

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
January 12, 2016

v

REGINA LYNNE SPEARS-EVERETT,  
Defendant-Appellant.

No. 324134  
Kalamazoo Circuit Court  
LC No. 2013-001188-FH

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Before: BOONSTRA, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

A jury convicted defendant of embezzling \$20,000 or more from a vulnerable adult, MCL 750.174a(5)(a). After being sentenced to nine months in jail and ordered to pay \$169,374.18 in restitution, she appeals by right. We affirm.

Defendant, a podiatrist, befriended the victim, an elderly patient, in 1996. The victim's health declined, and in January of 2010, defendant presented the victim with a medical directive, power of attorney, and will. The victim signed the documents and transferred control of her affairs to defendant. The following week, the victim was diagnosed with dementia and involuntarily committed to the hospital. She was moved into an assisted living facility, and defendant took over her finances. Between January 25, 2010 and March 8, 2010, defendant spent over \$47,000 from one of the victim's bank accounts, and between January 27, 2010 and June 9, 2010, defendant transferred over \$57,000 to herself from another of the victim's accounts. Defendant made numerous large purchases that did not benefit the victim. Even after defendant's power of attorney was revoked in June of 2010, defendant continued to spend the victim's money.

Defendant first argues that there was insufficient evidence to sustain her conviction. A challenge to the sufficiency of the evidence requires this Court to view the evidence de novo in a light most favorable to the prosecution and determine whether any reasonable juror would be warranted in finding that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harverson*, 291 Mich App 171, 175, 177; 804 NW2d 757 (2010).

To convict defendant, the prosecution was required to prove that defendant through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtained or used or attempted to obtain or use a vulnerable adult's money or property, valued at \$20,000 or more, to directly or indirectly benefit defendant knowing or having reason to know the vulnerable adult is a

vulnerable adult. MCL 750.174a(5)(a). A “vulnerable adult” includes “[a]n individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently.” MCL 750.145m(u)(i). On appeal, defendant challenges the sufficiency of the evidence that the victim was a vulnerable adult and that the money or property was obtained through fraud, deceit, misrepresentation, coercion, or unjust enrichment.

First, viewed in a light most favorable to the prosecution, a reasonable jury could infer from the testimony that the victim was a vulnerable adult at all times relevant to this case. The victim was elderly and had experienced problems living alone before she was placed in the hospital. The victim was diagnosed with dementia, and her doctor testified that it had become unsafe for her to live independently. A reasonable jury could infer from this testimony that the victim required supervision or personal care or lacked the personal or social skills required to live independently both at the time the victim signed the documents and at the time defendant used the victim’s money to benefit herself. Therefore, a reasonable jury could conclude that the victim was a vulnerable adult.

Next, a reasonable jury could infer beyond a reasonable doubt from the testimony that the money or property was obtained through fraud, deceit, misrepresentation, coercion, or unjust enrichment. MCL 750.174a does not define fraud, deceit, misrepresentation, coercion, or unjust enrichment. “The primary goal of statutory interpretation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute. If the language of the statute is clear, we presume that the Legislature intended the meaning expressed.” *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008) (internal quotations and citations omitted). If the statute does not define a word, it is appropriate to consult a dictionary to determine the plain and ordinary meaning of the word. *Id.*

Black’s Law Dictionary defines fraud as “[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment,” deceit as “[t]he act of intentionally leading someone to believe something that is not true; an act designed to deceive or trick,” and misrepresentation as “[t]he act or an instance of making a false or misleading assertion about something, usually with the intent to deceive.” *Black’s Law Dictionary* (10th ed).

The prosecution presented evidence that defendant befriended the victim and, over the course of their friendship, steadily became closer to the victim and exerted increasing control over her affairs. The evidence also showed that the victim began to exhibit forgetfulness and to engage in bizarre behavior, such as flushing 200 rags down her toilets. At that point, defendant presented the victim with a medical directive, power of attorney, and will, which the victim signed and which transferred control of her affairs to defendant. A jury could reasonably infer that when defendant noticed the victim was becoming forgetful and physically weaker, she induced the victim to sign legal documents under the guise of taking care of her. Then, because the victim believed that defendant would act in her best interest, she granted defendant complete control of the victim’s affairs and access to the victim’s entire estate. Defendant then spent large sums of the victim’s money on things that did not benefit the victim, and which, in fact, injured the victim. A rational jury could conclude from this testimony that defendant obtained the victim’s money or property through fraud, deceit, or misrepresentation.

Defendant also argues that she is entitled to a reduction in the restitution amount because some of the charges included in the total were incurred for the victim's benefit. This Court typically reviews for an abuse of discretion a trial court's decision regarding restitution. *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003). Defendant, however, raises this argument for the first time on appeal, so this Court may only review this claim for plain error affecting her substantial rights. *Id.* To avoid forfeiture under the plain error rule, three requirements must be met: (1) error must have occurred; (2) the error was plain, i.e., clear or obvious, (3) and the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant is not entitled to a reduction in restitution. MCL 769.1a(2) provides, in part, that the sentencing court shall order "that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." "[A]ny course of conduct that does not give rise to a conviction may not be relied on as a basis for assessing restitution against a defendant." *People v McKinley*, 496 Mich 410, 419-420; 852 NW2d 770 (2014). The Crime Victim's Rights Act, MCL 780.751 *et seq.*, governs whether a trial court's restitution order is appropriate. *Newton*, 257 Mich App at 68. To prove the appropriate amount of restitution, MCL 780.767(4) requires that "[a]ny dispute as to the proper amount or type of restitution . . . be resolved by the court by a preponderance of the evidence." A "preponderance of the evidence" means "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this case, the prosecution introduced evidence to demonstrate the amount of the loss the victim sustained because of defendant's actions. Multiple witnesses testified about defendant's financial transactions at trial, and the presentence investigation report and attached victim impact statement included a breakdown of specific expenditures defendant made using the victim's money. At sentencing, defendant was ordered to pay restitution of \$169,374.18, which included two separate \$22,000 credit card charges and an aggregation of the amount of cash defendant had withdrawn from the victim's bank accounts. While defendant disagrees with this amount, she did not introduce any evidence to contradict it. Consequently, when determining the restitution amount, the trial court implicitly determined that the weight of the prosecution's evidence versus defendant's lack of evidence was far stronger and more credible. *Cross*, 281 Mich App at 740. Defendant has not demonstrated plain error because she did not offer any evidence to show that the restitution total included expenditures benefitting the victim.

Defendant next argues that she was denied the effective assistance of counsel because her trial counsel failed to move at trial for an independent dementia expert and failed to object to the restitution amount on the ground that some of the charges included in the restitution total were incurred for the victim's benefit. This issue is not preserved, so our review is limited to mistakes apparent on the record. *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008).

Generally, to establish the ineffective assistance of counsel, a defendant must show (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Vaughn*, 491 Mich 642, 669; 821 NW2d 288 (2012). Effective assistance of counsel is strongly presumed, and the defendant bears the burden of proving

otherwise. *Id.* at 670. On matters of trial strategy, defense counsel has wide discretion, *id.*, and this Court will not substitute its judgment for that of counsel, *Petri*, 279 Mich App at 411.

Defendant's argument that she was denied the effective assistance of counsel because her attorney did not present an independent expert on dementia is without merit. Defendant failed to demonstrate that her counsel's representation fell below an objective standard of reasonableness. Defendant has not shown that a witness existed who could have been called at trial and who would have presented testimony to support the premise that people with dementia may still have the requisite mental capacity to sign legal documents. It was defendant's burden to establish the factual predicate for her claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Defendant did not meet that burden.

Further, two psychiatrists who evaluated the victim during her stay in the hospital testified at trial about dementia and how the disease impacted the victim. They were both cross-examined by defense counsel. That defense counsel chose not to employ an independent expert witness to challenge the treating physicians' opinions, if, in fact, one could even have been found, was a matter of trial strategy. This Court does not substitute its judgment for that of counsel on matters of trial strategy. *Petri*, 279 Mich App at 411. Defendant has not demonstrated that counsel's failure to call an expert witness fell below an objective standard of reasonableness; consequently, her claim of ineffective assistance of counsel fails.

Finally, we find no merit in defendant's argument that she was denied effective assistance of counsel when her counsel failed to object to the restitution amount on the grounds that some of the charges included in the total were incurred for the victim's benefit. Defendant has not shown that the failure to object for that reason fell below an objective standard of reasonableness. As previously noted, the amount requested for restitution was based on information in the record, and the record supports that accuracy of the amount. There is no indication that money defendant may have spent for the victim's benefit was included in the amount calculated for restitution. Thus, any challenge on those grounds would have been futile. Failing to advance a meritless argument does not constitute ineffective assistance of counsel. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

We affirm.

/s/ Mark T. Boonstra  
/s/ David H. Sawyer  
/s/ Jane E. Markey