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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. IRMA HAMMOND, Defendant and Appellant.	B231927 (Los Angeles County Super. Ct. No. BA353660)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara R. Johnson, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Michael J. Wise, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Irma Hammond (defendant) was convicted of workers' compensation insurance fraud. (Ins. Code, § 1871.4, subd. (a)(1)[1]). On appeal, defendant contends that there is insufficient evidence to support her conviction. We affirm the judgment.

BACKGROUND

A. Factual Background

1. Prosecution Evidence

Felicia Negrete testified that she was employed as a claims adjustor for Gallagher Bassett Insurance Company (Gallagher Bassett), which handled the workers' compensation insurance claims for Wells Fargo Bank. In 1995, defendant submitted a claim for workers' compensation benefits, reporting that she had an occupational injury at Wells Fargo Bank, where she worked. At that time, defendant began receiving workers' compensation benefits.

In 2004, several 25 pound boxes fell on defendant when she was attempting to place them on a shelf. Negrete testified that in 2004, Dr. Robert Hunt, defendant's physician at that time, submitted to Gallagher Bassett a request for transportation stating that defendant "may have an injury or injuries that may be aggravated/exacerbated with driving or with public transportation." The request did not state that defendant could not drive. Gallagher Bassett objected to defendant's request. In December 2004, defendant requested an expedited hearing before the Workers' Compensation Appeals Board (WCAB).[2] The matter was set for hearing on April 7, 2005.

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[1] All statutory citations are to the Insurance Code unless otherwise noted.

[2] Counsel for Gallagher Bassett argued that defendant made the request for an expedited hearing because of the parties' dispute as to whether defendant was entitled to

The trial court admitted into evidence a transcript of the April 7, 2005, proceedings before the WCAB. At the April 7, 2005, hearing,[3] defendant testified that in 1996, she sustained an injury to her head, neck, right shoulder and arm, and back and lower right extremity, including her hip, at Wells Fargo Bank when she lifted luggage from a bin. Defendant testified that she has been under the medical care of Dr. Hunt for those injuries from January 20, 2004 to the present. When asked if she has "good days and bad days?," defendant responded, "Every day is a bad day," and that she does not have any good days.

Defendant underwent various forms of therapy three times a week at different locations, often 20 miles away from her home. She was taken to physical and occupational therapy by a transportation company hired by Dr. Hunt. According to defendant, she could not utilize bus transportation because the appointments are far from her home and she has more than one appointment a day that are at different locations. In July 2004 she stopped using the transportation company, and since then she has been taken to her medical appointments and therapy sessions by her husband, who has to take time off from work in order to do so.

At the WCAB hearing on April 7, 2005, defendant was asked, "Did you drive yourself [from your home to the location where the therapy was administered?," and defendant responded "no." Defendant was asked, "[D]uring the time you were getting the therapy . . . , were you able to drive?," and defendant responded "no." Defendant was also asked, "When did you last drive?" and defendant responded, "About three years ago." Defendant was asked, "Your testimony is [that the] last time you drove anywhere is about three years ago?," and defendant responded, "Yeah." Defendant testified that she cannot drive to the supermarket or her local mall. She testified at the hearing that she owns a Dodge truck but "I don't drive it."

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receive from Gallagher Bassett transportation to her medical appointments as a workers' compensation benefit.

[3] The record does not disclose the WCAB's ruling following the hearing.

Defendant testified at the WCAB hearing that she stopped driving because she experienced "double vision," was "not . . . able to maneuver [it]" because of the injuries to her shoulder and lack of strength in her hands and shoulders, and was taking medication that caused blurred vision, nausea, and drowsiness. When Dr. Hunt prescribed medication for her, he told her not to drive.

Defendant testified at the WCAB hearing that she started using a cane in February 2004, and it was prescribed by Dr. Hunt. According to defendant, she always had to use it, and she has to use it to get out of her car and to walk around the house.

Nestor Gomez, a private investigator, testified both at the WCAB hearing and at trial that he conducted surveillance of defendant in March 2005. He took surveillance video of defendant driving a Dodge truck to her home, exit the vehicle without the assistance of a cane, walk to her home without the assistance of a cane, and a few hours later exit her home and drive the Dodge truck away from the home.

Negrete testified at trial that telling the truth about driving a vehicle within the last three years is important to Gallagher Bassett because if defendant can drive, there would be no need to provide her with transportation, which can be expensive. Negrete estimated that it would cost between $120 to $150 to provide defendant with transportation to a location 20 miles from her home. On cross-examination, Negrete testified that if defendant were not able to drive except in emergency circumstances or on a very, very limited basis, it should not affect the amount of money necessary for transportation.

2. Defendant's Evidence

Leslie Metcalf, a physician, testified at trial that she and Dr. Hunt, defendant's primary physician, treated defendant from 2004 through October 2008. After Dr. Hunt died in October 2008, Dr. Metcalf continued to treat defendant.

Since 2004, as a result of boxes falling on defendant as she attempted to place them on a shelf, defendant had pain in her shoulder, arm and lower back. Defendant had thoracic scoliosis, neck, arm, low back, leg, and ankle pain, and her right leg would

occasionally "give way." Defendant underwent physical therapy and "a multitude" of epidural blocks in her neck and low back. In 2004 and 2005, defendant was taking "a lot" of medication proscribed by a psychiatrist, that "tend[s] to affect your thinking" and "mental ability," and cause drowsiness.

Dr. Metcalf testified that Dr. Hunt recommended that defendant arrange for transportation "to take her to and from her house to and from other therapy that Dr. Hunt recommended." Dr. Metcalf testified that Dr. Hunt did not think defendant would be a safe driver in view of the medications she was taking and her orthopedic problems. Physically, defendant could drive. Dr. Metcalf wrote a note in defendant's medical files that defendant said that if she had to she could drive, but Metcalf testified that "I really don't think she'd be a real, real safe driver . . . ." Dr. Metcalf never saw defendant drive a car.

Dr. Metcalf gave defendant tests to prove or disprove defendant's ability to perform certain functions. Dr. Metcalf opined that defendant could not have been "faking" having scoliosis because x-rays of her spine revealed that she had curvature of the spine. Defendant received multiple epidurals to her neck and low back, which Dr. Metcalf opined is an invasive and dangerous procedure. Dr. Metcalf would not have performed the epidurals if she had reason to believe that defendant was "faking" those injuries.

Glen Joseph Hensle, an acupuncturist, testified at trial that he treated defendant from 2004 through 2006, and that "[s]ome days [for defendant] were better than others." Defendant had an antalgic gate—her walking was altered due to physical pain. Dr. Hensle testified that defendant also had hypertonicity and spasticity of the muscles, which is unusual for a woman of defendant's age and build, and Dr. Hensle testified that he does not think someone other than a yoga master could fake having that condition. Dr. Hensle believes that Robert Hammond, defendant's husband, would drive defendant to the visits with Dr. Hensle, and Hammond would be waiting for defendant when she finished treatment. Upon viewing the videotaped surveillance of defendant, Dr. Hensle

stated that it showed defendant taking two or three steps before she passed by a fence, so it was "hard to know if she was walking normally."

Jamie Guerrero, a physician assistant at Pain Management Group, testified that since 2004 defendant had been a patient in the group. Prior to becoming a patient at Pain Management Group, defendant had been diagnosed with cervical radiculitis, several disk bulges in her neck causing pain to her neck and upper extremities, right shoulder internal derangement, lumbar spine protruding disks, facet arthritis causing low back and leg pain, chronic pain syndrome, and fibromyalgia syndrome. Fibromyalgia causes pain, chronic fatigue, chronic insomnia, mental fatigue, and metal "haziness"—difficulty in the cognitive aspects of thinking, remembering, focusing, and concentrating.

Gladys Schreiner, defendant's friend, testified that from 2002 to 2005, defendant was "deteriorating." Since 1999, she noticed that defendant was not remembering things.

Irma Priscilla Garcia, defendant's daughter, testified that she lived with defendant in 2003 and 2004. From 2003 through 2005 Garcia never saw defendant drive, and she never heard about defendant "driving at all." Defendant had some "good days," and bad days and, upon viewing the surveillance video of defendant, Garcia opined "that day could have been a good day for her."

Hammond, defendant's husband of 33 years, testified at trial that from 2003 through 2005 defendant was in poor condition. From 2004 through 2005, defendant had a "good day"—when she was cognizant when she woke up—about once every week or every other week. Approximately once a month defendant would have a "terrific" day.

Hammond testified that he "generally" drove defendant to her medical appointments, including during the period of 2003 through 2005. Hammond testified that between 2003 through 2005 he would drive defendant to her doctors' appointments "all of the time, most of the time." According to Hammond, the only reason defendant would drive is if he was unable to leave work and drive her.

Hammond said defendant was capable of driving—she had the physical ability to manipulate the vehicle—but he did not think it was safe for her to drive because her

actions were slow. He maintained vehicle insurance for defendant and she was allowed to drive a vehicle any time she wanted, but "generally" he did not "have her drive a car." Defendant had a disabled placard for her vehicle. Hammond observed defendant drive within three years prior to 2005, but "not many times." Hammond observed defendant drive approximately three times "after her injury." Hammond was later asked, "Now, on these visits to the doctor, did [defendant] ever drive to the doctor herself?," and he responded, "Oh, yes. She's driven to the doctor many times herself." Shortly before the WCAB hearing, Hammond drove defendant to her medical appointments "99 percent" of the time. Hammond testified, "[Defendant] does not drive other than to go to the doctor. [I]'ve kept insurance active on my cars . . . just in case she had to, in an emergency, drive to the doctors. Other than that, all other driving I [drive] 99.9 percent [of the time]."

Hammond observed the surveillance videotape of defendant and said that it appeared she was having one of her better days. According to Hammond, he was working on that day and unable to drive defendant to her doctors' appointments.

Hammond attended a meeting with defendant and her attorney regarding Gallagher Bassett's denial of defendant's request for transportation, and the upcoming WCAB hearing. Defendant's attorney told Hammond that defendant's attorney requested the WCAB hearing for the purpose of obtaining transportation for defendant's medical appointments. Hammond does not believe that he told defendant's attorney that defendant had driven, despite Hammond having seen her drive.

Hammond testified that defendant's attorney told defendant to answer the questions posed to her at the WCAB hearing by telling the truth to the best of her knowledge, and by being as specific as she could if it concerned her medical issues. According to Hammond, defendant's attorney told defendant that "other questions should be answered generally unless they ask for a specific point . . . or item." Hammond believed defendant was correct in testifying at the WCAB hearing that she had not driven in three years because "whether or not she drove was not a specific question as far as a particular day. . . . [Defendant] didn't mark down on the calendar every day she drove."

Hammond said he thought that defendant answered the questions asked of her at the hearing "consistent[] with the directive from her lawyer."

According to Hammond, on the day of the WCAB hearing, defendant was emotional and "highly medicated." Hammond opined that defendant was having trouble with her memory at the hearing and "mixing dates, years, and events," "due to the drugs she was on" at that time.

B. Procedural Background

The District Attorney of Los Angeles County filed an information charging defendant with two counts of workers' compensation insurance fraud in violation of section 1871.4, subdivision (a)(1) (counts 1 and 2), and two counts of perjury under oath in violation of Penal Code section 118, subdivision (a) (counts 3 and 4).

The trial court granted defendant's request for a court trial, and denied her motion for judgment of acquittal pursuant to section 1118.1. Following trial, the trial court found defendant guilty on count 1 for workers' compensation insurance fraud, and not guilty on the remaining counts. The trial court denied defendant's motion for a new trial.

The trial court placed defendant on formal probation for three years, with the condition that she serve two days in county jail and perform 100 hours of community service. The trial court awarded defendant two days of custody credit and imposed various monetary penalties and assessments, and a restitution fine.

DISCUSSION

Defendant contends that there is insufficient evidence to support her conviction for workers' compensation insurance fraud. We disagree.

A. Standard of Review

In reviewing a challenge to the sufficiency of the evidence, we apply the following standard of review: "[We] . . . consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from

the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted; *People v. Hayes* (1990) 52 Cal.3d 577, 631; *People v. Johnson* (1980) 26 Cal.3d 557, 576.) Our sole function is to determine if "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" (*People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) The California Supreme Court has held, "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.) We review the trial court's ruling on defendant's motion for new trial based on the insufficiency of the evidence under that same standard. (*People v. Dickens* (2005) 130 Cal.App.4th 1245, 1252; *People v. Serrato* (1973) 9 Cal.3d 753, 761 disapproved on another ground in *People v. Fosselman* (1983) 33 Cal.3d 572, 583, fn. 1.)

B. Trial Court Rulings

At the conclusion of the court trial, the trial court found defendant guilty on count 1 for workers' compensation insurance fraud, stating, "[It] looked like [from the video surveillance that defendant was having] a really good day because [of] the way she got out of the car, the way she went to her place. . . . [A]nybody can have a good five minutes. [¶] I don't think that the tape in and of itself goes to—can establish by itself whether or not the defendant was malingering or really was ill. And I am going to take the representation of the witnesses who have doctoral training that she was, in 2005, not a well woman; and I'm going to take the representation of her husband that she's deteriorated since then. [¶] Be that as it may, we're only to decide whether on April 5th, or the date that she took the testimony in front of the court, whether or not her statement was material to the issue of getting transportation, and I think that it was. . . . [¶] [Is] the statement 'I don't drive' or "I haven't driven in the last three years" . . . material? I think

it is and mainly because she had just driven eight days before her testimony. So that's something that you would have in your mind. It's not something that you . . . would forget. . . . Although [defendant] says she hasn't, her husband has testified that she has driven more times than just that one occasion to the doctor. And I think that that might have affected the way the judge in this case would have awarded benefits . . . . [¶] . . . [¶] [B]ecause [defendant's testimony at the WCAB hearing] was fresh enough from the time that she was driving, I don't think that the question was so vague that there could have been a misunderstanding as to the answer . . . in terms of evaluating whether or not she's going to get benefits. And because she had driven so recently, I think that her statement that 'I haven't driven' . . . or anything like that, was with an intent; and that . . . she knew that the statement was false as the time and it was made with the intent to gain transportation."

Defendant filed a motion for new trial pursuant to section 1181. Defendant's counsel argued that Hammond was mistaken when he testified as to the time period during which defendant was driving—Hammond was available to testify in order to "explain his [trial] testimony"—and that there was not sufficient evidence to support a finding that defendant had the specific intent to defraud. The trial court denied defendant's motion, stating, "I reviewed the evidence. And I don't think that there's any new discoverable information, and I think that the ruling that I made was correct, and I think that the . . . time period of the testimony that I heard was sufficient for the conviction."

C. Analysis

"An employee who suffers a work-related injury is entitled to various benefits under workers' compensation law. Among the benefits are temporary disability payments which substitute for lost wages during the period of temporary incapacity [citation], permanent disability payments which indemnify the worker for lost future wages if a residual disability remains after the healing process is complete [citation], and medical benefits [citation]." (*People v. Gillard* (1997) 57 Cal.App.4th 136, 153-154.)

Defendant was convicted of workers' compensation insurance fraud in violation of section 1871.4, subdivision (a)(1), which provides in relevant part: "(a) It is unlawful to do any of the following: [¶] (1) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code." Defendant contends that there is insufficient evidence to support a finding that she made a material representation. We disagree.

"[M]ateriality [under section 1871.4, subdivision (a)(1)] does not require that the omitted information in fact influence the ultimate determination of whether benefits are owed; it is material if it can influence the determination. . . . [¶] . . . [¶] [A] misrepresentation is material if it can influence the determination, even though it does not." (*People v. Gillard*, *supra*, 57 Cal.App.4th at p. 158.)

The trial court accepted the testimony that defendant was "not a well woman." The trial court, however, found that defendant's statements made during the WCAB hearing that she did not drive and had not driven in the prior three years were material to the issue of her obtaining the workers' compensation benefit of transportation from the WCAB. The purpose of the WCAB hearing was for the WCAB to determine whether defendant should be awarded transportation as a workers' compensation benefit. Defendant's misrepresentations made during that hearing could have influenced the WCAB in making that award.

Defendant contends that, notwithstanding defendant's statements made during the WCAB hearing that she could not drive, and had not driven in the prior three years, there was evidence that defendant only drove "on a very limited basis if she had no other way to be transported" to her medical appointments and that her limited driving was not material. We reject defendant's contention because under the substantial evidence standard of review, we "consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment." (*People v. Mincey*, *supra*, 2 Cal.4th at p. 432, fn. omitted.) There was substantial evidence that defendant represented during the WCAB

hearing that she could not drive, and had not driven in the prior three years, but in fact she had driven during that period. We do not reweigh evidence or resolve evidentiary conflicts. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on other grounds as stated in *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1439; *In re H.G.* (2006) 146 Cal.App.4th 1, 13.)

Defendant contends that there is insufficient evidence to support a finding that she had the specific intent to defraud. We disagree.

"Section 1871.4, subdivision (a)(1) expressly describes the intent required by that provision as 'the purpose of obtaining or denying any [workers'] compensation.' . . . Because the language of section 1871.4, subdivision (a)(1) is clear and unambiguous, there is no need to insert a superfluous additional specific intent requirement. [¶] Appellant necessarily acted with specific intent to defraud when he presented information he knew to be false with the intent that the insurance company rely upon it to settle his claim. (*People v. Booth* (1996) 48 Cal.App.4th 1247, 1254, fn. 3 [56 Cal.Rptr.2d 202].) The courts have held that 'the intent to defraud the insurer is necessarily implied when the misrepresentation is material and the insured wilfully makes it with knowledge of its falsity.' (*Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1418 [249 Cal.Rptr. 568].) 'One who wilfully submits a claim, knowing it to be false, necessarily does so with intent to defraud.' (*People v. Scofield* [(1971)] 17 Cal.App.3d [1018 ,] 1026.)" (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 279.)

There is sufficient evidence that defendant knew that her representation made during the WCAB hearing that she could not drive and had not driven in the prior three years before the WCAB hearing was false. Hammond testified that defendant was capable of driving. Dr. Metcalf testified that defendant could physically drive. There was evidence that Hammond maintained vehicle insurance for defendant, defendant had a disabled placard for her vehicle, and defendant was allowed to drive a vehicle any time she wanted. Hammond testified that defendant has driven prior to three years before the WCAB hearing. According to Hammond, defendant would drive if he was unable to leave work and drive her. Also, shortly prior to the WCAB hearing, defendant was

depicted in a surveillance video driving a vehicle. It is reasonable for a fact finder to assume that defendant knew at the time of the WCAB hearing that she could drive and had driven within three years before the WCAB hearing. There is substantial evidence that defendant necessarily acted with specific intent to defraud when she presented information before the WCAB that she knew to be false with the intent that the WCAB rely upon it to award workers' compensation benefits.

Defendant contends that she did not have the mental capacity to defraud because evidence was introduced that she was medicated at the time of the WCAB hearing. The trial court, however, implicitly found that defendant had the mental capacity to defraud, stating, "[Is] the statement 'I don't drive' or "I haven't driven in the last three years" . . . material? I think it is and mainly because she had just driven eight days before her testimony. So that's something that you would have in your mind. It's not something that you . . . would forget. . . ." The trial court also stated, "And because [defendant] had driven so recently, I think that her statement that 'I haven't driven' . . . or anything like that, was with an intent; and that . . . she knew that the statement was false as the time and it was made with the intent to gain transportation." There is sufficient evidence to support a finding that defendant had the mental capacity to defraud.

Defendant also contends that she did not have the requisite intent to defraud because there was evidence that defendant's attorney advised her that under certain circumstances she should testify generally rather than specifically at the WCAB hearing. Hammond testified that defendant's counsel told defendant to answer non-medical questions generally "unless they ask for a specific point . . . or item." Defendant was specifically asked, "[D]uring the time you were getting the therapy . . . , were you *able* to drive?," and defendant responded "no." (Italics added.) That question posed to defendant was of a "specific point," and there is substantial evidence, including evidence introduced by defendant, that defendant was "able" to drive. Defendant was also specifically asked, "When did you last drive?" and defendant responded, "About three years ago." It would be reasonable to conclude that such a question posed to defendant did not call for a "general" response. In addition, advice from defendant's counsel that

defendant should respond "generally" to certain questions, even if the trial court believed that she had been given such advice, does not relieve defendant of her sworn obligation to testify truthfully at the WCAB hearing.

DISPOSITION

The judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.