

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Frank Stirlacci (and 135 companion cases)

SJC-12735 · No. SJC-12735 · Decided January 8, 2020

SUMMARY

The Massachusetts Supreme Judicial Court reviewed the dismissal of indictments against physician Frank Stirlacci and office manager Jessica Miller involving improper prescribing, uttering false prescriptions, and false health care claims. The court held that sufficient evidence supported indictments against Stirlacci for improper prescribing and supported twenty false health care claim counts against each defendant, but that the evidence was insufficient for the uttering charges. It also held that the improper-prescribing statute does not impose liability on nonpractitioners such as Miller.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Lenk, J.; Gants, C.J.; Gaziano, J.; Lowy, J.; Budd, J.; Cypher, J.; Kafker, J.
JURISDICTION	Massachusetts
DECIDED	January 8, 2020
DOCKET	SJC-12735
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth appealed under Mass. R. Crim. P. 15(a)(1) from a Superior Court order dismissing indictments for improper prescribing and uttering false prescriptions and finding insufficient evidence on six of twenty-two false health care claim counts. The Supreme Judicial Court transferred the consolidated appeals from the Appeals Court on its own initiative.
STANDARD OF REVIEW	The court reviewed the grand-jury evidence in the light most favorable to the Commonwealth and independently reviewed the dismissal ruling without deference to the lower judge's factual findings or legal conclusions. The question was whether the evidence established probable cause, meaning facts sufficient to warrant a person of reasonable caution in believing that an offense had been committed.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Commonwealth v. Frank Stirlacci, Jessica Miller

TOPICS

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statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. What standard governs improper prescribing under G. L. c. 94C, § 19(a), and whether the evidence established probable cause to indict Stirlacci.
2. Whether a nonpractitioner such as Miller may be prosecuted directly or as an accessory under G. L. c. 94C, § 19(a).
3. Whether the prescriptions issued using Stirlacci's pre-signed forms were false prescriptions under G. L. c. 94C, § 33(b).
4. Whether the evidence established probable cause that Stirlacci and Miller knowingly and willfully submitted false health care claims under G. L. c. 175H, § 2.

HOLDINGS

1. A practitioner may be convicted of improper prescribing when the Commonwealth proves that the practitioner issued a controlled-substance prescription for a purpose other than genuine medical treatment. Legitimate medical purpose and usual course of professional practice are mutually reinforcing aspects of a single holistic standard, not separate statutory elements. Mere malpractice, without the requisite lack of legitimate medical purpose, is not criminal improper prescribing.
2. General Laws c. 94C, § 19(a), does not impose liability on a nonpractitioner, either directly as a practitioner or as an accessory to a practitioner's violation under that provision.
3. A false prescription is one that falsely purports to have been issued by the authorized practitioner named in it, such as a prescription issued using fake or unauthorized credentials. The prescriptions here were not false because Stirlacci genuinely authorized their issuance and Miller completed renewal forms within the scope of that authority.
4. The evidence established probable cause that Stirlacci and Miller knowingly and willfully submitted false health care claims for twenty of the twenty-two counts against each defendant. Billing records and testimony permitted the grand jury to infer that the claims falsely implied that Stirlacci had provided services when he was in Kentucky, and the defendants' awareness of the nurse practitioner's objections supported the required knowledge and willfulness.

KEY QUOTATIONS

"In sum, we hold that a practitioner may be found guilty of improper prescribing, in violation of G. L. c. 94C, § 19 (a), where the Commonwealth can establish that the practitioner issued a prescription for a controlled substance for a purpose other than genuine medical treatment." (16-19)

“A prescription is not issued for genuine medical treatment where a practitioner fails to exercise medical judgment in a manner consistent with the basic routines associated with such medical treatment.” (16-19)

“We thus conclude that Miller cannot be prosecuted for improper prescribing under the Controlled Substances Act, and the indictments against her charging violations of G. L. c. 94C, § 19 (a), properly were dismissed.” (24)

“We thus conclude that a “false prescription” is one that falsely purports to have been issued by an authorized practitioner.” (28-29)

“Therefore, the evidence presented, if not abundant, was sufficient to establish probable cause that the defendants each acted knowingly in making false statements.” (36-37)

FACTUAL BACKGROUND

Frank Stirlacci, a physician operating a solo practice, was incarcerated in Kentucky from April 17 through May 11, 2015. During his incarceration, he directed office manager Jessica Miller, who was not a medical professional, to use pre-signed prescription forms to issue renewal prescriptions for controlled substances and to submit insurance claims for patients who came to the office. The grand-jury evidence included telephone recordings, patient records, prescriptions for narcotics, and billing records indicating that patients had been billed for visits with Stirlacci while he was absent.

PROCEDURAL HISTORY

A Hampden County grand jury indicted physician Frank Stirlacci and office manager Jessica Miller on charges under the Controlled Substances Act and for submitting false health care claims. The Superior Court dismissed the improper-prescribing and uttering-false-prescription indictments and concluded that six false-health-care-claim counts lacked sufficient evidence. The Supreme Judicial Court held that some dismissals were erroneous, upheld others, and remanded for a bill of particulars and further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Commonwealth must submit a bill of particulars identifying the indictments associated with the patient transactions. A Superior Court judge must determine which counts should be reinstated against both defendants and which two false-health-care-claim counts must be dismissed without prejudice. The matter is remanded for further proceedings consistent with the opinion.

CASES CITED

- Commonwealth v. Robinson, 373 Mass. 591, 592 (1977)
- Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982)
- Commonwealth v. Moran, 453 Mass. 880, 884 (2009)

- Commonwealth v. O'Dell, 392 Mass. 445, 451 (1984)
- Commonwealth v. Levesque, 436 Mass. 443, 447 (2002)
- Commonwealth v. Catalina, 407 Mass. 779, 781 (1990)
- Commonwealth v. Ilya I., 470 Mass. 625, 627 (2015)
- Seideman v. Newton, 452 Mass. 472, 477 (2008)
- Bellalta v. Zoning Bd. of Appeals of Brookline, 481 Mass. 372, 378 (2019)
- Essex Regional Retirement Bd. v. Swallow, 481 Mass. 241, 252 (2019)
- Commonwealth v. Brown, 456 Mass. 708, 716-718 (2010)
- Commonwealth v. Kobrin, 72 Mass. App. Ct. 589, 596, 607 (2008)
- Commonwealth v. Comins, 371 Mass. 222, 229-233 (1976), cert. denied, 430 U.S. 946 (1977)
- United States v. Smith, 573 F.3d 639, 647-648 (8th Cir. 2009)
- United States v. Hurwitz, 459 F.3d 463, 477 (4th Cir. 2006)
- United States v. Feingold, 454 F.3d 1001, 1007-1008 (9th Cir.), cert. denied, 549 U.S. 1067 (2006)
- Commonwealth v. Pike, 430 Mass. 317, 321-323 (1999)
- United States v. Vamos, 797 F.2d 1146, 1153-1154 (2d Cir.), cert. denied, 479 U.S. 1036 (1987)
- Simon v. State Examiners of Electricians, 395 Mass. 238, 242-243 (1985)
- Commonwealth v. Lightfoot, 391 Mass. 718, 720 (1984)
- Commonwealth v. O'Connell, 438 Mass. 658, 663-664 n.9 (2003)
- Commonwealth v. Analetto, 326 Mass. 115, 118-119 (1950)
- Commonwealth v. Morgan, 476 Mass. 768, 777 (2017)
- United States v. Singh, 390 F.3d 168, 177, 187-189 (2d Cir. 2004)
- United States v. Larm, 824 F.2d 780, 782-783 (9th Cir. 1987), cert. denied, 484 U.S. 1078 (1988)
- Commonwealth v. Barbosa, 421 Mass. 547, 550 (1995)