DIVISION ONE
FILED: 10-12-2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 08-1047
	)	
Appellee,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
GARY J KARPIN, SR.,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2006-031057-001 SE

The Honorable Warren J. Granville, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Adriana M. Rosenblum, Assistant Attorney General
Attorneys for Appellee

Janelle A. McEachern Attorney at Law — Chandler
By Janelle A. McEachern
Attorney for Appellant

O R O Z C O, Judge

¶1 Gary J. Karpin, Jr. (Defendant) appeals from his convictions on twenty-three counts of theft and one count of

fraudulent schemes and artifices. On appeal, he argues that (1) the trial court abused its discretion when it denied his Rule 20 motion for acquittal, and (2) insufficient evidence supports the jury's guilty verdicts. For reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts and resolve all reasonable inferences against defendant. *State v. Vandever*, 211 Ariz. 206, 207 n.2, 119 P.3d 473, 474 n.2 (App. 2005).

¶3 Defendant received a juris doctor degree from Vermont Law School in 1985 and was licensed to practice law in Vermont and Maine in 1987. He was suspended from the practice of law in Maine in 1991 and disbarred in Vermont in 1993. In 1996, Defendant came to Arizona, but neither applied for, nor was admitted to practice law.

¶4 Defendant began a private mediation practice in Arizona under the name of three different business entities: Divorce with Dignity, Divorce Associates, and Relationships with Dignity.

¶5 The State Bar of Arizona (SBA) became aware that Defendant had been disbarred in Vermont. The SBA sent Defendant a letter in 1998 and requested that he stop using labels, such as "J.D.," in a manner that implied that he was authorized to practice law in Arizona. The letter also requested that he stop

preparing legal documents, giving legal advice, or negotiating legal matters. Sometime after 1999, Fran Johansen, who was the newly-created unlicensed practice of law attorney with the SBA, sent Defendant a second letter about complaints and again requested that he cease any activities that appeared to be the practice of law. Defendant responded with a fax in which he claimed that his work was "attorney supervised" and that all his clients signed a fee agreement that clearly stated that he was not an attorney. Defendant also threatened to sue the SBA if it contacted any of his clients.

¶6 In response to additional complaints, Johansen sent Defendant a third letter, in 2004, advising him that he had been reported as engaging in activities that violated Arizona Supreme Court Rule 31 prohibiting the unauthorized practice of law. The 2004 letter asked Defendant to cease activities such as preparing legal documents for filing in court, negotiating legal rights, and/or using designations such as "J.D.," "Esq." and "law office" in a manner that was "likely to induce others to believe that [he was] authorized to practice law." Johansen also asked Defendant to send her a letter within thirty days confirming his compliance with the SBA's request. Defendant responded by fax, assuring her that he was working under the supervision of The Green Law Group, LLC, and that he was a paralegal and law clerk for Robert Green.

¶7 The SBA filed a civil lawsuit against Defendant in 2004, seeking an injunction against his practice of law and requested restitution for clients who had paid him for legal services. Defendant responded by filing a lawsuit against Johansen, the SBA and its chief counsel for, among other things, defamation, slander, restraint of trade and infliction of emotional distress.

¶8 Yvette Gray (Gray) took over Johansen's job as the SBA's unauthorized practice of law attorney and in 2004 worked on the lawsuit involving Defendant. During Gray's tenure, she discovered that Defendant operated several businesses, including Divorce with Dignity and Divorce Associated. Advertisements for Divorce with Dignity contained statements like "Former Prosecutors," "Certified Paralegals" and "Full representation in court by an Arizona Licensed attorney." The SBA sought an injunction to prohibit Defendant from practicing law without a license.

¶9 Defendant agreed to drop his lawsuit against the SBA in July 2004 and also expressed an interest in coming to a resolution of the SBA's actions against him. Defendant signed a Cease and Desist Agreement as an end to the Bar's civil action against him on May 10, 2005. In signing the agreement, Defendant acknowledged that he was not authorized to practice

law in Arizona or certified as a legal document preparer.[1] The agreement further acknowledged that Defendant was disbarred in Vermont and that he had practiced law in Arizona without the supervision of a licensed attorney.

¶10 As part of the agreement, Defendant further agreed to provide the SBA "within thirty (30) days, the name(s) of his supervising attorney, and update the information within seven (7) days if charges are made." However, Defendant never provided Gray or the SBA with such a letter confirming that he was being supervised by an attorney, licensed to practice in Arizona.

¶11 The Maricopa County Attorney's Office (MCAO) began investigating Defendant in February 2005, after the office received two boxes of documents from the SBA. MCAO obtained copies of advertisements Defendant had posted in different Phoenix area newspapers and magazines and discovered that Defendant used several different business names for his mediation practice in addition to the ones known to the SBA.[2] MCAO also obtained a copy of a mediation overview that Defendant distributed to clients, which contained several letters of

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[1] The agreement stated: "[Defendant] has read the complaint, and agrees that the charges made against him are true in substance and in fact, sufficiently so that the State Bar could prevail at trial."

[2] These included: Law Office of G.J. Karpin; G.J. Karpin, JD; Offices of G.J. Karpin and Associates; and A Dignified Divorce.

recommendation, including one that noted that Defendant was "a sterling example of what a lawyer should be."

¶12 Through a search of Defendant's office pursuant to a search warrant, MCAO obtained a business card for Divorce Associates with Defendant's name on it which also said "juris doctorate," "former prosecutor" and "Superior Court certified." On the wall of Defendant's office there was a Vermont Law School diploma, a Bar certificate for the State of Maine, a certificate of membership in the Trial Lawyers Association of America, and a certificate of admission to practice in the U.S. District Court of Maine. Also a badge bearing Defendant's name and "State's Attorney" for Orleans County, Vermont, was found in Defendant's desk drawer.

¶13 The State charged Defendant with twenty-five counts of theft[3] by means of material misrepresentation and one count of fraudulent schemes and artifices, a Class 2 felony in October 2006. One count of theft was dismissed prior to trial. The

[3] The theft counts, based on the amount of monies at issue, were the following: Counts 1, 2, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, and 25, involving an amount greater than $3,000 but less than, $25,000, were each Class 3 felonies; Counts 3, 4, and 6, involving an amount greater than $2,000 but less than $3,000, were each Class 4 felonies; Count 7, involving an amount greater than $25,000 but less than $100,000, was a Class 2 felony; Counts 5 and 10, involving an amount greater than $250 but less than $1,000, were each Class 6 felonies; and Count 23, involving an amount greater than $1,000 but less than $2,000, was a Class 5 felony.

trial court granted Defendant's Rule 20 motion on count 11, theft, at the end of the State's case in chief.

¶14 Defendant, who represented himself, presented witnesses and also testified at trial. At the conclusion of the trial, the jury found Defendant guilty of twenty-three counts of theft by means of material misrepresentation as well as the one count of fraudulent schemes and artifices.

¶15 Defendant timely appealed. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003),[4] 13-4031 and -4033 (2010).

DISCUSSION

Denial of Rule 20 Motion for Acquittal

¶16 Defendant first argues that the trial court's denial of his Rule 20 motion at the end of the State's case was an abuse of its discretion. We disagree.

¶17 We review a trial court's ruling on a Rule 20 motion for an abuse of discretion. *State v. McCurdy*, 216 Ariz. 567, 573, ¶ 14, 169 P.3d 931, 937 (App. 2007); *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). A directed verdict is appropriate only when there is no substantial evidence to prove each element of the offense and support the

[4] Unless otherwise noted, we cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

conviction. *McCurdy*, 216 Ariz. at 573, ¶ 14, 169 P.3d at 937. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Hall*, 204 Ariz. 442, 454, ¶ 49, 65 P.3d 90, 102 (2003) (quoting *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996)). Furthermore, substantial evidence may consist of both circumstantial and direct evidence. *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App. 1981).

¶18 A trial court must submit a case to the jury if "reasonable minds can differ on the inferences to be drawn from the evidence." *Henry*, 205 Ariz. at 232, ¶ 11, 68 P.3d at 458. On appeal, we will consider that evidence in the light most favorable to sustaining the trial court's decision. *State v. Sullivan*, 205 Ariz. 285, 287, ¶ 6, 69 P.3d 1006, 1008 (App. 2003).

¶19 To prove the theft charges under the facts of this case, the State had to establish that, without lawful authority, Defendant obtained funds from his victims by means of a material misrepresentation, with the intent to permanently deprive those victims of their funds. A.R.S. § 13-1802.A.3. As Defendant acknowledges, all the victims who testified at trial stated that they responded to Defendant's advertisement, or were referred to him by someone who had engaged him or read his ad and had

interpreted the language of the advertisement - such phrases as "former prosecutor" and "JD" - as indicating that Defendant was licensed to practice as an attorney in Arizona. This impression was further reinforced in their minds by the degrees and certificates hanging on the wall of his office, the stationary he used, and the business cards he tendered. They also testified that they would not have hired Defendant had they known he was disbarred or known that he was not licensed to practice in Arizona.

¶20 Defendant maintained that he only provided mediation services to clients, which did not require him to be licensed to practice law in Arizona. However, he also maintained that he was a "licensed attorney," because he had graduated from law school, and that, he would tell people, "Here's my training. Here's my credentials." If anyone asked him outright if he was licensed to practice *in Arizona,* Defendant argues he would have answered truthfully. He also maintained he did not misrepresent himself as a licensed attorney in Arizona because he had never filed a pleading in court indicating he was "an Arizona licensed attorney with a bar number on it."

¶21 Although he admitted that he was not a certified legal document preparer, he also admitted he nonetheless prepared legal documents but that it was done under the supervision of Robert Green, a licensed Arizona attorney. However, Green, with

whom Defendant claimed to be "affiliated" through "The Green Law Group," testified that he: never authorized Defendant to use his name in advertisements; had instructed Defendant to stop claiming an association with him; and also advised Defendant to inform his clients up front that he was not an attorney licensed to practice in Arizona.

¶22 This testimony alone supplied sufficient evidence and inferences to be drawn to support the jury's verdicts of theft by means of material misrepresentation. The trial court did not err in denying the Rule 20 motion on the theft counts. *Henry*, 205 Ariz. at 232, ¶ 11, 68 P.3d at 458.

¶23 The State also met its burden by presenting sufficient evidence at trial for the court to deny the Rule 20 motion on the charge of fraudulent schemes and artifices. To prove a person guilty of that charge, the State must show that (1) a plan or scheme existed; (2) the purpose of the plan was to defraud others; (3) knowing the purpose of the scheme or fraud, the defendant obtained a benefit pursuant to the fraud; (4) by means of false pretenses, representations, promises or material omissions. *State v. Bridgeforth*, 156 Ariz. 60, 64, 750 P.2d 3, 7 (1988). Our supreme court has found that "false pretenses" also include intentionally misleading someone by hiding or concealing the truth. *State v. Haas,* 138 Ariz. 413, 422, 675 P.2d 673, 682 (1983).

¶24 As noted above, the evidence showed that Defendant carried out his work under a number of different business names with advertising that included misrepresentations and misleading terms. Even after he was advised by the SBA that he should not prepare legal documents and should not use terms that gave potential clients the misimpression that he was authorized to engage in the practice of law in Arizona, Defendant continued to do so until he was arrested. In two instances, Defendant also went so far as to imply to clients that he had a special relationship with Commissioner Parks, stating that ”he worked with her for 11 years,” “would be reporting to [Commissioner] Parks every day” and “had the authority of the court.” This evidence is sufficient to support the jury’s finding that Defendant knowingly engaged in a plan to mislead or defraud clients through a series of false representations and omissions.

Verdicts Unsupported by Evidence

¶25 Contrary to Defendant’s contention, we also find that there was ample evidence to support the jury’s guilty verdicts. *See Vandever*, 211 Ariz. at 207 n.2, 119 P.3d at 474 n.2. (we view evidence in light most favorable to sustaining the verdicts).

¶26 Defendant testified on his own behalf. He pointed to the fact that his fee agreement specified that he was “not an attorney for divorce mediation purposes,” but admitted that

clients may have had “miscues” about his status as an attorney and that he might have explained things to them better. The problem, according to Defendant was “differentiating” what people thought, which “wasn’t done sufficiently.” Defendant maintained that “mistakes were definitely made with some people.”

¶27 Defendant testified that he never told anyone about the SBA letters or that he was disbarred “[b]ecause the letters suck” and because “it’s a human response to put your best foot forward.” Furthermore, although he maintained that he was “supervised” by Green, he also testified that he “didn’t care” about what actual supervision entailed because “as long as he had [Green’s] representation under his letterhead” he would be meeting the requirements and Green had the liability under the Rules of Professional Conduct.

¶28 Defendant admitted that he exaggerated his relationship with Commissioner Parks, but that this too was a “mistake” that he regretted. Likewise using terms such as “former prosecutors,” “divorce litigators” and “paralegals” in his advertisement was a “mistake,” but only because of his use of the plurals[5] and only because he was “sloppy,” not because he intended to mislead anyone. His use of the term “Superior Court

[5] According to Defendant, there was “one former prosecutor,” Defendant, and “one attorney,” Rob Green.

certified mediator" in his ads was also a "mistake." Even listing himself as part of "The Green Law Group" after Green told him to stop doing so was simply a "big mistake." In fact, it was Defendant's testimony at trial that many, if not all, of the misrepresentations that the State accused him of, were simply "mistakes" and "embellishment."

¶29 The jury found Defendant guilty of all of the charges submitted to it. It is well established that the weight and credibility of his statements were a matter for the jury to determine. *State v. Cox*, 217 Ariz. 353, 357, ¶ 27, 174 P.3d 265, 269 (2007). Having reviewed the entire record we find substantial evidence supports the jury's verdict.

CONCLUSION

¶30 For the reasons stated above, we affirm Defendant's convictions and sentences.

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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MARGARET H. DOWNIE, Judge