

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-40435

United States Court of Appeals
Fifth Circuit

FILED

July 14, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

CHIA JEAN LEE, also known as Chia Lee Taylor; THEODORE WILLIAM
TAYLOR, also known as Tad Taylor,

Defendants - Appellants

Appeals from the United States District Court
for the Eastern District of Texas

Before DENNIS, ELROD, and COSTA, Circuit Judges.

GREGG COSTA, Circuit Judge:

The prosecution of a medical clinic outside Dallas offers a window into the prescription drug epidemic that is plaguing America. At trial, the parties told a tale of two clinics. The government described a pill mill that prescribed patients more than a million doses of abusable drugs in just two years. The defense described a pain management clinic that helped people who appeared to suffer from chronic pain. A jury agreed with the government's account and found the clinic's doctor and office manager guilty of conspiring to distribute controlled substances. We consider a number of challenges to the convictions and sentences.

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I.

Theodore “Tad” Taylor and Chia Jean Lee, a married couple who met while earning their degrees at Yale, ran Taylor Texas Medicine in Richardson, Texas. Taylor was the clinic’s only doctor while Lee, a nurse by training, was the clinic’s office manager. An Eastern District of Texas grand jury indicted the couple for conspiring to distribute controlled substances. The indictment alleged that from 2010 through early 2012, Taylor and Lee conspired to illegally prescribe five controlled substances: oxycodone, amphetamine salts, hydrocodone, alprazolam, and promethazine with codeine.

A jury convicted both of them after a seven-day trial. It also made findings about the quantity of drugs the couple distributed, but those quantities did not trigger higher statutory minimum or maximum sentences. *See* 21 U.S.C. § 841(b)(1)(C). The district court then sentenced Taylor to the 20-year statutory maximum (his Guidelines range would have been higher but for the statutory cap) and Lee to just over 15 years (the bottom of her Guidelines range).

Taylor and Lee challenge the sufficiency of the evidence, contend that they were convicted in an improper venue, and argue that three errors infected the trial: premature jury deliberation, unreliable expert testimony, and a deliberate ignorance instruction. They also appeal their sentences.

II.

We start with the defendants’ claim that there was not enough evidence to convict them. They moved for acquittal at the end of trial, so we review their sufficiency appeal *de novo*. *See United States v. Ollison*, 555 F.3d 152, 158 (5th Cir. 2009). That means we do not give deference to the district court’s ruling denying the motion. But, like the district judge, we give great deference to the jury’s factfinding role, viewing the evidence and drawing all inferences in favor of its verdict. *United States v. Beacham*, 774 F.3d 267, 272 (5th Cir. 2014).

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Because Taylor was a doctor with prescribing authority, he and Lee could distribute controlled substances as long as they did so for a legitimate medical purpose and within the scope of professional practice. *United States v. Norris*, 780 F.2d 1207, 1209 (5th Cir. 1986); *see also* 21 C.F.R. § 1306.04(a). Thus, when a conspirator has prescribing authority, the elements of conspiracy to distribute controlled substances are: “(1) an agreement by two or more persons to unlawfully distribute or dispense a controlled substance outside the scope of professional practice and without a legitimate medical purpose; (2) the defendant’s knowledge of the unlawful purpose of the agreement; and (3) the defendant’s willful participation in the agreement.” *United States v. Oti*, 872 F.3d 678, 687 (5th Cir. 2017) (footnote omitted).

Even by the standards of our adversarial system, the difference in the parties’ portrayals of the clinic is stark. The defendants’ story is that they ran Taylor Texas Medicine as a legitimate pain management operation. Taylor says that he carefully examined patients, refused to prescribe to patients who tested positive for illegal drugs, and attempted conservative treatments before resorting to others prone to abuse. He acknowledges that, in retrospect, he may have made some mistakes. But he contends he acted in good faith and trusted his patients to accurately report their pain. Lee, for her part, asserts that she knew nothing about the prescriptions Taylor wrote. According to her, she was an innocent office manager.

The government tells the story of a “pill mill”—a medical practice that serves as a front for dealing prescription drugs. It portrays a clinic packed with drug users and dealers, where one person would often pay for multiple patients’ visits. Also consistent with patients’ trafficking drugs is that, on follow-up visits, many tested negative for the medication Taylor had prescribed them. Others tested positive for illegal drugs like cocaine. Despite the red flags, Taylor kept prescribing these patients drugs. Even when a patient’s wife

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begged Taylor to stop feeding her husband's drug addiction, he kept prescribing the husband drugs. And when a pharmacist who filled many of Taylor's prescriptions told him that some of his patients were also receiving scripts from other doctors, he kept prescribing them drugs too. The pharmacist was so troubled that she contacted the Drug Enforcement Administration for the first time in her career. The government contends that Lee was a key part of the scheme. It says she reviewed failed drug tests, knew some patients had substance abuse problems, and prewrote prescriptions for Taylor to sign. She was also in charge of the clinic's finances, which improved dramatically as the clinic concentrated its practice on pain management.

Because the jury found the defendants guilty, we must honor the government's telling if it is backed by evidence. It is. The government called seventeen witnesses, including the pharmacist who reported Taylor to the DEA, the patient's wife who asked Taylor to stop prescribing drugs to her husband, undercover officers who pretended to be patients, an actual patient, medical experts, clinic staff, and case agents. It also introduced documentary evidence like financial records, patient files, and prescription data. Taylor testified too. All this evidence was more than enough for the jury to convict on. What follows is just a sampling.

Taylor is not a pain management specialist, yet the clinic shifted its focus to pain patients when he and Lee began having financial difficulties. Eventually 80% of the clinic's patients were pain patients. The proportion of prescriptions Taylor wrote for the commonly abused drugs hydrocodone and alprazolam grew from about 50% of prescriptions in January 2010 to over 80% by August 2011. Almost all those prescriptions were for the maximum dosage. *Cf. United States v. Moore*, 423 U.S. 122, 143 (1975) (“[The defendant] did not regulate the dosage at all, prescribing as much and as frequently as the patient

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demanded.”). He seldom offered patients conservative treatments not prone to abuse.

Taylor did little to justify the prescriptions. By 2011, he was seeing 40 to 50 patients a day. The undercover visits confirmed the brevity of the examinations; Taylor spent between two-and-a-half and eleven minutes per visit with the pretend patients. *Cf. Oti*, 872 F.3d at 688 (describing pill mill where typical patient visits were between four and eight minutes long). One of the medical experts, Graves Owen, estimated that a pain doctor complying with the standard of care might spend 30 to 60 minutes with a new patient and between 10 and 15 minutes for an ordinary follow-up. *Cf. id.* at 687 (expert testified it would have been “impossible” for a doctor acting within the normal scope of professional practice to see 40 to 50 patients per day).

What time Taylor spent with patients often involved only a cursory physical examination. A patient, the undercover officers, and the medical experts all testified that Taylor’s physicals were brief and that he rarely requested imaging to corroborate claims of pain. Sometimes Taylor would enter the examination room with a prefilled prescription form. Agents even found presigned (but otherwise blank) prescription forms when they searched the clinic. For some patients, Taylor wrote prescriptions without any examination at all; they could just stop by the clinic and pick them up. *Cf. Moore*, 423 U.S. at 142–43; *United States v. Evans*, 892 F.3d 692, 703–07 (5th Cir. 2018); *Oti*, 872 F.3d at 688 (all recognizing similar patterns indicative of a pill mill).

For at least some of these prescriptions, Taylor had direct knowledge that the patients exhibited obvious drug-seeking behavior. Recall that a pharmacist told Taylor he was prescribing drugs to patients who were getting the same drugs from other doctors. And a patient’s wife called and emailed Taylor asking him not to prescribe to her husband because he had substance

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