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FIRST DIVISION
September 22, 2014

No. 1-12-1941
2014 IL App (1st) 121941-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 11 CR 1670
)	
MARGARITA LOPEZ,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concur with the judgment.

ORDER

Held: State failed to prove intimidation beyond a reasonable doubt where defendant was not a public official; failure to instruct jury on other-crimes evidence and accomplice testimony did not amount to plain error or ineffective assistance of counsel; and defendant's convictions for official misconduct violated the one-act, one-crime rule.

¶ 1 Defendant Margarita Lopez was convicted by a jury of mail fraud, wire fraud, official misconduct based on mail fraud, official misconduct based on wire fraud, and intimidation.

Defendant was sentenced to 30 months of intensive probation, 300 hours of community service, and was ordered to pay restitution in the amount of \$17,453. Defendant appeals arguing that (1)

the State failed to prove intimidation beyond a reasonable doubt, (2) she was denied a fair trial where the jury was not instructed on other-crimes evidence and accomplice testimony, and (3) her convictions for official misconduct violated the one-act, one-crime rule. For the following reasons, we affirm in part, reverse in part, and vacate in part.

¶ 2

I. BACKGROUND

¶ 3 Defendant worked as a counselor for the Home Services Program (HSP) of the Illinois Department of Human Services (IDHS). Her job was to determine whether customers qualified for home services so that they would not have to live in a nursing home. If the customer was approved, he or she was assigned a personal assistant (PA) who would provide the in-home services and then submit timesheets to the IDHS reflecting the hours worked, and the state would pay the PA for his or her work. At trial, evidence was presented showing that defendant set up files for fictitious customers. In 2009, an IDHS employee noticed something strange in Jose Minsal's file. Defendant was listed as Minsal's counselor, and Victor Colon was listed as the PA, but the timesheets were signed by Nereida Correa instead of Minsal. Colon was also allegedly working as a PA for Correa, Colon's mother.

¶ 4 Maggie Chavez, another IDHS employee, saw the suspicious timesheet and wrote an anonymous letter to the IDHS fraud investigator, stating that defendant was opening fraudulent files on her family and friends. Chavez identified the fraudulent files as those of Marcus Coleman and Miriam Coleman, a mother and son, who had the same PA, Jackie Vazquez. Chavez also alleged that Nereida Correa lived with her PA, Victor Colon.

¶ 5 Patricia Sabo, the fraud manager at IDHS at that time, received Chavez's letter. Defendant's employee records indicated that she had two sisters: Yolanda Diaz and Nereida Correa. Sabo told Renard Heygood, defendant's supervisor, to make unannounced visits to the

customers listed in Chavez's letter. Heygood went to the addresses given for Jose Minsal, Marcus Coleman, and Miriam Coleman, but did not find the customers. Marcus Coleman's address was a vacant lot. Heygood sent letters to Marcus Coleman and Miriam Coleman, but they were returned undelivered.

¶ 6 Marcus Coleman's file had been opened in 2008 under defendant's name. His PA was listed as Jackie Vazquez. Marcus's case file listed him as a paraplegic with a spinal cord injury. Miriam Coleman's file was also opened by defendant. Jose Minsal's file was opened by defendant and stated that he was a paraplegic. His PA was listed as Victor Colon. Nereida Correa's file was opened by defendant, as was Yolanda Diaz's, even though it was against department policy for an employee to work on a family member's case.

¶ 7 Yolanda Diaz, defendant's sister, testified before a grand jury on July 19, 2010, that defendant told Diaz's boyfriend, Jose Agron, that he could be hired by IDHS to be Diaz's PA because of Diaz's spinal, knee, and pelvic problems. Agron was paid to act as Diaz's PA between July 2008 and December 2008. Diaz testified that after Agron received his first or second check from the state, defendant began hinting that some of her other customers gave her money and that she wanted \$300 of Agron's \$700 paychecks for signing Diaz up for benefits. Diaz testified that defendant kept coming to Diaz's home and leaving "terrible" phone messages. So in August of 2008, Diaz began paying defendant \$325 from each of Agron's checks. At first, defendant would come to her home and wait for two or three hours for the mail carrier to arrive with Agron's check. Diaz then began bringing the money to defendant's home in cash.

¶ 8 Diaz testified that Agron was hospitalized after a stroke when his last check arrived. Defendant called Diaz from outside the hospital and asked for the money. Diaz told defendant to go home, but instead she came to Agron's room and sat in the corner. Defendant threatened to

cut off Diaz's benefits. Diaz testified that defendant told her she received money from other IDHS recipients, including their sister, Correa. Diaz testified that her nephew, Victor Colon, had told her that he had a similar arrangement while acting as PA for his mother, Correa.

¶ 9 James Dorger, the associate director of the Public Integrity Unit of the Illinois Attorney General's Office, testified that he interviewed Diaz on July 13, 2010. During the interview, Diaz stated that it was defendant's idea for Diaz to apply for IDHS benefits, and that Diaz's boyfriend received the first PA check in the summer of 2008. Diaz testified that defendant demanded \$300 from each check, and on one occasion defendant struck Diaz's door with a car jack when Diaz refused to let her in.

¶ 10 Diaz testified at trial that she had been an IDHS customer with her boyfriend, Agron, acting as her PA. Diaz testified that she did not remember describing defendant's kickback system to state investigators, she was on pain medication during the interview, and the investigators had threatened her with prosecution. Diaz also testified that she could not recall the substance of her grand jury testimony. Diaz denied giving defendant money or ever being intimidated by her, and stated that she continued receiving benefits after defendant was no longer her counselor.

¶ 11 Colon also testified before a grand jury. He testified that his mother was Correa, and his aunts were Diaz and defendant. In October 2008, while he was working as a PA for Correa, he entered in-patient drug rehabilitation treatment—first in Chicago, then in Pennsylvania. Colon never received any of the money for being the PA for both Correa and Minsal, and later learned that the money had been divided between Correa and defendant. Colon looked at timesheets submitted for his purported work with Minsal and denied filling them out or signing them.

¶ 12 Patricia McConnell, the director of investigations for the Executive Inspector General of the Attorney General's office, testified at trial that she had interviewed Colon on July 27, 2010. Colon told her that he had worked as Correa's PA from May 2006 to October 2008. He denied ever giving defendant a kickback. When reviewing timesheets he allegedly signed between February 2009 and May 2009, Colon did not recognize the handwriting and admitted that he had been in a drug rehabilitation program during this time. Colon then stated that before he left for his rehabilitation program, Correa had asked him to sign a stack of blank timesheets. Colon claimed that he never spoke directly to defendant about the monetary arrangements, but he thought that Correa and defendant were getting the money paid to Colon for working as a PA. Colon told McConnell that defendant was relentless and that she would go to Correa's house and demand money.

¶ 13 Colon then admitted to McConnell that he, defendant, and Correa had discussed splitting the PA money. He would get \$50 from each check, and Correa and defendant would split the rest. At first Colon would cash the checks and give Correa the money. Later, Colon opened a bank account where the money was directly deposited, and Correa would withdraw the money using Colon's bank card. Colon admitted that he never worked as Correa's PA.

¶ 14 At trial, Colon testified that he had acted as a PA for Correa and Jose Minsal. He testified that he did not know of any agreement to kick back his PA money to defendant. Colon claimed he had never discussed splitting his PA money and that he had never given defendant any money. He testified that he did not remember describing the kickback scheme during the interview with McConnell. Colon further testified that his grand jury testimony was coerced by threats from the state investigators.

¶ 15 Jose Minsal testified at trial that he had never lived in Chicago, never applied for state benefits, and had never been paralyzed. Minsal knew defendant through an associate, Alex Ortiz, but had never met defendant in person.

¶ 16 Miriam Coleman testified that she had lived in Illinois until 2006 with her son Marcus. Miriam testified that the address listed in the IDHS file for her was not hers, the signatures were not hers or her son's, her son had never visited the doctor whose name appeared in his file, and neither she nor Marcus had the diagnoses attributed to them in the file.

¶ 17 The parties stipulated that the doctors whose names and signatures appeared in the Jose Minsal, Miriam Coleman, and Marcus Coleman files would testify that they had never treated these individuals.

¶ 18 Jackie Vazquez testified at trial pursuant to an agreement with the State, but was still subject to prosecution in the case. She testified that defendant offered to assign Vazquez as a PA for two people in December 2008. Defendant told her she would not have to work, and that defendant would split the PA money with Vazquez. The customers Vazquez would be assigned to her were named Miriam Coleman and Marcus Coleman. Defendant told Vazquez that Marcus was a paraplegic. Vazquez forged the Colemans' signatures on the timesheets at defendant's direction and submitted them by person or by mail and was paid every two weeks. Vazquez would cash the checks and give defendant half of the money in person.

¶ 19 Vazquez testified that at some point in 2009, the checks stopped arriving. She asked defendant what was going on and defendant replied that "they were on to us."

¶ 20 Maggie Chavez, the computer coordinator for the IDHS office, testified that she had access to the database of people who had applied for public assistance. Chavez only

remembered helping defendant with her computer once, after defendant had installed illegal software on her computer. Chavez testified that she never changed defendant's password.

¶ 21 Defendant testified on her own behalf. She claimed that Chavez was entering defendant's office and going through her desk. She also claimed Chavez was logging into the computer system under her name and accessing her files.

¶ 22 Defendant denied falsifying files for Jose Minsal, Miriam Coleman, and Marcus Coleman. She testified that she had never agreed with Vazquez to sign her as a PA in return for a portion of her check. Defendant denied any arrangement with Vazquez or Correa to split PA money. She testified that she was not Correa's counselor and never discussed Colon becoming Correa's PA.

¶ 23 Defendant further denied intimidating Diaz, receiving money from Diaz, threatening to cut off Diaz's benefits, or banging on Diaz's door to get money. She denied opening Diaz's case or knowing that Agron would be Diaz's PA. She also denied that she had tried to get money from Diaz after Agron's stroke.

¶ 24 Defendant testified that she believed that Chavez or Correa had set up the fake files and planned to split the money with Vazquez.

¶ 25 After the evidence had been presented, the jury was instructed that it could consider any interest or bias when evaluating witness credibility. On March 9, 2012, the jury convicted defendant of mail fraud based on Vazquez's payments, wire fraud based on Colon's payments, intimidation of Diaz, and two counts of official misconduct related to the mail and wire fraud.

¶ 26 On April 6, 2012, the trial court sentenced defendant to 30 months of intensive probation, three hundred hours of community service, and to pay restitution in the amount of \$17,453. Defendant now appeals.

¶ 27

II. ANALYSIS

¶ 28

A. Intimidation

¶ 29 Defendant's first argument on appeal is that the State failed to prove her guilty of intimidation beyond a reasonable doubt. Defendant was convicted of intimidation under section 5.12-6(a)(6) of the Criminal Code, which states that a person commits intimidation when, with intent to cause another to perform any act, he or she communicates to another, directly or indirectly by any means, a threat to take action as a public official against anyone or anything, or withhold official action, without lawful authority. 720 ILCS 5/12-6(a)(6) (West 2008).

Defendant claims that the State did not present any evidence that she was a public official, and that the jury was not tendered a definition for "public official." Accordingly, defendant claims that because the State failed to prove she was a public official, it failed to prove her guilty of intimidation beyond a reasonable doubt. The State responds that defendant was a public official for purposes of the intimidation statute because a public official should be interpreted as a "person authorized by law to disburse any money belonging to the State."

¶ 30 Both parties agree that the interpretation of a state statute is a question of law that is reviewed *de novo*. *People v. Brooks*, 221 Ill. 2d 381, 388 (2006). The primary objective in construing a statute is to give effect to the intention of the legislature. *People v. Grever*, 222 Ill. 2d 321, 328 (2006). The language of the statute is the best indication of legislative intent. *Id.* The statute should be evaluated as a whole, with each provision construed in connection with every other section. *Id.* at 329. In the absence of a statutory definition, courts will assume the statutory words have their ordinary and popularly understood meanings. *People v. Bailey*, 167 Ill. 2d 210, 229 (1995).

¶ 31 The intimidation statute does not define "public official." At the time the intimidation statute was first enacted in the Criminal Code of 1961, neither Black's Law Dictionary (Deluxe Fourth Ed. 1951), nor Webster's Third New International Dictionary Unabridged (3d ed. 1961), defined "public official." However, Black's Law Dictionary did define "official" as "[a]n officer; a person invested with the authority of an office." Within the definition of "officer," it further defined a public officer as "[a]n officer of a public corporation; one holding office under the government of a municipality, state, or nation." The Criminal Code defines "public officer" as "a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions." 720 ILCS 5/2-18 (West 2008). This statute became effective at the same time as the intimidation statute. Moreover, in criminal cases, "criminal statutes are narrowly construed in favor of the accused." *People v. Williams*, 393 Ill. App. 3d 77, 86 (2009) (citing *United States v. Santos*, 553 U.S. 507, 514 (2008) ("The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them")). Accordingly, we find that defendant was not a public official for purposes of the intimidation statute as she was not elected or appointed to office.

¶ 32 We acknowledge that in 1981 the legislature added a section to the intimidation statute entitled "threatening public officials." 720 ILCS 5/12-9 (West 1981). That section, at the time defendant committed the offense, defined "public official," for the purpose of that section only, as:

"a person who is elected to office in accordance with a statute or who is appointed to an office which is established and the qualifications and duties of which are prescribed, by statute, to

discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. 'Public official' includes a duly appointed assistant State's Attorney and a sworn law enforcement or peace officer." 720 ILCS 5/12-9(b)(1) (West 2008).

¶ 33 The current definition of a "public official" under the "threatening a public official" statute now includes a social worker employed by the IDHS. 720 ILCS 5/12-9(b)(1) (West 2013). However, this definition of "public official" was not in existence at the time of the enactment of the intimidation statute, or at the time the offense was committed, which indicates that a "public official" was not intended to incorporate case workers and social workers until January 1, 2013. See *People v. Nunn*, 77 Ill. 2d 243, 248 (1979) ("an amendatory change in the language of a statute creates a presumption that it was intended to change the law as it theretofore existed"); see also *People v. Spencer*, 408 Ill. App. 3d 1, 8 (2011) (where a statute or regulation lists the things to which it refers, it may be inferred that all omissions therefrom should be understood as exclusions).

¶ 34 Because the State did not prove beyond a reasonable doubt that defendant was a public official under the intimidation statute, we find that the intimidation conviction must be reversed.

¶ 35 **B. Other-Crimes Evidence**

¶ 36 Defendant's next argument on appeal is that the jury should have been instructed regarding other-crimes evidence and accomplice testimony. As an initial matter, defendant admits that she neither raised this issue at trial, nor raised the issue in a posttrial motion. A defendant forfeits her right to challenge an instructional error if she does not object to the

erroneous instruction or propose alternate instructions, and if the issue is not raised in a post-trial motion. *People v. Piatkowski*, 225 Ill. 2d 55, 564 (2007). This principle encourages a defendant to raise issues before the trial court, thereby allowing the court to correct its errors before the instructions are given, and consequently precluding a defendant from obtaining a reversal through inaction. *Id.*

¶ 37 Supreme Court Rule 451(c), however, provides that " 'substantial defects' in criminal jury instructions 'are not waived by failure to make timely objections thereto if the interests of justice require.' " *People v. Herron*, 215 Ill. 2d 167, 175 (2005) (quoting Ill. S. Ct. R. 451 (c) (eff. July 1, 2006)). Rule 451(c) is coextensive with the plain error clause of Supreme Court Rule 615(a), and the two rules are construed identically. *Herron*, 215 Ill. 2d at 175. Rule 615(a) states the following: "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court."

¶ 38 Plain error allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Herron*, 215 Ill. 2d at 186-87. "[T]he erroneous omission of a jury instruction rises to the level of plain error only where the omission creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial." *People v. Hopp*, 209 Ill. 2d 1, 8 (2004).

¶ 39 We note that the first step is to determine whether error occurred during jury instructions. Defendant contends that the State presented extensive other-crimes evidence regarding defendant's alleged scheme with Nereida Correa, defendant's sister, and Victor Colon, Correa's son, to share the money paid to Colon as Correa's PA. Defendant argues that if this other-crimes evidence was admissible for any legitimate purpose, it was imperative to inform the jury how to consider such evidence by tendering Illinois Pattern Jury Instruction 3.14 to the jury, which instructs the jury that other-crimes evidence can only be considered for a limited purpose. Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000).

¶ 40 However, evidence of other criminal acts that occurred at the same time and place and that were related to the criminal action for which the defendant was being tried does not require a limiting instruction. *People v. Figueroa*, 341 Ill. App. 3d 665, 672 (2003). In this case, Colon was paid by wire, which is what the wire fraud conviction was based on. Colon was being paid for his work as both a PA to a fictitious customer, Jose Minsal, and his mother, Correa. While Colon's alleged position as a PA for Correa was not the basis for a specific charge, we nevertheless find that the facts presented at trial regarding the relationship between Correa, Colon, and defendant, were related to the wire fraud conviction for which defendant was being tried, and thus did not need a limiting instruction. It therefore follows that the trial court did not commit plain error by failing to give the jury the limiting instruction, nor was defense counsel ineffective for failing to submit a limiting instruction. *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 24 ("counsel cannot be ineffective for failing to object if there was no error to object to").

¶ 41 We come to a similar result regarding defendant's argument about instructions for accomplice testimony. Defendant contends that there was probable cause to believe that Colon

and Jackie Vazquez were guilty of wire fraud and mail fraud, and because they could have been indicted for those offenses, the instruction for accomplice testimony, Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000), should have been given to the jury. This instruction states that when a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered with caution. Here, no such instruction was given.

¶ 42 However, viewing defendant's trial as a whole, it is clear that the jury was not deprived, by the failure to give the accomplice instruction, of essential guidance in its evaluation of the evidence. Both Vazquez and Colon were cross-examined on their legal liabilities due to their involvement with defendant's schemes and their prior inconsistent statements. Although the jury was not instructed specifically that the credibility of an accomplice was subject to suspicion, it was instructed on its duty to judge the credibility of witnesses generally, on the proper consideration of prior inconsistent statements of a witness, and on the presumption of innocence. See *People v. Parks*, 65 Ill. 2d 132, 138 (1976). While these general instructions were not as absolute as the more particularized accomplice instruction would have been, they provided the jury with sufficient direction and the failure to instruct the jury on accomplice testimony did not rise to the level of plain error or ineffective assistance of counsel. See *Sanders*, 2012 IL App (1st) 102040, ¶ 24.

¶ 43 C. One-Act, One-Crime

¶ 44 Both parties agree that defendant's convictions for official misconduct must be vacated pursuant to the one-act, one-crime doctrine. Her convictions for official misconduct were based on the same physical acts as the mail and wire fraud charges, which was improper. See *People v. Nunez*, 236 Ill. 2d 488, 494 (2010) (the one-act, one-crime doctrine prohibits multiple

convictions based on "precisely the same physical act.") Since mail fraud, wire fraud, and official misconduct were all Class 3 felonies, the official misconduct convictions should be vacated as they are based on the more general statute. *People v. Jones*, 89 Ill. App. 3d 1030, 1034 (1980).

¶ 45

III. CONCLUSION

¶ 46 For the foregoing reasons we affirm defendant's convictions for wire fraud and mail fraud, reverse defendant's conviction for intimidation, and vacate defendant's convictions for official misconduct. We therefore remand only to consider if a different sentence is warranted based on these findings.

¶ 47 Affirmed in part, reversed in part, and vacated in part. Remanded for consideration of resentencing.