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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)**

THE PEOPLE,

Plaintiff and Respondent,

v.

RENEE WOOLF et al.,

Defendants and Appellants.

C068742

(Super. Ct. Nos.
MF032816A, MF032816B)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). The case involved a 19-day jury trial with two married defendants and over 100 exhibits, presided over by the Honorable Seth R. Hoyt, Jr. We commend Judge Hoyt as, having reviewed the lengthy record as required by *Wende*, we find no arguable error in favor of defendants and, with only minor corrections to the abstracts of judgment, we shall affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

Rose Souza, the victim of elder theft in this case, testified at trial. She was born in October 1930. She worked as an accounting technician at the Sharpe Army Depot in Manteca for 31 years. She never married, and lived with her sister Gloria at a home they owned in Manteca. Souza inherited her sister's estate when Gloria died in 1999. In 2005, Souza had assets in excess of \$1,000,000.

Souza had a stroke in November 2005, causing her to lose her ability to speak for awhile, and leaving her confined to a wheelchair. She could no longer live on her own or manage her affairs, so she went to live with her niece, defendant Renee Woolf (Renee), Woolf's husband, codefendant Jerry Woolf, Jr., (Jerry)¹ and their two children in April 2006. Before Souza moved in with defendants, her annual income, derived from her pension, social security, and interest on investments, was between \$25,000 and \$50,000. Souza would keep a good track of her finances and lived within her means.

Souza's expenditures rose after she started living with defendants. Her 2006 federal tax return showed an adjusted gross income of \$56,258. Her income in her 2007 federal return was \$52,158. The federal tax return for 2008 showed a \$190,111 income, and the 2009 return showed an income of \$243,300.

A forensic accountant analyzed Souza's expenditures between December 2004 and December 2009. Souza's expenditures started increasing dramatically starting in January 2006. Sums between \$25,000 and \$16,000 were transferred from Souza's savings account to her checking account. Investments were cashed in and transferred to her checking account, such as sums of \$59,000, \$43,000, and \$31,000 in March 2007. A total of \$1,045,279.55 was transferred into the account and \$1,034,481.71 went out of the account during this period. During this time, Souza received \$10,996 in social security

¹ As defendants have the same surname, we refer to them by their first names, or collectively as defendants; no disrespect is intended.

payments and \$101,845.41 from her pension. Defendants' daughter received checks from Souza, totaling \$14,550 during this time; their son, \$36,900; Jerry, \$15,100; and Renee received 106 checks from Souza, totaling \$184,967. A total of \$450,000 was transferred from Souza's savings account to her checking account.

During this time, \$292,875.92 was paid on two credit card accounts in Souza's name. Among the credit card charges were a total of \$78,743.93 spent on automobile-related expenditures, \$29,968.35 on health and beauty items, \$33,145.29 on travel, \$46,000 on retail purchases, and \$38,969.38 on education for defendants' children and for Jerry's business. Checks from Souza's account were the primary source of funds for an account maintained by defendants to pay their household expenditures, including their mortgage.

Souza stated that she authorized at least some of the purchases from her funds, including a motor home and a speed boat for defendants and their family. She "probably" bought the motor home for them because they were taking care of her. She never gave defendants or their family permission to use her credit cards. No one ever told her that most of her money is gone.

Steven Pierce was once friends with Jerry; his girlfriend worked for defendants and defendants rented a home from them between July 2005 and August 2009. At the time Souza moved into defendants' home, Pierce heard both defendants say that Souza had over \$1.2 million. He heard Renee say that she would spend every penny of Souza's money before the other family members got any.

Souza was in the hospital on March 15, 2010. A detective with the San Joaquin County Sheriff's Department interviewed Souza at the hospital that day. The detective asked Renee and other family members to leave Souza's room; he shut the door after they left. As the detective interviewed Souza, Renee repeatedly tried to push the door open and enter the room, telling the detective that Souza needed an attorney in the room before

she could talk to law enforcement. Renee refused to leave, and told the detective that she had to be in the room. As the detective pulled on her wrist and pushed the door closed, defendant fell to the ground and screamed that it was police brutality.

Following a jury trial, Renee was convicted of elder abuse involving embezzlement by a caretaker (Pen. Code, § 386, subd. (e))² with a white collar crimes enhancement (§ 186.11, subd. (a)(2)), fraudulent use of a credit card (§ 484g), and resisting, obstructing, or delaying a peace officer, a misdemeanor (§ 148, subd. (a)(1)). Jerry was convicted of elder abuse involving embezzlement by a caretaker with a white collar crimes enhancement, and fraudulent use of a credit card.

The trial court sentenced Renee to the midterm of six years eight months in state prison, imposed various fines and fees, and awarded 56 days of presentence credit (28 actual and 28 conduct days). Jerry was sentenced to the low term of five years eight months in state prison, ordered to pay various fines and fees, and awarded 56 days of presentence credit (28 actual and 28 conduct days). Defendants were found jointly and severally liable and ordered to pay \$500,000.01 in restitution to Souza.

Defendants appeal.

We appointed counsel to represent defendants on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendants were advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Renee filed a supplemental brief raising several allegations. First, she contends that Souza was very happy in defendants' home, approved of their use of her money, and

² Undesignated statutory references are to the Penal Code.

“had every right to spend her money any way she wanted.” Assuming this is a claim of insufficient evidence to support the verdicts, it fails. Souza testified that she consented to some expenditures, but did not consent to the use of her credit cards, and did not know that the vast majority of her assets had been spent while in defendants’ care. Substantial evidence supports both defendants’ convictions on all counts.

Second, Renee asserts Souza has suffered considerably since she was removed from their home. This does not raise a cognizable issue on appeal and thus we decline to address it.

Third, Renee claims Souza was on pain medication when she testified and counsel should have had “her doctor come in and deem her competent to testify.” Before Souza testified, the trial court conducted a hearing on her competency, and found her competent to testify. Renee does not show how she was prejudiced by the alleged failure of counsel, a prerequisite for a claim of ineffective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 691-692 [80 L.Ed.2d 674, 693, 696].) Her claim that Souza was confused and could not completely understand the questions is not supported by the record.

Fourth, Renee notes that the jurors did not have a break room, and spent their breaks in the corridors with witnesses and family members of defendants. Renee does not establish how she was prejudiced by the courtroom facilities. In any event, the jury was instructed at the beginning of trial: “do not speak to any party, witness, or lawyer involved in the trial. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it.” We presume the jury followed the instructions. (*People v. Lewis* (2001) 26 Cal.4th 334, 390.)

Fifth, and finally, Renee claims “This case . . . should . . . never [have] been in court,” as it was “more about family rivalry and resentment.” This does not present a cognizable issue on appeal, and we therefore decline to consider it.

We have found errors in the abstracts for both defendants, which we shall order corrected.

Each abstract indicates that the count for fraudulent use of a credit card is pursuant to code section “PC 484[, subdivision] (G)” (see count 2—Renee; count 5—Jerry). The relevant code section is 484g.

The trial court imposed a \$200 restitution fine (§ 1202.4) and a stayed \$200 parole revocation fine (§ 1202.45) on each felony count for both defendants. Renee’s abstract incorrectly shows restitution and stayed parole revocation fines of \$600, while Jerry’s abstract correctly shows the amount of \$400 for each fine. Each defendant was convicted of two felonies, thus \$400 is the correct amount for each defendant on each fine.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendants.

DISPOSITION

The judgments are affirmed. The trial court is directed to prepare corrected abstracts of judgment for each defendant indicating the correct code section (§ 484g) on count 2 for Renee and count 5 for Jerry. It shall further correct Renee’s abstract of judgment to reflect a \$400 restitution fine (§ 1202.4) and a \$400 suspended parole revocation fine (§ 1202.45), and forward certified copies of the corrected abstracts to the Department of Corrections and Rehabilitation.

BUTZ, J.

We concur:

ROBIE, Acting P. J.

DUARTE, J.