SUMMARY
July 11, 2024

2024COA73

No. 23CA0106, *People v. Hupke* — Crimes — Attempt to Influence a Public Servant — By Means of Deceit

As a matter of first impression, a division of the court of appeals interprets the phrase "by means of deceit" in the statute criminalizing attempt to influence a public servant, section 18-8-306, C.R.S. 2023. The division concludes that the statute does not require the offender to commit the deception themself, but instead, requires that the offender use some sort of plan or method to deceive the public servant. Evidence that the defendant asked his mother to lie to his parole officer in an effort to persuade the parole officer to lift a hold was sufficient to sustain the conviction for attempt to influence a public servant. Therefore, the judgment is affirmed.

COLORADO COURT OF APPEALS **2024COA73**

Court of Appeals No. 23CA0106
Mesa County District Court No. 21CR1901
Honorable Matthew D. Barrett, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Michael Thomas Hupke,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE FREYRE
Lipinsky and Schutz, JJ., concur

Announced July 11, 2024

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¶ 1 Defendant, Michael Thomas Hupke, appeals the judgment of conviction entered on a jury verdict finding him guilty of attempt to influence a public servant in violation of section 18-8-306, C.R.S. 2023. Hupke contends that insufficient evidence supports his conviction because the language "by means of deceit" in section 18-8-306 requires an offender to personally deceive a public servant, and the prosecution presented no evidence that he personally deceived a public servant.

¶ 2 Hupke's sufficiency argument raises a novel issue of statutory interpretation that requires us to decide whether a person can only be convicted of attempt to influence a public servant if they personally engage in the deception or whether such person can be convicted by using a third party to engage in that deception for them. We hold that the statute's plain language does not limit the offense to acts of deception personally committed by the offender as Hupke argues, but also includes deceptive acts that the offender engages a third party to commit on their behalf. Accordingly, we affirm the judgment.

I. Background

¶ 3 The evidence supporting Hupke's conviction is largely undisputed.

- Hupke was on parole for a prior offense when he was arrested on unrelated charges and held in the county jail on a parole hold.
- One of the conditions of his parole was that he obtain permission from his parole officer before changing residences.
- While in jail, Hupke spoke to his mother by phone, and those conversations were recorded. In the conversations, Hupke acknowledged that he had changed residences without his parole officer's permission.
- Hupke told his mother to contact his parole officer about lifting the parole hold, but not to mention that he had moved. Instead, he suggested that his mother tell the parole officer he was *planning* to move to a different apartment in the same complex.
- Hupke's mother agreed to call his parole officer and say that Hupke was in the process of moving. In a later conversation,

she told Hupke that she had conveyed that information to his parole officer.

II. Discussion

¶ 4 Hupke contends that insufficient evidence supports his conviction for attempt to influence a public servant. He reasons that the statute criminalizes the behavior of a person who, through their *own* deceit, attempts to influence a public servant. And because he was not the person who lied to his parole officer, the evidence cannot support his conviction for that offense.

A. Standard of Review and Applicable Law

¶ 5 The interpretation of a statute is a question of law that we review de novo. *People v. Cali*, 2020 CO 20, ¶ 14. Likewise, we review sufficiency of the evidence challenges de novo to determine whether the direct and circumstantial evidence, when viewed in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charge beyond a reasonable doubt. *People v. Perez*, 2016 CO 12, ¶ 8.

¶ 6 When interpreting a statute, our task is to determine and give effect to the legislature's intent by first examining the plain and

ordinary meaning of the statutory language. *People v. Lee*, 2020 CO 81, ¶ 11. This requires us to "read the words of a statute in context and analyze the whole statute in order to provide consistent, harmonious, and logical effect to all its parts." *People v. Poage*, 272 P.3d 1113, 1116 (Colo. App. 2011) (citation omitted).

¶ 7 Because it's the General Assembly's prerogative to define crimes and prescribe the relevant punishments, *Vensor v. People*, 151 P.3d 1274, 1275 (Colo. 2007), we begin with the statute's plain language, giving words and phrases their plain and commonly understood meanings, *Carrera v. People*, 2019 CO 83, ¶ 17. To discern the ordinary meaning, we "construe[] undefined words and phrases according to their common usage." *Lee*, ¶ 11 (quoting *People v. Griego*, 2018 CO 5, ¶ 25). When the statutory language is clear and unambiguous, we presume the General Assembly meant what it said. *People v. Montoya*, 2024 COA 37, ¶ 33. Therefore, we apply the plain and ordinary meaning of the provision, without resort to other aids of statutory construction. *Lee*, ¶ 11; *Cali*, ¶ 18.

B. Interpreting Section 18-8-306

¶ 8 As relevant here, a person commits the class 4 felony of attempt to influence a public servant when, "*by means of deceit*,"

they attempt "to alter or affect the public servant's decision . . . or action concerning any matter which is to be considered or performed by the public servant or the agency or body of which the public servant is a member." § 18-8-306 (emphasis added).

¶ 9 Hupke's challenge requires us to interpret the phrase "by means of deceit." The statute does not define that phrase. However, our supreme court has defined "deceit," as used in section 18-8-306, as "[a] fraudulent and deceptive misrepresentation . . . used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon" and "any trick, collusion, contrivance, false representation, or underhand practice used to defraud another." *People v. Janousek*, 871 P.2d 1189, 1196 (Colo. 1994) (first quoting Black's Law Dictionary 405 (6th ed. 1990); and then quoting Webster's Third New International Dictionary 584 (1986)).

¶ 10 The phrase "by means of" is defined as "[t]hrough the use of" or "owing to." Dictionary.com, https://perma.cc/Y5NY-QEUS. And by itself, the word "means" is commonly defined as "something useful or helpful to a desired end," Merriam-Webster Dictionary, https://perma.cc/E67N-HRQU, or as "the medium, method, or

instrument used to obtain a result or achieve an end," Dictionary.com, https://perma.cc/KQM4-GGX8.

¶ 11 Based on these definitions, we conclude that the phrase "by means of deceit" in section 18-8-306 describes the offender's attempt to influence a public servant through *any* fraudulent and deceptive misrepresentation designed to deceive and trick the public servant. The act for which the offender is held responsible under this statute is the "[a]ttempt to influence a public servant." As relevant here, the way in which the offender engages in that act is "by means of deceit," which can be accomplished by any method or plan to convey false information to trick or defraud another to obtain a desired result. Thus, we conclude, contrary to Hupke's argument, that the statute does not require that the offender commit the deception themself, only that they use some sort of plan or method to deceive the public servant.

¶ 12 We presume that the General Assembly intentionally selected each word used in section 18-8-306, and we must give full effect to the words chosen. *See People v. Duncan*, 2023 COA 122, ¶ 13. If the General Assembly had intended to limit the crime of attempt to influence a public servant to situations where the offender

personally communicated the deceptive statement to the public servant, it could have done so by not using the words "by means of."

¶ 13 In reaching this decision, we reject Hupke's assertion that interpreting section 18-8-306 to encompass a person's use of a third party to engage in the deception would add words to the statute. To the contrary, such an interpretation gives meaning to each of the words the General Assembly chose.

¶ 14 Applying that definition to the facts of this case, we conclude that the evidence was sufficient to sustain Hupke's conviction. First, it is undisputed that the parole officer was a public servant for purposes of the statute. Second, Hupke concedes on appeal that the evidence presented at trial showed that he used his mother to tell his probation officer that "they were in the process of moving." Third, uncontroverted evidence revealed that Hupke had already moved, and thus that telling his parole officer he was in the process of moving was a false statement and deceitful. Fourth, Hupke's recorded telephone conversations provided evidence that, by asking his mother to lie to his parole officer, Hupke intended to persuade his parole officer to lift his parole hold. Finally, the jail

recordings confirmed that, as Hupke requested, his mother called the parole officer and told him, falsely, that Hupke was merely in the process of moving.

¶ 15 Viewing this evidence in the light most favorable to the prosecution, we conclude that it was sufficient to satisfy each of the elements of the crime of attempt to influence a public servant.

III. Disposition

¶ 16 The judgment is affirmed.

JUDGE LIPINSKY and JUDGE SCHUTZ concur.