

No. 1-16-0299

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 8769
)	
DEBRA GAINES,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's conviction for theft where the evidence was sufficient to show she knowingly obtained or exerted unauthorized control over money to permanently deprive the State of Illinois of its use and benefit.
- ¶ 2 Following a bench trial, defendant Debra Gaines was found guilty of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)) and sentenced to six years' imprisonment. On appeal, defendant argues the evidence was insufficient to prove she knowingly exerted unauthorized control over money from the State of Illinois. We affirm.

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¶ 3 Defendant was charged by indictment with two counts of theft and one count of vendor fraud stemming from activities occurring when she owned and operated Heavenly Interventions, a community health center in Chicago. Relevant here, the indictment alleged that, between August 20, 2007, and August 25, 2010, defendant, through a series of acts in furtherance of a single intention and design, at least one of which occurred after May 10, 2010, knowingly obtained or exerted unauthorized control over governmental property of the State of Illinois, specifically over United States Currency valued at \$100,000 and not exceeding \$500,000, with the intent to deprive the State of Illinois permanently of the use or benefit of that property. The following evidence was presented at trial.

¶ 4 Special Agent Waheeda Muhammad of the Illinois State Police's Medicaid fraud unit testified that she was assigned to investigate Heavenly Interventions and spoke with defendant. Defendant told Muhammad that she was the owner of Heavenly Interventions, which provided individual and group therapy, and confirmed her signature on documents stating that she was the president and director. She further told Muhammad that therapy services at Heavenly Interventions were first provided by Dr. Albert Knott but, after he left, were continued by Khamraj Mookhram.¹ Defendant admitted that she knew Mookhram was not a licensed physician, which Muhammad later verified.

¶ 5 Defendant told Muhammad that billings were submitted to Medicaid using a signature stamp bearing Dr. Ernest Mensah's name and his "provider ID number." She told Muhammad that there was an agreement between Dr. Mensah and Mookhram that allowed Mookhram to

¹ Subsequently, defendant testified that Mookhram was also known as "Dr. K."

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facilitate group therapy sessions at Heavenly Interventions. Defendant stated that Dr. Mensah never provided any services for, and was never compensated by, Heavenly Interventions.

¶ 6 Defendant identified her signature on an alternate payee agreement form, which allowed Heavenly Interventions to bill for Dr. Mensah's services. This form contains a signature of Dr. Mensah and indicates he owns 100% of Heavenly Interventions. It further lists defendant's signature as "payee representative" of Heavenly Interventions, and the area indicating percentage of ownership by another owner is left blank.

¶ 7 Defendant told Muhammad that Heavenly Interventions opened a joint business checking account with herself, her mother, and Knott as joint members on the account. The "Chase Bank business signature card and business account add signers form" for Heavenly Interventions lists defendant's mother as president and defendant as vice president, and defendant confirmed their signatures on the form.

¶ 8 Muhammad made attempts to contact Mookhram, including by trying Jackson Park Hospital and at an "old" residence, but was unable to locate him. Muhammad spoke with several individuals who had received services at Heavenly Interventions but, after being shown a picture of Dr. Mensah, the patients did not identify him as the person they had received services from. One patient did tell Muhammad there was a doctor of Indian descent at Heavenly Interventions. Muhammad testified that she spoke with Dr. Mensah, who told her he had turned down a job at Heavenly Interventions, and that it was possible that Mookhram was a student at Jackson Park Hospital.

¶ 9 Terry Rogers, a public service administrator who managed physician billings for the Department of Healthcare and Family Services (HFS), testified to the billing procedures for

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Medicaid claims. In order to receive payment for providing psychiatric Medicaid services, one has to be a provider enrolled in the Medicaid program and have a valid claim. Neither defendant nor Heavenly Interventions was an approved Medicaid provider. Heavenly Interventions was instead a payee entitled to receive payments for medical services provided by Dr. Mensah.

¶ 10 Between August 20, 2007 and August 25, 2010, Heavenly Interventions received payments for individual and group psychotherapy services through provider Dr. Ernest Mensah. Rogers identified an alternate payee form on which defendant was identified as the payee representative for Heavenly Interventions and Dr. Mensah was listed as the owner. A power of attorney form allowed Heavenly Interventions to submit claims to HFS for Dr. Mensah. Heavenly Interventions submitted bills showing an actively enrolled provider, Dr. Mensah. If Dr. Mensah did not provide those services, the State of Illinois would not have paid the claims.

¶ 11 Dr. Ernest Mensah testified that he was an emergency room physician licensed to practice medicine in Illinois since 1999. In addition to his medical degree, Dr. Mensah also held an MBA degree and Master of Public Health degree. Dr. Mensah had never done his own billing for Medicare, Medicaid, or other insurance, but learned that his Medicaid provider number is the same as his medical license number. He worked at several hospitals, including Jackson Park Hospital.

¶ 12 In late 2005 or early 2006, Dr. Mensah learned from a colleague about an employment opportunity. He called and spoke with defendant, who invited him to meet the next day and told him to bring his resume and license. Dr. Mensah's sister was in town, so he brought her to the meeting. While Dr. Mensah spoke with defendant and her mother Bernice Gaines, his sister spoke with a man known as "Dr. K.," later determined to be Khamraj Mookhram. Defendant told

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Dr. Mensah that she wanted him to be medical director of the Heavenly Interventions facility and explained that Mookhram would be assisting him in treating patients. Defendant took copies of Dr. Mensah's medical licenses and a copy of his resume. Dr. Mensah filled out an application form, on which he provided his social security number and signature.

¶ 13 Dr. Mensah then spoke with Mookhram, who stated that he was a former student of Dr. Mensah's at Jackson Park Hospital. Dr. Mensah did not remember Mookhram as a student of his and, at the time of trial, could not say if Mookhram had ever been his student.

¶ 14 As Dr. Mensah left the facility, he noticed about 20 individuals who appeared "high or drunk," and was informed by Mookhram that they were patients. Dr. Mensah decided he did not want the job, believing the patients needed counseling and not the treatment Dr. Mensah could provide. He drove away and called defendant to inform her he would not be taking the job and that she should look for a psychologist or psychiatrist.

¶ 15 Later, in December 2010, Dr. Mensah received a "big package" from Medicaid referencing billings from Heavenly Interventions and asking him to pay about a half million dollars owed. Between the time of his interview and the receipt of the package from Medicaid, Dr. Mensah had not spoken with defendant, treated anyone at Heavenly Interventions, authorized anyone to use his provider number to bill Medicare or Medicaid at Heavenly Interventions, or received any payment for services from Heavenly Interventions.

¶ 16 Dr. Mensah denied signing a power of attorney form bearing his name and signature, and denied having seen it prior to December 2010. This document also displayed defendant's signature. Dr. Mensah further denied having signed or seen an alternate payee form, which allowed Heavenly Interventions to bill for Dr. Mensah's services. The form contained his social

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security number and apparent signature. This document further listed Dr. Mensah as owning 100% of Heavenly Interventions, even though he did not own any of it, and contained defendant's name and signature as "payee representative." Finally, Dr. Mensah denied having signed or seen a W-9 form, which contained his apparent signature and social security number.

¶ 17 On cross-examination, Dr. Mensah explained that, in 2010, HFS initiated Medicaid vendor administrative proceedings against him. The proceedings sought to recover \$260,000 from him and to terminate or suspend his ability to work as a provider with Medicaid, which would prevent him from billing Medicare or Medicaid for services rendered as a doctor. This would have, in essence, prevented Dr. Mensah from working as an emergency room physician in Illinois. He further testified that he filed a lawsuit against defendant.

¶ 18 Debbie Helms, bureau chief of claims processing for HFS, testified that Illinois pays the portion of a claim that Medicaid does not cover. Helms reviewed the records of paid claims with Heavenly Interventions as the payee and Dr. Mensah as the provider. From August 20, 2007 to August 25, 2010, Illinois paid \$282,275.77 to Heavenly Interventions for services purportedly rendered by Dr. Mensah, with at least one claim having been paid after May 10, 2007.

¶ 19 The parties stipulated that Clark Barber of the Illinois Office of the Comptroller would identify warrant copies and vendor history reports for Heavenly Interventions for the period of January 1, 2007, and May 28, 2010. The warrants were paid by the State of Illinois to Heavenly Interventions and credited to a JPMorgan Chase Bank account. The parties further stipulated that Dora E. Alejo, the custodian of records for JPMorgan Chase, would testify the JPMorgan Chase Bank account belonged to Heavenly Interventions and defendant was listed as authorized to act on behalf of the business. Additionally, the parties stipulated that Jay Stewart of the Illinois

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Department of Financial and Professional Regulation would testify there was no record of anyone by the name of Khamraj Mookhram licensed under the Illinois Clinical Psychologist Licensing Act or the Illinois Medical Practice Act. Finally, the parties stipulated that a representative from the State of Illinois Secretary of State's Office would testify that Heavenly Interventions was incorporated on June 9, 2005, with Debra S. Gaines as president, and dissolved November 12, 2010.

¶ 20 Defendant testified that she started Heavenly Interventions in 2005, after years of being a pastor and helping the homeless. She completed a few years of college and worked in data processing before moving into outreach work. Prior to starting Heavenly Interventions, defendant never worked in a job involving doctors or medical billing.

¶ 21 Heavenly Interventions began with a staff of five employees, including Dr. Knott, who provided therapy to patients. However, defendant was not happy with Knott because he would sometimes arrive late or fall asleep during treatment sessions, so she sought another doctor. One of the companies that provided transportation for patients to Heavenly Interventions referred defendant to Mookhram. Mookhram was not licensed but told defendant he could work under supervision by a licensed physician, as he had done at a different facility.

¶ 22 Mookhram told defendant that he had a friend, Dr. Mensah, who could supervise, and a meeting was set up. About a week later, Dr. Mensah came in alone, and he gave "approval" to Mookhram practicing under his supervision. A few days later, Dr. Mensah returned and signed paperwork, including an alternate payee form, a power of attorney form, and a W-9 form. Dr. Mensah returned a third time to review patient information and to deliver his signature stamp.

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Beyond that, he might have come into Heavenly Interventions another time, but contact was made mostly through telephone.

¶ 23 In August or September 2010, defendant contacted Dr. Mensah to inform him that the Inspector General wanted to conduct an audit. Defendant was only able to reach Dr. Mensah once but could not reach him again, despite calling and hand delivering a letter to Jackson Park Hospital.

¶ 24 Defendant testified that, because of policy changes with the State, Heavenly Interventions could no longer bill Medicaid under Dr. Mensah's information. Thereafter, Heavenly Interventions could no longer afford to pay Mookhram, and he stopped working around February 2010. Eventually, Heavenly Interventions had to close around September.

¶ 25 Defendant testified that Heavenly Interventions tried to pay Dr. Mensah, but he told her that the company should "get established first and then we will work something out." Defendant did not know that Mookhram was not supposed to practice under Dr. Mensah, and further that she could not bill Medicaid under Dr. Mensah's number while he was supervising Mookhram. She believed she was allowed to bill Medicaid because Dr. Mensah "authorized" it, and it was "okay" for Mookhram to provide services under the supervision of Dr. Mensah, even if Dr. Mensah was not physically present at Heavenly Interventions.

¶ 26 On cross-examination, defendant testified that she was the sole owner of Heavenly Interventions and would take control of the money received by the business. Defendant, when confronted with the alternate payee form listing Dr. Mensah as the 100% owner of Heavenly Interventions, explained that she meant to give him 10% ownership, but erroneously listed him as having 100% ownership. She acknowledged Heavenly Interventions was listed as payee, she

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signed the form as “payee’s representative,” and the other “percent of ownership” line was left blank.

¶ 27 Defense witness Bernice Gaines, defendant’s mother, testified that she volunteered at Heavenly Interventions. She explained that “Doctor K.” first brought Dr. Mensah into the facility. Dr. Mensah returned a day or two later, and filled out more paperwork. He then returned again about a week later and brought with him a signature stamp and showed how to use it. Bernice was present for several group therapy sessions run by “Doctor K.” She denied having any training in medical billing.

¶ 28 Defense witness Tomia Amet, defendant’s niece, testified that she did general office work at Heavenly Interventions, including medical billing despite having never done such work. Defendant helped her with some of the Medicare billing, but Amet did all the Medicaid billing on her own. After Dr. Knott left, “Doctor K.,” who was not a licensed physician, began working at Heavenly Interventions. “Doctor K.” introduced Dr. Mensah to defendant, with the purpose of using Dr. Mensah’s number for billing because “Doctor K.” was not licensed. Defendant and others led group therapy sessions at various times. On cross-examination, Amet admitted that defendant gave her provider numbers and told her to bill under Dr. Mensah’s provider number.

¶ 29 Defense witness Kelvin Johnson testified that he received therapy at Heavenly Interventions for depression between 2009 and 2010. He participated in group therapy session administered by “Doctor K.”

¶ 30 The trial court found defendant guilty of all charges, noting that defendant “never had permission from Doctor Mensah” and “[i]t was a con from day one.” It stated that defendant was a “thief,” who “[stole] money from the State of Illinois under[] the falsest of pretenses and

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pretending to have a program.” The court denied defendant’s written motion for a new trial and proceeded to sentencing.

¶ 31 The court sentenced defendant to the minimum of six years’ imprisonment as a Class X offender on one count of theft under Count 1 (720 ILCS 5/16-1(a)(1)(A) (West 2010). See 720 ILCS 5/16-1(b)(6.1) (West 2010) (“Theft of property exceeding \$100,000 in value is a Class X felony if the theft *** was of governmental property”). It merged the remaining findings of guilt into Count 1. Defendant filed a timely notice of appeal.

¶ 32 Defendant argues the evidence was insufficient to show she knowingly exerted unauthorized control over money from the State of Illinois as required to sustain her conviction for theft beyond a reasonable doubt. When reviewing the sufficiency of the evidence, we look whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the elements of the offense beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. In a bench trial, the trial judge, as the trier of fact, has the duty of determining the credibility of witnesses, weighing the evidence and any inferences derived therefrom, and resolving any conflicts in the evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 39. On appeal, we will not retry the defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). Instead, “[t]he reviewing court must carefully examine the record evidence while bearing in mind that it was the trier of fact who saw and heard the witness.” *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant’s guilt exists. *People v. Brown*, 2013 IL 114196, ¶ 48.

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¶ 33 As charged here, a person commits the offense of theft when she knowingly obtains or exerts unauthorized control over an owner's property and intends to deprive the owner permanently of the use and benefit of that property. 720 ILCS 5/16-1(a)(1)(A) (West 2010). Here, defendant does not challenge the element that she intended to deprive the State of Illinois of the use and benefit of the money. Rather, she argues the evidence was insufficient to show she *knowingly* obtained or exerted unauthorized control of the money. She asserts she trusted the doctors involved and believed there was an agreement between Dr. Mensah and Mookhram that allowed Mookhram to work under Dr. Mensah and use Dr. Mensah's information to bill Medicaid.

¶ 34 A person acts knowingly if he "is consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(b) (West 2014); *People v. Gean*, 143 Ill. 2d 281, 288 (1991). The element of knowledge is rarely established by direct proof, and is usually shown through circumstantial evidence. *People v. Fleming*, 2013 IL App (1st) 120386, ¶ 74. Knowledge is therefore inferred from the facts and circumstances encompassing the case. *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 118. As it is a factual issue, we will not disturb the trier of fact's finding of knowledge unless the evidence is so unbelievable or improbable that it creates a reasonable doubt of the defendant's guilt. *People v. Miller*, 2018 IL App (1st) 152967, ¶ 9.

¶ 35 Viewing the evidence in the light most favorable to the State, we find the evidence was sufficient to sustain defendant's conviction for theft. Defendant testified that Heavenly Interventions used Dr. Mensah's provider number to bill Medicaid, despite Dr. Mensah never providing any medical services. Dr. Mensah testified that he interviewed for a job at Heavenly

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Interventions and filled out an application form, on which he provided his social security number and signature. He denied signing an alternate payee form, which allowed Heavenly Interventions to bill for Dr. Mensah's services, despite it containing his social security number and apparent signature. Further, this document listed Dr. Mensah as owning 100% of Heavenly Interventions, even though he did not own any of it. The document also contained defendant's name and signature as "payee representative," with no percentage of ownership listed even though defendant testified she owned the business. Moreover, Dr. Mensah never received any compensation from Heavenly Interventions. Finally, the evidence showed that Heavenly Interventions billed the State of Illinois for \$282,275.77 in services under Dr. Mensah's name, which Illinois would not have paid if Dr. Mensah did not provide those services. Defendant acknowledged she billed Medicaid with Dr. Mensah's information, but asserted that she had permission to do so pursuant to an agreement wherein Mookhram would provide services under the "supervision" of Dr. Mensah.

¶ 36 Given this evidence, a rational trier of fact could find defendant knowingly exerted unauthorized control over money from the State of Illinois. The evidence supports a finding that defendant acted knowingly when she provided Dr. Mensah's information without permission on an alternate payee form, listed Dr. Mensah as having 100% ownership of Heavenly Interventions, and subsequently billed the State for medical services purportedly rendered by Dr. Mensah. She exerted unauthorized control given that, as shown by Rogers's testimony, the State of Illinois would not have paid the claims if Dr. Mensah did not provide the medical services. The evidence presented is not so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. See *Brown*, 2013 IL 114196, ¶ 48.

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¶ 37 Defendant, of course, is correct that the “case came down to [defendant’s] version of events versus Dr. Mensah’s explanation of what occurred.” She asserts that she is merely an unsophisticated businesswoman, who believed she had permission to use Dr. Mensah’s provider number. She points to Dr. Mensah’s educational background to contend that Dr. Mensah is familiar with the medical field and billing. However, “[a] trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor must the trier of fact search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt.” *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Here, the trial court heard all the evidence and determined defendant was a “thief,” who “[stole] money from the State of Illinois under[] the falsest of pretenses and pretending to have a program.” Ultimately, the trial court believed Dr. Mensah’s version of events over defendant’s. It is the court’s duty to determine the credibility of witnesses and we defer to that determination. See *Brown*, 2017 IL App (1st) 142877, ¶ 39.

¶ 38 Defendant argues the alternate payee form does not prove she knowingly exerted unauthorized control over the money where Dr. Mensah signed the form and was therefore aware of its contents. We disagree. Dr. Mensah testified that he did not sign the form and had never seen it before. The trial court was presented with two conflicting accounts of what had happened at Heavenly Interventions and concluded defendant was a “thief,” who “never had permission from Doctor Mensah.” We will not substitute our judgment for that of the trial court. See *People v. Moore*, 2016 IL App (1st) 133814, ¶ 55. Moreover, the trial court did not have to accept defendant’s testimony that she erroneously wrote that Dr. Mensah owned 100% of Heavenly Interventions instead of 10%, especially where Dr. Mensah testified he did not own the business

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and never received any compensation, and defendant neglected to note on the form that she was in fact the owner. See *Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 39 Defendant asserts that Dr. Mensah had motive to lie at trial because, if defendant's version of the events were true, he could face criminal charges or professional discipline affecting his ability to work. Again, defendant is challenging the credibility of Dr. Mensah as a witness, which is the duty of the trier of fact to determine. See *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Moreover, we will not reverse a conviction where a defendant merely asserts that a witness is not credible. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. Here, defendant tested Dr. Mensah's credibility on cross-examination, and the trial court was able to consider Dr. Mensah's credibility and any self-serving testimony he provided. We will not disturb its credibility determination on appeal.

¶ 40 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 41 Affirmed.