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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ANNIE MY TRAN, Defendant and Appellant.	B281201 (Los Angeles County Super. Ct. No. BA438535)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Colleen M. Tiedemann, Michael Katz, and Samuel P. Siegel, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant challenges her conviction for theft from an elder (Pen. Code, § 368, subd. (d)), arguing that it was not supported by substantial evidence. She also argues the trial court prejudicially erred in admitting evidence of prior uncharged acts and a recorded telephone conversation between the victim and an insurance representative. We disagree with these contentions and affirm.

FACTUAL AND PROCEDURAL SUMMARY

On March 14, 2016, appellant was charged by information with violation of Penal Code section 368, subdivision (d), theft from an elder. The information alleged that appellant committed theft against the victim, Dr. Peter Shugarman, "[o]n or between January 1, 2010 and April 20, 2012." Appellant pleaded not guilty and the case was called for a jury trial in May 2016.

Appellant and Dr. Shugarman, a professor at the University of Southern California (USC), first met in 1999, when appellant was a student at USC. Appellant attended one of Dr. Shugarman's classes. She met with him to request a letter of recommendation and they spoke for three hours. After that meeting, they began to meet for breakfasts and dinners on a regular basis. These meetings continued until 2011. Appellant stated that their relationship was a nonromantic friendship. Appellant referred to herself as Dr. Shugarman's "goddaughter." Dr. Shugarman may also have stated that appellant was his "goddaughter" in conversation with a colleague. In 2012, Dr. Shugarman was 84 years old and appellant was 31 years old.

Between August 15, 2005 and January 16, 2012, Dr. Shugarman made out several checks to appellant, totaling over $281,000. This included checks totaling $38,599.95 during the charged period from January 1, 2010 to April 20, 2012. On January 16, 2012, appellant accepted a check from Dr. Shugarman for $1,000. Most of the checks had the word "loan"

written in the memo line, but there was no evidence that appellant repaid Dr. Shugarman.

Before trial, the prosecutor filed a motion in limine to admit all of the checks from Dr. Shugarman to appellant, arguing they were admissible as business records under Evidence Code section 1271. At the hearing on this motion, the prosecutor argued the checks written prior to the charged period were admissible as prior uncharged acts under Evidence Code section 1101, subdivision (b) to show motive, intent, and common scheme or plan. Appellant's counsel objected, but did not provide a basis for the objection. The court said to appellant's counsel: "If we have checks that begin in 2005, it seems to support statements that you made in opening statement yesterday that this is a relationship that was in place for a number of years, long before anyone suspected that Dr. Shugarman was lacking capacity to write these checks."[1] Appellant's counsel agreed that this was a correct statement of her position. The court asked again if she wanted to object and she stated she wanted to think about it.

When the trial court later revisited the issue, appellant's counsel stated she was "leaning towards . . . let[ting] it all come in." When asked if she maintained her objection to the admission of the checks dated before the charged period, she replied affirmatively, but again did not state the basis of the objection. The court admitted the checks as prior uncharged acts under Evidence Code section 1101, subdivision (b) to show motive, intent, and common scheme or plan, stating that the evidence

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[1] Appellant's counsel had argued in her opening statement that appellant and Dr. Shugarman had a relationship for 17 years and that "during that relationship, Dr. [Shugarman] made loans and gifts of money to [appellant]."

was probative with respect to both parties' theories of the case and had minimal prejudicial value.

According to Dr. Shugarman's colleague, Dr. Albert Herrera, in the mid-2000s, students began to complain about Dr. Shugarman's teaching. Their complaints increased over time. Around that time, Dr. Herrera also observed that Dr. Shugarman's "mental function[ing] was deteriorating." He noticed that Dr. Shugarman would repeat the same conversation he had had with him only a few days before. He felt that by the late 2000s Dr. Shugarman's mental decline was "apparent from talking with him."

Another of Dr. Shugarman's colleagues, Linda Bazilian, stated that in 2003 the school began to receive complaints from students and teaching assistants about Dr. Shugarman's teaching. Dr. Shugarman's teaching load was reduced in 2003. In December 2011, Bazilian noticed that Dr. Shugarman was wearing the same clothing every day over a period of weeks and that he appeared to have lost weight.

In January 2012, Bazilian was summoned to Dr. Shugarman's office from her office by another colleague. She found Dr. Shugarman sitting at his desk, looking upset and scared. He was looking around the room with wide eyes, shaking and appearing confused. She asked him what date it was, to name the President of the university was, and to say who was the President of the United States. He could not answer any of these questions. She told her colleague to call the university police, which he did.

Dr. Shugarman was taken to California Hospital, where he was evaluated by Dr. Litos Mallare, a physician with a specialization in psychiatry, to assess his capacity to make medical decisions. Dr. Mallare stated Dr. Shugarman's "goddaughter" was present during the evaluation. Dr. Mallare

noted that Dr. Shugarman had a history of dementia. He had been taking dementia medication since 2008. He informed Dr. Shugarman and his "goddaughter" about the dementia diagnosis. Dr. Mallare determined that Dr. Shugarman had the capacity to make medical decisions and discharged him from the hospital. During his time at California Hospital, Dr. Shugarman also was evaluated by a neurologist who concluded that he had advanced or severe dementia.

Following discharge from California Hospital, Dr. Shugarman moved to a convalescent hospital. He told Daniel Distefano, an administrator there, that he did not know how much money he had or how he could find out. Distefano noticed that appellant was listed as the agent in a durable power of attorney document dated January 14, 2012. Distefano believed the document was void because Dr. Shugarman had diminished capacity when it was signed. Based on this concern, Distefano contacted Adult Protective Services and the Office of the Public Guardian.

During his stay at the convalescent hospital, Dr. Shugarman was evaluated by Dr. Jared Kliger, a psychologist, to determine his medical and financial capacity. Dr. Kliger concluded that Dr. Shugarman had moderate dementia, and lacked the capacity to make medical and financial decisions as of March 2012. Dr. Kliger stated that he could not say for certain whether Dr. Shugarman had lacked financial capacity two months before, in January 2012, but that in general, financial capacity would not change over a period of two months.

Dr. Shugarman also was evaluated by Dr. Diana Homeier, a geriatrician, who concluded that he was experiencing moderately severe to severe stages of Alzheimer's disease. She concluded that Dr. Shugarman lacked capacity to make medical or financial decisions. She was certain that Dr. Shugarman

lacked financial capacity in 2010 and thereafter, based on her understanding of the progression of Alzheimer's disease and her review of his medical records. She explained that she reached this conclusion by consulting medical literature on the topic of financial capacity at different stages of the progression of Alzheimer's disease. She described his symptoms in 2012 when she examined him and explained how these symptoms would typically have manifested at earlier stages of the disease.

She concluded Dr. Shugarman lacked the capacity to consent to any financial transaction during the entire charged period, from January 2010 to April 2012. Dr. Shugarman had told her that he had loaned appellant about $100 and did not expect her to repay him. He told her he believed he would only loan another person a couple of hundred dollars. He stated there was no way he would lend someone over $10,000.

Dr. Homeier's testimony was based in part on her analysis of a telephone recording of Dr. Shugarman speaking to an insurance company representative in December 2011. Appellant argued the recording should not be admitted because it lacked foundation and constituted hearsay. The recording was played for the jury over appellant's objection. In the recorded conversation, Dr. Shugarman had difficulty entering a web address into a web browser and mistakenly attempted to input the address into an e-mail. Dr. Herrera testified that he recognized the voice on the phone call to be that of Dr. Shugarman. Dr. Homeier stated that the recording demonstrated that Dr. Shugarman had difficulty processing information and had forgotten how to use the Internet, indicating memory problems.

The jury was instructed in terms of CALCRIM No. 1800, which provides that theft is a taking of property without consent of the owner. The instruction states that "if the owner

of . . . property is, at the time of the taking, incapable, because of mental disorder, of giving legal consent, and this capacity is known or reasonably should be known to the person committing the act, then the taking is without consent."

The jury found appellant guilty as charged. The trial court sentenced her to the high term of four years in county jail, but suspended two years of the sentence.

This appeal followed.

DISCUSSION

I

Appellant argues that substantial evidence did not support the claim that Dr. Shugarman lacked financial capacity in 2010 or the claim that appellant knew or should have known that Dr. Shugarman lacked financial capacity. We disagree.

We review the record in the light most favorable to the judgment to determine whether substantial evidence supports the determination below. (*People v. Fulcher* (2006) 136 Cal.App.4th 41, 52.) In conducting this review, "[w]e may not determine the credibility of witnesses, nor reweigh any of the evidence, and we must draw all reasonable inferences in favor of the judgment below. [Citation.]" (*Ibid.*)

Appellant argues that of the many doctors who testified as expert witnesses in this case, only Dr. Homeier testified that Dr. Shugarman was incapable of consenting to financial transactions as early as January 2010. Appellant relies on statements made by other doctors, Dr. Mallare and Dr. Broadhead, who examined Dr. Shugarman, arguing that their testimony undermines Dr. Homeier's conclusion.

The testimony of a single witness, including an expert witness, may be sufficient to constitute substantial evidence of a particular fact at issue, unless the expert's testimony is purely

speculative. (*People v. Wright* (2016) 4 Cal.App.5th 537, 545-546.) Expert opinion testimony is considered speculative "when unaccompanied by a reasoned explanation illuminating how the expert employed his or her superior knowledge and training to connect the facts with the ultimate conclusion." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) Appellant implies that Dr. Homeier's testimony with respect to Dr. Shugarman's mental state in 2010 was speculative because she examined him for the first time in 2012. Dr. Homeier based her conclusion regarding Dr. Shugarman's capacity in 2010 on her diagnosis of his Alzheimer's disease and her understanding of the progression of that disease. Her opinion testimony was accompanied by a reasoned explanation of how she used her knowledge and training, by consulting the medical literature and examining Dr. Shugarman and his medical records, to reach this conclusion. Her testimony was sufficient to support the finding that Dr. Shugarman lacked financial capacity in 2010.

The jury was entitled to disregard other expert opinion if it found that opinion unreasonable. (See *People v. Townsel* (2016) 63 Cal.4th 25, 48.) The jury was not bound to accept testimony by Dr. Mallare and Dr. Broadhead which was inconsistent with Dr. Homeier's testimony.

Appellant also claims there is no evidence that any other person who knew Dr. Shugarman realized he was unable to consent to financial transactions prior to late 2011. The jury was instructed that appellant could be found guilty of theft if she knew *or should have known* that Dr. Shugarman lacked the capacity to consent to financial transactions. There was abundant evidence that those who had contact with Dr.

Shugarman during the charged period should have known that he could not consent to financial transactions. His colleagues and doctors describe him as a person with deteriorating mental faculties and apparent memory problems who exhibited strange behavior, such as wearing the same clothes every day. Since appellant shared meals every week with Dr. Shugarman until 2011, it is reasonable to infer that she witnessed the same symptoms as others around him.

Dr. Mallare testified that he informed Dr. Shugarman's "goddaughter," whom it is reasonable to conclude is appellant, regarding his dementia diagnosis on January 9, 2012. Appellant accepted a check for $1,000 from Dr. Shugarman on January 16, 2012, after Dr. Mallare gave her this information. As respondent argues, this alone would be sufficient to constitute theft from an elder under Penal Code section 368, subdivision (d), which requires theft of more than $950. Based on her knowledge of his symptoms and diagnosis, it was reasonable for the jury to conclude that appellant knew or should have known that Dr. Shugarman was mentally unable to consent to financial transactions.

II

Appellant argues the trial court prejudicially erred in admitting a recording of a telephone conversation between Dr. Shugarman and an insurance representative. We disagree.

Since errors involving the routine application of state evidentiary law do not implicate federal due process (*People v. Henriquez* (2017) 4 Cal.5th 1, 29), this claim is reviewed under the *Watson* standard. (*People v. Watson* (1956) 46 Cal.2d 818, 836 [reversal not required unless it is reasonably probable defendant would have obtained better result absent error].) Any

error with respect to the admission of the telephone recording was harmless under this standard.

The telephone recording evidence was used to further bolster Dr. Homeier's claim that Dr. Shugarman was financially incapacitated during the charged period. As we have discussed, that claim was amply supported by Dr. Homeier's other testimony regarding her use of medical records, examination of Dr. Shugarman and consultation of the medical literature on Alzheimer's Disease. Even had the telephone recording been excluded, there still would have been substantial evidence that Dr. Shugarman was financially incapacitated during the charged period. We conclude that it is not reasonably probable that the outcome would have been different had the telephone recording not been admitted.

III

Appellant argues the trial court erred in admitting checks made out to her before the charged period from January 2010 to April 2012. Because appellant's attorney failed to preserve this objection for appeal, the argument is forfeited. Evidence Code section 353 provides that a claim of erroneous admission of evidence on appeal must be supported by a trial court record which includes "an objection to or a motion to exclude or to strike the evidence that was timely made and *so stated as to make clear the specific ground of the objection*." (Evid. Code, § 353, subd. (a), italics added; *People v. Doolin* (2009) 45 Cal.4th 390, 438 [claim of erroneous admission of evidence is preserved for appeal if objection in trial court included the basis on which exclusion was sought]; *People v. Carter* (2003) 30 Cal.4th 1166, 1207 [failure to specify grounds upon which objection rests forfeits argument on appeal].) Here, appellant's trial counsel stated she objected to the admission of checks from the pre-charge period, but she did not state the basis for her objection. Because appellant's trial

attorney failed to state the grounds of her objection, arguments on this point may not be raised for the first time on appeal. (*People v. Carter*, *supra*, at p. 1207.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.