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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-165

Filed: 4 October 2016

Rowan County, Nos. 11 CRS 055236-40

STATE OF NORTH CAROLINA

v.

THORNELL CHRIS BENNETT

Appeal by defendant from judgment entered 2 September 2015 by Judge Anna M. Wagoner in Rowan County Superior Court. Heard in the Court of Appeals 25 August 2016.

Attorney General Roy Cooper, by Assistant Attorney General Rebecca E. Lem, for the State.

Willis Johnson & Nelson PLLC, by Drew Nelson, for defendant-appellant.

McCULLOUGH, Judge.

Thornell Chris Bennett (“defendant”) appeals from judgment entered upon his convictions of two counts of insurance fraud and two counts of obtaining property by false pretenses. On appeal, defendant argues that the trial court erred by denying his motion to dismiss. For the reasons stated herein, we hold no error.

I. Background

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On 2 April 2012, defendant was indicted on two counts of insurance fraud in violation of N.C. Gen. Stat. § 58-2-161 and three counts of obtaining property by false pretenses in violation of N.C. Gen. Stat. § 14-100.

Defendant's case commenced at the 1 September 2015 criminal session of Rowan County Superior Court, the Honorable Anna Mills Wagoner, presiding.

April York ("Ms. York"), the senior director of patient financial for Novant Health and supervisor of billing practices at Rowan Regional Medical Center, testified for the State. Ms. York testified that Rowan Regional Medical Center's records demonstrated that defendant was admitted and discharged on 7 January 2011 and that he received the following medical services: "CT of the spine, a CT of the head, an ED visit, and some medications." The hospital bill from defendant's 7 January 2011 visit, totaling \$3,662.00, was admitted as State's Exhibit 1 ("Exhibit 1") and published to the jury. Ms. York testified that Exhibit 1 was a fair and accurate copy of defendant's hospital billing record as of 12 July 2011. There were no records of defendant being a patient at Rowan Regional Medical Center on 27 January 2011. On cross-examination, Ms. York testified that nurses or a unit secretary input information contained in the bills and conceded that mistakes could occur in the entry of data. She also admitted that she had no personal knowledge of the services rendered to defendant.

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Ryan Simpson (“Mr. Simpson”), an investigator with Travelers Insurance, testified for the State. Mr. Simpson testified that defendant, a customer of Travelers Insurance, submitted a claim for a single-vehicle collision with a telephone pole with the date of loss being 10 January 2011. Defendant submitted a medical invoice in support of his claim which was admitted as State’s Exhibit 2 (“Exhibit 2”). Mr. Simpson testified that Exhibit 2 indicated a service date of 27 January 2011 and total charges of \$3,662.00. As a part of his investigation, Mr. Simpson went to Rowan Regional Medical Center to confirm the dates and also called a representative from Nationwide Insurance.

Jessica Hayes (“Ms. Hayes”), an employee for Travelers Insurance who was working as a first-party medical adjuster in 2011, was also a State’s witness. Ms. Hayes testified that defendant presented a medical payment claim with the date of loss as 10 January 2011. Exhibit 2 was e-mailed to Ms. Hayes. **[T 51-52]** Defendant received a “MedPay” payment of \$1,000.00 from Travelers Insurance on 14 March 2011.

Leigh Walther (“Ms. Walther”), an investigator with Nationwide Insurance, testified for the State. Ms. Walther testified that defendant submitted a bodily injury claim with Nationwide Insurance with a date of loss of 20 January 2011. Defendant submitted Exhibit 2 via e-mail in support of his claim. Nationwide Insurance paid a total of \$4,162.00 to the benefit of defendant. \$500.00 of the \$4,162.00 payment was

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for general injuries and was paid directly to defendant. The remaining \$3,662.00 was paid directly to Rowan Regional Medical Center.

Lance Foss (“Mr. Foss”), a criminal investigator with the North Carolina Department of Insurance, testified that he conducted an investigation of defendant after receiving referrals from Nationwide Insurance and Travelers Insurance. Mr. Foss testified that defendant submitted two claims with Exhibit 2 to both of these insurance companies. Defendant had received \$1,000.00 from Travelers Insurance and \$500.00 from Nationwide Insurance. Mr. Foss also testified that he requested and received Exhibit 1.

At the close of the State’s evidence, defendant moved to dismiss all charges. The trial court denied defendant’s motion.

Defendant testified that he was involved in an accident on 10 January 2011 and that he received medical treatment from Rowan Regional Medical Center “[a] few days after the accident.” Defendant requested an itemized bill from Rowan Regional Medical Center to submit to his insurance company but did not recall the request date. Defendant also testified that he recalled being in an accident on 20 January 2011. “A few days after the accident[,]” defendant sought medical attention and subsequently, requested an itemized bill from Rowan Regional Medical Center to submit to the insurance company. Defendant submitted a claim with Travelers Insurance for an accident that occurred on 10 January 2011 and a claim

with Nationwide Insurance for an accident that occurred on 20 January 2011. Defendant denied altering documents he submitted to the insurance companies and testified that he did not believe they contained misleading or false information. His intent in submitting documents to the insurance companies was “[f]or them to pay the [medical] bills.” When defendant was asked whether he was admitted, treated, or discharged on 17 January 2011, defendant replied as follows:

A. These dates are wrong. I don’t know the date. I went to the hospital, I got seen after the accident. That’s what I’m saying I did. I went to the hospital and got an itemized bill and submitted it to the insurance company, what they gave me.

On 2 September 2015, a jury found defendant guilty on all counts. Defendant was sentenced as a prior record level II, received a suspended sentence of 7 to 18 months, and was placed on supervised probation for 24 months. Defendant was also ordered to pay restitution in the amount of \$1,500.00.

Defendant appeals.

II. Discussion

On appeal, defendant argues that the trial court erred by denying his motion to dismiss for insufficiency of the evidence. His arguments have no merit.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

[T]he trial court must consider the evidence in the light most favorable to the State, drawing all reasonable

inferences in the State's favor. All evidence, competent or incompetent, must be considered. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered. In its analysis, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When the evidence raises no more than a suspicion of guilt, a motion to dismiss should be granted. However, so long as the evidence supports a reasonable inference of the defendant's guilt, a motion to dismiss is properly denied even though the evidence also permits a reasonable inference of the defendant's innocence. The test for sufficiency of the evidence is the same whether the evidence is direct, circumstantial or both.

State v. Bradshaw, 366 N.C. 90, 92-93, 728 S.E.2d 345, 347 (2012) (internal citations and quotation marks omitted).

To convict defendant of insurance fraud, the State must prove:

that the accused presented a statement in support of a claim for payment under an insurance policy, that the statement contained false or misleading information concerning a fact or matter material to the claim, that the accused knew that the statement contained false or misleading information, and that the accused acted with the intent to defraud.

State v. Payne, 149 N.C. App. 421, 426-27, 561 S.E.2d 507, 511 (2002); see N.C. Gen. Stat. § 58-2-161 (2015). The elements of obtaining property by false pretenses are as follows:

- (1) knowingly and designedly by means of any kind of

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false pretense; (2) obtain[ing] or attempt[ing] to obtain from any person . . . any money, goods, property, services, chose in action, or other thing of value; (3) with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value.

State v. Jones, 367 N.C. 299, 307, 758 S.E.2d 345, 351 (2014) (citing N.C. Gen. Stat. § 14-100(a)) (internal quotation marks omitted).

First, defendant argues that the trial court erred by failing to dismiss all charges where there was no substantial evidence that Exhibit 2, submitted by defendant to the insurance companies, was inaccurate or inauthentic. Essentially, defendant is challenging the element of insurance fraud that Exhibit 2 “contained false and misleading information” and the element of obtaining property by false pretenses that there be “any kind of false pretense.”

We note that:

Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. The evidence need only give rise to a reasonable inference of guilt in order for it to be properly submitted to the jury for a determination of defendant’s guilt beyond a reasonable doubt.

State v. Stone, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citations omitted).

Here, the State presented testimony from Ms. York, the supervisor of billing practices at Rowan Regional Medical Center. According to Rowan Regional Medical Center’s records, defendant was admitted and discharged on 7 January 2011 after

receiving medical treatment. Ms. York testified that there were no records of defendant being a patient at Rowan Regional Medical Center on 27 January 2011. The State also presented evidence from representatives at Nationwide Insurance and Travelers Insurance that defendant submitted two separate insurance claims with Exhibit 2. Exhibit 2 was an itemized bill from Rowan Regional Medical Center with the service date of 27 January 2011. Viewing the evidence in the light most favorable to the State, we hold that it can reasonably be inferred that the 27 January 2011 bill, or Exhibit 2, contained false or misleading information and constituted a false pretense.

Next, defendant argues that the trial court erred by failing to dismiss the charges against him where there was no substantial evidence that defendant submitted the 27 January 2011 bill with the intent to defraud the insurance companies or knowledge of the bill's inaccuracy. Defendant maintains that no evidence was submitted that defendant altered Exhibit 1 to create Exhibit 2. Furthermore, defendant argues that assuming that Exhibit 2 was inaccurate or inauthentic, there was no evidence that defendant had knowledge of this fact at the time he submitted it to the insurance companies.

It is an essential element of insurance fraud that defendant "acted with the intent to defraud." *Payne*, 149 N.C. App. at 427, 561 S.E.2d at 511. "It is [also] an essential element of obtaining property by false pretense that the act be done

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‘knowingly and designedly . . . with intent to cheat or defraud.’” *State v. Hines*, 54 N.C. App. 529, 532-33, 284 S.E.2d 164, 167 (1981) (citing N.C. Gen. Stat. § 14-100). “Moreover, the false pretense need not come through spoken words, but instead may be by act or conduct.” *State v. Parker*, 354 N.C. 268, 284, 553 S.E.2d 885, 897 (2001) (citations omitted).

We reject defendant’s contention that there must be direct evidence that defendant altered Exhibit 1 to create Exhibit 2. “Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred.” *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974). Here, in the light most favorable to the State, there was adequate evidence in the record from which a reasonable jury could conclude that defendant knowingly and intentionally submitted Exhibit 2 to both Travelers and Nationwide Insurance with the knowledge that it contained the false service date of 27 January 2011. As previously discussed, the State presented evidence that defendant was not a patient at Rowan Regional Medical Center on 27 January 2011. Rather, records demonstrated that defendant was a patient on 7 January 2011. Defendant himself testified that he obtained the itemized bill from Rowan Regional Medical Center so that he could submit claims to his insurance companies. His intent in submitting Exhibit 2 was so that the insurance companies could “pay the [medical] bills.”

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Accordingly, we hold that there was substantial evidence of defendant's intent to defraud the insurance companies.

III. Conclusion

The trial court did not err by denying defendant's motion to dismiss all charges. Defendant received a fair trial, free of error.

NO ERROR.

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).