Affirmed and Opinion Filed June 28, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00963-CR

AURORA SONANO REYES, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 2-17-0510

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Partida-Kipness
Opinion by Justice Partida-Kipness

Appellant Aurora Sonano Reyes appeals her conviction for injury to an elderly individual with intent to cause serious bodily injury. In four issues, appellant contends the trial court abused its discretion in denying her motion for continuance to address the State's late production of evidence, excluding medical records offered during both the guilt/innocence and punishment phases of trial, and excluding an audio recording of the event that gave rise to the charges against her. We affirm the trial court's judgment.

BACKGROUND

Aurora, her husband Richard Allen Nichols, Jr., and their adopted daughter Rhori Tess Reyes Nichols (Tess) lived in Rockwall County. Tess, who Aurora and Richard adopted at birth, was born to Aurora's sister in 2004. In October 2015, Andres Reyes moved in with the family. Andres was Aurora's biological father and Tess's biological grandfather. He was 85 years old when he moved in. According to Richard and Tess, Aurora exercised strict control over her household, despite suffering from multiple medical issues, including cancer, and occasionally using a wheelchair and oxygen mask. Tess testified that Aurora "decided everything," including inviting Andres to live with them.

The family got along with one another for a couple of weeks after Andres arrived, but "[t]hings got violent" shortly thereafter, according to Tess. Both Tess and Richard testified that Aurora would physically and verbally abuse Andres as "punishment" for his allegedly bad behavior. Specifically, Aurora would order Andres to kneel before her as she sat on the sofa in the living room, where she spent much of her time. With Andres kneeling before her, Aurora would yell at him and hit him. She would also use objects as part of the physical abuse, including a cutting board to hold his head up and soda bottles she would "poke" into his eyes. These sessions would sometime last hours. When she would tire of hitting Andres or when Andres would fall over, Aurora would summon Richard to hit him until he got back up on his knees. She occasionally ordered Tess to participate in the abuse too.

This routine of abuse continued for months, until June 1, 2017. When Tess returned from school on that day, she found Andres again kneeling in front of the sofa on which Aurora was seated. Richard was away at work. Tess observed cuts, bruises, and blood on Andres's face, and heard him moaning in pain and asking to get up. Tess went about her chores and left Aurora and Andres in the living room. While doing her chores, Tess observed Aurora hitting Andres with "[a] cane, her hand, [and] a chopping [cutting] board." The cane was a metal, four-legged cane Richard had purchased for Aurora. Tess observed Aurora holding the cane at the bottom, near the legs, and hitting Andres with the other end. She also observed Aurora ordering Andres to wipe the blood from his face, then getting angry when he did not do it the way she instructed. Aurora also held the cutting board under Andres's chin to lift his face up and prevent the blood from dripping down.

Richard arrived home from work about 7:00 p.m. and found Aurora still "punishing" Andres in the living room. Richard immediately went into the bedroom to "pay a septic tank bill" and avoid the situation in the living room. When Richard later entered the living room, he found Andres lying on the floor. Aurora told Richard that she was tired and ordered him to get Andres back up on his knees. She gave him the cane and told him to use it on Andres, which he did. When Andres returned to his knees, Richard left the room. When Richard reentered the living room, Andres "was fallen back down." Aurora again ordered Richard to strike

Andres with the cane until he returned to his knees, and Richard did. Andres fell a third time, and Richard again struck Andres with the cane on Aurora's orders.

Andres later collapsed again, holding his stomach. Richard alleged that Andres had previously faked injury, but he appeared to be genuinely injured this time. Aurora ordered Tess to bring some water, and Andres drank a little. Aurora had "had her satisfaction" with Andres at that point and stopped hitting him. Richard told Aurora that they needed to take Andres to the hospital. Aurora resisted, saying they would get in trouble. She then ordered Richard to massage Andres's feet, got up and went into the bathroom to get ready for bed.

Andres became unconscious, and Richard performed CPR and called 911. An ambulance arrived and transported Andres to the hospital. Richard gathered up bloody rags and tissues that had been used to wipe blood from Andres's face and the cane. He also grabbed a digital audio recording device he had placed in the living room several months prior. Richard put the rags, tissues, and recorder in his vehicle and drove himself and Aurora to the hospital. Shortly after they arrived at the hospital, a hospital chaplain notified Richard and Aurora that Andres had died. Hospital staff also contacted police to report the suspicious death.

Police officers arrived at the hospital shortly thereafter and interviewed Richard and Aurora in separate rooms. After initially omitting facts that occurred before Andres collapsed, Richard later told the police "everything" that happened on June 1, 2017. Richard also gave the recorder to police and gave consent for police

to retrieve the bloody rags and tissues from his vehicle and the cane from his house. Aurora told police that she was not physically able to speak with police, saying, "I can barely speak." According to the interviewing officer, Aurora "looked very sickly" and was slumped in her wheelchair while wearing an oxygen mask. Despite her alleged inability to speak, Aurora briefly said that Andres had been acting like his stomach was sore, was beating on his stomach, and fell out of his chair after Richard came home. She said that she went to the bathroom and did not know what happened after that. Police placed Richard under arrest and went to his house to retrieve the cane and take photographs.

The medical examiner determined that Andres had suffered multiple blunt-force injuries to the head, trunk, and extremities. Specifically, there were twenty-seven injuries, including ten blunt-force injuries to Andres's trunk. Andres also suffered multiple rib fractures, some of which were consistent with the performance of CPR. The medical examiner also noted during trial that Andres had approximately fifty milliliters of blood in his left pleural cavity that he attributed to broken ribs puncturing blood vessels. He considered the non-resuscitative rib fractures to be serious bodily injuries because such injuries make it difficult to breathe and cause internal bleeding. The medical examiner also noted multiple defensive injuries to the back of Andres's arms and hands. The injuries on Andres's knees, however, were not defensive and showed evidence of healing. Thus, the medical examiner concluded they occurred before the other "fresh" injuries. The "fresh" injuries were

consistent with being struck by a metal cane and a person's hand. The medical examiner concluded Andres died from blunt-force trauma, the effect of which was amplified by Andres's age and frail physical condition caused by numerous pre-existing medical conditions.

Police arrested Aurora on June 5, 2017, based on information obtained from Tess in the days following June 1, 2017. A jury convicted her of injury to an elderly individual with intent to cause serious bodily injury and sentenced her to life in prison and assessed a $10,000 fine. This appeal followed.

ANALYSIS

Aurora raises four issues on appeal, contending the trial court abused its discretion in (1) denying her motion for continuance to address evidence offered by the State one week before trial, (2) excluding medical records offered by Aurora to establish her inability to commit the alleged offense, (3) excluding the same medical records offered during the punishment phase to mitigate the degree of punishment assessed, and (4) admitting an audio recording from Richard's digital recorder. We address each issue in turn.

A. Motion for Continuance

In her first issue, Aurora contends the trial court abused its discretion in denying her motion for continuance to address twenty-three pages of documents produced by the State one week before trial. The State contends the documents were not late discovery production but merely preemptive disclosure of facts supporting

anticipated expert opinion testimony. The State contends further that it met its expert disclosure requirements by timely noticing the expert, and that no further production was required. We agree.

We review the denial of a motion for continuance for an abuse of discretion, giving a wide degree of deference to the trial court. *Gallo v. State*, 239 S.W.3d 757, 764 (Tex. Crim. App. 2007); TEX. CODE CRIM. PROC. art. 29.06(6). An appellant claiming the erroneous denial of a motion for continuance must show that (1) the trial court erred in denying the motion for continuance, and (2) such denial harmed her in some tangible way. *Gonzales v. State*, 304 S.W.3d 838, 843 (Tex. Crim. App. 2010). To demonstrate the ruling was in error "most likely requires a showing that the case for delay was so convincing that no reasonable trial judge could conclude that scheduling and other considerations as well as fairness to the State outweighed the defendant's interest in delay of the trial." *Id*. (internal citation omitted). To show harm, the defendant must demonstrate "with considerable specificity" how she was harmed by the lack of additional time to prepare. *Id*. We consider the circumstances of the case and the reasons given to the trial court at the time the request is made, and we bear in mind the general interest in the prompt and efficient administration of justice. *Rosales v. State*, 841 S.W.2d 368, 374 (Tex. Crim. App. 1992).

Aurora submitted her request for discovery from the State on November 6, 2018. She alleged that her counsel obtained what he thought was a complete copy of the State's file in response to that request. On July 1, 2019, one week before trial,

the State produced an additional twenty-three pages of documents. These documents included a statement of qualifications for forensic scientist Clare S. Moyers, a biological evidence screening worksheet, a laboratory information sheet concerning recovery of evidence from the cane and bloody tissues and rags, and charts containing analysis of the biological material obtained from these objects. Aside from the statement of qualifications, Aurora contends the documents were untimely discovery production. Aurora moved for a continuance to allow "additional time to prepare for trial and to assess these late disclosures." The trial court heard and denied Aurora's motion.

According to Aurora, article 39.14(a) of the code of criminal procedure controlled the timing of the State's production, including the documents at issue. Relevant to Aurora's argument, article 39.14(a) requires the State "as soon as practicable after receiving a timely request from the defendant" to produce "any designated documents, papers, . . . or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state." TEX. CODE CRIM. PROC. art. 39.14(a). She contends on appeal, as she did in her motion for continuance, that the State's production on July 1, 2019, was untimely under article 39.14(a).

The State contends, however, that its production of the documents is not controlled by article 39.14(a) but article 39.14(b) and rule of evidence 705. Article

39.14(b) requires a party, upon request of another party, to disclose only "the name and address of each person the disclosing party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence." TEX. CODE CRIM. PROC. art. 39.14(b). According to the State, it had no obligation to produce documents under article 39.14(b) because the statute requires only disclosure of testifying expert name and address. Recognizing, however, that it may be required on cross-examination to produce the documents as facts or data underlying Moyers's expert opinion, it produced the documents preemptively to expedite the trial process. *See* TEX. R. EVID. 705(a) (an expert may be required to disclose facts or data underlying an opinion on cross-examination). The parties do not dispute that the State met the requirements of article 39.14(b) and rule of evidence 705.

We agree that the documents in question were facts and data supporting Moyers's testimony and the State had no obligation to produce the documents under article 39.14(b). At trial, Moyers testified to her role in processing the cane and bloody tissues and rags to recover biological material and conducting DNA analysis of that recovered material. She also testified to her interpretations of the DNA profiles generated by that analysis. At the close of direct examination, the State offered into evidence Moyers's statement of qualifications and DNA laboratory report. Aurora cross-examined Moyers but only asked Moyers when she received the cane and bloody tissues and rags. She did not question the basis of Moyers's

opinions or analysis, and the State did not offer the contested documents into evidence.

Aurora also did not explain in her motion how the State's production of the documents prejudiced her defense. Rather, she merely sought "additional time to prepare for trial and to assess these late disclosures." A mere statement that "counsel did not have enough time to prepare an adequate defense does not demonstrate prejudice." *Dotson v. State*, 146 S.W.3d 285, 297 (Tex. App.—Fort Worth 2004, pet. ref'd) (citing *Janecka v. State*, 937 S.W.2d 456, 468 (Tex. Crim. App. 1996)). Accordingly, we overrule Aurora's first issue.

B. Exclusion and Admission of Evidence

Aurora's second, third, and fourth issues concern the exclusion and admission of evidence. In her second issue, Aurora contends the trial court erred by excluding medical records she introduced to show that she was not physically capable of committing the charged offense. In her third issue, she contends the trial court erred by excluding the same medical records offered to mitigate her sentence. In her fourth issue, she contends the trial court erred by admitting an audio recording of her and Andres taken from Richard's digital audio recorder.

We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Khoshayand v. State*, 179 S.W.3d 779, 784 (Tex. App.—Dallas 2005, no pet.). "We review the trial court's ruling in light of what was before it at the time

the ruling was made and uphold the ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case." *Id*.

1. Exclusion of Medical Records at Trial

The record reflects that Aurora moved during trial to enter voluminous medical records to negate an element of the charged offense by proving that she was physically unable to assault Andres as the State alleged. According to Aurora, the records were necessary to counter the State's witness testimony that "diminished or demeaned" her medical conditions.

Outside the presence of the jury, she proffered the testimony of registered nurse William Brent Smith as an offer of proof for the records. Smith testified that he had reviewed the records but had never met or treated Aurora. From his review of the records, Smith noted that Aurora suffered from numerous medical conditions, including myeloid leukemia, that he characterized as "almost chronic." When pressed as to whether leukemia would "incapacitate[] a person's ability . . . to commit acts" like those alleged here, Smith stated that as a nurse, he did not have the capability to diagnose, but that a physician could have made such a determination. He did not offer that the records contained any such determination. On cross-examination, Smith confirmed that he could not testify whether Aurora would not be able to commit the physical acts alleged. He also confirmed that he could not testify that Aurora would not be able to assist in the commission of the offense by soliciting, encouraging, directing, or attempting to aid another to commit

the offense. We conclude Smith's testimony did not establish that the records were relevant to disprove any element of the charged offense. Accordingly, the records were not relevant and were not admissible.

Moreover, the jury heard testimony from the State's witnesses, including Richard and an investigating detective, regarding Aurora's medical conditions. This testimony addressed Aurora's cancer diagnosis and treatment, and her use of a wheelchair and oxygen mask. Thus, any error in excluding the medical records was harmless. *See Ray v. State*, 178 S.W.3d 833, 836 (Tex. Crim. App. 2005) (constitutional error is harmless if defendant did not demonstrate excluded evidence was important to her defense; non-constitutional error is harmless if we are "fairly assured that the error did not influence the jury or had but a slight effect"). Accordingly, we overrule Aurora's second issue.

2. Exclusion of Medical Records at Sentencing

During the punishment phase of trial, Aurora offered the same medical records to mitigate her punishment by demonstrating her current medical condition. The State objected that many of the records contained hearsay and were not relevant to because they addressed only her medical condition at the time of the offense. The State conceded, however, that records establishing Aurora's current condition would be admissible. When asked by the trial court whether any of the offered exhibits met this criterion, Aurora indicated that exhibits eight and nine showed her current

condition. The trial court admitted these exhibits and excluded the remaining exhibits.

On appeal, Aurora contends the medical records were necessary to defend the State's attempt to describe her as "manipulatively using falsified medical conditions as a means to evade probation." According to Aurora, "the State's argument against probation was predicated on her medical conditions," and the State opened the door for the records by offering the testimony of community supervision officer Steven Thomas, who testified that manipulative persons were not typically good candidates for probation. We disagree.

Thomas testified that, in his experience, manipulative persons do not make good candidates for probation because they "work harder to get out of their conditions than they do just actually doing their conditions." Nothing in his testimony implied that Aurora had or would use false medical conditions to avoid probation conditions. Indeed, Thomas testified that probation conditions can be altered or even waived for documented medical conditions. The only other testimony proffered by the State was that of Richard and Eleanor Reyes Nichols, Tess's biological sister and Richard and Aurora's adopted daughter. Although they testified to Aurora's manipulative behavior, they neither directly nor indirectly accused Aurora of manipulatively using falsified medical conditions to her benefit.

Regardless, Aurora failed to segregate and offer the admissible portions of the medical records in response to the State's objection that the records contained

inadmissible hearsay. The trial judge is not required to sort through the evidence offered to determine which statements are potentially admissible under the theory proposed by the party offering the evidence. *Willover v. State*, 70 S.W.3d 841, 847 (Tex. Crim. App. 2002). "When a trial judge is presented with a proffer of evidence containing both admissible and inadmissible statements and the proponent of the evidence fails to segregate and specifically offer the admissible statements, the trial court may properly exclude all of the statements." *Id*.

Likewise, on appeal, she admits that some excluded records do not address her current medical condition, yet she fails to identify what portion of these voluminous records the trial court should have admitted. We are not obligated to search the record for evidence supporting her argument. TEX. R. APP. P. 38.1(i); *Lucio v. State*, 351 S.W.3d 878, 896 (Tex. Crim. App. 2011); *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008) (stating that the court "has no obligation to construct and compose appellant's issues, facts, and arguments 'with appropriate citations to authorities and to the record'"), *cert. denied*, 555 U.S. 1050 (2008). Accordingly, we overrule Aurora's third issue.

3. Admission of the Audio Recording

In her fourth issue, Aurora contends the trial court abused its discretion by admitting an audio recording of herself and Andres obtained from Richard's digital recorder. According to Aurora, she did not consent to the recording. The State contends otherwise.

At trial, Richard testified that he had purchased a digital audio recorder in December 2016. At some point before June 1, 2017, he placed it on a shelf in the living room. The recorder was always on but was sound activated, so it did not record silence. The recorder would stop when full. Every few days, Richard would download the audio to his computer, erase the recorder, and put it back.

Richard testified that he took the recorder with him when he went to hospital on June 1 and gave it to the investigating detective "right off the bat." The recorder was admitted into evidence over Aurora's objections. Outside of the presence of the jury, the trial court heard argument on the admissibility of the audio recording that police obtained from the recorder. The question before the trial court was whether Aurora had given consent to the recording. Aurora argued that she had not consented to the initial placement of the recorder in the living room and had not consented to being recorded on June 1. The State argued that Aurora had given implied consent in that she had notice of the recorder's presence less than a week before June 1 when she found it, played some of the recorded audio, put it back in place, and stated she was glad it was there because she could use the recordings against Richard. The trial court admitted the recording.

Aurora contends the recording violates the Federal Wiretap Statute, 18 U.S.C. §§ 2510, et seq., and penal code section 16.02. Under both statutes, it is unlawful for a person not acting under color of law to intercept oral communication unless the person is a party to the communication or one of the parties has given prior consent

to the interception. 18 U.S.C. § 2511(2)(d); TEX. PENAL CODE § 16.02(c)(4). A person may give implied consent under these statutes if she received meaningful notice that the communication was being recorded and nevertheless chose to make the communication. *See Siddiq v. State*, 502 S.W.3d 387, 394 (Tex. App.—Fort Worth 2016, no pet.) (collecting cases addressing monitored jailhouse phone calls).

As noted by the State in its argument before the trial court, Aurora was glad the recorder was capturing audio in the living room. Tess testified that when Richard told her and Aurora that he had been recording conversations in the house, Aurora yelled her disapproval to Richard. When she found the recorder approximately a week before June 1, however, her response was markedly different. Aurora showed the recorder to Tess and listened to it. Tess heard the conversations contained in the recording. Aurora then declared she was "okay" with the recorder because she could use the recordings against Richard. She did not delete the recording and placed the recorder back where she found it. Tess also testified that Aurora subsequently told Richard that she was "okay" with him recording her because she "can record him back."

Although Aurora admits she consented to the recorder approximately a week before June 1, she contends this is insufficient to find consent on June 1 because "[c]onsent to record one day cannot simply serve as consent forevermore." She provides no authority, however, for the proposition that her consent a week prior would not still be valid on June 1. She likewise cites no evidence demonstrating that

she was not still on notice that the recorder was recording events in the living room on June 1. Indeed, by all accounts, she was the last person to place the recorder in the living room before June 1. Thus, we conclude that she gave implied consent to the recording, *see Siddiq*, 502 S.W.3d at 394, and we overrule her fourth issue.

CONCLUSION

We conclude the trial court did not abuse its discretion by denying Aurora's motion for continuance to address the documents preemptively produced by the State in support of its expert testimony. We likewise conclude the trial court did not abuse its discretion by excluding Aurora's medical records and by admitting the audio recording of events that occurred the night Andres died. Accordingly, we overrule all of Aurora's appellate issues and affirm the trial court's judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

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TEX. R. APP. P. 47.2(b)
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

AURORA SONANO REYES, Appellant	On Appeal from the 382nd Judicial District Court, Rockwall County, Texas
No. 05-19-00963-CR V.	Trial Court Cause No. 2-17-0510.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Partida-Kipness. Justices Schenck and Osborne participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered June 28, 2021