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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LAURA CECILIA CARLSON,

Defendant and Appellant.

2d Crim. No. B247312
(Super. Ct. No. 2010000667)
(Ventura County)

This appeal is about a fraudulent home foreclosure rescue scheme. Laura Cecilia Carlson was convicted by jury of two counts of unlawful acts by a foreclosure consultant (counts 1 -2; Civ. Code, § 2945.4, subds. (e) & (f)), nine counts of grand theft (counts 3-6, 8-12; Pen. Code, § 487, subd. (a))¹, one count of filing a false or forged instrument (count 7; § 115, subd. (a)), and two counts of money laundering (counts 13-14; § 186.10, subd. (a)). The trial court sentenced appellant to three years state prison on count 7 and imposed eight-month consecutive terms (one-third the middle term) on the remaining counts for an aggregate sentence of 11 years eight months state prison. We reverse the grand theft convictions on counts 4, 9, 11, and 12 which are barred by the *Bailey* multiple takings doctrine. (*People v. Bailey* (1961) 55 Cal.2d 514, 518-519.) We

¹ All statutory references are to the Penal Code.

accordingly reduce the sentence to nine years state prison and affirm the judgment as modified.

Facts and Procedural History

In 2009 and 2010 appellant managed a home foreclosure rescue operation, doing business as Global Team Consulting and Santa Barbara Management aka SB Management.² Appellant supervised Maria Victoria Santos and Juan Alvarado who targeted Spanish-speaking homeowners with mortgage problems. The victims paid a program enrollment fee, signed grant deeds and powers of attorney, and mailed monthly payments to appellant's office in Pomona. Appellant deposited the money in a Santa Barbara Management bank account and maintained a spreadsheet of the amount paid by each client/victim. From June 8, 2010 through August 31, 2010, appellant withdrew \$117,000 by writing checks to herself, Global Team Consulting, to cash, to Felipe Castro, and to Western Empowering Enterprise Group.

Santos and Alvarado pled guilty before trial and testified for the prosecution. Evidence was received that the following homeowners were defrauded:
Counts 1 & 2: Guillermo Martinez

In 2009, Guillermo Martinez was in default on his house mortgage and responded to Santos' radio ad. Martinez paid a \$2,500 enrollment fee and signed a grant deed transferring a five percent ownership interest in his house to appellant. Martinez was provided a contract stating that Global Team Consulting would renegotiate his mortgage if Martinez paid SB Management monthly payments. Appellant had Martinez sign a quitclaim deed and a power of attorney, and guaranteed that his money would be refunded if the program was not successful. Martinez lost his home at a March 18, 2010 foreclosure.

² Appellant had an organization chart in her office that listed Mike Aguilar, doing business as Second Chance, Inc., as the leader of the foreclosure rescue operation. Beneath Aguilar was Felipe Castro, doing business as Western Empowering Enterprise Group. Appellant is listed on the chart as a mid-level manager doing business as Global Team Consulting.

Counts 3 & 4: Luz Lechuga

In April 2010, Alvarado enrolled Luz Lechuga in the foreclosure rescue program. Lechuga paid a \$2,000 enrollment fee plus \$1,120 a month to SB Management. After a notice of default was recorded on Lechuga's home, Lechuga demanded that appellant cancel the contract. Lechuga lost her house at a December 2010 foreclosure sale.

Count 5: Ruben & Bertha Coronel

In April 2010, Santos enrolled Ruben and Bertha Coronel in the program and said that investors would purchase Coronel's home and deed it back to them at a reduced price. The Coronels paid \$945 a month to Santa Barbara Management and lost their home at a December 2010 foreclosure.

Counts 6 & 7: Juan Jimenez

In 2010, Santos enrolled Juan Jimenez in the program. Jimenez paid a \$3,169 enrollment fee and \$880 a month to Santa Barbara Management. He also signed a quitclaim deed and \$30,930 deed of trust. Jimenez lost \$8,449 but managed to restore title to his house.

Counts 8 & 9: Felix Rangel

In April 2010, Santos told Felix Rangel that SB Management would buy his house and sell it back to him at a lower price. Rangel paid a \$2,500 enrollment fee plus \$1,129.37 a month and lost about \$8,000 before the fraud was discovered.

Counts 10-12: Manuel Bernal

In December 2009, Santos enrolled Manuel Bernal in the program and had him sign a quitclaim deed. Bernal paid a \$900 enrollment fee plus \$1,564 a month to SB Management. The home was sold at a January 2011 foreclosure sale.

Bailey Doctrine

Citing *People v. Bailey, supra*, 55 Cal.2d 514 (*Bailey*), appellant argues that the primary grand theft counts (counts 3, 5, 6, 8, and 10) constitute a single offense because the takings are all part of a single scheme or plan. In *Bailey*, defendant fraudulently received a series of welfare payments, each less than \$200. Our Supreme

Court held that the counts could be aggregated to convict on one count for grand theft. "[W]here as part of a single plan a defendant makes false representations and receives various sums from the victim the receipts may be cumulated to constitute but one offense of grand theft. [Citations.] The test . . . in determining if there were separate offenses or one offense is whether the evidence discloses one general intent or separate and distinct intents." (*Id.*, at pp 518-519.)

Bailey does not apply to the primary grand theft counts: count 3 (Lechuga), count 5 (Coronel), count 6 (Jimenez), count 8 (Rangel), and count 10 (Bernal), because each count involves a different victim and different taking. The *Bailey* doctrine is limited to multiple takings from the "same person" where the thefts are not "separate and distinct" and "committed pursuant to one intention, one general impulse, and one plan. [Citation.]" (*Id.*, at p. 519; see e.g., *People v. Tabb* (2009) 170 Cal.App.4th 1142, 1149-1150; *In re David D.* (1997) 52 Cal.App.4th 304, 309.)

Counts 4, 9, 11, and 12 - Multiple Takings From Same Person

The grand theft convictions on count 4 (Lechuga), count 9 (Rangel), and counts 11 and 12 (Bernal) are based on additional takings pursuant to a single plan and scheme. The jury was instructed: "A member of a conspiracy is criminally responsible for the acts or statements of any other member of the conspiracy done to help accomplish the goal of the conspiracy." (CALCRIM 416.) The trial court found that appellant was the "operator" of the conspiracy and the crimes were part "of a planned, carefully orchestrated criminal conspiracy."

People v. Whitmer

While this appeal was pending, our Supreme Court in *People v. Whitmer* (2014) 59 Cal.4th 733 refined *Bailey* because "past appellate courts have interpreted *Bailey* more broadly than is warranted. . . ." (*Id.*, at p. 733.) The *Whitmer* court held that "a defendant may be convicted of multiple counts of grand theft, based on separate and distinct acts of theft, even if committed pursuant to a single overarching scheme." (*Ibid.*) Citing *People v. Stanford* (1940) 16 Cal.2d 247, *People v. Rabe* (1927) 202 Cal. 409, and

People v. Ashley (1954) 42 Cal.2d 246, the *Whitmer* court concluded that "a serial thief should not receive a 'felony discount' if the thefts are separate and distinct even if they are similar." (*Id.*, at p.740.) The court, however, declined to apply retroactive the "new rule," noting that a long, uninterrupted series of cases had interpreted *Bailey* to hold that multiple acts of grand theft against the same victim pursuant to a single scheme supports only one grand theft conviction. (See *People v. Jaska* (2011) 194 Cal.App.4th 971; *People v. Kronemyer* (1987) 189 Cal.App.3d 314; *People v. Brooks* (1985) 166 Cal.App.4th 24; *People v. Packard* (1982) 131 Cal.App.3d 622; *People v. Gardner* (1979) 90 Cal.App.3d 42, *People v. Richardson* (1978) 83 Cal.App.3d 853.) "[G]iven the numerous, and uncontradicted, Court of Appeal decisions over a long period of time that reached a conclusion contrary to ours, we believe today's holding is . . . an unforeseeable judicial enlargement of criminal liability for multiple grand thefts" and must, as matter of due process, be applied prospectively. (*People v. Whitmer, supra*, 59 Cal.4th at p.742.)

In light of *Whitmer* and the People's concession, the convictions on counts 4, 9, 11, and 12 are reversed. "Under the law that has existed for decades, [appellant] could only have been convicted of a single count of grand theft." (*Id.*, at p.733.) A series of takings from the same person constitutes a single theft where the takings are pursuant to a single plan and scheme. (*People v. Bailey, supra*, 55 Cal.2d at p. 519.)

CALCRIM 1862

Appellant refunded money to some clients but not the victims. Appellant signed 51 refund checks but no checks were issued to Lechuga, Coronel, Martinez, Jimenez, Rangel, or Bernal. The trial court gave CALCRIM 1862 which stated: "If you conclude that the People have proved that the defendant committed theft, the return or offer to return all of the property wrongfully obtained is not a defense to that charge."

Appellant argues that CALCRIM 1862 (return of property not a defense) should have been modified to instruct that the refunds are circumstantial evidence of lack of intent to defraud. Because appellant did not object or request a modification, he is precluded from arguing instructional error on appeal. (*People v. Whalen* (2013) 56 Cal.4th 1, 81-82.)

Appellant concedes that CALCRIM 1812 is a correct statement of the law but argues that she was denied a fair trial because of the prosecutor's comments. Appellant's trial attorney told the jury that "[g]iving money back, if you've stolen it, is not a defense. . . . [N]one of the people that Ms. Carlson refunded money to . . . are victims in this case. . . . What this is is circumstantial evidence of [appellant's] state of mind whether or not she was attempting to steal money from people."

In rebuttal, the prosecution argued that the refund checks do not "negate [appellant's] intent. It does not render her innocent. All it shows is that they ripped off a lot of people all over Southern California. [¶] And even if you believe that these checks were refunds, so what? It's not relevant to . . . your deliberations. . . . [W]e know without a shadow of a doubt, based on [the victims'] testimony that they didn't get their money back. They never got refunds. They all testified to that."

Appellant asserts that the comments undermined her defense of lack of intent but did not object, waiving the alleged error. (*People v. Ochoa* (1998) 19 Cal.4th 353, 431.) Waiver aside, there was no prejudice. The trial court instructed that "[n]othing that the attorneys say is evidence" (CALCRIM 222), that the prosecution had to prove that appellant "knowingly and intentionally deceived" the victims (CALCRIM 1804), and that intent can be proved by circumstantial evidence (CALCRIM 225). The trial court instructed that if two or more reasonable conclusions can be drawn from the circumstantial evidence, and one of those supports a finding that appellant had the required intent, and the other does not, the jury must conclude that intent was not proved by the circumstantial evidence. (CALCRIM 225.)

On review, it is presumed that the jury understood and followed the instructions. (*People v. Delgado* (1993) 5 Cal.4th 312, 331.) The trial court had no sua sponte duty to give an amplifying instruction that was argumentative, misstated the law, or would confuse the jury. (*People v. Wright* (1988) 45 Cal.3d 1126, 1135.) Nor is a trial court required to give a pinpoint instruction that is argumentative or duplicates the other instructions. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 99; *People v. Bolden* (2002) 29 Cal.4th 515, 558.) Appellant makes no showing that she was denied a

fair trial or the due process right to present a defense. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.)

Counts 1 and 2 - Foreclosure Consultant

On count 1 appellant was convicted of acquiring an interest in Guillermo Martinez's house (i.e., grant deed conveying a five percent ownership interest) while acting as a foreclosure consultant. (Civ. Code, § 29454, subd. (e).) On count 2, the jury convicted appellant of obtaining a power of attorney from Martinez while acting as a foreclosure consultant. (Civ. Code, § 2845,4, subd. (f).) Both counts are wobblers punishable "by imprisonment in county jail for not more than one year, or in state prison . . . for each violation." (See former Civ. Code, § 2945.7.) Civil Code section 2945.7 provides that "these penalties are cumulative to any other remedies or penalties provided by law."

Appellant argues that section 654 prohibits multiple punishment for the substantive offenses that are the object of the conspiracy. (See *People v. Ramirez* (1987) 189 Cal.App.3d 603, 615.) Appellant obtained the grant deed in August 2009 (count 1) and the power of attorney in January 2010 (count 2). Because the offenses were committed on different occasions, they may be punished separately. (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253-1254.) Under section 654, "a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]" (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11.) "[S]ection 654 does not bar multiple punishment for multiple violations of the same criminal statute." (*People v. Correa* (2012) 54 Cal.4th 331, 334.)

Conclusion

We reverse the convictions on counts 4, 9, 11, and 12 and modify the judgment by striking the convictions. (*Bailey, supra*, 55 Cal.2d at pp. 518-519; *People v. Whitmer, supra*, 59 Cal.4th at p. 733.) We affirm the judgment of conviction on counts 1-3, 5-8, 10, 13, and 14 and reduce the sentence to nine years state prison. The superior court clerk is directed to prepare an amended abstract of judgment and forward a certified

copy of the to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

James P. Cloninger, Judge
Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.