Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-218

JULY TERM, 2017

State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
v.	}	Criminal Division
	}	
	}	
Jennifer Ploof	}	DOCKET NO. 1476-5-15 Cncr
		Trial Judge: Nancy J. Waples

In the above-entitled cause, the Clerk will enter:

Defendant Jennifer Ploof appeals the sentence imposed by the trial court in this case. We affirm.

During the winter of 2015, defendant wrote two checks—one in January for $24.00 and one in February for $585.02—to a local repair shop to pay for repairs to her automobile. The checks were from an account in defendant's father's name. Defendant falsely told the repair shop that she had a power of attorney for her father. Defendant knew that the account had been closed for some time and that the checks would not be honored, but she wanted to retrieve her vehicle. In May 2015, defendant was charged with two felony counts of obtaining property by false pretenses.

At the time defendant wrote the checks, she lived in her father's home with her husband and two children. Defendant's father had Alzheimer's disease and was living with his brother, who had been appointed to be his sole legal guardian in the fall of 2014. Prior to then, father lived in his home and defendant had managed father's finances.

In October 2015, the State charged defendant with financial exploitation of a vulnerable adult, i.e., her father. This charge was joined with the earlier offenses for trial. In May 2016, the State informed the trial court that it intended to dismiss the financial exploitation claim with prejudice, stating: "The plan is just to try the forgery charge and then . . . should it go to sentencing then we would deal with the context of the entire situation. . . . It would include part of that financial exploitation." On May 9, 2016, the parties reached an agreement under which defendant pleaded guilty to an amended charge of two misdemeanor counts of false pretenses.

At the May 24, 2016 sentencing hearing, an investigator with Adult Protective Services (APS) testified for the State. She opened an investigation in September 2014 after receiving a report that defendant may have been financially exploiting her father. The APS investigator learned that defendant's father received a monthly income of more than $3000 from Social Security and his pension. Both defendant and her father told the investigator

that defendant had been taking care of father's finances. However, the investigator learned that defendant had not been paying the mortgage or taxes on her father's house, which was in foreclosure. Father owed $14,000 in state taxes and the electric company had placed a lien on the home due to unpaid bills. Defendant told the investigator that she spent her father's income on a variety of things including cigarettes, meals, household needs, and items for the children.

The APS investigator spoke to father's sister-in-law as part of the investigation. When the State asked if the sister-in-law told her "any information regarding [father's] day-to-day living under the care of [defendant]," defense counsel objected on hearsay grounds. The judge overruled the objection, stating that "I will give it the weight that I think is sufficient based on it sounds like at least maybe there's a double hearsay issue." The investigator said that the sister-in-law told her that she was concerned that father was only having one meal a day, that his clothes were soiled, and that he was not being cared for. The State later called defendant's uncle, who was father's legal guardian. He testified that "we found [father] wearing the same clothes every time I came in, and it may be that he was changing them and we just didn't know, but when I saw the same stain, it began to kind of hit me that you know there's something going on here, you know, we're too busy with our own family."

The State requested the maximum sentence of two years. The court took the matter under advisement and scheduled a second hearing date for June 24, 2016. It invited the parties to submit additional testimony if they wished. Both parties submitted sentencing memoranda, but neither asked to present additional testimony.

At the June hearing, the court asked the State to estimate how much money defendant had taken from her father. The State was unable to give a definite answer, but noted that defendant had admitted to spending $900 per month on cigarettes and $50 to $60 per day on food, although the State conceded that some of that was probably spent for father's benefit. Defense counsel objected that the State was trying to punish defendant for her past history, rather than the bad check charges at hand. The court stated that "in my mind . . . those are aggravating circumstances that I need to consider in terms of what is an appropriate sentence." The court went on to state that

> based on the evidence that's been presented to me for the purposes of sentencing, I find the offense conduct that she pled guilty to, that is, the two charges of the false pretenses of the amended complaint as part of the same common plan or scheme that she devised in terms of using her father's assets to pay for her own enrichment.

The court sentenced defendant to eighteen months to two years, all suspended except for sixty days in jail. The court explained that in fashioning the sentence, it took into account the nature and circumstances of the bad check offenses, the relatively small amount of money involved in those offenses, and defendant's acceptance of responsibility for those offenses. However, it also considered defendant's prior convictions and charges for similar conduct and her more recent victimization of her father. The court noted that defendant's behavior had "set [her] father into financial ruin," and that this was a "big factor" that the court took into account in sentencing. Defendant appealed. We granted defendant's request to stay the incarcerative portion of her sentence pending the outcome of this appeal.

The trial court has broad discretion when imposing a sentence. State v. Ingerson, 2004 VT 36, ¶ 10, 176 Vt. 428. "We will affirm a sentence on appeal if it falls within statutory limits, and it was not derived from the court's reliance on improper or inaccurate information." Id. (citation omitted).

Defendant claims that the sentencing court erroneously overruled defense counsel's hearsay objection to father's sister-in-law's statements to the APS investigator. The Rules of Evidence, which prohibit admission of hearsay at trial unless it fits an exception, do not apply at sentencing hearings. V.R.E. 1101(b)(3); State v. Morse, 2014 VT 84, ¶ 14, 197 Vt. 495. Hearsay may be admitted at sentencing provided that its use is disclosed sufficiently in advance and the defendant has an opportunity to rebut it. V.R.Cr.P. 32(c)(3)-(4). Defendant was notified at least three weeks prior to the sentencing hearing that the State intended to present evidence regarding the financial exploitation allegations, and she had an opportunity to rebut the testimony through cross-examination of the investigator and her uncle or by presenting her own evidence. Under these circumstances, it was not error for the court to admit the testimony.

Defendant argues, however, that her sentence must be reversed because the court improperly relied upon the disputed testimony without making findings as to the reliability of the testimony as required by Criminal Rule 32(c). We disagree. There is no indication in the record that the court relied upon the disputed statements in deciding defendant's sentence. The court discussed the factors upon which it relied, including defendant's pattern of fraudulent behavior and the financial impacts to father that resulted from defendant's actions. The court did not mention the allegations that father was poorly fed and had soiled clothes while living with defendant. Even if the court did consider this information, there is sufficient evidence in the record to support a finding that the disputed testimony was reliable, as the testimony was largely corroborated by defendant's uncle. State v. Decoteau, 2007 VT 94, ¶ 14, 182 Vt. 433, 440 (explaining that presence of corroborative evidence indicates reliability of hearsay testimony). Any error in the lack of findings was therefore harmless.

Defendant also contends that the court improperly based its sentence on the unproven financial exploitation allegations. We have long held that the sentencing court may consider evidence of other criminal acts by a defendant, and any other information, so long as the information is factual, reliable, and not materially untrue. State v. Ramsay, 146 Vt. 70, 81-82 (1985). "Factual reliability is sought through a process of disclosure and opportunity to rebut." Id. at 78; V.R.Cr.P. 32(c)(3)-(4). Here, defendant had advance notice of the challenged information and ample opportunity to respond. The State informed defendant and the court at the May 2, 2016 pretrial conference that it intended to rely upon the financial exploitation allegations at sentencing. The State presented two witnesses who testified to defendant's alleged conduct. Defendant was able to cross-examine those witnesses and to present her own rebuttal evidence. Except for the hearsay objection discussed previously, defendant did not object to the factual information presented by the State's witnesses or present rebuttal evidence regarding the financial exploitation allegations. At the end of the hearing, the court invited the parties to submit additional evidence and indicated that it would provide additional time if necessary. Defendant did not ask to submit any additional evidence despite having a month to do so. We therefore see no reason to remand for resentencing. See State v. Pellerin, 164 Vt. 376, 382-83 (1995) (rejecting defendant's argument that he was denied fair sentencing when court allowed victim from prior trial to testify despite lack of notice to defendant, where defendant was aware that his prior offenses

would be discussed at hearing, had opportunity to cross-examine, and did not request continuance).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice