

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN LEE BENJAMIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58118

FILED

FEB 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of exploiting an older or vulnerable person. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

In 1993, Kelly Six befriended the victim while they were living in a mobile-home park. As time passed, the victim inherited a large sum of money and purchased a home. In 2008, the victim was hospitalized for dementia and Six obtained a power-of-attorney over her affairs. After officials inspected the victim's residence and deemed it uninhabitable, Six decided to sell the residence. She sought out appellant Robin Lee Benjamin—a real estate broker—to sell the distressed property. Six and Benjamin met and discussed the methods and advantages of moving assets out of the victim's name. Benjamin agreed to buy the property, took title, and issued notes payable to the victim. Benjamin then transferred the home to a non-profit business which she owned—creating the appearance of an unencumbered title. Benjamin also incorporated Wildlife Images for Six. Several weeks later, Six wrote a \$170,000 check to Benjamin from the victim's account. Benjamin endorsed the check and deposited it into Six's Wildlife Images account. On appeal, Benjamin raises two contentions.

First, Benjamin asserts that insufficient evidence supports a conclusion that she aided Six in exploiting the victim or conspired with Six to exploit the victim. We disagree. Benjamin and Six discussed possible methods to take the victim's property, and Benjamin endorsed and deposited checks written from the victim's account into the Wildlife Images account. All of these events occurred while the victim was suffering from dementia. Viewed in the light most favorable to the prosecution, a rational juror could reasonably infer that Benjamin aided or conspired in exploiting the victim. See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (stating review standard for sufficiency of evidence).

Second, Benjamin contends the trial court erred by failing to instruct the jury that conspiracy was a specific intent crime. Benjamin complains that the jury instructions—specifically 23, 24, and 25—failed to inform jurors that they must find that Benjamin conspired specifically to exploit the victim. Because Benjamin failed to object at trial, we review this claim for plain error affecting her substantial rights. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). No error occurred, as the jury instructions as a whole correctly informed the jury that the offense required specific intent. See Greene v. State, 113 Nev. 157, 167-68, 931 P.2d 54, 61 (1997) (holding that jury instructions must be viewed in the context of the overall charge, not in isolation), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000). Specifically, instruction 20 explained the elements of the crime and instructed the jury that it could find Benjamin guilty only if she aided and

abetted or conspired in the conversion of the victim's assets.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk