue here to be more severe than the above-named offenses. Indeed, Burrell helped coordinate such fraud on a large scale, involving many participants and requiring a greater degree of sophistication than other fraud crimes.

The conduct of, and severity level assigned to, other offenders for the same unranked offense

The district court further reasoned that, according to guidelines commission data, racketeering is most commonly ranked at level nine. Burrell argues that this factor should be given little weight because—by their nature—unranked offenses are rarely prosecuted or cover a wide range of underlying conduct. But *Kenard* identifies historical ranking of such offenses as a relevant consideration in establishing the severity level of the instant offense. 606 N.W.2d at 443. The district court appropriately considered the ranking assigned to other racketeering convictions.

The severity level assigned to other offenders who engaged in similar conduct

Referencing this factor, Burrell reiterates the argument that her crime was nonviolent and observes that level-nine offenses generally involve loss of life or the high probability of loss of life. Indeed, the district court expressed reluctance to adopt a straight comparison between violent crimes and the racketeering involved here. Nonetheless, as the district court observed, Burrell's conduct is similar to racketeering cases involving mortgage fraud and white-collar crimes, which courts have also ranked at level nine.[4]

The district court did not abuse its discretion in establishing a severity level of nine for this unranked offense.

Affirmed.

[4] *See, e.g.*, *State v. Rosenlund*, No. A09-358, 2010 WL 771773, at *4-5 (Minn. App. Mar. 9, 2010) (affirming level-nine ranking for racketeering involving mortgage fraud).