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publication in the New York Reports.

No. 2
The People &c.,
 Appellant,
 v.
Daivery Taylor and Law Offices of
Silverman & Taylor,
 Respondents.

Monica Wagner, for appellant.
Peter J. Moschetti, Jr., for respondents.

MEMORANDUM:

The order of the Appellate Division, insofar as
appealed from, should be reversed, the conviction of the Law
Offices of Silverman & Taylor of four counts of offering a false
instrument for filing in the first degree reinstated, and the
case remitted to the Appellate Division for further proceedings

in accordance with this memorandum.

Defendant Law Offices was convicted, following a nonjury trial in Nassau County Court, of four counts of offering a false instrument for filing under Penal Law § 175.35, a class E felony. The People's theory of the case was that defendants, working with numerous others, engaged in a scheme to submit fraudulent claims to no-fault insurance carriers by having illegally solicited automobile accident victims exaggerate their injuries, receive excessive medical treatment, and file inflated claims. As relevant to this appeal,* defendant Law Offices allegedly filed retainer statements with the Office of Court Administration (OCA) containing false representations as to the source of client referrals.

In reversing the conviction against defendant Law Offices, the Appellate Division concluded that the element of "intent to defraud" as required by Penal Law § 175.35 was not established because OCA did not itself "check, verify or rely upon the information" contained in retainer statements (55 AD3d 640, 642 [2d Dept 2008]). We disagree with the Appellate Division's legal conclusion that Penal Law § 175.35 requires that the receiving agency take action in reliance upon the filing of

* Defendants were additionally convicted by County Court of a scheme to defraud under Penal Law § 190.65 (1) (b), which was reversed by the Appellate Division; the People do not challenge this here. Nor do the People appeal the Appellate Division's dismissal of the indictment against defendant Daivery Taylor.

such information and itself be misled to its detriment. The statute, by its plain terms, contains no such element. "Intent to defraud" refers only to a defendant's state of mind in acting with a conscious aim and objective to defraud (see Penal Law § 15.05 [1]; Donnino, Practice Commentary, McKinney's Cons Laws of NY, Book 39, Penal Law § 175.30, at 79-80).

We therefore remit to the Appellate Division for consideration of the facts under the proper legal analysis and, if necessary, of other issues raised but not determined on the appeal to that court.

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Order, insofar as appealed from, reversed, the conviction of the Law Offices of Silverman & Taylor of four counts of offering a false instrument for filing in the first degree reinstated and the case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 11, 2010