



## **Case Summary**

Sherrie Hansen appeals her convictions for five counts of Class D felony theft.

We affirm.

### **Issue**

The sole issue before us is whether there is sufficient evidence to support Hansen's convictions.

### **Facts**

Hansen is a nurse. The evidence most favorable to the convictions reveals that in June 1998, Hansen's employment with St. Joseph Regional Medical Center was terminated after it was determined that she had self-administered the narcotic Dilaudid, taken from the facility's supply. In April 1999, Hansen's employment with Ironwood Health and Rehabilitation Center was terminated on suspicion that she had improperly withdrawn several vials of Demerol from the facility's Emergency Drug Kit ("EDK"). In October 1999, Hansen's employment with Greencroft Terraces Healthcare was terminated on suspicion that she had improperly taken a vial of morphine intended for a patient. In August 2003, Hansen's employment with Rosewood Terrace healthcare facility was terminated after a vial of Demerol went missing and she subsequently tested positive for Demerol. After this termination, Hansen was convicted of an unspecified misdemeanor offense and entered the Indiana State Nurses Assistance Program ("ISNAP") for substance abuse issues. Hansen began working at Healthwin Specialized

Care facility (“Healthwin”) in February 2004, with Healthwin being aware of her probationary status and enrollment in the ISNAP program.

Hansen was a dayshift nurse responsible for about thirty patients at a time. Among a nurse’s responsibilities at Healthwin were administering medications and charting patient care. Patient charts included a physician’s order sheet, a medication administration record, and nursing notes. A nurse also was required to note changes in a patient’s condition and contact a physician, usually by phone, to receive further orders. If a doctor ordered additional medication for a patient, ordinarily the nurse would write down the order on a physician’s telephone order sheet; a copy of the sheet would be faxed to a local, outside pharmacy for the prescription to be filled; and a copy of the sheet would be sent to the physician for a signature.

If, however, a doctor ordered immediate medication, including pain medication, for a patient, it would be obtained from the Healthwin’s on-site EDK. The EDK was a locked box inside of a locked cabinet. After documenting on a physician telephone order sheet that a doctor had ordered a certain medication to be given immediately, a nurse was obligated to fill out a form to verify the removal of a drug from the EDK and indicate if any of the drug was disposed of as excess wastage, with a witness also signing the form.<sup>1</sup> A nursing supervisor held the keys for the EDK.

On February 7, 2006, one of Hansen’s patients was Mary Jasinski. Hansen’s nursing notes on that date state that Jasinski was in severe pain and that she called Dr.

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<sup>1</sup> For example, Demerol came in vials of 50 mg, but if only a 25 mg dose was ordered, the remaining 25 mg would be disposed of as excess wastage.

Jeffrey Borders to discuss Jasinski's condition. The notes go on to indicate that at 1400 hours (2 p.m.), Hansen received a one-time order to inject Jasinski with 25 mg of Demerol. The EDK records indicate that Hansen withdrew a 50 mg Demerol vial on that date and wasted 25 mg of it. However, in Jasinski's chart, there is no physician telephone order sheet reflecting that Dr. Borders had ordered the administration of Demerol, nor is it reflected in Jasinski's medication administration record. Dr. Borders also later stated that he did not give any order on February 7, 2006, to administer Demerol to Jasinski. In fact, Dr. Borders as a general rule never orders Demerol for his patients.

On March 10, 2006, Hansen's nursing notes for Jasinski indicate that she again was in severe pain and that she was not responding well to Oxycontin. The notes state that at 11:00 a.m. Hansen received a one-time order for a 25 mg Demerol injection for Jasinski through Dr. Borders. Again, however, in Jasinski's chart there is no physician telephone order sheet reflecting this directive, and no indication in the medication administration record that it was given; Dr. Borders again stated that he gave no such order. There is an EDK record that Hansen withdrew a 50 mg Demerol vial on that date, and that she disposed of 25 mg as wastage.

On June 3, 2006, one of Hansen's patients was Louis Biddle. Hansen's nursing notes for that date indicate that Biddle was calling out in pain and she contacted his doctor, Shaya Mokfi, who authorized Hansen to give Biddle one 25 mg dose of Demerol, with permission to give another dose later if the pain did not subside. The EDK record

indicates that Hansen withdrew a 50 mg Demerol vial that day and wasted 25 mg of it. Fellow nurse Starr Starbuck signed that she had witnessed the wastage. Later, however, Starbuck could not recall having personally witnessed the wastage. Additionally, there was a physician telephone order sheet indicating that Dr. Mokfi had ordered the Demerol, but it was out of place chronologically with other orders. Also, when the pharmacy later sent paperwork to Dr. Mokfi to verify that he had prescribed Demerol, per the physician telephone order sheet, he replied that he had not. Biddle's medication administration record does not indicate that he was given Demerol. Finally, Dr. Mokfi specifically remembered ordering morphine for Biddle, but not Demerol. Similar to Dr. Borders, Dr. Mokfi stated that he never prescribes Demerol for nursing home patients like Biddle.

Hansen's nursing notes for June 6, 2006, indicate that Biddle was again calling out in pain and that she gave him Demerol as ordered. Again, there was a physician telephone order sheet indicating that Dr. Mokfi had ordered it, but it was out of chronological sequence with other orders. Dr. Mokfi did not recall having any discussion with Hansen that day regarding Biddle's treatment and insisted he did not order Demerol for him. The EDK record indicates that Hansen removed a 50 mg Demerol vial on that date and disposed of 25 mg, with Starbuck again signing that she witnessed the disposal. Starbuck stated that she was not on duty when Hansen removed the Demerol, and her signature indicated only that the Demerol was gone from the EDK when she came on duty. The EDK record also indicates that Hansen removed a second 50 mg Demerol vial on June 6, although there is no signature from Starbuck with respect to this second vial.

Also on June 6, according to Hansen's notes, Biddle was transferred to an emergency room. It was discovered that Biddle had been injected with insulin, although he is not diabetic, and this had caused a dangerous drop in his blood sugar. This caused an investigation by Healthwin and the Attorney General's Medicaid Fraud Control Unit into why Biddle had been injected with insulin. This investigation uncovered the discrepancies in Hansen's withdrawal of Demerol. In fact, during the previous eighteen months at Healthwin, there had been seven withdrawals of Demerol from the EDK, out of 136 total orders for pain medication, and Hansen had made all of those withdrawals.

The State ultimately charged Hansen with five counts of Class D felony theft, four counts of Class D felony obtaining a prescription by fraud, deceit, or forgery, and five counts of Class D felony possession of a controlled substance. The State later dismissed the obtaining a prescription charges. The trial court conducted a bench trial on September 14-15, 2009, and found Hansen guilty of all counts. The trial court merged the possession of a controlled substance counts with the theft counts and sentenced Hansen accordingly. She now appeals.

### **Analysis**

Hansen challenges the sufficiency of the evidence to support her convictions. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine

whether it is sufficient to support a conviction.” Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

In order to convict Hansen of theft, the State was required to prove that she knowingly or intentionally exerted unauthorized control over Healthwin’s property, i.e. the Demerol, with intent to deprive Healthwin of any part of its value or use. See Ind. Code § 35-43-4-2(a). Where a confession is lacking, “intent” must be proven by consideration of the defendant’s conduct and the natural consequences of that conduct. Long v. State, 867 N.E.2d 606, 614 (Ind. Ct. App. 2007). “Accordingly, intent may be proven by circumstantial evidence, and it may be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points.” Id.

Hansen’s trial testimony and arguments on appeal essentially allege that her improperly documented withdrawals of Demerol were merely the result of misunderstandings or sloppy recordkeeping. We believe it was a matter for the trial court as fact finder to assess the validity of that argument. Drs. Borders and Mokfi testified unequivocally that they gave no orders for the administration of Demerol to Jasinski or Biddle, and in fact such orders would have contravened their standing practice of not ordering Demerol. Yet, Hansen’s nursing notes indicate that the doctors gave such orders. This flat-out contradiction between the notes and the testimony of Drs. Borders

and Mokfi, combined with the other recordkeeping discrepancies, clearly supports a reasonable inference that Hansen deliberately falsified the notes and records in furtherance of an illegal scheme to acquire the Demerol for herself.

Moreover, through stipulation by the parties, the trial court was presented with evidence of four prior occasions linking Hansen with the improper acquisition of medication, including Demerol, from other facilities. Indiana Evidence Rule 404(b) permits the admission of evidence of other crimes, wrongs, or acts by a defendant as, among other things, proof of absence of mistake or accident. Here, to the extent Hansen is claiming her obtaining of Demerol without proper documentation was merely a mistake or accident, it contravenes her history of repeatedly using deceptive means to improperly acquire medications from medical facilities. Hansen's sufficiency argument is an invitation to re-weigh the evidence and judge witness credibility, which we must decline.

### **Conclusion**

There is sufficient evidence to support Hansen's theft convictions. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.