IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

CRYSTAL EVE LA PLANTE, *Appellant*.

No. 1 CA-CR 17-0452
FILED 8-14-2018

Appeal from the Superior Court in Mohave County
No. S8015CR201500585
The Honorable Steven F. Conn, Judge *Retired*

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Eric Knobloch
Counsel for Appellee

The Nolan Law Firm PLLC, Mesa
By Cari McConeghy Nolan
Counsel for Appellant

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Lawrence F. Winthrop joined.

P E R K I N S, Judge:

¶1 Crystal Eve La Plante appeals her convictions and sentences for four counts of vulnerable adult abuse. La Plante argues the trial court erred when it allowed the State to proceed on an insufficient indictment and when it failed to order disclosure of health insurance and protective services records. La Plante further asserts the trial court erred when it denied her motion for judgment of acquittal. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the facts in the light most favorable to sustaining the verdicts. *State v. Payne*, 233 Ariz. 484, 509, ¶ 93 (2013). La Plante owned an assisted living facility, House on the Riviera (the "Facility"), in Lake Havasu City between 2010 and 2015. In November 2014, two Facility employees filed reports with Adult Protective Services ("APS"), a division of Arizona's Department of Economic Security. *See* Arizona Revised Statutes ("A.R.S.") § 41-1954(A)(1)(b); Arizona Administrative Code R6-8-201(2). The employees alleged that conditions at the Facility were inadequate and residents were severely neglected. Given the nature of the allegations, APS investigators contacted the Lake Havasu City Police Department ("LHCPD").

¶3 The Facility employees told a detective with LHCPD that, between October and November 2014, they observed: 1) unclean conditions throughout the facility; 2) lack of necessary supplies, equipment, and medications; 3) facility regularly understaffed; 4) residents sitting in their own urine and feces for days at a time; 5) leaking catheters; and 6) insects in food items. These allegations focused on the care of four residents, H.A., J.M., C.H., and R.C. The Facility employees reported that La Plante appeared indifferent to the condition of the facility, made derogatory statements toward residents, and ignored instructions from hospice employees. Both of the Facility employees provided the detective with photographs of the residents and the facility, including photographs of

H.A. with feces up to her face, bedding soiled with dried feces, and insects in food items.

¶4 Hospice employees, who visited the Facility regularly, reiterated the concerns raised by the Facility employees. Hospice employees added that residents suffered pain and redness from sitting in their urine and feces for long periods of time. The widow of J.H., herself a former resident of the Facility, also reported that J.H.'s health deteriorated immediately after arriving at the facility and residents were not adequately fed.

¶5 When the detective, a Department of Health Services employee, and an APS investigator arrived at the facility in December 2014, they did not observe the reported conditions and APS found the allegations unsubstantiated. The Facility employees, however, believed that an APS investigator "tipped off" La Plante regarding the investigation. La Plante denied all allegations, later testifying that the employees filed reports only after becoming angry with her for unrelated reasons.

¶6 La Plante waived her right to a jury and the trial court conducted a bench trial. The trial court found La Plante guilty of the lesser-included mental state of recklessness as to Counts 1, 2, 4, and 5, but granted La Plante's motion for judgment of acquittal as to Count 3. The trial court suspended La Plante's sentence for three years of supervised probation with a 45-day jail term.

¶7 La Plante filed a timely appeal and we have jurisdiction pursuant to Article VI, Section 9 of the Arizona Constitution and A.R.S. sections 12-120.21(A)(1) (2018), 13-4031 (2018), and -4033(A)(1) (2018).

DISCUSSION

I. Sufficiency of the Indictment

¶8 La Plante asserts that the trial court committed fundamental error when it allowed the State to proceed on an indictment that lacked specificity and did not provide sufficient notice of the charged crimes.

¶9 A defendant must object to a defect in the indictment no later than 20 days before trial so that the State may cure any alleged defects. Ariz. R. Crim. P. 13.5(d), 16.1(b), (c); *State v. Anderson*, 210 Ariz. 327, 336, ¶ 17 (2005). If a defendant knew or should have known of the alleged defect in an indictment and failed to make a timely objection, then the court may

preclude any defense based upon the defect. *See* Ariz. R. Crim. P. 16.1(b), (c); *State v. Fullem*, 185 Ariz. 134, 136 (App. 1995).

¶10 Referencing the indictment, the trial court recognized that the distinction between the "timeframes" in the counts appeared arbitrary. The trial court, however, noted the indictment listed one victim per count, requiring "five separate decisions." Moreover, the "timeframes" listed in the indictment all included October and November 2014 and testimony showed the charged crimes occurred within that date range. La Plante never objected to the sufficiency of the indictment.

¶11 By failing to object to the indictment below, La Plante is precluded from doing so now. Even if La Plante were not precluded from raising the issue now, the State is not required to list specific acts committed in each count. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 107–08 (2007) (holding that the indictment, which listed the applicable criminal statute, the date range, and the location of the offense, was sufficient). Any technical defects with the date ranges known to La Plante prior to trial do not constitute prejudicial error. *See* Ariz. R. Crim. P. 13.5(b); *State v. Bruce*, 125 Ariz. 421, 423 (1980).

II. Disclosure of Records

¶12 La Plante argues the trial court committed fundamental error by failing to order the State's disclosure of records generated by United Healthcare Community Plan ("UHC") and APS pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

¶13 We review a trial court's ruling on a *Brady* violation for an abuse of discretion. *State v. Robles*, 182 Ariz. 268, 272 (App. 1995). If a defendant fails to object at trial, we review only for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2005).

¶14 La Plante moved to compel the State's disclosure of UHC records from an audit of the Facility in March 2015 and APS records from an investigation of the Facility between November 2014 and July 2015 regarding resident R.H. In her motions, La Plante included letters addressed to the Facility, which stated: 1) UHC reviewed "charts" of Facility residents, including H.A. and R.H., in March 2015 and gave an audit score of 100%; 2) APS did not substantiate the allegations regarding R.H.; and 3) the Arizona Attorney General's Child and Family Protection Division would only release confidential APS records regarding R.H. if it received a release form signed by R.H. Because R.H. and two other Facility

patients were not listed in the indictment, H.A. is the only victim referenced in the letters from UHC and APS.

¶15 The trial court granted La Plante's motion and ordered disclosure of the UHC and APS records. UHC then moved to vacate the disclosure order, arguing UHC is "a health plan administered by Arizona Physicians IPA, Inc." and "not a state entity." UHC contended that Arizona Rule of Criminal Procedure 15.1 did not apply to it because it is a private entity, that it did not have an opportunity to respond to the motion, and that HIPAA and Arizona law prohibited disclosure of the records. In granting UHC's motion to vacate the disclosure order as to both the UHC and APS records, the trial court specified that it would schedule a hearing on the issue upon request from either La Plante or the State. La Plante neither requested a hearing nor renewed her motion to compel disclosure of the records.

¶16 The trial court granted the State's pretrial motion to compel testimony of the APS investigators. The APS investigators testified that they found no evidence substantiating the abuse or neglect of the residents.

¶17 As established in *Brady*, the State must disclose exculpatory evidence that "is material either to guilt or to punishment." 373 U.S. at 87. The *Brady* rule turns on the issue of materiality, however, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." *United States v. Agurs*, 427 U.S. 97, 109-10 (1976). Accordingly, our courts have found no prejudicial error in cases where the nature of the undisclosed evidence is unknown. *See State v. Acinelli*, 191 Ariz. 66, 70–71 (App. 1997); *State v. Youngblood*, 173 Ariz. 502, 507–08 (1993). It is not enough to speculate that the evidence could be exculpatory.

¶18 The record does not contain a list of items disclosed by the State. Thus, even assuming the State did not disclose the UHC and APS records, we do not know whether those records contained "exculpatory, inculpatory, or neutral" information. *Youngblood*, 173 Ariz. at 507. Although the letters from UHC and APS indicate that H.A. received adequate care in 2015, and certain non-victim residents received adequate care between November 2014 and June 2015, we simply do not know what the records would show regarding all the victims at all relevant times. Moreover, the trial court heard testimony from APS investigators that the allegations associated with this case were unsubstantiated. Nothing from the record indicates that additional information from UHC or APS would have

impacted the trial court's verdict. Indeed, the record suggests that, at best, APS reports would have been cumulative to the APS investigators' testimony. Thus, La Plante has failed to show the records were material under *Brady*.

¶19 Based on the foregoing, the trial court's refusal to order disclosure of the UHC and APS records did not constitute fundamental error.

III. Motion for Judgment of Acquittal

¶20 La Plante argues the trial court erred in denying her motion for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20.

¶21 Under Rule 20, the trial court must enter a judgment of acquittal if there is no substantial evidence upon which a reasonable person could have found guilt beyond a reasonable doubt. *See* Ariz. R. Crim. P. 20(a) (2017); *State v. Davolt*, 207 Ariz. 191, 212, ¶ 87 (2004). We review a trial court's denial of a motion for judgment of acquittal *de novo*. *State v. Parker*, 231 Ariz. 391, 407, ¶ 69 (2013). We review the evidence in the light most favorable to sustaining the verdict. *State v. Borquez*, 232 Ariz. 484, 487, ¶ 9 (App. 2013). Our standard of review "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *State v. Tison*, 129 Ariz. 546, 552–53 (1981) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)).

¶22 The State's case-in-chief included testimony from the two Facility employees, hospice employees, APS investigators, the LHCPD detective, and J.H.'s widow. Photographs taken by the Facility employees were admitted as evidence.

¶23 La Plante moved for judgment of acquittal as to all counts. La Plante argued the evidence did not show her actions rose to the level of criminal abuse or neglect, the evidence did not show she was "tipped off" regarding the APS investigation, and law enforcement did not see any signs of abuse or neglect. La Plante conceded that the State presented evidence of "some negligence, but it's a type of negligence . . . you would expect to see in nursing homes." Although the trial court granted La Plante's motion as to Count 3, it denied the motion as to all remaining counts. The trial court added that it considered witness credibility, the weight of the evidence as to each victim, and the language of the relevant statutory law.

¶24 The trial court ultimately found La Plante guilty of "recklessly" endangering "the person or health" of four vulnerable adults under A.R.S. § 13-3623(B)(2) (2017). In reaching this verdict, the trial court specifically looked to witness credibility and corroborating testimony in applying the facts to each element of the offense. It noted the State presented evidence that the victims qualified as vulnerable adults, La Plante was their primary caretaker, and the conditions of her Facility endangered their health. Giving deference to the trial court's ability to make reasonable inferences from the facts and assess witness credibility, we find that the State presented substantial evidence to support a conviction. The trial court did not abuse its discretion in denying La Plante's motion for judgment of acquittal.

CONCLUSION

¶25 For the foregoing reasons, we affirm the convictions and sentences.

AMY M. WOOD • Clerk of the Court
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