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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2067**

State of Minnesota,
Respondent,

vs.

Lisa Anne Olson,
Appellant.

**Filed November 30, 2020
Affirmed; motion granted
Worke, Judge**

Sherburne County District Court
File No. 71-CR-17-49

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, Dawn R. Nyhus, Assistant County
Attorney, Elk River, Minnesota (for respondent)

Joy M. Johnson, The Law Offices of Joy Johnson, LLC, Zimmerman, Minnesota (for
appellant)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges her conviction of wrongfully obtaining public assistance,
arguing that the district court erred by permitting the jury to interpret an ambiguous

settlement agreement and that the prosecutor committed misconduct by publishing a redacted audio recording. The state moves to strike documents in appellant's reply addendum. We affirm appellant's conviction and grant the state's motion because the documents are not in the district court record.

FACTS

Appellant Lisa Anne Olson was charged with wrongfully obtaining public assistance for failing to disclose that her brother, G.R., was the beneficiary of an annuity when applying for his public assistance. Olson was G.R.'s guardian and representative payee from 2006 to G.R.'s death in November 2015. The state brought the charge after learning that Olson split annuity checks with her sister after their mother's death. The annuity was funded from a settlement agreement following their father's workplace accidental death. The language of the agreement states that "the amount of \$1,750.00 be distributed in monthly checks made payable to [Olson and G.R.'s mother] individually and as mother and natural guardian of [G.R.], said amount to be for her own use and for the care and maintenance of [G.R.], the minor son of the decedent." The issue at trial was whether Olson knowingly failed to report it as G.R.'s income when he was the beneficiary of the agreement.

The jury found Olson guilty of wrongfully obtaining public assistance. Olson brought several postverdict motions, including the two claims that she raises on appeal. The district court denied Olson's motions and sentenced her to probation with a ten-year stay of imposition, \$106,750 in restitution, and 240 hours of community service. This appeal followed.

DECISION

Motion to strike

We begin by addressing the state's motion to exclude from our consideration documents in Olson's reply addendum that are not in the district court record. "The record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcript of the proceedings, if any." Minn. R. Crim. P. 28.02, subd. 8. Appellate courts strike any documents that are not part of the record. *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993). Olson admits that the objected-to documents are not part of the record. For that reason, we grant the state's motion to strike and do not consider the documents in this appeal.

Jury instruction

Olson argues that, because "the jury had to determine, without the benefit of parol evidence, the meaning of two or more ambiguous terms [in the settlement agreement] that were susceptible to two or more reasonable interpretations," that the district court should have treated this as a question of law and instructed the jury on the legal meaning of the terms.

We construe this as a challenge to the jury instructions. In denying Olson's postverdict motions, the district court addressed this claim. It stated that the jury was instructed that one element of the offense was that "G.R. was entitled to income through

an annuity.” The district court stated that Olson did not object to this instruction at trial.¹ “A defendant generally forfeits the right to contest jury instructions on appeal when the defendant fails to object at trial.” *State v. Davis*, 864 N.W.2d 171, 176 (Minn. 2015). But we can review an unobjected-to jury instruction under the plain-error standard. Minn. R. Crim. P. 31.02; *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015). In a plain-error analysis, appellate courts review the jury instruction to determine (1) whether there was error, (2) whether the error was plain, and (3) whether the error affected the appellant’s substantial rights. *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). If an appellant meets these requirements, this court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 274 (quotations omitted).

Olson relies on *Dykes v. Sukup Mfg. Co.* to support her argument that interpretation of ambiguous contracts in criminal cases is a question of law for the district court. 781 N.W.2d 578, 581-82 (Minn. 2010). But *Dykes* provides the appellate standard of review for ambiguous contracts in civil cases. *Id.* There is no precedent for a district court interpreting a contract in a criminal case and instructing the jury on its meaning. Olson has not met her burden in showing that the district court erred.

Even if the district court erred, the error is not plain. “An error is plain if it was clear or obvious. Usually this is shown if the error contravenes case law, a rule, or a

¹ We are referencing the district court’s order on what occurred at trial because Olson failed to provide a complete transcript. See Minn. R. App. P. 110.02, subd. 1(a) (stating it is appellant’s burden to provide transcript).

standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). “An alleged error does not contravene caselaw unless the issue is conclusively resolved.” *State v. Hollins*, 765 N.W.2d 125, 133 (Minn. App. 2009) (quotation omitted). Olson admits that this “issue is one of first impression for Minnesota courts.” The district court, therefore, did not commit plain error.

Finally, Olson has not met her “heavy burden of proving that there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict.” *See Kelley*, 855 N.W.2d at 283 (quotation omitted). “An erroneous jury instruction will not ordinarily have a significant effect on the jury’s verdict if there is considerable evidence of the defendant’s guilt.” *Id.* at 283-84. There is considerable evidence of Olson’s guilt in this case.

G.R.’s caretaker testified that Olson told her that G.R. “had enough money to send his nieces and nephew through college and then some.” Bank records show that the annuity checks always ended up in Olson’s checking account, and that the checks were addressed to “LISA A. OLSON AND [Olson and G.R.’s sister] AS GUARDIANS OF [G.R.],” and later, “REP. LISA OLSON GRDN OF [G.R.] FBO: [G.R.]” One check was addressed only to G.R., and Olson transferred those funds from G.R.’s account to her own and called the annuity finance company to change the name on future checks. Olson also submitted a form to the annuity finance company on which she included G.R. among the annuitants or beneficiaries.

The financial worker for G.R.’s account testified that Olson never reported any income for G.R. other than his social security. A Sherburne County employee who assists

those applying for long-term-care medical assistance testified that all \$1,750 of the annuity check would have gone to G.R.'s medical spend-down if Olson disclosed it as his income. The jury also heard two telephone conversations between Olson and a deputy. In the second conversation, Olson stated that she was worried about what could happen to the family if she reported the money as G.R.'s income because her mother did not report it for 20 years. She was also worried it would mess with G.R.'s eligibility and did not want that to burden her family. Finally, she apologized for not being honest with the deputy earlier and recognized that, in hindsight, "it was probably a very stupid decision" to not report the income. Because of the amount of evidence showing Olson's guilt, any error did not affect her substantial rights. Olson's argument fails under the plain-error analysis.

Prosecutorial misconduct

Olson argues that the prosecutor committed misconduct² by "fail[ing] to disclose that it redacted [the investigator's] statements about Olson's lack of intent to Olson" in an audio recording played for the jury.

Olson did not object to the alleged misconduct, thus the modified plain-error analysis applies. Under the modified plain-error analysis, "the defendant must establish both that the misconduct constitutes error and that the error was plain." *State v. Carridine*,

² The state asks that this be called prosecutorial error because the prosecutor did not intentionally commit an error. Prosecutorial misconduct "implies a deliberate violation of a rule or practice, or perhaps a grossly negligent transgression," while prosecutorial error "suggests merely a mistake of some sort, a misstep of a type all trial lawyers make from time to time." *State v. Leutsch*, 759 N.W.2d 414, 418 (Minn. App. 2009). Even though the distinction is valid, it does not affect our standard of review. *Id.* This opinion uses the term "misconduct" because that is what Olson argues.

812 N.W.2d 130, 146 (Minn. 2012). If the defendant meets these elements, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Id.*

Olson argues that the prosecutor's failure to disclose what was redacted qualifies as error under Minn. R. Prof. Conduct 4.1 and 8.4. Rule 4.1 states, "In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law," and rule 8.4 states that it is misconduct for attorneys to engage in dishonesty or "conduct that is prejudicial to the administration of justice."

During a trial break, the parties conferred to discuss the redaction of the reference to financial exploitation in the audio recording because the state dropped the financial-exploitation charges. The following is the redacted portion of the conversation:

DEPUTY: Um the second piece of it is um if this money was intended for [G.R.]'s benefit and it was going into your account and he was not really seeing a dime of it, that's considered financial exploitation, okay? But I'm taking everything you're saying into account cause I do understand that this is a settlement to the accident that caused your father's death.

OLSON: Yep.

DEPUTY: So I'm not exactly sure in terms of um the bigger picture um how that's gonna be viewed in terms of is it income, is it not income? Ya know what is it? Um so I'm gonna have to go back to the county and kinda see how they're going to view that um because that could kinda change the way things go. Basically what I've described is ya know the fraud piece and the exploitation piece are considered crimes, okay? And I, I don't think your intent was to completely screw your brother out of money and things like that um ya know.

Olson did not meet her burden in showing that the state erred and that the error was plain. Rule 4.1 requires that the lawyer "knowingly" made the false statement. Olson has

not shown that the prosecutor's statement was knowing or false. The intent that the deputy discussed matches the charges for financial exploitation, not wrongfully obtaining public assistance. *Compare* Minn. Stat. § 609.2335, subd. 1(1)(iii) (2010) (intent to deprive vulnerable adult), *with* Minn. Stat. § 256.98, subd. 1 (2010) (intent to defeat public assistance purpose). Olson also fails to show that the state violated rule 8.4. The state offered to let Olson listen to the audio recording to review the redactions and her attorney declined. Olson did not meet her burden in establishing an error, much less that the error was plain.

Even if this were plain error, it did not affect Olson's substantial rights. As the district court noted, the deputy testified about the redacted statement at trial, and Olson brought it up in closing argument. Olson argues that she was prejudiced because the state obtained answers from the deputy on redirect that suggested her opinion about Olson's intent was a lie used to put Olson at ease. Olson argues that, if the jury heard the full recording, they would know that this statement came at the end of the conversation, not at the beginning where this tactic would usually occur. But Olson asked two questions confirming that the statement appeared at the end of the conversation on her recross examination. Every omission that Olson argues prejudiced her was presented to the jury. The state has met its burden in showing that no error affected Olson's substantial rights.

Affirmed; motion granted.