IN THE SUPREME COURT OF THE STATE OF NEVADA

MILAGROS R. SURATOS A/K/A MILAGROS SURATOS RAYRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53314

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of exploitation of an older person and neglect of an older person causing substantial bodily harm. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Failure to dismiss juror for cause

Appellant Milagros R. Suratos claims that the district court erred in denying her challenge to a member of the venire for cause. The decision whether to remove a prospective juror for cause lies within the broad discretion of the district court. Weber v. State, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005). We conclude that the district court did not err because the prospective juror did not express an opinion regarding the merits of the case and was able to confidently state that, despite her sympathy for vulnerable seniors, she could be a fair and impartial juror and her sympathy would not influence her verdict. See id. at 581, 119 P.3d at 125 (discussing that it would not be error to deny challenge when prospective juror relinquishes previous statement at odds with duty as impartial juror).

Collateral estoppel

Suratos claims that the doctrine of collateral estoppel precluded the State from pursuing the exploitation charge. This claim lacks merit because no issues of fact or law were litigated and determined by the probate court that approved the settlement of the will contest brought by the victim's heirs. See Yates v. United States, 354 U.S. 298, 335 (1957) (confirming that doctrine, if applicable, may bar subsequent criminal case even when prior proceedings were civil), overruled on other grounds by Burks v. United States, 437 U.S. 1, 18 (1978); see also Five Star Capital Corp. v. Ruby, 124 Nev. ___, ___, 194 P.3d 709, 713 (2008) (explaining the four factors necessary for issue preclusion to apply).

Sufficiency of the evidence

Suratos claims that insufficient evidence was adduced at trial to support the convictions. When reviewing the sufficiency of evidence, we determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (internal quotation marks omitted). The jury was presented evidence that Suratos (1) intentionally administered the 88-year-old victim excessive doses of narcotics, an unprescribed blood thinner, and alcoholic spirits, (2) knowingly failed to secure the depressed victim's medications, enabling him to access them and attempt suicide, (3) waited over 12 hours before obtaining medical care for the victim after he suffered a fall that fractured his pelvis, caused severe bruising, and was accompanied by gastrointestinal bleeding, (4) gained the trust and confidence of the victim, (5) exploited his fears of going into a nursing home, (6) took control over all of the victim's assets

within a short period of time after taking over his care, and (7) withdrew over $7,000.00 from the victim's account for her own purposes. The jury was also presented evidence that the victim suffered substantial bodily harm as a result of Suratos' actions. We conclude that a rational juror could have found, beyond a reasonable doubt, that Suratos committed neglect of an older person causing substantial bodily harm, see NRS 200.5092(4); NRS 200.5099(2), (7), and exploitation of an older person, see NRS 200.5092(2); NRS 200.5099(3)(c). It is for the jury to determine the weight and credibility to give conflicting testimony, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981), and we decline Suratos' invitation to depart from our precedent on this issue by conducting an independent evaluation of the evidence to resolve conflicting evidence differently from the jury. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See id.; see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Jury instructions

Suratos claims that the district court erred by refusing to give five proposed jury instructions incorporating her theories of defense. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Rose, 123 Nev. at 204-05, 163 P.3d at 415 (internal quotation marks omitted).

We conclude that the district court did not err by refusing to give Suratos' proposed instructions on administrative violations, superseding cause, and collateral estoppel because they misstated the applicable law or were not supported by the evidence. See Vallery v. State, 118 Nev. 357, 373-74, 46 P.3d 66, 77-78 (2002) (holding that

defendant in elder abuse case was not entitled to instruction erroneously stating that violation of regulations is not a criminal act, or to instruction on superseding cause when evidence showed conduct at issue was, at most, a concurrent, contributing cause); Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005) (district court need not accept misleading, inaccurate or duplicitous jury instructions); see also Adler v. State, 95 Nev. 339, 346, 594 P.2d 725, 730 (1979) (holding that defendant was not entitled to theory instruction that was not a defense to the crime).

The district court refused both the State's and Suratos' proffered instructions defining undue influence because there is no Nevada authority defining the term as it relates to the elder abuse statutes and the term is used in ordinary language. See NRS 175.161(2), (3) (providing that the district court instructs the jury as it "thinks necessary" and must refuse instructions that are not pertinent). We note that the term undue influence was partially defined in an instruction given to the jury and the definition proffered by Suratos would not have provided a complete theory of defense because undue influence was only one theory under which the jury could have found exploitation. See NRS 200.5092(2)(a); see also Adler, 95 Nev. at 346, 594 P.2d at 730 (upholding district court's refusal of instruction because, in part, the theory was not a complete defense). Therefore, we conclude that the district court did not abuse its broad discretion or commit judicial error by refusing this instruction.

Finally, we conclude that the district court erred by refusing Suratos' proposed instruction defining "reasonable cause to believe." See NRS 200.50925(1). However, we conclude that the error did not contribute to the jury's verdict and therefore this error was harmless and no relief is

warranted. See Crawford v. State, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005).

Cumulative error

Finally, Suratos contends that cumulative error deprived her of a fair trial. Balancing the relevant factors, we conclude that the cumulative effect of the errors did not deprive Suratos of a fair trial and no relief is warranted. Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 481 (2008) (three factors are relevant to cumulative error: "'(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged'" (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000))).

Having considered Suratos' claims and determined that they lack merit or do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk