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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2069**

State of Minnesota,
Respondent,

vs.

Gladys Ondina Manzanares,
Appellant.

**Filed December 23, 2013
Affirmed in part, reversed in part, and remanded
Hudson, Judge**

Kandiyohi County District Court
File No. 34-CR-11-548

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jennifer K. Fischer, Kandiyohi County Attorney, John Kallestad, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges her convictions of aggravated and simple forgery, arguing that the state failed to prove beyond a reasonable doubt that she acted with intent to

defraud by using a false name on employment documents; that the district court erred by failing to provide the jury with the correct legal definitions of “intent” and “defraud”; that the district court made various evidentiary errors, which deprived her of a fair trial; and that the warrant of commitment on one aggravated-forgery count must be amended to comport with the sentence pronounced on the record. We affirm appellant’s convictions but reverse and remand for correction of the clerical error on the warrant of commitment and consideration of the legality of concurrent sentences.

FACTS

In June 2011, a Willmar police officer responding to a report of domestic abuse spoke to the victim, appellant Gladys Ondina Manzanares. Appellant informed him through an interpreter that she was in the United States illegally and that she was using another name and working at Jennie-O Foods. A Willmar police detective contacted Jennie-O, who furnished police with employment documents in the false name appellant had mentioned.

As a result of this information, the state charged appellant, and the district court held a jury trial on the state’s charges of seven counts of aggravated forgery, in violation of Minn. Stat. § 609.625, subd. 1 (2010), and one count of forgery, in violation of Minn. Stat. § 609.63, subd. 1(1) (2010). The aggravated-forgery charges were based on appellant’s signing a false name to an application for employment, a W-4 form, a verification of Social Security number form, a retirement-savings-plan beneficiary designation form, two retirement-savings-plan enrollment forms, and a two-week notice-of-termination form. The simple forgery charge was based on appellant’s using a false

state identification card and Social Security card as identification for employment. At trial, a human resources manager at Jennie-O testified that she would not have hired appellant had she known that appellant did not have legal residency status in the United States. Appellant admitted that she signed documents using a false name but stated that she only used them to work, “not to defraud or to hurt anyone.”

On the aggravated-forgery counts, the district court instructed the jury that, to convict appellant, it must find that she acted with an “intent to defraud,” defined as “an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person.” 10A *Minnesota Practice*, CRIMJIG 19.02 (2006). On the simple forgery count, the district court instructed the jury that it must find that she “had an intent to injure another, or an intent that another believe the writing to be true and act in accordance with that belief.” 10A *Minnesota Practice*, CRIMJIG 19.06 (2006).

The jury convicted appellant of all eight counts. The district court sentenced appellant on the record to the presumptive sentences on all counts, to be served concurrently. Specifically, on count four, one of the aggravated-forgery counts, the district court pronounced a sentence of 13 months. The warrant of commitment, however, provided that appellant was sentenced to “1 year and 13 months” on count four. This appeal follows.

DECISION

I

An appellate court reviews a sufficiency-of-the-evidence claim by determining whether legitimate inferences drawn from the evidence would allow a factfinder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). This court will not overturn a guilty verdict “if, giving due regard to the presumption of innocence and the prosecution’s burden of proving guilt beyond a reasonable doubt, the [factfinder] could reasonably have found the defendant guilty of the charged offense.” *State v. Hayes*, 831 N.W.2d 546, 552 (Minn. 2013) (quotation omitted).

When proof of intent is based on circumstantial evidence, we perform a two-step analysis to determine whether the evidence was sufficient to sustain a conviction. *Id.* at 552–53. First, we examine the circumstances proved, deferring to the jury’s acceptance of that proof, recognizing that the jury is “in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). We then independently examine the reasonableness of inferences that may be drawn from those circumstances, *Pratt*, 813 N.W.2d at 874, including inferences of innocence as well as guilt, *Andersen*, 784 N.W.2d at 329. In this examination, all of the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Id.* at 329–30. But a rational hypothesis that negates guilt must be based on more than mere conjecture. *Id.* at 330.

A person may be convicted of aggravated forgery if that person, with intent to defraud, falsely makes or alters a writing or object that transfers, terminates, or evidences “genuine, legal rights, privileges, or obligations,” or that is normally relied on as evidence of debt or property rights, so that it purports to have been made by another person or by that person under an assumed or fictitious name. Minn. Stat. § 609.625, subd. 1(1). “[A]n intent to defraud is an essential element of forgery.” *Strader v. Haley*, 216 Minn. 315, 327, 12 N.W.2d 608, 614 (1943).

Appellant argues, relying on *State v. Williams*, 324 N.W.2d 154, 159 (Minn. 1982), that the state failed to show that she intended to deprive her employer of property by deceit, which was required to convict her of aggravated forgery. In *Williams*, a case involving charges of theft by false representation, the Minnesota Supreme Court held that the district court erred by failing to instruct the jury on the required element of specific intent to defraud, defined as the intention to defraud by permanently depriving another of his property. *Id.* at 159. But unlike the offense of theft by false representation, the offense of aggravated forgery does not require obtaining property by false representation. Compare Minn. Stat. § 609.52, subd. 2(3) (2010) (defining crime of theft by false representation), with Minn. Stat. § 609.625, subd. 1(1) (defining crime of aggravated forgery). And “[a] person may be found to have committed aggravated forgery and satisfy the ‘intent to defraud’ requirement of Minn. Stat. § 609.625, subd. 1 (2010), when the person signs a document under an assumed name or the name of another and the document creates, terminates, transfers, or evidences genuine, legal rights, privileges, or obligations.” *State v. Stahosky*, 836 N.W.2d 769, 770 (Minn. App. 2013). Thus, the

“intent to defraud” required for aggravated forgery is not limited to contexts involving the deprivation of property. It may also apply to writings that implicate legal rights unrelated to debt or property rights. *See id.*

Here, the state proved that appellant presented documents to her employer that contained a false name. These documents provided evidence that she intended to defraud the employer regarding her legal right to obtain employment and her rights relating to her tax status and entitlement to Social Security and company retirement benefits. Her actions also affected the employer’s right to contract with employees of its own choosing, including those who are legally entitled to work in the United States. *See Fed. Distillers, Inc. v. State*, 304 Minn. 28, 45–46, 229 N.W.2d 144, 157–58 (1975) (noting that freedom to contract in the conduct of a lawful business implicates a liberty interest, protected under constitutional due-process principles). Given the circumstances proved, the reasonable inference from appellant’s presentation of false documents leads only to the rational hypothesis that she intended to defraud her employer by representing that she was legally entitled to work in this country, when in fact she was not. Therefore, we reject appellant’s sufficiency-of-the-evidence argument.

II

Appellant challenges the district court’s jury instructions on the aggravated forgery counts, to which she did not object at trial. “Failure to object to jury instructions may result in waiver of the issue on appeal,” but an appellate court has discretion to review unobjected-to instructions if they “contain plain error affecting substantial rights or an error of fundamental law.” *State v. Scruggs*, 822 N.W.2d 631, 642 (Minn. 2012)

(quotation omitted); *see also State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that under three-pronged plain-error test, this court reviews whether there is “(1) error; (2) that is plain; and (3) the error . . . affect[s] substantial rights”). An appellate court “will order a new trial only if all three prongs of the plain error standard are satisfied and the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Scruggs*, 822 N.W.2d at 642 (quotation omitted). When considering whether the district court erred, we recognize the district court’s considerable latitude in choosing the language of jury instructions, and we will not reverse if the instructions as a whole fairly and correctly state the applicable law. *State v. Hokanson*, 821 N.W.2d 340, 356 (Minn. 2012).

The district court instructed the jury with the pattern jury instruction for aggravated forgery, which states a requirement that “the defendant acted with intent to defraud,” which is defined as “an intent to deceive another person for the purpose of persuading the person to part with property or gaining some material advantage over the person.” 10A *Minnesota Practice*, CRIMJIG 19.02 (2006). Appellant argues that, because aggravated forgery is a specific-intent crime, the district court plainly erred by failing to instruct the jury that it must find that appellant acted with the purpose of obtaining a specific result, *see State v. Orsello*, 554 N.W.2d 70, 72 (Minn. 1996), and that this result must be depriving her employer of property, based on *Williams*, 324 N.W.2d at 159. But as discussed previously, *Williams* is inapposite because, in that case, the defendant was convicted of theft by false representation, not aggravated forgery. *Id.* In

addition, as to each count of aggravated forgery, the district court also instructed the jury that

The statutes of Minnesota provide that whoever, with intent to defraud, makes or alters a writing or object that, if genuine, would create, terminate, transfer, evidence legal rights or obligations, so that it purports to have been made by another person or by the person under an assumed or fictitious name, is guilty of a crime.

This language closely tracks the language of the aggravated-forgery statute. *See* Minn. Stat. § 609.625, subd. 1, 1(1). We note also that the district court instructed the jury on the difference between motive and intent. *See* 10 *Minnesota Practice*, CRIMJIG 7.11 (2006) (standard jury instructions explaining the distinction). Thus, the district court’s jury instructions with respect to the elements of aggravated forgery, viewed as a whole, fairly and correctly state the applicable law, and the district court did not plainly err in its instructions on that offense. *See Hokanson*, 821 N.W.2d at 356; *Stahosky*, 836 N.W.2d at 773.

Appellant also renews her challenge, made during trial, to the district court’s jury instructions on simple forgery. “A properly objected-to instructional error regarding an element of an offense requires a new trial only if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.” *State v. Koppi*, 798 N.W.2d 358, 364 (Minn. 2011) (quotations omitted). A person may be found guilty of simple forgery if that person “with intent to injure or defraud . . . uses a false writing, knowing it to be false, for the purpose of identification or recommendation.” Minn. Stat. § 609.63, subd. 1, 1(1). The district court instructed the jury that the elements of simple

forgery include that the defendant used a writing for identification or recommendation; the writing was false and defendant knew it to be false; and “the defendant had an intent to injure another, or an intent that another believe the writing to be true and act in accordance with that belief.” 10A *Minnesota Practice*, CRIMJIG 19.06. Appellant argues that the district court erred by failing to specifically instruct the jury that an “intent to defraud,” rather than an intent that another party believe the writing to be true, was required for conviction. But “defraud” has been defined as “[t]o cause injury or loss to (a person) by deceit.” *Black’s Law Dictionary* 488 (9th ed. 2009). The district court’s jury instruction comported with statutory requirements and fairly and accurately stated the law with respect to proof of simple forgery. See Minn. Stat. § 609.63, subd. 1(1); see also *State v. Smith*, 835 N.W.2d 1, 4 (Minn. 2013) (“Only if a jury instruction materially misstates the law is it erroneous.”).

II

Appellant argues that the district court made various evidentiary errors that deprived her of a fair trial. First, she argues that the district court erred by declining to admit evidence that she explained her illegal status to a police officer during the course of a domestic-abuse investigation in which she was the alleged victim. The right to present a defense includes the defendant’s right to explain her conduct to a jury, even if that conduct is not a valid defense. *State v. Brechon*, 352 N.W.2d 745, 750–51 (Minn. 1984). But “a defendant has no right to introduce evidence that either is irrelevant, or whose prejudicial effect outweighs its probative value.” *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995), review denied (Minn. Jan. 25, 1996).

The district court ruled that appellant could not testify about any alleged assault because this information was irrelevant and could have a prejudicial impact on the state's case. Even if relevant, evidence may be inadmissible if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. To establish foundation for appellant's statement that she was in the United States illegally, the state presented limited testimony from the officer who investigated the incident. Appellant argues that this evidence alone may have left the jury with the impression that she was a crime suspect, rather than a victim. But we agree with the district court's determination that evidence of appellant's status as a possible domestic-assault victim is irrelevant to the issues surrounding her presentation of false documents to obtain employment. Accordingly, the district court did not err by declining to admit that evidence.

Appellant also challenges the district court's admission of additional evidence supporting the state's case. On appeal, appellant has the burden to establish that the district court abused its discretion by admitting the challenged evidence and that its admission prejudiced her. *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013). An error in admitting evidence is prejudicial only if "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994).

Appellant maintains that the district court should not have admitted evidence that she told police she was in the country illegally because the fact was uncontested, the evidence had minimal probative value, and the evidence could have persuaded the jury to

convict her based on her immigration status. *See State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005) (stating that evidence is unfairly prejudicial when it “persuades by illegitimate means, giving one party an unfair advantage”). But “[e]vidence that is probative, though it may arouse the passions of the jury, will still be admitted unless [its] tendency to . . . persuade by illegitimate means overwhelms its legitimate probative force.” *Id.* at 478–79. The district court ruled that evidence of appellant’s immigration status was relevant to the state’s theory of the case; specifically, because appellant’s illegal immigration status provided appellant with a motive to use a false name when applying for work. At the district court’s direction, the prosecutor agreed to restrict his comments on appellant’s status to the issue of motive and to instruct the state’s witnesses not to testify further on that issue. After the state’s opening statement, the district court cautioned the jury that appellant was not being tried for her immigration status and that it would be unfair to convict her based on any federal matter. And at closing argument, the prosecutor noted that the jury should not convict appellant because she was in the United States illegally, but should only use that evidence with respect to her motive in using a false name. Therefore, we conclude that the district court did not abuse its discretion by admitting this evidence for a limited purpose, and any prejudice was mitigated by the district court’s instruction on its use.

Appellant also argues that the district court abused its discretion by admitting evidence that a human resources employee at Jennie-O received a request for information from its New Jersey office about a Yasmin Delgado, who was apparently receiving unemployment-insurance payments in New Jersey. Because “Delgado” was the false

name used by appellant, this information prompted Jennie-O to question appellant and review her work file. Appellant affirmed that she was Delgado. Appellant argues that this evidence was highly prejudicial, had little probative value, and could have permitted the jury to infer that she was guilty of the charged offense based on another bad act—potential unemployment fraud. But the record shows only that Jennie-O was notified that “someone” using the same false name as appellant was claiming unemployment benefits in New Jersey at the same time that appellant was working for Jennie-O. Therefore, evidence of this inquiry was not unduly prejudicial on the issue of whether appellant committed the charged offenses when she was hired. It was, however, probative because the record shows that, after learning of this inquiry, appellant provided inconsistent answers to Jennie-O as to her prior residency and employment. Therefore, we conclude that the district court did not abuse its discretion by admitting this evidence.

Appellant further argues that the district court abused its discretion by admitting, in connection with the simple forgery charge, a copy of a federal I-9 employment-eligibility verification form, which Jennie-O completed based on appellant’s presentation of false state identification and Social Security cards. Appellant contends that the I-9 form was prejudicial because it included inflammatory statements concerning the signator’s awareness that it is a federal crime to make false statements or submit false documents in connection with the completion of the I-9. Most significantly, appellant argues that admission of the I-9 form was error based on this court’s decision in *State v. Reynua*, 807 N.W.2d 473, 480 (Minn. App. 2011), *rev’d in part and remanded* (Minn. Feb. 28, 2012).

In *Reynua*, the defendant was charged, among other offenses, with aggravated and simple forgery and perjury after she presented false documents in the hiring process. *Id.* The state was permitted to introduce evidence of an I-9 form the defendant filled out when she was hired, but at trial, a supervisor could not identify the defendant as the person who presented a false identification card. *Id.* at 475–76. This court held that federal law “bars the use of the I-9 form and ‘any information contained in or appended to such form’ for purposes other than enforcement of the federal immigration statute and the federal perjury and false-statement provisions.” *Id.* at 480 (quoting 8 U.S.C. § 1324a(b)(5) (2006)). This court stated that “the state’s proof of the falsity of the [state] identification card [presented] did not rely on its use in support of the I-9 form,” implicitly determining that the admission of the I-9 form was harmless error as to the simple forgery count. *Id.* at 482, 484. But on remand from the supreme court to consider the harmless-error issue, this court concluded that admission of the I-9 form was not harmless because the state had presented no testimony or additional evidence, independent of the I-9 form, that the defendant presented a false identification card when she was hired. *See State v. Reynua*, No. A10-1946, 2012 WL 3023328, at *2 (Minn. App. July 23, 2012).

We agree with appellant that, based on *Reynua*, the district court erred by admitting the evidence of the I-9 form in connection with the simple-forgery count. But we must consider whether its admission was harmless error.¹ “An error is harmless

¹ Because this court on remand in *Reynua* concluded that the defendant’s simple-forgery conviction must be reversed and remanded under the harmless-error test for non-

beyond a reasonable doubt if the jury's verdict was surely unattributable to the error.” *State v. Sterling*, 834 N.W.2d 162, 171 (Minn. 2013) (quotation omitted). In determining whether a jury verdict was surely unattributable to an erroneous admission of evidence, this court considers “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defendant.” *Id.* (quotation omitted). We also examine the strength of the evidence of guilt. *State v. Hall*, 764 N.W.2d 837, 842 (Minn. 2009).

Here, the state submitted the I-9 form as foundation for appellant's presentation of a false state identification form and Social Security card. The senior human resources manager at Jennie-O testified that the process of verifying work eligibility involves submitting actual documents for review and that an employee verifies that they appear to be genuine, writes their information down, makes copies, and attaches them to the back of the I-9. She testified that, for this purpose, appellant submitted an Illinois state identification card and a Social Security card. Another human resources employee testified that she processed those documents from appellant and identified appellant as the person who presented them. Therefore, unlike in *Reynua*, the employer presented

constitutional error, we did not consider her argument that the admission of the I-9 form violated her constitutional rights. See *Reynua*, 2012 WL 3023328, at *3. Although in this case, appellant has not argued that admission of the I-9 form implicated her constitutional rights, we may nonetheless consider her challenge to its admission under the harmless-beyond-a-reasonable-doubt standard applicable to constitutional violations. See *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (articulating that standard for erroneous admission of evidence when constitutional violation is implicated); *cf.* *State v. Carridine*, 812 N.W.2d 130, 150 (Minn. 2012) (noting that the harmless-error standard for less-serious prosecutorial misconduct had not been definitively resolved, but concluding that the prosecutorial misconduct in question was harmless beyond a reasonable doubt, even under the standard for serious misconduct).

additional evidence of the use of the false documents besides the I-9 form, including testimony identifying appellant as the person who presented the documents. In addition, the district court limited the state's use of the I-9 form, and the prosecutor offered to redact any sensitive portions of the form. Defense counsel did not request any redactions. Finally, the strength of the evidence against appellant was strong; she admitted that she applied for work using a false name in order to make Jennie-O believe she was legally employable. Therefore, we conclude that the district court's error in admitting the I-9 form was harmless beyond a reasonable doubt and does not entitle appellant to a new trial.

III

The parties agree that the warrant of commitment as to count four, aggravated forgery, contains a clerical error, which does not conform to the district court's oral sentencing order. *See State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (stating that when the warrant of commitment conflicts with the sentence as pronounced by the district court, the "orally pronounced sentence controls"). Specifically, at sentencing, the district court pronounced the presumptive 13-month stayed sentence for that count, but the warrant of commitment states that appellant received a sentence of "1 year and 13 months."

In addition, we note that the record shows that an additional sentencing issue may exist involving the imposition of multiple sentences. With certain exceptions not applicable here, Minnesota law bars multiple sentencing for two or more offenses arising from the same behavioral incident. Minn. Stat. § 609.035 (2010). "The purpose of this

statute is to limit punishment to a single sentence where a single behavioral incident results in the violation of more than one criminal statute”; the statute ensures that punishment is commensurate with the crime committed. *Bookwalter v. State*, 541 N.W.2d 290, 293, 294 (Minn. 1993) (quotation omitted). Determining whether the prohibition against multiple punishment applies involves an assessment of whether the offenses arose from a single behavioral incident, a fact-specific analysis that addresses relevant factors of whether the crimes had a single criminal objective and a unity of time and place. *Id.* at 294.

This court has a responsibility “to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990); *see also* Minn. R. Crim. P. 27.03, subd. 9 (“The court may at any time correct a sentence not authorized by law.”). On this record, it appears that the prohibition against multiple sentences may apply to appellant’s seven concurrent sentences for aggravated forgery. Although appellant committed this offense by signing seven separate documents, she signed them at the same time and place, with the single criminal objective of obtaining employment using a false name. Therefore, although she may obtain seven convictions for her conduct, the bar against imposing multiple sentences for a single behavioral incident may preclude sentencing on all of those convictions. *See* Minn. Stat. § 609.035. Because the imposition of seven separate sentences may be barred by section 609.035, we cannot reach the sentencing issue raised in this appeal, and we reverse and remand for sentencing consistent with this opinion. On remand, should the district court’s resolution of the multiple-sentencing

issue require its correction of the clerical error in the warrant on count four, the district court should appropriately address that issue as well.

Affirmed in part, reversed in part, and remanded.