

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States v. Memar

United States v. Memar, 906 F.3d 652 (7th Cir. 2018) · Decided October 17, 2018

SUMMARY

The Seventh Circuit affirmed health care fraud and false statement convictions (18 U.S.C. §§ 1347, 1035(a)(2)) of a dermatologist who billed insurance for intense pulsed light (IPL) treatments, claiming they destroyed 15+ actinic keratosis lesions, when patients did not actually have the condition or were not informed of it. The court held the evidence was sufficient for a jury to find intentional misdiagnosis and fraudulent billing, rejecting challenges to the sufficiency of evidence under the Jackson v. Virginia standard. Unobjected prosecutorial misstatements during closing arguments did not constitute plain error requiring reversal, and the defendant's ineffective assistance of counsel claim under Strickland was not properly raised on direct appeal due to an undeveloped record.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Wood; Bauer; Scudder
JURISDICTION	Federal
DECIDED	October 17, 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction after jury trial
STANDARD OF REVIEW	Sufficiency of evidence: whether the record is devoid of evidence from which a rational trier of fact could find guilt beyond a reasonable doubt. Prosecutorial misconduct: plain error review because no objection.
PRECEDENTIAL VALUE	Published
PARTIES	Omeed Memar v. United States

TOPICS

- criminal procedure
- prosecutorial misconduct
- evidence
- standard of review
- health law
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the convictions for health care fraud and false statements
2. Whether the prosecutor's mischaracterization of testimony during closing arguments deprived Memar of a fair trial
3. Whether trial counsel's failure to object to the prosecutor's remarks constituted ineffective assistance of counsel

HOLDINGS

1. The evidence was sufficient; a rational jury could find beyond a reasonable doubt that Memar fraudulently diagnosed patients and submitted false claims.
2. The prosecutor's repeated mischaracterization of testimony was improper but did not render the trial unfair under the five-factor test.

KEY QUOTATIONS

"we consider 'only if, after viewing the evidence in the light most favorable to the government, the record is devoid of evidence from which a rational trier of fact could find guilt beyond a reasonable doubt.'" (656)

"If what a lawyer said is different from the evidence as you remember it, the evidence is what counts." (659)

"we AFFIRM the judgment of the district court." (660)

FACTUAL BACKGROUND

Memar was a dermatologist who diagnosed eight patients with actinic keratosis and treated them with intense pulsed light (IPL), billing insurance for destruction of 15 or more lesions. The patients, mostly in their 20s and 30s, testified they had no such lesions and were not informed of the diagnosis. Medical assistants testified they copied lesion diagrams from prior visits without examining patients. The government also presented expert testimony that IPL alone is ineffective for actinic keratosis. Memar defended that he believed in IPL's efficacy and presented his own expert and patient witnesses.

PROCEDURAL HISTORY

Memar was convicted on 16 counts of health care fraud and false statements, sentenced to supervised release, community service, fines, and restitution. He appeals.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307 (1979)

- United States v. Chhibber, 741 F.3d 852 (7th Cir. 2014)
- United States v. Natale, 719 F.3d 719 (7th Cir. 2013)
- United States v. Moshiri, 858 F.3d 1077 (7th Cir. 2017)
- United States v. Farmer, 717 F.3d 559 (7th Cir. 2013)
- United States v. Jones, 713 F.3d 336 (7th Cir. 2013)
- United States v. Galati, 230 F.3d 254 (7th Cir. 2000)
- United States v. Daniel, 749 F.3d 608 (7th Cir. 2014)
- United States v. Rucker, 738 F.3d 878 (7th Cir. 2013)
- United States v. Kolbusz, 837 F.3d 811 (7th Cir. 2016)
- United States v. Hunt, 521 F.3d 636 (6th Cir. 2008)
- Darden v. Wainwright, 477 U.S. 168 (1986)
- United States v. Klemis, 859 F.3d 436 (7th Cir. 2017)
- Puckett v. United States, 556 U.S. 129 (2009)
- United States v. Wolfe, 701 F.3d 1206 (7th Cir. 2012)
- Jordan v. Hepp, 831 F.3d 837 (7th Cir. 2016)
- United States v. McMath, 559 F.3d 657 (7th Cir. 2009)
- United States v. Bowman, 353 F.3d 546 (7th Cir. 2003)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Ramirez v. United States, 799 F.3d 845 (7th Cir. 2015)
- United States v. Flores, 739 F.3d 337 (7th Cir. 2014)
- United States v. Jansen, 884 F.3d 649 (7th Cir. 2018)
- Hicks v. Hepp, 871 F.3d 513 (7th Cir. 2017)
- United States v. Driver, 798 F.2d 248 (7th Cir. 1986)
- Vinyard v. United States, 804 F.3d 1218 (7th Cir. 2015)
- Clarke v. United States, 703 F.3d 1098 (7th Cir. 2013)
- Kusay v. United States, 62 F.3d 192 (7th Cir. 1995)
- United States v. Wallace, 753 F.3d 671 (7th Cir. 2014)