Filed 6/18/18 P. v. Sanford CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ERICA YVONNE SANFORD et al., Defendants and Appellants.	B264626 Los Angeles County Super. Ct. No. BA396686

APPEALS from judgments of the Superior Court of Los Angeles County, Stephen A. Marcus, Judge. Affirmed in part and reversed in part.

Mark S. Givens, under appointment by the Court of Appeal, for Defendant and Appellant Angela Hadley.

Jeffrey J. Gale, under appointment by the Court of Appeal, for Defendant and Appellant Rosechell Marquerite Murray.

Richard M. Doctoroff, under appointment by the Court of Appeal, for Defendant and Appellant Suzan Ann McFadden.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant Erica Yvonne Sanford.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Angela Hadley, Rosechell Marquerite Murray, Suzan Ann McFadden, and Erica Yvonne Sanford of grand theft, perjury, conspiracy, forgery, and petty theft, in connection with signed statements they made in 2008, 2009, and 2010 to obtain payments from county and state agencies for child care at Hadley's childcare operation. All four defendants appealed, and we affirm in part and reverse in part.

BACKGROUND

Hadley, Murray, McFadden, and Sanford faced 36 counts of grand theft (Pen. Code, § 487, subd. (a)),[1] conspiracy (§ 182, subd. (a)(1)), perjury (§ 118, subd. (a)), forgery (§ 470, subd. (d)), and misdemeanor petty theft (§ 484, subd. (a)), in a fourth amended information filed during trial on April 28, 2015.[2] The information alleged all the crimes of which the jury convicted the defendants occurred between January 1, 2009 and July 31, 2010 (with the

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[1] All subsequent statutory references are to the Penal Code.

[2] The 66-count complaint, filed April 30, 2012, named five additional defendants including Valencia Brooks and Lakesia Moore, who later pleaded no contest and testified at trial. The initial information was filed November 15, 2012.

exception of counts 25 and 33, which alleged against Hadley and McFadden crimes occurring in 2008), and the crimes were not discovered before September 20, 2009.

The conspiracy counts against Sanford, Murray, and McFadden alleged that as parents using Hadley's childcare operation, they conspired with Hadley to submit false claims, and in some instances to commit perjury, to secure payment for child care from public funds.

I. Trial Evidence

A. *Crystal Stairs childcare funding*

Gloria Torres testified as a fraud prevention coordinator for Crystal Stairs, Inc., a nonprofit childcare and child development program that administered funds from the Los Angeles Department of Public Social Services and the California Department of Education. Crystal Stairs distributed payments from those public funds to approved childcare providers caring for the children of parents who were income-eligible and who worked or engaged in other approved activity.

1. *Eligibility for childcare funds*

The complex procedure to establish eligibility required a parent to complete a confidential application for childcare services listing the parent's employment, hours, children, and the amount of child care needed, signed by the parent under penalty of perjury. The parent and the childcare provider filled out and signed a participant-provider services agreement, listing the number of children and the hours of child care needed each day. The parent signed a participant agreement under penalty of perjury, stating she[3] would pay back any childcare payments she

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[3] All the defendants are women, so we use female pronouns.

was not entitled to, and agreeing she must notify Crystal Stairs within five calendar days of "any changes to my income, family size, residence, employment or reason for needing child care services. Failure to do so may affect the status of my child care services." The childcare provider signed a provider agreement under penalty of perjury, and wrote in her usual and customary rates.

When Crystal Stairs approved funding for child care, the parent received a "Notice of Action" listing the children, the approved hours, and the basis for the need for child care. The childcare provider received a certificate of enrollment for each child, with the approved days and hours of care.

Each parent signed a participant fraud policy explaining: "If you receive any child care by fraud, you may be asked for repayment, may be prosecuted to the full extent of the law, and may be terminated as a participant."[4] Each childcare provider signed a similar provider fraud policy.

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[4] Fraud included:
"Intentionally giving false or misleading information on . . . participant agreements, attendance forms, or other documents . . . .";
"Intentionally not giving information that may cause the child care or services you receive to be denied, reduced, or terminated. This includes, but is not limited to, NOT REPORTING all your income, a change in status of your job or work-related activity . . . .";
"Claiming or agreeing that you have received hours of child care that you have not received and/or that your provider of record has not given."; and
"In any other way intentionally giving false or misleading information or statements, or withholding information . . . ."

The parent also initialed and signed a two-page document titled, "Crystal Stairs Services and Requirements," stating parents must report within five calendar days any changes in family income, employment and/or educational status, including becoming unemployed, changing from full-time work to part-time work or a training program, or special circumstances such as medical disabilities. A parent who did not timely report, or who provided false or misleading information, would be terminated and billed for any payments provided while the parent was not eligible. The parent must sign the child in and out of child care each day with a full signature. Crystal Stairs would only pay for "childcare services that are authorized around work/school or any other approved childcare need."

A childcare provider could notify Crystal Stairs of a change of address by telephone. She then had 60 days to supply supporting documents, including a copy of her provider's license with the new address.

2. *Forms at issue in this case*

a. *Employment verification requests*

A working parent completed and signed the top of a document titled,"Request for Employment Verification," and submitted it to her employer. The employer filled in the parent's pay and work schedule, and certified under penalty of perjury the information was true and correct according to the employer's employee records. Crystal Stairs used this form to determine whether a parent was income-eligible and entitled to the

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The parent signed under language reiterating that if the parent gave false information, or withheld information about eligibility, her benefits would be terminated and the case may be sent to law enforcement "for possible criminal prosecution."

childcare hours requested. If a parent participated in work training, Crystal Stairs required a "Training Verification" on which she filled in the hours spent in training and authorized the registrar of the school or institution to verify the training plan, sign and stamp the form, and place the form in a sealed envelope for the parent to return to Crystal Stairs.

b. *Attendance records*

Once funded child care began, each day the parent recorded the times she dropped off and picked up each child at child care, with a full signature on a Crystal Stairs pre-printed monthly Child Care Assistance Program Attendance Record. Each month, before the provider submitted the attendance record to Crystal Stairs, the parent and the provider signed the bottom of the form. The parent stated, "I certify, under penalty of perjury, that child care services, as noted on this attendance record, have been provided and that the services were rendered according to the schedule authorized by Crystal Stairs, Inc." The provider stated, "I certify, under penalty of perjury, that I provided child care services as indicated on this attendance record for the above named child and the services were rendered according to the Certificate of Enrollment issued by Crystal Stairs, Inc."

B. ***Defendant Angela Hadley***

The fourth amended information alleged Hadley committed a total of 29 counts of grand theft (counts 1, 2, 23, 24, 35, 42, 49, 57), perjury (counts 5, 6, 25, 26, 27, 39, 46, 50, 58), conspiracy to commit grand theft (counts 8, 33, 40, 47, 55, 62), and conspiracy to commit perjury (counts 9, 34, 41, 48, 56, 63). After closing arguments and before the jury began deliberations, the court granted the prosecution's motion to dismiss counts 23 and 24

(grand theft against Hadley of childcare funds for McFadden's children).

1. *Prosecution evidence*

Hadley provided child care at three different addresses within Crystal Stairs's geographical area. In May 2006, Hadley held a license to operate a family childcare operation at 11725 Birch Avenue in Hawthorne (the Birch address). In January 2007, Hadley notified Crystal Stairs of a change of address to 5038 West 132nd Street near Oceangate (the 5038 address). Hadley's license for the 5038 address, effective February 28, 2007, allowed a maximum of 12 or 14 children, depending on the number of infants and young children present.[5] After Hadley was evicted from and locked out of the 5038 address on May 6, 2009, she moved her childcare operation back to the Birch address. Five months later, on October 8, 2009, she requested a change of address to 3714 West 132nd Street (the 3714 address), and on October 11, 2009, she filed an application with Health and Human Services for a new license. Hadley received a license for the 3714 address effective December 12, 2009. Hadley's license was valid throughout May to October 2009.[6]

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[5] When a state licensing analyst made an unannounced visit to the 5038 address on March 18, 2009 from 7:30 a.m. to 9:45 a.m., she reviewed the records of the 12 children authorized for that location (including Sanford's, Murray's, and McFadden's children). Only one child (not related to defendants) was present, which did not concern her, and she observed no deficiencies.

[6] On cross-examination, Torres testified Crystal Stairs had no authority to prevent a caregiver from moving her childcare operation. If moving meant a provider became unlicensed, however, and if she did not provide a license for her new location,

Murray, McFadden, and Sanford each received funds through Crystal Stairs for childcare services Hadley purportedly provided at the three locations between 2008 and 2010.

An investigation of Hadley began when Thamh Flumerfelt, an investigator with the public assistance crime enforcement team of the Los Angeles County District Attorney's Office, noticed a "For Sale" sign at the 5038 address on September 21, 2009, more than four months after Hadley had been evicted and locked out of the 5038 address and three weeks before Hadley reported her change of address to Crystal Stairs. The house at the 5038 address was empty, with no furniture or refrigerator. Mail addressed to Hadley from Crystal Stairs was in the mailbox, and the attendance records Hadley submitted to Crystal Stairs still showed the 5038 address.

After Hadley filed her change of address to the 3714 address in October 2009, Flumerfelt conducted 11 surveillances at that address in December 2009 and January 2010. He saw a total of only two or three children. On December 17, 2009, he arrived at 6:00 a.m. and left at 9:00 a.m. He saw no activity, although Sanford's December 2009 attendance record stated she dropped off her son at 6:21 a.m. and signed him out at 8:00 a.m., and Lakesia Moore's attendance record stated she signed a child in at 6:34 a.m. On December 30, he arrived at 4:15 p.m. and left at 6:40 p.m. He saw no activity at 4:30 p.m., when Sanford's attendance record stated she signed her son out. On December 31, 2009, Flumerfelt arrived at 5:58 a.m. and left at 8:35 a.m. He saw no activity at 6:18 a.m. or 6:39 a.m., although Sanford's

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Crystal Stairs would terminate her as a provider or limit her to the care of one family's children.

attendance record stated she signed her son in at 6:18 a.m., and Moore's attendance record stated she signed a child in at 6:39 a.m. On January 14, Flumerfelt arrived at 4:59 a.m. and left at 6:32 a.m. He saw no activity at 5:17 a.m., although Sanford's January 2010 attendance record stated she signed her son in at 5:17 a.m. On January 27, Flumerfelt arrived at 1:08 p.m. and left at 4:15 p.m. He saw one child picked up (by someone other than McFadden), but saw no activity at 2:05 p.m., although McFadden's attendance record stated she signed her son in at 2:05 p.m.

2. *Defense evidence*

Hadley's partner Joseph Hollins testified Hadley ran busy childcare operations at all three addresses in 2008 to 2010, with six to 13 children under her care, including Sanford's son. Hadley had two assistants, including her daughter, and Hadley provided the children with transportation to and from school or home. Hollins had cooked for the children at the 5038 address, where there were books, bikes, and toys. Hollins identified children Hadley cared for in photographs of birthday parties and other activities at the 5038 address in 2009.

Hollins lived in Corona in a house under a lease agreement Hadley signed because his credit was bad. Hadley visited and stayed overnight. Sometimes she brought the children she cared for to the house, but Hadley never moved her child care to Corona.[7]

Constance Steen, a friend of Hadley's who lived next door to the 3714 address, testified that in 2009 and 2010 she saw as

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[7] In closing argument, the prosecution suggested Hadley had moved to Corona after her eviction from the 5038 address.

many as seven or eight children daily at Hadley's childcare operation. Parents dropped off the children early in the morning and picked them up in the evening. Steen saw child-sized furniture, toys, and an activity center in the garage, and inside the house she saw cots for naps, a table for snacks, and a television and game system for the children. Once in the summer of 2010, three little girls under Hadley's care came over to play with her dog.

Jessica Garrett testified she had been friends with Hadley since 1995 and that Hadley ran childcare operations from 2004 to 2011 or 2012. Garrett visited Hadley's childcare operations at the Birch address, at the 5038 address, and at another address, and saw an average of eight to 10 children present.

Whitney Wells testified she was a close friend of Hadley's daughter, and met Hadley in 2009 or 2010. She had stayed at all three childcare locations, which were well-run, and in 2009 she had seen Hadley caring for children day and night. She recognized photographs of McFadden, Murray, and Sanford.

Cornelius Foster, Hadley's brother, testified he owned the Birch address. Hadley provided childcare services there from May to October 2009 and was there every day, caring for children and supervising activities.

Mark Nicks, a first aid and CPR instructor, testified that beginning in early 2007 and ending in 2009, he gave multiple four to eight hour health and safety classes to Hadley and other staff members, at both the Birch and 5038 addresses. He saw children at both addresses.

In closing, the prosecutor argued that Hadley had provided child care at the Birch and 5038 addresses, but "[i]n January of 2009, something happened, something changed," and Valencia

Brooks and Hadley "hatched a scheme to bill Crystal Stairs for child care that Angela Hadley would not provide," a scheme in which Murray, McFadden, and Sanford participated.

C. ***Valencia Brooks***

Valencia Brooks pleaded no contest to one count of grand theft and testified under a grant of immunity. Brooks and Hadley submitted false claims for childcare services to Crystal Stairs, and Hadley paid Brooks a portion of the funds Hadley received.

Brooks had known Hadley for many years and considered her a cousin. Brooks worked part-time at home braiding hair, but she told Crystal Stairs she worked at a barber shop. She and Hadley convinced the barber shop owner to sign a false employment verification form. For January, March, April, May, and June 2009, Brooks and Hadley signed provider payment requests for Brooks's three children.[8] In July, August, September, and October 2009, Brooks and Hadley signed attendance records for Brooks's three children. Attendance

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[8] Provider payment request forms were used in place of attendance records if a parent received Stage 1 funds. The parent signed under language stating, "I declare under penalty of perjury that this information is true and correct, and that the child care was provided for the purpose for which child care was certified. I understand that I may be prosecuted for fraud and required to repay any overpayment resulting from false or incorrect information provided herein. I understand that over billing on this report can lead to legal action resulting in penalties of a fine, imprisonment or both." These forms did not include a daily record of a child's arrival and departure. They simply listed the total daytime and evening hours, and the total weekend hours, of child care provided each week.

records for her children for November 2009, however, bore signatures that were not hers.

But Brooks never brought her three children to Hadley's child care. She simply signed the attendance records, and in return, Hadley paid her $700 to $800 a month in cash. Brooks signed the provider payment requests and attendance records at the 5038 address, or Hadley brought the forms to Brooks's home in Gardena for her to sign. Hadley would then submit the forms to Crystal Stairs.

D. ***Lakesia Moore***

Lakesia Moore pleaded no contest to one count of grand theft and was paying victim restitution of $17,308. Moore testified Hadley provided child care for Moore's two children at all three locations. Moore took her children to the 5038 address for more than a year. After Hadley left the 5038 address in May 2009, Moore dropped off her two children four times at the Birch address, and fewer than 10 times at the 3714 address. Yet she and Hadley signed attendance records at the 5038 address for June, August, and September; and at the 3714 address for December 2009 and January 2010—showing 8-15 hours of child care, six days a week, for each child. The parent signature, at the bottom of the September 2009 attendance records for one of her children, was not Moore's. The January 2010 attendance record for the same child also bore a signature that was not hers, both on the daily attendance lines (for eight or more hours a day, six days a week) in the middle, and at the bottom under penalty of perjury. Moore never gave Hadley permission to sign the attendance records for her (although she did sometimes allow Hadley to fill in the hours), and Hadley never gave Moore any money.

E. ***Defendant Rosechell Murray***

The four charges against Murray in the fourth amended information were perjury (count 39), conspiracy to commit grand theft (count 40), conspiracy to commit perjury (count 41), and misdemeanor grand theft (count 67).

1. *Prosecution evidence*

Murray worked as a bus driver, and first received childcare benefits through Crystal Stairs in 2005 or 2006. In February 2007, Murray received a notice that her services had been terminated because she failed to report within five days (as required) that she stopped working in December 2006 and went on maternity leave. Murray appealed with a doctor's note that she was on bed rest from December 11, 2006, until she delivered on January 8, 2007. In June 2007, Crystal Stairs notified Murray her appeal had been successful and she was eligible to reapply for childcare services. But a written warning dated July 3, 2007 emphasized Murray must report changes in employment, training, family income, or family size within five calendar days, or her childcare services would end, as provided in the parent handbook (which Murray acknowledged receiving on January 30, 2008). The handbook also stated up to eight hours a day of child care was available if a parent was incapacitated or disabled, and included a "Statement of Disability" form for parents to use with a doctor's recommendation.

Murray reapplied to Crystal Stairs for child care on December 4, 2008, stating she lived in Hawthorne and worked as a bus operator for First Transit. She requested Hadley as a provider for her four children, and she signed the participant fraud policy. Crystal Stairs reinstated Murray's child care on December 11, 2008, approving a maximum of 41.43 hours a week

for each child. In April 2009 Veolia Transportation verified Murray's new job, and she received approval for weekly child care of 47.52 hours in May 2009, 41 hours in November 2009, and 52.43 hours in January 2010.

Murray went on family medical leave in February 2010. Veolia payroll records showed she did not work from March through July, returned to work in August, and worked through October 2010. Yet attendance records signed by Murray and Hadley showed Murray dropped off and picked up her children at the approved hours in March, April, May, June, and July 2010. Murray also submitted to Crystal Stairs six earnings statements for July to September 2010 with multiple errors and inconsistencies, including the same check number on each statement, her name misspelled as "Murry," an incorrect social security number, and an incorrect address.

2. *Defense evidence*

Murray submitted an August 5, 2014 "Statement of Parental Incapacity" completed by Enrique Ramos, M.D., who first saw Murray in 2001 for acute depression and marital discord. Dr. Ramos stated Murray had seen multiple therapists and tried different combinations of antidepressants, and "has required disability from work over the years—and has been consistently overwhelmed with motherhood." Dr. Ramos believed Murray was probably incapacitated from May 1, 2009 to August 6, 2010, and would have been unable to care for her children Monday through Friday, from 8:00 a.m. to 5:00 p.m.

At trial, Dr. Ramos testified he had treated Murray for depression since 2001, and more recently for bipolar disorder. Murray was tired, emotional, and angry. She had mood swings, tried to hurt herself, and experienced suicidal thoughts, memory

loss, and cognitive disruptions. He saw Murray on April 29, 2009, noted she had a panic disorder and depression, and prescribed Zoloft and Clonazepam. Dr. Ramos also saw Murray on July 30, 2009. Based on his conversations with Murray and his assessment of her mood, Dr. Ramos believed the statements he made on the 2014 statement of incapacity were correct, and Murray had been incapable of caring for her children from May 1, 2009 through August 6, 2010. Dr. Ramos's contemporaneous notes were consistent with that conclusion. On July 21, 2010, Dr. Ramos wrote Murray could return to work on July 22; she had told him she was ready to go back to work.

On cross-examination, Torres testified if Crystal Stairs verified that a parent's disability meant she could not care for her children, the parent could receive childcare subsidies. But Dr. Ramos's 2014 form could not demonstrate Murray was eligible to receive childcare funding for her disability in 2010. As Murray knew, she had five calendar days to report any changes in her work status to allow Crystal Stairs to verify she was incapacitated and eligible to continue to receive childcare funding. In her interactions with Crystal Stairs in 2010, Murray never gave any indication she was on disability leave.

When Flumerfelt interviewed Murray on November 29, 2010, she told him she had been on medical leave.

In closing, the prosecutor argued that in 2009 and 2010 Murray received childcare funds from Crystal Stairs but did not inform Crystal Stairs she was on disability. Instead, she submitted fake check stubs to show she was working.

F. ***Defendant Suzan McFadden***

The 10 charges against McFadden in the fourth amended information were perjury (counts 25, 26, 27, 31, 32), forgery

(counts 28, 29, 30), conspiracy to commit grand theft (count 33), and conspiracy to commit perjury (count 34). After closing argument and before the jury began deliberations, the court dismissed count 30 (forgery) in the interest of justice.

McFadden was in training to become a nurse and worked nights at a pizza parlor. A July 2008 employment verification form signed under penalty of perjury by manager Abner Cocom stated that McFadden worked at Papa John's Pizza (Papa John's) six nights a week for a total of 31 hours.[9]

In August 2008, McFadden signed a request for training verification. The assistant register of American Career College completed the form, stating beginning June 26, 2008 McFadden attended American Career College for 35 hours a week, studying to be a licensed vocational nurse, with a June 24, 2009 completion date.

On August 19, 2008, McFadden and Hadley signed a participant-provider services agreement for eight hours of child care on Sundays, and 10-15 hours other days of the week. McFadden and Hadley signed monthly provider payment requests for McFadden's two children for July, August, September, and October 2008.[10]

In November 2008, McFadden transferred to the Stage III program, which required daily signatures on an attendance record. McFadden signed the participant fraud policy on

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[9] Under "OFFICE USE ONLY," the form stated "employment verified (per Sup. Abner) day & hours can decrease however Pt is working as indicated as of 9/3/08 day verified."

[10] Because McFadden received Stage 1 aid at the time, no daily attendance record was required.

March 18, 2009. McFadden and Hadley signed attendance records for both McFadden's children for November and December 2008, and for January through November 2009. In March 2009, another training verification form again showed June 24, 2009 as McFadden's completion date at American Career College, and in April 2009 an employment verification form signed by Cocom certified she worked 30 hours a week at Papa John's. American Career College verified McFadden completed four full days of continuing education on July 31, 2009.

Alsabeth Ramon testified she began to work at Papa John's in September 2009 and became the manager in March 2010, when Cocom left the country. She had never met McFadden. The Papa John's time clock reports showed the times employees punched in and out. Exhibit 28c, a printout of a time clock report for McFadden, with the heading "01/01/2008−12/31/2009," showed a last entry on July 19, 2008. Exhibit 28d, however, a photograph[11] of the Papa John's computer employee record, showed that McFadden was hired on April 9, 2009; her last date worked was July 19, 2008; and her termination date was August 14, 2009. Ramon stated, "I have no idea" why the computer employee record showed McFadden's last day of work was July 19, 2008, and also showed she was hired on April 9, 2009, and worked until August 14, 2009 (all before Ramon began working at Papa John's).

McFadden and Hadley signed attendance records showing Hadley provided child care for McFadden's two children every

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[11] When the investigator interviewed Ramon, she pulled up the computer employee record and the investigator took a photograph of the screen.

day for eight hours in August 2009, nine hours in November 2009, 10 hours in December 2009, and 11 hours in January 2010, although McFadden's training ended in June 2009, her weekly continuing education ended in July 2009, and she did not work at Papa John's after August 2009.

In closing, the prosecution argued McFadden and Hadley claimed many more hours of child care than McFadden actually needed when she was working or attending training.

G. ***Defendant Erica Sanford***

The four charges against Sanford were perjury (count 58), conspiracy to commit grand theft (count 62), conspiracy to commit perjury (count 63), and misdemeanor petty theft (count 71).

Sanford worked for the Transportation Security Administration (TSA) at Los Angeles International Airport. Sanford first received subsidized childcare services in 2002 and was recertified in February 2009. She signed the Crystal Stairs participant fraud policy and a confidential application for child care on January 6, 2009 (Hadley signed the application on February 2, 2009), stating she worked for TSA (with a monthly income of $3,106.78) and needed child care Wednesday through Sunday, 10 1/2 hours a day (including two hours for travel to and from the airport). Sanford again signed the participant fraud policy on January 5, 2010, and on February 1, 2010 Crystal Stairs accepted Sanford's updated schedule, changing her days off to Tuesday and Wednesday.

During Flumerfelt's surveillance of the 3714 address in December 2009 and January 2010, he saw no activity on four days, December 17, 30, and 31, and January 14, at the times

when Sanford's signed attendance records stated she signed her son in or out.

In closing, the prosecutor argued Sanford's TSA pay period documents for April, June, October, and December 2009, compared to her attendance records for those months, showed she recovered a total of $465.72 in childcare funds to which she was not entitled.

II. Jury Verdicts

The jury found Hadley not guilty on count 62 (conspiracy with Sanford to commit grand theft) and guilty on 26 remaining counts.

The jury found Murray not guilty on count 39 (perjury by declaration) and guilty as charged on three remaining counts of grand theft (count 67), conspiracy to commit grand theft (count 40), and conspiracy to commit perjury (count 41).

The jury found McFadden not guilty on count 28 (forgery) and guilty as charged on eight remaining counts of perjury (counts 25, 26, 27, 31, 32), forgery (count 29), and conspiracy with Hadley to commit grand theft (count 33) and perjury (count 34).

The jury found Sanford not guilty on count 62 (conspiracy with Hadley to commit grand theft) and guilty on three remaining counts of perjury (count 58), conspiracy with Hadley to commit perjury (count 63), and misdemeanor petty theft (count 71).

The jury also found the prosecution on each count of conviction commenced within the applicable statute of limitations, and as to the conspiracy counts, found true that at least one overt act was committed by a defendant or coconspirator.

III. Sentencing

The trial court sentenced Hadley to a total of two years and eight months in jail for her 26 counts of conviction. The court also imposed fines and assessments, and awarded presentence credits.

The court suspended Murray's sentence and placed her on concurrent probation for her three counts of conviction (five years formal probation with 180 days in jail, and 40 hours of community service), imposed fines and assessments, and awarded presentence credits.

The court suspended McFadden's sentence and placed her on concurrent probation for her eight counts of conviction (five years formal probation with 150 days in jail, and 100 hours of community service), imposed fines and assessments, awarded presentence credits, and ordered $7,870.19 in restitution.

The court suspended Sanford's sentence and placed her on concurrent probation for her three counts of conviction (five years formal probation with 210 days in jail, and 24 hours of community service), imposed fines and assessments, awarded presentence credits, and ordered $465.72 in restitution.

All four defendants filed timely appeals. Each appellant joins in the opening briefs of the others.

DISCUSSION

Most of the challenged convictions were for perjury and conspiracy. Those crimes are not easy to prove.

Perjury requires proof of an oath or a certification under penalty of perjury, and a material false statement. "Every person who . . . certifies under penalty of perjury . . . and willfully states as true any material matter which he or she knows to be false, is guilty of perjury." (§ 118, subd. (a).) " 'Perjury requires a higher

measure of proof than any other crime known to the law, treason alone excepted.' [Citation.] The law looks to 'both the quantity and quality of evidence essential to a conviction of this offense' [citation], and 'positive' in contradistinction to 'circumstantial' evidence is required [citation]. 'It is . . . necessary to have positive testimony as to facts that are absolutely incompatible with the innocence of the accused.' [Citation.] [¶] '[It] is not sufficient to support the charge of perjury that the accused swears to a material fact that is false, *the false swearing must be knowingly and willfully done*.' [Citation.] [I]n addition to knowingly making a false statement, there must be a *specific intent* that the false statement be under oath or penalty of perjury." (*People v. Viniegra* (1982) 130 Cal.App.3d 577, 585–586.) The element of the statute stating that the defendant must make the statement "willfully" requires proof the defendant made such statement " 'with the consciousness that he did not know that it was true, and with the intent that it should be received as a statement of what was true in fact.' " (*People v. Hagen* (1998) 19 Cal.4th 652, 663–664.)

"[A] statement made under penalty of perjury is a 'certificate' within the meaning of section 124," and the delivery requirement of section 124 is an element of perjury in cases involving a false certificate. (*People v. Griffini* (1998) 65 Cal.App.4th 581, 593–594.) Under section 124, "[t]he making of a . . . certificate is deemed to be complete . . . from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true."

Subdivision (b) of section 118 requires that when one witness testifies to the falsity of the statement made under penalty of perjury, other evidence must corroborate that the

statement was false: "No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence." Before amendment in 1969, the statute (then numbered section 1103a) required "the testimony of two witnesses, or of one witness and corroborating circumstances." (*People v. Alcocer* (1991) 230 Cal.App.3d 406, 412.) Although the amended statute states that "direct or indirect evidence" will suffice (§ 118, subd. (b)), courts have continued to apply the rule that "direct as distinguished from circumstantial evidence of the falsity of the defendant's testimony by at least one witness is generally required. [Citations.] Evidence is insufficient under the direct evidence rule that merely establishes facts from which the falsity of an alleged perjured statement may or may not be inferred." (*Alcocer*, *supra*, at p. 413.) The 1969 amendment "lightens the prosecution's burden" (*People v. Gamble* (1970) 8 Cal.App.3d 142, 147, fn. 2), and circumstantial evidence suffices for the required corroboration. (*People v. Morris* (1971) 20 Cal.App.3d 659, 664 & fn. 2.) Corroborating evidence may be slight, and need not prove all the elements of the charged offense. (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1204.)

The jury instructions stated: "You may not find the defendant's statement was false based on the testimony of another witness alone. In addition to the testimony of another witness, there must be some other evidence that the defendant's statement was false. This other evidence may be direct or indirect."

" '[C]onspiracy is by reason of its very character difficult of proof . . . . [C]onspiracies cannot be established by suspicions.' "

(*Hendrix v. Superior Court* (1962) 203 Cal.App.2d 421, 425–426.) A conspiracy conviction " 'requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act "by one or more of the parties to such agreement" in furtherance of the conspiracy.' " (*People v. Johnson* (2013) 57 Cal.4th 250, 257.) "The crime of conspiracy punishes the agreement itself," but the agreement must be accompanied by an overt act in furtherance of the crime. (*Id.* at pp. 258–259.) " 'To prove an agreement, it is not necessary to establish the parties met and expressly agreed; rather, "a criminal conspiracy may be shown by direct or circumstantial evidence that the parties positively or tacitly came to a mutual understanding to accomplish *the act* and unlawful design." ' " (*Id.* at p. 264.)

The jury was instructed that they must all agree that at least one alleged overt act was committed within the statute of limitations, but they did not have to agree which specific overt act was committed, or who committed the overt act.

I. Angela Hadley

Hadley argues insufficient evidence supports her convictions on counts 39, 40, 41, and 47, and instructional error requires reversal of all her convictions of perjury (counts 5, 6, 25, 26, 27, 39, 46, 50, and 58).

A. *Insufficient evidence supports Hadley's convictions on counts 39, 40, and 41*

On a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. (*People v.*

Young (2005) 34 Cal.4th 1149, 1175.) We " ' "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' " (*Ibid.*)

1. *Count 39 (perjury with Murray)*

Count 39 alleged that on or between May 1, 2009 and July 31, 2009, Hadley and Murray committed perjury by declaration in violation of section 118, subdivision (a), when they signed under penalty of perjury the attendance records stating that Hadley provided child care for Murray's children. The court instructed the jury that the false statement was that Hadley provided child care for Murray's children as indicated on the attendance records. The jury convicted Hadley and acquitted Murray on this count.

Hadley signed attendance records printed with the 5038 address for each of Murray's four children on May 5, 2009 (for April), June 2, 2009 (for May), and July 1, 2009 (for June). Hadley signed the attendance records under a declaration stating, "I certify, under penalty of perjury, that I provided child care services as indicated on this attendance record for the above named child and the services were rendered according to the Certificate of Enrollment issued by Crystal Stairs, Inc." Hadley argues no evidence established that the dates and times on the attendance records were false, or that any false dates or times were material, so that her signatures under penalty of perjury did not constitute perjury.

We agree with Hadley that no evidence established that the days and times recorded were not true. Dr. Ramos testified that Murray would have been unable to care for her children beginning in May 2009. Although Murray was no longer working, no evidence established that Murray did not continue to

use Hadley's child care, dropping off and picking up her children at the times indicated. Hadley would therefore not have made any false statements under penalty of perjury by signing the attendance records.

We reject the People's argument that Hadley committed perjury when she signed the attendance records because she was no longer providing child care at the 5038 address appearing on the pre-printed form. The certificates of enrollment for Murray's children give Hadley's name as the childcare provider and state the approved hours, but do not bear any address or indicate the reason for child care. Hadley's signature did not certify under penalty of perjury where she provided the child care or the purpose for which care was provided.

In the absence of substantial evidence that on or between May 1 and July 31, 2009, Murray did not drop off and pick up her children as reflected on the attendance records Hadley signed during that period, we reverse Hadley's conviction of perjury in count 39.

2. *Count 40 (conspiracy with Murray to commit grand theft)*

Grand theft occurs when the money taken exceeds $950. (§ 487, subd. (a).)

Count 40 alleged that on or between May 1, 2009 and July 31, 2010, Hadley and Murray conspired to commit grand theft in violation of section 182, subdivision (a)(1), and section 487, subdivision (a), by committing the overt acts of turning in attendance records for July 2009, September 2009, October 2009,

January 2010, and April 2010.[12] The jury found Hadley and Murray guilty.

Hadley again argues the record contains no substantial evidence that the attendance records were false. She also argues no evidence shows she ever reached an agreement with Murray to steal childcare funds.

Hadley signed the provider fraud policy, which defines fraud as giving false or misleading information on attendance forms, and/or intentionally not giving information that could cause child care to be reduced or terminated. If substantial evidence showed Hadley and Murray agreed to submit attendance records for payment even though Hadley knew Murray was not working, was not approved for disability, and therefore was not entitled to child care, and Hadley committed at least one overt act by submitting one of the listed attendance records, we must affirm Hadley's conviction on count 40.

The People contend substantial evidence supports a single overt act, the submission of the attendance records for September 2009 on or around October 7, 2009, and argue "Murray's . . . signatures appear in what is obviously Hadley's handwriting," so the jury could infer that Murray knew that Hadley forged Murray's signature. This is without merit. First, the People do not cite to any evidence at trial that Hadley forged Murray's

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[12] The court denied the prosecution's motion to amend count 40 by condensing the overt acts into a single, additional overt act with a time frame extending into October 2010. We therefore do not consider the earning statements Murray submitted to Crystal Stairs for July through September 2010, which contain multiple errors and inconsistencies. The earning statements are outside the period alleged in count 40.

signatures on the September 2009 attendance records. Second, even if Hadley did sign the September 2009 attendance records for Murray, the People point to no evidence that Murray knew that Hadley forged her signature. Third, if the signatures on the September 2009 attendance records were not Murray's, those attendance records are not evidence that Hadley *and Murray* intended to agree to commit grand theft.

In the absence of substantial evidence that Hadley and Murray intentionally agreed to commit grand theft and committed an overt act during the time period alleged in the information, we reverse Hadley's conviction, and necessarily Murray's conviction, of conspiracy to commit grand theft in count 40.

3. *Count 41 (conspiracy with Murray to commit perjury)*

Count 41 alleged that on or between May 1, 2009 and July 31, 2010, Hadley and Murray conspired to commit perjury, and committed five overt acts of submitting attendance records for August 2009, November 2009, February 2010, June 2010, and July 2010. We conclude that no substantial evidence established that any of the overt acts constituted perjury.

The attendance records submitted for August 2009 showed Hadley's old 5038 address. We have already rejected the address on the preprinted form as direct evidence of falsity.

The third, fourth, and fifth overt acts allege the submission of attendance records for February 2010, June 2010, and July 2010 (all of which bore the 3714 address).[13] The People argue

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[13] The People do not argue that the attendance records submitted for Murray's children in November 2009 show evidence of perjury.

Dr. Ramos's records establish that Murray was on medical leave from work during those months and that Hadley therefore committed perjury when she signed the attendance records stating that she provided childcare services when Murray was not working. But as we explained in our discussion of count 39,[14] Hadley's signature on the attendance records certified under penalty of perjury she "provided child care services as indicated on this attendance record for the above named child and the services were rendered according to the Certificate of Enrollment issued by Crystal Stairs, Inc." Murray's certificates of enrollment gave Hadley's name as the childcare provider, but gave no address, and do not indicate the reason for child care. Hadley's signatures on the attendance records did not certify under penalty of perjury where she provided the child care or the purpose for which care was provided.[15]

In the absence of substantial evidence supporting any of the overt acts alleged in count 41, we reverse Hadley's conviction, and necessarily Murray's conviction, of conspiracy to commit perjury on count 41.

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[14] Count 39 alleged that Hadley committed perjury during a shorter time period, May 1, 2009 to July 31, 2009.

[15] "Mr. Justice Holmes once observed that '[men] must turn square corners when they deal with the Government.' [Citation.] A correlative proposition is that the government should turn square corners when it deals with men." (*People v. Jensen* (1979) 94 Cal.App.3d 451, 455.) We turn square corners with the women defendants in this case by holding them to the precise language of their declarations under penalty of perjury.

B. ***Sufficient evidence supports Hadley's conviction on count 47 (conspiracy with Moore to commit grand theft)***

Count 47 alleged that on or between May 1, 2009 and March 31, 2010, Hadley and Moore (who pled no contest to grand theft and testified at trial) conspired to commit grand theft in violation of section 182, subdivision (a)(1), and section 487, subdivision (a), and committed two overt acts of submitting attendance records for June 2009 and August 2009.

Hadley was evicted from the 5038 address in May 2009. Cornelius Foster testified she moved her childcare operation back to the Birch address, where she provided child care from May to October 2009. Moore testified that she dropped her two children off for child care only four times at the Birch address. Yet Hadley and Moore signed the attendance records showing that Moore's children were at Hadley's childcare operation 51 days for an average of 13 hours each day.

Moore testified the signatures on the June 2009 and August 2009 attendance records were hers. Moore and Hadley signed the June 2009 and August 2009 attendance records on the same dates, which is circumstantial evidence that they came to a mutual understanding, either positively or tacitly, that they would submit false attendance records to Crystal Stairs so Hadley would receive overpayments. (See *People v. Johnson*, *supra*, 57 Cal.4th at p. 264.) Substantial evidence also supports the two overt acts, and the June 2009 attendance record alone resulted in an overpayment to Hadley of $1,497, above the $950 threshold for grand theft.

Substantial evidence supports Hadley's conviction of conspiracy to commit grand theft on count 47.

C. ***The materiality instruction was correct***

Hadley, Sanford, and McFadden argue the trial court's jury instructions on perjury removed the element of materiality from the jury's consideration, invalidating all their perjury convictions.[16] None of the defendants objected, but even in the absence of a request we will review a claim that the instruction was an incorrect statement of the law. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011–1012.)

The element of materiality is for the jury to decide. (*People v. Kobrin* (1995) 11 Cal.4th 416, 420.) "An instruction that informs the jury that a false statement is material if it could *probably* influence the outcome of the proceeding . . . conveys the requirement that the false statement must be important to the matter under discussion. It also conveys to the jury that false statements on matters not pertinent to the proceeding do not constitute perjury." (*People v. Rubio* (2004) 121 Cal.App.4th 927, 933, italics added.) "To state that a false statement is material if it could influence the outcome of the proceeding is simply too broad." (*Ibid.*) "[M]ateriality must be defined by an objective standard." (*People v. Morera-Munoz* (2016) 5 Cal.App.5th 838, 858.) "[M]ateriality is not subjective to the listener . . . . Instead it is a review of the *potential* to influence a listener . . . . In other words, is the false statement objectively capable of influencing the behavior of the [listener]?" (*Id.* at p. 859.)

The court's perjury instruction stated the People must prove the defendants declared under penalty of perjury information to be true that the defendants knew was false; "[t]he

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[16] Below, we reverse on other grounds Murray's sole perjury conviction (conspiracy to commit perjury with Hadley, count 41).

information was material;" and the defendants knew they made the statements under penalty of perjury, intended to make the false statements under penalty of perjury, and signed and delivered, or caused another to sign and deliver, the declaration to someone else intending that it be circulated as true. The instruction also stated: "Information is material if it would cause an agency to authorize child care, set child care hours or pay a certain amount to a child care provider. [¶] The People do not need to prove that the defendant knew that the information in her statement was material."

The court adequately instructed the jury on the materiality element. The instruction did more than state that a false statement was material if it "could probably" influence the outcome of the proceeding; it stated that a false statement was material if it "would" influence the outcome (by causing an agency to authorize child care, set hours, or pay a certain amount for child care). "Could" is the past tense of "can;" "would" is the past tense of "will." "Could probably" denotes probability; "would" denotes certainty. The instruction set a higher standard for materiality than case law requires, and made it clear that the false statement had to be important to the agency to be material.

The defendants nevertheless argue that the instruction allowed the jury to find any error on the forms material, no matter how insignificant the mistake. To the contrary, the instruction viewed as a whole told the jury that an *intentionally false statement* was material if it *would* cause Crystal Stairs to authorize child care, authorize a number of hours, or pay for a certain amount of child care. Defendants also argue the instruction allows a false statement to be material even if the falsity resulted in only a small overpayment. A false statement

that could probably influence the government agency is material (for the purposes of the perjury statute) without regard to how much the government agency overpaid as a result. It is the statement that must be material, not the amount overpaid.

We find no error in the materiality instruction.

II. Rosechell Marquerite Murray

We concluded above that insufficient evidence supports Murray's and Hadley's convictions of conspiracy to commit grand theft on count 40 and conspiracy to commit perjury on count 41. Murray argues that we must also reverse her sole remaining conviction for misdemeanor grand theft (count 67) because the one-year statute of limitations for misdemeanor prosecutions applied, and the prosecution commenced more than one year after the discovery of the offense on September 20, 2009. She does not argue that insufficient evidence supports her conviction.

The complaint filed April 30, 2012 named Murray with Hadley in count 35, felony grand theft on or between May 1, 2009 and July 31, 2010. At her preliminary hearing Murray moved to reduce count 35 to a misdemeanor, and on November 2, 2012 the magistrate granted the motion: "[T]he court's intent is to grant the defense's motion to reduce [count 35] to a misdemeanor." Because count 35 named Hadley as well, the court stated it would dismiss count 35 as to Murray and then add count 67 as a misdemeanor count. Nevertheless, the original information filed November 15, 2012 charged Murray and Hadley with felony grand theft on or between May 1, 2009 and July 31, 2010 in count 35.[17] An amended information filed February 20, 2013 continued to name Murray in count 35. On December 31, 2013 Murray

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[17] Hadley does not appeal her conviction on count 35.

moved to set aside count 35 as the magistrate intended. The court granted the motion and, on January 13, 2014, amended the information to reinstate an allegation of misdemeanor grand theft by Murray in count 67. The prosecutor filed an amended information adding count 67 on February 6, 2014, alleging Murray committed misdemeanor grand theft on or between May 1, 2009 and July 31, 2010. The fourth amended information alleged Murray committed misdemeanor grand theft by unlawfully taking childcare funds on or between May 1, 2009 and July 31, 2010.[18]

Grand theft under section 487 is a "wobbler," prosecutable as a misdemeanor or as a felony. (§ 489, subd. (c).) "[I]f an offense is an alternative felony/misdemeanor (wobbler) initially charged as a felony, the three-year statute of limitations for felonies applies, without regard to the ultimate reduction to a misdemeanor after the filing of the complaint." (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1309–1310.)[19] Because

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[18] At trial, Murray's lawyer admitted that the April 30, 2012 complaint was timely as to count 67, as the three-year statute of limitations for a felony applied to the misdemeanor count originally charged as a felony. The People argue that Murray thus waived the statute of limitations. Waiver may be possible when "it might be to a defendant's *advantage* to waive the statute of limitations." (*People v. Williams* (1999) 21 Cal.4th 335, 340.) Waiver would not be to Murray's advantage, and she may raise this jurisdictional issue at any time. (*People v. Soni* (2005) 134 Cal.App.4th 1510, 1514.)

[19] The reduction of the felony in count 35 to a misdemeanor in count 67 was not based on the offense as a necessarily included misdemeanor, in which case the one-year statute of limitations

grand theft is a wobbler offense and the initial charge against Murray in count 35 was felony grand theft, the three-year statute of limitations applies after the reduction of the felony count to misdemeanor grand theft in count 67. The prosecution began April 30, 2012, within three years of September 20, 2009.

We reverse for insufficient evidence Murray's convictions on counts 40 and 41, and we affirm her conviction of misdemeanor grand theft on count 67.

III. **Suzan McFadden**

McFadden argues insufficient evidence supports her convictions for perjury on counts 25, 26, 27, 31, and 32, forgery on count 29, and conspiracy with Hadley to commit perjury on counts 33 and 34. She also argues that exhibits were admitted in error, undermining her convictions on counts 29, 31, 32, and 33.

A. ***Sufficient evidence supports McFadden's conviction on counts 25 and 32; insufficient evidence supports her convictions on counts 26, 27, and 31***

McFadden argues the evidence of perjury was insufficient and "entirely speculative," because no substantial evidence showed that errors on her attendance records and employment verifications were material or intentional; Flumerfelt's testimony was not corroborated; Hadley maintained and submitted the forms; and McFadden's signature was not verified.

1. *Count 25 (perjury with Hadley)*

Count 25 alleged that on or between November 1 and December 5, 2008, McFadden and Hadley committed perjury

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for misdemeanors applies. (*People v. Mincey* (1992) 2 Cal.4th 408, 453.)

when they declared under penalty of perjury that Hadley provided child care for McFadden's two children as indicated on the attendance record. The exhibits included October 2008 provider payment requests for McFadden's children (at the time, McFadden's aid level did not require a daily attendance record) signed by both women on November 1,[20] and a November 2008 daily attendance record signed on December 4. McFadden argues there was no evidence whatsoever that her children did not attend child care for the time periods on the documents she and Hadley signed for October and November 2008.

In response, the People argue that the forms bore the old 5038 address. We have already rejected this as a basis for a perjury conviction.

The People argue that McFadden and Hadley claimed more childcare hours than Hadley could possibly have provided. McFadden was approved for child care for 10 to 15 hours on weekdays and six hours on Saturday (a total of more than 80 hours). The October 2008 provider payment requests listed 80 weekday daytime hours and 80 weekday nighttime hours for each week (as well as additional weekend hours). The People also point out that McFadden's paperwork provided that one of her

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[20] McFadden and Hadley signed the October 2008 provider payment request forms, under language stating, "I declare under penalty of perjury that this information is true and correct, and that the child care was provided for the purpose for which child care was certified. I understand that I may be prosecuted for fraud and required to repay any overpayment resulting from false or incorrect information provided herein. I understand that over billing on this report can lead to legal action resulting in penalties of a fine, imprisonment or both."

children was in school in October 2008, and no care was authorized between 8:30 a.m. and 1:30 or 3:30 p.m. Viewed in the light most favorable to the prosecution, this is evidence of perjury on the provider payment request, on which McFadden and Hadley certified that the information was true and correct.

The People also argue that McFadden stopped working at Papa John's in July 2008, and thus did not need all the hours of child care claimed for October and November. We agree there is no evidence that McFadden worked at Papa John's in October and November 2008. Although McFadden's and Hadley's signatures on the November attendance record did not certify under penalty of perjury that McFadden used Hadley's childcare operation because she was working, her signature on the October provider payment request certified "the child care was provided for the purpose for which child care was certified." This is corroborating evidence that McFadden and Hadley committed perjury on the October 2008 provider payment request form.

We affirm McFadden's and Hadley's convictions on count 25.

2. *Count 26 (perjury with Hadley)*

Count 26 alleged that Hadley and McFadden committed perjury on or between January 1, 2009 and December 31, 2009, by falsely declaring "Angela Hadley provided child care for Suzan McFadden's children as indicated on the attendance record."

The People point to attendance records for March 2009 showing that on March 18, McFadden signed in her two sons around 6:00 a.m. and signed them out at 11:08 p.m., and yet the state licensing analyst testified that when she visited from 7:30 a.m. to 9:45 a.m., she recorded that only one child (not related to defendants) was present. This is not evidence that

McFadden and Hadley committed perjury. The analyst testified when she arrived, Hadley was taking some children to school; Hadley returned fifteen minutes later. Both McFadden's children were in school in 2009, as recorded in the notice of action and certificate of enrollment. The logical inference is that when the analyst arrived, Hadley was driving McFadden's children to school.

The People also argue that McFadden and Hadley committed perjury on January 5, 2009, when they signed the December 2008 attendance record, because McFadden claimed more child care in December 2008 than her actual work and training schedule required. Again, their signatures on the attendance record certify under penalty of perjury only that Hadley provided child care according to the schedule authorized by Crystal Stairs and the certificate of enrollment, not that McFadden used the hours of child care for the reasons she claimed when she applied.

The People also cite to additional pages of the record as other examples of "fraud," with no explanation of why the identified exhibits are evidence of *perjury*. Perjury, unlike fraud, requires the specific intent to swear falsely "under oath or affirmation" (*People v. Jenkins* (1980) 28 Cal.3d 494, 503, italics omitted), and, as we explained above, requires corroborating evidence to support a conviction.

Insufficient evidence supports McFadden's and Hadley's conviction of perjury on count 26.

3. *Count 27 (perjury with Hadley)*

Count 27 alleges that on or between January 1 and February 5, 2010, Hadley and McFadden committed perjury by falsely declaring that Hadley "provided child care for Suzan McFadden's children as indicated on the attendance record."

The People point to McFadden and Hadley's February 5, 2010 signatures on the attendance record for January 2010, which showed that McFadden signed one child in at 2:05 p.m. on January 27. Flumerfelt testified that he arrived outside the 3714 address at 1:08 p.m. and left at 4:15, but saw no activity at 2:05 p.m.

Flumerfelt's testimony is evidence that the drop-off time on the attendance record for January 27 was false. Without corroborating evidence, however, his testimony alone is not sufficient evidence to support a *perjury* conviction under section 118, subdivision (b). The People suggest that Hadley's involvement with Hollins's Corona house corroborates a general lack of activity at the 3714 address, but testimony established that the rental agreement ended in January 2010 and Hollins moved out. The People point to no other evidence corroborating Flumerfelt's testimony.

Insufficient evidence supports Hadley's and McFadden's convictions for perjury on count 27.

4. *Counts 31 and 32 (perjury)*

Counts 31 and 32 allege that McFadden committed perjury when, on April 9, 2009 and on February 18, 2010, she declared under penalty of perjury that she worked for Papa John's in the afternoons and evenings.

a. *No abuse of discretion to admit the records*

McFadden first argues that the Papa John's records in evidence at trial were inadmissible hearsay. We conclude the trial court did not abuse "its wide discretion in determining whether sufficient foundation is laid to qualify evidence as a business record." (*People v. Lugashi* (1988) 205 Cal.App.3d 632, 638–639.)

Ramon testified the records from Cocom's tenure were in the Papa John's computer. As the current manager of the Papa John's franchise, she located McFadden's computer record at the request of the prosecution's investigator. After defense counsel objected to her testimony, the prosecutor stated at sidebar that Ramon brought up the screen with McFadden's employee record, and the investigator took a photograph of the computer screen. Because the "times didn't match up," Ramon later printed out the time clock report. The trial court questioned whether Ramon qualified as the custodian of records from the franchise when Cocom was the manager.

Ramon testified the time clock record was made before she began working at Papa John's; the record was routinely kept, and was the basis for paychecks; the employees placed the hours in the computer on the recorded dates, punching in and out using the last four digits of their social security numbers; and the time clock record was the most accurate indication of when McFadden last worked.

The court initially denied admission of the records. After a recess, the court admitted both the time clock record and the screen shot, concluding that Ramon did not have to have been the custodian of records at the time the records were created to

testify that the records were made in the usual course of business.

Before the jury, Ramon testified that she printed out the time clock record before coming to court. She had no idea why the time clock record showed McFadden's last day in July 2008, while her employee record showed a last day in July 2008 but also a hire date in April 2009 and a termination date in August 2009. On cross-examination, she stated that the employee generated the time clock record, and the manager in charge would have entered the information on the computer employee record, which could not be changed.

Evidence Code section 1271 allows admission of a writing made as a record of an act or event if: "(a) The writing was made in the regular course of a business; (b) The writing was made at or near the time of the act, condition, or event; (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness." The witness testifying about a business record "need not be the custodian, the person who created the record, or one with personal knowledge in order for a business record to be admissible under the hearsay exception." (*Estate of O'Connor* (2017) 16 Cal.App.5th 159, 170; *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 322.) "[Q]uestions 'as to the accuracy of [computer] printouts, whether resulting from incorrect data entry or the operation of the computer program, as with inaccuracies in any other type of business records, [affect] only the weight of the printouts, not their admissibility.' " (*People v. Martinez* (2000) 22 Cal.4th 106, 132.)

We see no clear showing of abuse of discretion in the trial court's admission of the Papa John's records. Ramon testified regarding the Papa John's practice—once created, the records could not be changed. It was up to the jury to decide whether the records were accurate and what weight to give them.

b. *Insufficient evidence of perjury in count 31*

On April 9, 2009, McFadden signed a Crystal Stairs "Statement of Duties" indicating that she worked for Papa John's every day except Sunday, starting as early as 4:10 p.m. and ending at 10 p.m. She signed under penalty of perjury "that the information stated above and any documentation submitted herewith, are true and correct to the best of my knowledge, and that none of such information or documentation is misleading, untrue or false."[21] This declaration is consistent with the Papa John's computer employee record showing that McFadden was hired on April 9, 2009, with a termination date of August 14, 2009. While the same computer record, as well as the time clock record, shows McFadden's last day of work as July 19, *2008*, this equivocal and contradictory evidence (characterized by the prosecutor as "kind of exculpatory and kind of confusing") is not sufficient to show that her April 9, 2009 statement was false, and the People point to no corroborating evidence that McFadden committed perjury.

We reverse McFadden's conviction on count 31.

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[21] The People also cite to an employment verification dated April 9, 2009, but only Cocom signed that document under penalty of perjury.

c. *Sufficient evidence of perjury in count 32*

Count 32 alleges that McFadden committed perjury when, on February 18, 2010, she declared that she worked for Papa John's in the afternoons and evenings.

On February 18, 2010, McFadden signed a confidential application and certification of eligibility stating that she continued to work at Papa John's, and, "under penalty of perjury that the above information is true and correct to the best of my knowledge." The Papa John's records, although inconsistent, are both evidence of perjury. The time clock record showed a last date of work of July 19, 2008, and the Papa John's computer employee record shows McFadden was terminated at the very latest in August 2009. Ramon, who worked at Papa John's starting in September 2009 and became the manager in March 2010, testified that she never met McFadden, which corroborates the documentary evidence that McFadden did not work at Papa John's in February 2010.

We affirm McFadden's conviction on count 32.

B. ***Insufficient evidence supports McFadden's conviction on count 29 (forgery)***

Count 29 alleges McFadden committed forgery in violation of section 470, subdivision (d), when she made and submitted a false and forged employment verification on or between April 9, 2009 and May 6, 2009. Under section 470, subdivision (d), anyone who, with the intent to defraud, "falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine," any of a long list of items including a request for payment of money, while "knowing the same to be false, altered, forged, or counterfeited," is guilty of forgery. " 'The intent to defraud is the essential element of the

crime of forgery . . . .' " (*People v. Martinez* (2008) 161 Cal.App.4th 754, 762.)

An employment verification form received by Crystal Stairs on April 30, 2009, in a section "to be completed by employer only," stated that McFadden worked at Papa John's four days a week from 4:00 or 5:00 p.m. to 10:00 p.m. The form bears an April 29, 2009 signature by supervisor Cocom, declaring under penalty of perjury that the information on the form is true and correct. Contrary to the People's assertion, McFadden did not sign under penalty of perjury; her signature on the top of the form merely authorized her employer to release information to Crystal Stairs.

The employment verification is consistent with the Papa John's computer employee record showing that McFadden was hired on April 9, 2009, with a termination date of August 14, 2009 (although the record also shows that McFadden's last day was in July 2008). The computer record is evidence that the information on the employment verification form is true, not false. The People argue that McFadden forged Cocom's signature because his handwriting "strongly resembled hers." The prosecutor presented no testimony to that effect, and did not rely on that theory at trial.[22]

Section 470, subdivision (a), makes it forgery to sign the name of another person on any of the items listed in subdivision (d). As there is insufficient evidence that the employment verification is false, the form is not an item listed in

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[22] The prosecutor stated in closing argument he could not say "whether that's [Cocom's] signature or not his signature."

subdivision (d). If the information is not false, McFadden lacked any reason to forge Cocom's signature.[23]

We reverse McFadden's forgery conviction on count 29.

C. *Insufficient evidence supports McFadden and Hadley's convictions on count 33 (conspiracy with Hadley to commit grand theft)*

Count 33 alleged that Hadley and McFadden conspired to commit grand theft on or between April 1, 2008 and February 28, 2010. The overt acts alleged were McFadden's submission of employment verifications on March 20, 2007, April 23, 2007, September 3, 2008, and April 30, 2009,[24] and her application for child care on February 18, 2010, all of which claimed McFadden was working at Papa John's.

The employment verification received by Crystal Stairs on September 3, 2008 reported McFadden's hours in July 2008, with a July 14, 2008 signature by manager Cocom. The Papa John's computer records show McFadden still working as of that date. We have already concluded the evidence was insufficient to show the April 30, 2009 employment verification was false. We have also concluded that the evidence was sufficient to show McFadden's February 18, 2010 application for child care and certification for eligibility, which stated that she still worked at

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[23] In addition, the bottom of the form states, under "FOR OFFICE USE ONLY," that a Crystal Stairs employee spoke to Cocom and verified McFadden's employment on June 11, 2009.

[24] To conform the information to proof, at the end of trial the prosecutor changed the first four overt acts in count 33 from attendance records to employment verifications. We do not discuss the first two employment verifications, which occurred in 2007, before the time period alleged in count 33.

Papa John's, was false. One overt act is supported by substantial evidence.

But more is required for a conspiracy conviction. Substantial evidence must support an agreement between McFadden and Hadley. Hadley did not sign the application form. The People argue that Hadley submitted McFadden's signed application form to Crystal Stairs, and this constituted an agreement. The People do not cite to any part of the record that shows that Hadley, not McFadden, submitted McFadden's application for child care, or that Hadley knew McFadden no longer worked at Papa John's in 2010. In the absence of any evidence that McFadden conspired with Hadley when McFadden falsely stated under penalty of perjury that she continued to work at Papa John's in 2010, we reverse McFadden's conviction, and necessarily Hadley's conviction, for conspiracy to commit grand theft in count 33.

D. ***Insufficient evidence supports McFadden and Hadley's convictions on count 34 (conspiracy with Hadley to commit perjury)***

Count 34 alleged that McFadden and Hadley conspired to commit perjury on or between August 1, 2009 and February 28, 2010. The three overt acts alleged were the submission of attendance records on September 8, 2009 for August 2009; on December 7, 2009 for November 2009; and on February 5, 2010 for January 2010.

We have already determined that the evidence was insufficient to show that McFadden committed perjury when she signed the January 2010 attendance record on February 5, 2010. As to the August 2009 and November 2009 attendance records, we have explained that the parent's and provider's signatures on

the attendance records did not certify under penalty of perjury the reason for which child care was provided. The People cite no evidence that McFadden's children's attendance records for August 2009 and November 2009 did not reflect the child care actually provided by Hadley. We therefore conclude that none of the overt acts is supported by sufficient evidence. We reverse McFadden's conviction, and necessarily Hadley's conviction, for conspiracy to commit perjury in count 34.

IV. Erica Sanford

Sanford argues that insufficient evidence supports her convictions on counts 58, 63, and 71, and that count 71 is outside the statute of limitations.

A. *Insufficient evidence supports Sanford's and Hadley's convictions on count 58 (perjury by declaration with Hadley)*

Count 58 alleges that Hadley and Sanford committed perjury on or between May 1, 2009 and January 31, 2010, when they "did unlawfully, under penalty of perjury, declare as true, that which was known to be false, to wit: That Angela Hadley provided child care for Erica Sanford's children as indicated on the attendance record."

On December 17, 30, and 31, 2009, and on January 14, 2010, Flumerfelt did not see any children being dropped off or picked up at the 3714 address at the times written on the attendance records signed under penalty of perjury by Sanford and Hadley.[25]

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[25] On December 17, Flumerfelt watched the 3714 address from 6:00 to 9:00 a.m., and saw no activity. Yet Sanford's signed attendance record for December 2009 shows she dropped off her son at 6:21 a.m., and he was signed out at 8:00 a.m. On

As we stated in reversing McFadden's conviction on count 27, Flumerfelt's testimony that he did not see children arrive at or leave the 3714 address at the times shown on Sanford's signed attendance records is evidence that the attendance records are false. Without corroborating evidence, however, his testimony alone is not sufficient to support a *perjury* conviction under section 118, subdivision (b). The People identify no evidence corroborating Flumerfelt's testimony.

We reverse Hadley's and Sanford's convictions of perjury on count 58.

B. ***Insufficient evidence supports Sanford's and Hadley's convictions on count 63 (conspiracy to commit perjury with Hadley)***

Count 63 alleged Sanford conspired with Hadley to commit perjury on or between May 1, 2009 and February 28, 2010. The three overt acts alleged were the submission of attendance

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December 30, Flumerfelt watched the 3714 address from 4:15 p.m. to 6:40 p.m., and saw no activity at 4:30 p.m., when the attendance record shows Sanford signed him out. On December 31, Flumerfelt watched the house between 5:58 a.m. and 8:35 a.m., and saw no activity at 6:18 a.m., when the attendance record showed Sanford signed her son in.

On January 14, although Flumerfelt watched the 3714 address between 4:59 a.m. and 6:32 a.m., he saw no activity at 5:17 a.m., when Sanford's signed attendance record shows she signed her son in. Sanford signed the attendance record under penalty of perjury on February 5, however that was after the period alleged in the indictment ended, on January 31, 2010. The March 2009 attendance record cited by the People is also outside the time period specified in the information.

records for November and December of 2009 and January of 2010.

For the November and December attendance records, the People point out Sanford's TSA records show she worked only 80 hours in November and 112 hours in December, taking annual leave and sick leave for the remainder of her paycheck. The People argue that Sanford falsely certified under penalty of perjury on December 25, 2009 that she was working 40 hours a week, and, on January 5, 2010, that she needed child care for $52^{1}/_{2}$ hours a week. But on December 25, 2009, Sanford's supervisor, *not Sanford*, signed an employment verification form under penalty of perjury stating that Sanford was scheduled to work 40 hours a week. On January 5, 2010, Sanford signed "under penalty of perjury that the above information is true and correct to the best of my knowledge" a confidential application for child care and certification of eligibility stating that her work schedule was five days a week from 6 a.m. to 2:30 p.m. Her January 2010 signature on the application did not falsely certify how many hours Sanford worked in November and December 2009. And again, neither document is evidence that Hadley did not provide child care for the hours on the attendance sheets for November and December, regardless of what Sanford's work schedule may have been.

The People do not address the remaining overt act, the submission of the January 2010 attendance record. Hadley and Sanford signed the January attendance record on February 5, 2010, and Flumerfelt testified that he did not see activity at 5:17 a.m. on January 14, 2010, when the attendance record shows Sanford signed her son in. That is some evidence of a false entry on the attendance record, but as we explained above, no other

evidence corroborates Flumerfelt's testimony, as is required for a conviction of perjury under section 118, subdivision (b).

We reverse Sanford's conviction, and necessarily Hadley's conviction, for conspiracy to commit perjury on count 63.

C. ***The statute of limitations bars Sanford's conviction on count 71 (petty theft)***

Sanford argues that her conviction on count 71 was barred by the one-year statute of limitations for misdemeanors, and we agree.

The complaint, filed April 30, 2012, named Sanford with Hadley in count 57, felony grand theft of $4,182 on or between May 1, 2009 and January 31, 2010. At the preliminary hearing Sanford's counsel moved to reduce count 57 to a misdemeanor, arguing any overpayment would not exceed $500. On November 2, 2012, the magistrate granted the motion: "[T]he court's intent is to grant the defense's motion to reduce [count 57] to a misdemeanor." Because count 57 named Hadley as well, the court stated it would dismiss count 57 as to Sanford and then add count 71 as a misdemeanor count. Nevertheless, the original information, filed November 15, 2012, charged Sanford and Hadley with felony grand theft on or between May 1, 2009 and February 28, 2010 in count 57.[26] An amended information, filed February 20, 2013, continued to charge Sanford and Hadley with felony grand theft in count 57. The trial court dismissed count 57 and added count 71 on February 6, 2014. That same date, the prosecutor filed an amended information adding count 71 for misdemeanor grand theft naming Sanford only, and Sanford entered a not guilty plea.

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[26] Hadley does not appeal her conviction on count 35.

Toward the end of trial, the prosecutor stated that the loss in Count 71 was less than $950, and asked the court to reduce the charge of misdemeanor grand theft to petty theft. Sanford's counsel moved to dismiss count 71 as outside the statute of limitations, and the court took the motion under advisement. The prosecutor represented that he had not been sure until a few days earlier that the amount was below $950. The fourth amended information, filed April 28, 2015, includes count 71, charging Sanford with misdemeanor petty theft in violation of section 484, subdivision (a).[27] The jury found Sanford guilty on count 71.

As we explained above, grand theft under section 487 is a "wobbler," prosecutable as a misdemeanor or as a felony. (§ 489, subd. (c).) "[I]f an offense is an alternative felony/misdemeanor (wobbler) initially charged as a felony, the three-year statute of limitations for felonies applies, without regard to the ultimate reduction to a misdemeanor after the filing of the complaint." (*People v. Crabtree*, *supra*, 169 Cal.App.4th at pp. 1309–1310.) In Sanford's case, however, the ultimate charge was petty theft, which is a lesser and necessarily included offense of grand theft, the initial charge. (*People v. Shoaff* (1993) 16 Cal.App.4th 1112, 1116.) When a felony is reduced to a necessarily included misdemeanor rather than as a wobbler, the one-year statute of limitations for misdemeanors applies. (*People v. Mincey*, *supra*, 2 Cal.4th at p. 453.) The jury found Sanford guilty of a " 'straight' misdemeanor as a necessarily included offense of the wobbler charge. In other words, [she] was found guilty of [a] 'straight'

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[27] In closing, the prosecutor argued Sanford was responsible for $465.72 in losses for child care to which she was not entitled.

misdemeanor[ ] and no wobblers at all. (*People v. Mincey*, *supra*, 2 Cal.4th at p. 453.) Because no wobbler offenses were involved at all, only the general misdemeanor statute of limitations applied. That general statute was one year, which term had already expired. (*Ibid.*) [¶] The 'limitation of time applicable to the lesser included offense, regardless of the limitation of time applicable to the greater offense' (§ 805, subd. (b)) controls when a straight misdemeanor is found as a necessarily included offense of a wobbler." (*People v. Soni*, *supra*, 134 Cal.App.4th at pp. 1516–1517.) As the initial charge against Sanford was a felony but her conviction was of a necessarily included misdemeanor, the one-year limitations period for misdemeanors applies. (*People v. Crabtree*, *supra*, 169 Cal.App.4th at p. 1310.)

The discovery of the crime occurred in September 2009, when Flumerfelt discovered the 5038 address was vacant; the prosecution began on April 30, 2012, long after the one-year limitations period expired. We therefore reverse Sanford's conviction on count 71.

V. The admission of Exhibit 3c was not an abuse of the trial court's discretion

The defendants argue that the trial court abused its discretion when it allowed into evidence the prosecution's Exhibit 3c, which showed the four defendants' booking photographs among 10 photographs of black women.[28]

The defense objected to the exhibit, which the court described as "like a sort of lineup type of picture with five people

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[28] In opening statement, the prosecutor argued that 10 people had been associated with this case; not all had been charged, and some were no longer part of the case.

in one column and then five people in another column." Counsel argued that some of the women weren't suspects or defendants, and the exhibit looked like " 'murderer's row.' " The prosecutor responded that all the women had been involved in the case, and all the women, except Hadley's mother and daughter, originally had been charged. The photographs were relevant because in the deliberation room, the jurors could see which defendant the witnesses were talking about and "[t]hat's the only way they're going to remember." The court overruled the defense objection, stating that although the exhibit looked like a six-pack with 10 people, it was not overly prejudicial given its probative value under section 352. Defense counsel argued it was irrelevant what the women looked like because some of them would not be in court, and the court responded that the prosecutor could use the photographs to prove identity.

The prosecutor asked Moore to identify the women in the photographs. Moore testified her photograph was number 5 of the 10 photos, Hadley was number 1, she did not recognize number 2, McFadden was number 3, and Murray was number 4. Number 6 was a person named Lakeshia, and Moore did not recognize numbers 7 or 8. Number 9 was Hadley's mother, and number 10 was Hadley's daughter. Valencia Brooks testified her photograph was number 2, she did not know numbers 3, 4, 5, 6, or 7, identified number 8 as Diona Kemp, and confirmed that numbers 9 and 10 were Hadley's mother and daughter. The prosecutor then continued with exhibits showing photographs of the four childcare locations. The prosecutor also used the photographs in his cross-examination of Wells, who testified that she recognized McFadden, Murray, and Sanford as mothers who brought their children to Hadley's childcare operation. In closing,

the prosecutor referred to the exhibit as evidence that not all the women knew each other, supporting the existence of separate conspiracies to obtain childcare money from Crystal Stairs.

Evidence Code section 352 leaves to the trial court's discretion whether to exclude relevant evidence whose probative value is "substantially outweighed" by the likelihood that its admission will "create substantial danger of undue prejudice." On appeal, the defendants argue the arrangement of the photographs looked like "a six-pack with booking photos," and the exhibit was unduly inflammatory, associating the defendants with Moore and Brooks (who testified at trial).

The photographs were relevant under Evidence Code section 210 as evidence tending logically to establish identity. "[A] photograph need not be excluded as cumulative if offered to prove facts established by testimony." (*People v. Scheid* (1997) 16 Cal.4th 1, 14.) Even cumulative evidence may be relevant, and is admissible unless it is substantially more prejudicial than probative under Evidence Code section 352. (*Scheid*, at p. 15.)

Photographs may be admitted to help the jury keep track of individuals in a case, if the photographs are not unduly prejudicial. (*People v. Suff* (2014) 58 Cal.4th 1013, 1072–1073.) Here, the photographs had probative value to support the prosecutor's theory that Hadley engaged in multiple conspiracies with women who did not necessarily know each other, and to help the jury keep track of the defendants and witnesses.

As to whether the exhibit had a prejudicial effect, the "undue prejudice" referred to in Evidence Code section 352 characterizes "evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues." (*People v.*

Scheid, *supra*, 16 Cal.4th at p. 19.) Although the expressions are unsmiling on all but two of the faces in the photographs, the serious expressions do not invoke an emotional bias against the defendants outweighing the photographs' value to prove the prosecution's theory of multiple, separate schemes to obtain childcare funds. (*People v. Suff*, *supra*, 58 Cal.4th at p. 1073.)

Exhibit 3c was not *unduly* prejudicial, and " ' "[i]n applying section 352, 'prejudicial' is not synonymous with 'damaging.' " [Citation.]' " (*People v. Virgil* (2011) 51 Cal.4th 1210, 1249.)

VI. **The prosecutor's conduct does not require reversal**

The defendants argue the prosecutor committed misconduct when he used the term "welfare queen," and when he exaggerated the seriousness of the charges in an attempt to inflame the passions of the jury.

A. ***Background***

During opening statement, the prosecutor stated: "Lying to get money causes more damage to all of our lives than just about any other crime." Following a defense objection that the statement was argumentative, the trial court struck that remark.

Later in opening statement, the prosecutor said: "[T]here is this feeling back when I was growing up—it was a caricature basically. It was called the welfare queen. It was a woman who got on welfare because she didn't have a job and she had children. And she got into a trap because she had to continue to stay home to watch her children." Defense counsel objected that the statement was argumentative, and the court overruled the objection. The prosecutor then described the 1996 "welfare-to-work act" which changed the rules and required women to find a job or go to school before they could get public assistance,

pointing out that agencies like Crystal Stairs administered the taxpayer money set aside to pay childcare providers.

The prosecutor characterized the attendance records as "all fake. They were all perjury, perjury after perjury after perjury. . . . You will see so many perjuries in this case that it will make you sick." Following a defense objection that the statement was argumentative, the trial court struck the last remark.

In his opening statement, McFadden's counsel suggested the prosecutor was referring to McFadden when he "talked about the welfare queen." The prosecutor interjected that he had not said that, and the trial court advised him to object on the basis of mischaracterization. In his opening statement, Murray's counsel said, "[T]he theme of [the prosecutor's case] is Rosechell Murray is a welfare queen. Welfare queen." The trial court sustained the prosecutor's objection, but Murray's counsel again stated, "This is the welfare queen that he says he intends to prove is a thief and a liar. Those are his words. He can object all he wants. He's not taking the wind out of our sails." The court admonished counsel at sidebar to stop saying "welfare queen."

During cross-examination of Brooks, Hadley's lawyer asked her, "You are the embodiment of the stereotypical welfare queen; is that fair to say?"—and the court sustained the prosecutor's objection.

In closing statement, McFadden's counsel stated: "Now, when [the prosecutor] made his opening statement, he talked about welfare queens. I am sure that forced you to imagine—forced you to think about a stereotype of people you're going to hear in this case." The prosecutor did not object. Counsel characterized the prosecutor's statement that McFadden wasn't

doing anything while she received child care as "invok[ing] that image of welfare queen again."

Murray's counsel pointed out twice that the prosecutor had called Murray a "welfare queen" at the beginning of the case.

Sanford's counsel stated the prosecutor "used that caricature of the welfare queen" to "crank [the jury] up by talking about welfare queens and how they stole all this money."

In his rebuttal, the prosecutor referred to the "nasty connotation of a welfare queen" when he was a kid, pointing out he had told the jury it was unfair: "[T]hey were trapped. They couldn't go to work. They had to stay home and take care of their children." After the law required women to go to work, "that's when child care became the big money issue here." He repeated: "I never considered [the defendants] welfare queens" and never made that accusation. "These people all have jobs. . . . These are not welfare queens. These are people who are defrauding the system and are smart enough to do it very, very cleverly. That's what's going on here. They are not welfare queens. They're the opposite of that. . . . And I am telling you they're not welfare queens, not at all."

The prosecutor stated in concluding: "Murder is a terrible crime. It takes everything away from a victim, everything, and destroys their families. But it wasn't murderers who caused the entire collapse of the world economy in 2008, it was people who lied to get money."[29]

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[29] Before launching into this statement, the prosecutor asked the court if it had struck his opening statement that "lying to get money causes more damage than any other crime," and the court replied, "I don't believe I struck it. I don't remember striking

B. ***Analysis***

Prosecutorial misconduct violates the 14th Amendment when it so infects the trial with unfairness that the conviction denies the defendant due process and her right to a fair trial. (*People v. Tully* (2012) 54 Cal.4th 952, 1009–1010.) Even if the prosecutor's misconduct does not make the trial unfair, " 'the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury' " violates California law. (*Ibid.*) We will not reverse a conviction for prosecutorial misconduct " 'unless it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct.' " (*Ibid.*) To preserve a claim on appeal, the defendant must object to the misconduct and request an admonition, if an admonition would have cured the injury. (*Ibid.*) "The prosecutor's conduct need not be intentional to constitute reversible error." (*People v. Williams* (2017) 7 Cal.App.5th 644, 682.)

The court struck the prosecutor's remarks that lying to get money caused more damage than any other crime, and that the perjuries "will make you sick." Defendants have not shown that sustaining counsel's objections and striking the prosecutor's statements was an inadequate remedy. (*People v. Tully*, *supra*, 54 Cal.4th at p. 1015.)

The statements the court did not strike ("perjury after perjury after perjury," and people who lied to get money caused the financial crisis) are not misconduct. The information contained 11 counts of perjury. The defense did not object to the financial crisis comment made by the prosecutor in rebuttal, thus

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it."—although, as noted above, the court had sustained a defense objection and struck the statement.

forfeiting the claim that it was misconduct. (*People v. Tully*, *supra*, 54 Cal.4th at p. 1013.) We note the defense stated in closing that Hadley provided good child care and may have merely been lax or made mistakes; McFadden was just trying to better herself and hastily signed attendance records at Hadley's direction, with no intent to defraud; Murray was eligible for child care because of her disability, and simply failed to turn in a form to Crystal Stairs; and Sanford had no idea that her attendance records were not accurate, and the amount of loss alleged against her was negligible. In rebuttal, the prosecutor attempted to reestablish that the behavior minimized by the defense was criminal. The prosecutor exaggerated when he compared financial crime to murder and suggested that lying to get money caused the 2008 financial crisis. A prompt objection to his hyperbole by the defense, and an admonition by the court, would have cured any damage. (*Id.* at p. 1010.)

We are troubled by the prosecutor's use of "welfare queen" in opening statement. That racialized term carries negative connotations. The prosecutor called the term "a caricature" used when he was growing up to describe a woman who collected welfare while staying home caring for her children, and explained that welfare reform set aside taxpayer money for child care so those women could work. While this background could help the jury understand the source of the money administered by Crystal Stairs, the use of the pejorative "welfare queen" [30] was wrong. All

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[30] "Welfare queen" connotes a woman who obtains large amounts of welfare money by fraud. (*People v. Williams* (1980) 106 Cal.App.3d 15, 22.) The Supreme Court of Texas recently declined to rely on a Wikipedia definition of the term to determine whether an article entitled "The Park Cities['] Welfare

four defendants are black women accused of committing perjury and other crimes to collect excessive public childcare funds.

The court overruled the defense's initial objection, and although the prosecutor did not use the term again, McFadden's attorney seized on the term in his opening statement. Then, Murray's counsel argued the prosecutor's theme was that Murray was a welfare queen. The court sustained the prosecutor's objection, and after Murray's counsel persisted, at sidebar the court told counsel to stop using the term. Nevertheless, in closing statements counsel for McFadden, Sanford, and Murray used the term without further objection. The prosecutor explained himself in rebuttal, admitting the term had a "nasty connotation" that unfairly described women who could not go to work because they lacked child care. He argued he had not called the defendants welfare queens; the defendants all had jobs and were smart enough to defraud the system—"the opposite" of welfare queens.

Even though in opening statement the prosecutor did not use the term to describe the defendants, the jury could reasonably have associated the term "welfare queen" with the four defendants. It was defense counsel, however, who, over the prosecutor's objection, seized upon the term to connect it explicitly to the defendants, despite the court's admonition to all

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Queen" was a publication capable of a defamatory meaning. Instead, the court decided that a person of ordinary intelligence would perceive the publication as a whole, in light of the surrounding circumstances, as stating that the subject of the article fraudulently obtained food stamp benefits, which was sufficient to make out a prima facie case of defamation. (*D. Magazine Partners, L.P. v. Rosenthal* (Tex. 2017) 529 S.W.3d 429, 431, 435, 439.)

counsel (out of the jury's presence) not to continue to use the term.

We find error, but no prejudice. The prosecutor's use of the term "welfare queen" in opening statement, standing alone, does not justify reversal of all the defendants' criminal convictions. (*United States v. Young* (1985) 470 U.S. 1, 11.) The prosecutor's remarks in rebuttal "were 'invited,' and did no more than respond substantially in order to 'right the scale,' [and] such comments would not warrant reversing a conviction." (*Id*. at pp. 12-13.) We deplore the use of the term, but we do not believe it is reasonably probable it made the trial fundamentally unfair.

DISPOSITION

Angela Hadley's convictions on counts 26, 27, 33, 34, 39, 40, 41, 58, and 63 are reversed.

Rosechell Marquerite Murray's convictions on counts 40 and 41 are reversed.

Suzan Ann McFadden's convictions on counts 26, 27, 29, 31, 33, and 34 are reversed.

Erica Yvonne Sanford's convictions on counts 58, 63, and 71 are reversed.

In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.