

Exhibit 1

17CA1929 Peo v Moshrefi 05-27-2021

COLORADO COURT OF APPEALS

Court of Appeals No. 17CA1929
Jefferson County District Court No. 16CR3088
Honorable Christie A. Bachmeyer, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nahid Kadir Moshrefi,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE FOX
Dunn and Pawar, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced May 27, 2021

Philip J. Weiser, Attorney General, Jennifer L. Carty, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Meghan M. Morris, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Nahid Kadir Moshrefi, appeals the judgment of conviction finding her guilty of theft and exploitation of an at-risk adult. Specifically, she argues that (1) the trial court should have suppressed statements she gave to detectives in her home because she made them involuntarily and the detectives obtained them in violation of her Fourth, Fifth, and Sixth Amendment rights; (2) the trial court improperly admitted evidence under CRE 404(b) that she received money from another man for a claimed illness; and (3) cumulative error requires reversal. We reject her claims and affirm.

I. Background

¶ 2 Moshrefi met the victim, W.M., through a dating service in 2013. W.M. was seventy-seven (Moshrefi was in her mid-forties at the time) and suffered from mild memory loss and confusion; W.M. was later diagnosed with dementia. The two began dating, and shortly thereafter Moshrefi told W.M. that she needed money to treat her cancer. W.M. told others about Moshrefi's cancer and transferred large sums of money to her.

¶ 3 In July 2015, W.M.'s bank became concerned about his large transfers to Moshrefi and reported those suspicions to the police. W.M.'s therapist made a similar report.

¶ 4 In April 2016, Detectives Jessica Beren and Matt Calhoun of the Westminster Police Department interviewed Moshrefi in her home. Moshrefi said that W.M. had given her money for medical bills and miscellaneous expenses. She initially denied telling W.M. she had cancer, but when Beren suggested there was a recording of Moshrefi's conversation with W.M. and asked why she would lie about having cancer, Moshrefi responded, "I don't know. Maybe to get attention." W.M. spoke with Beren later that day and asked that Moshrefi not be prosecuted.

¶ 5 Moshrefi was charged with theft and criminal exploitation of an at-risk adult, and the case proceeded to trial in July of 2017. W.M. and Moshrefi testified that she never told him she had cancer. The prosecution presented evidence that Moshrefi had dated and received money from another man, purportedly for cancer treatment. The jury convicted Moshrefi as charged, and this appeal followed.

II. The April Interview

¶ 6 Moshrefi first argues that the trial court erred by admitting statements she made to Beren and Calhoun in her home in April 2016. She argues the trial court should not have admitted those

statements because she made them involuntarily and the detectives violated her Fourth, Fifth, and Sixth Amendment rights in obtaining them. We disagree.

A. Additional Background

¶ 7 When Beren and Calhoun arrived at Moshrefi's home one morning, they first encountered her husband, Joseph Zalewski. The detectives said they wanted to speak with Moshrefi, and Zalewski allowed them in and called for Moshrefi. When Moshrefi appeared, the detectives asked Zalewski to step away so they could talk with her privately, and they sat at a kitchen table near the home's door. The detectives were in plainclothes and armed, though Beren's weapon was concealed around her ankle.

¶ 8 Beren questioned Moshrefi about her relationship with W.M., and Calhoun asked Moshrefi if she wanted to sit down "to feel more comfortable talking to us." Moshrefi agreed.

¶ 9 Beren continued questioning Moshrefi, and when she asked about the money W.M. had given her, Moshrefi asked if she was under criminal investigation. Beren confirmed that she was under investigation regarding the money W.M. gave her, prompting Moshrefi to ask if the detectives had a warrant for her arrest. Beren

said, “No, not yet,” and Moshrefi responded, “Ok, then please get one and I’ll obtain an attorney and talk to you at that point.”

¶ 10 Beren stopped her questioning, but Calhoun volunteered that they already knew how much money W.M. had given her and that they wanted to give her an opportunity to explain the transfers. Calhoun added that “if you don’t want to talk about [it], that’s fine but . . . we already [kind of] know the answers.” He also said that they had been trying to contact her for about a month and would not give her another opportunity to explain herself before referring the case to the district attorney. After Moshrefi asked about their previous attempts to contact her, Calhoun said, “[I]f you’re done answering questions, then . . . that’s all I’ve got for now.” He also added that he thought it would be helpful if she explained “where some of the money came from.”

¶ 11 Moshrefi initially claimed that she needed the money to cover business expenses. When Calhoun pressed her on that assertion, Moshrefi denied that W.M. gave her money for her business. Calhoun then said, “[Y]ou said before you were done talking, I just want to make sure that you’re talking because you want to, I’m not

trying to bully [you] into anything. You understand that, right?”

Moshrefi responded, “Well . . . this is all kind of blind-sid[ing] me.”

¶ 12 The conversation continued, and Moshrefi later said the money was for medical bills and other miscellaneous expenses, such as car maintenance. The detectives asked if she had documentation that would support her assertions, and Moshrefi responded, “[M]y head is in water and you think I have . . . tracking for everything?” She expressed surprise and confusion over the situation, prompting Beren to again ask, “Do you want us to leave or do you want to talk a little bit more about it?” Moshrefi again suggested confusion, and Beren said that they knew W.M. had given her “tens of thousands” of dollars and that she was either exploiting him or had a legitimate illness that justified the transfers.

¶ 13 As Moshrefi continued to explain the transfers, she disclosed her history of breast lumps. But when Beren asked if she had seen a doctor regarding the lumps recently, she said she had not because she wanted to treat the lumps holistically. Beren then explained that Moshrefi was being accused of faking cancer to extract money from W.M. and requested proof of her illness.

Moshrefi said she was not sure whether she had cancer and denied

telling W.M. that she did. Beren said, “What if I told you there’s a recording of a conversation between the two of you and you’re explaining that you’re extremely ill and will die if you don’t have treatment?” Beren then asked Moshrefi, given her uncertainty about having cancer, why she would tell W.M. she was seeing a doctor and needed treatment to survive. Moshrefi responded, “I don’t know. Maybe to get attention.”

¶ 14 The conversation continued for a few more minutes and concluded when Moshrefi repeatedly said she wanted to speak with an attorney. The entire conversation lasted approximately thirty-two minutes.

¶ 15 Before trial, Moshrefi moved to suppress the statements she made to the detectives, arguing that the officers failed to honor her request for an attorney and that any statements she made after Beren misrepresented that there was a recording of a conversation between her and W.M. were involuntary. During a hearing on the motion, Moshrefi’s counsel stipulated that she was not in custody “for the purposes of this motion” and argued that (1) under the Fifth and Sixth Amendments, the detectives should have ceased their questioning once Moshrefi said she wanted to retain an attorney

before talking with the detectives and (2) Moshrefi's statements were involuntary under the totality of the circumstances. The trial court denied Moshrefi's motion, finding that her Sixth Amendment rights had not yet attached, that the detectives did not violate her Fifth Amendment rights, and that her statements were voluntary.

B. Standard of Review

¶ 16 In reviewing a ruling on a motion to suppress, we defer to a trial court's factual findings if they enjoy record support but review its legal conclusions de novo. *People v. Coke*, 2020 CO 28, ¶ 10.

Further,

“[w]here the statements sought to be suppressed are audio- and video-recorded, and there are no disputed facts outside the recording controlling the issue of suppression, we are in a similar position as the trial court to determine whether the statements should be suppressed.” Thus, we may undertake an independent review of the audio or video recording to determine whether the statements were properly suppressed in light of the controlling law.

People v. Kutlak, 2016 CO 1, ¶ 13 (quoting *People v. Madrid*, 179 P.3d 1010, 1014 (Colo. 2008)).

C. Voluntariness

¶ 17 The People contend that Moshrefi only preserved the issue of voluntariness with respect to statements she made after Beren's fabrication regarding a recording of a conversation between Moshrefi and W.M. We need not consider this argument because, as discussed below, all of Moshrefi's statements to the detectives during the April interview were voluntary under the totality of the circumstances.

¶ 18 Under the Due Process Clauses of the United States and Colorado Constitutions, a defendant's statements must be voluntary to be admissible as evidence. *People v. Ramadan*, 2013 CO 68, ¶ 18. Courts determine voluntariness by considering the totality of the circumstances under which the defendant spoke, balancing the defendant's ability to resist coercive pressure and the nature of the police conduct. *Id.* at ¶ 20.

¶ 19 The supreme court has identified a nonexclusive list of factors to consider in making the voluntariness determination, including (1) whether the defendant was in custody; (2) whether the defendant was free to leave; (3) whether the defendant was aware of the situation; (4) whether the police read *Miranda* rights to the defendant; (5) whether the defendant understood and waived

Miranda rights; (6) whether the defendant had an opportunity to confer with counsel or anyone else before or during the interrogation; (7) whether the statement was made during the interrogation or volunteered later; (8) whether the police threatened the defendant or promised anything directly or impliedly; (9) the method or style of the interrogation; (10) the defendant's mental and physical condition just before the interrogation; (11) the length of the interrogation; (12) the location of the interrogation; and (13) the physical conditions of the location where the interrogation occurred. *Id.*

¶ 20 Considering these factors, we conclude that Moshrefi's statements during the interview in her home were voluntary. At a pretrial hearing, Moshrefi's counsel conceded that she was not in custody. The detectives told Moshrefi several times that she did not have to speak with them. And while *some* of the detectives' questions and statements were accusatory,¹ they never raised their voices or became aggressive with Moshrefi, and they made no

¹ The detectives stated they were willing to clear Moshrefi of any wrongdoing if she could justify, with documentation, the money W.M. gave her.

threats or promises. Moshrefi spoke softly throughout the conversation and, while she sounded emotional at times and expressed confusion, she was responsive to the detectives' questions and was not so emotional or distraught as to have misunderstood the nature of the interview.

¶ 21 Moshrefi argues her statements were involuntary because the detectives (1) isolated her; (2) established physical control over her by sitting between her and the door, displaying their weapons, and ordering her to sit down; (3) ignored her requests to end the discussion; and (4) lied to her about the existence of incriminating evidence. These arguments do not persuade us that, under the totality of the circumstances, Moshrefi's statements were involuntary.

¶ 22 The record shows that, while the detectives were armed, asked Zalewski to leave, and sat roughly between Moshrefi and the door, the detectives did not brandish their weapons, directly block the door, or otherwise physically coerce or intimidate Moshrefi into speaking with them. Contrary to Moshrefi's assertion, the detectives did not order her to sit down; rather, Calhoun asked if she would be more comfortable sitting. And while Calhoun

continued talking after Moshrefi said she wanted an attorney before talking to them, she did not then insist on ending the conversation. Further, Calhoun indicated several times that he would end the conversation if Moshrefi so desired and specifically asked her to confirm that she was speaking with them voluntarily.

¶ 23 Lastly, while the People concede that Beren misrepresented the existence of an incriminating recording to Moshrefi, deceptive tactics, standing alone, are not enough to render a suspect's statements involuntary. *See Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (stating that while misrepresentation by police is relevant, it is insufficient to make an otherwise voluntary confession inadmissible); *People v. Speer*, 216 P.3d 18, 23 (Colo. App. 2007) ("It is true the officers here made false statements regarding the evidence, but the record supports the trial court's finding that the effect of the statements did not make defendant's statements involuntary."), *rev'd on other grounds*, 255 P.3d 1115 (Colo. 2011).

¶ 24 Thus, we conclude that Moshrefi's statements during the interrogation were voluntary. *See Ramadan*, ¶ 20.

D. Fourth Amendment Claim

¶ 25 The People argue that Moshrefi waived her Fourth Amendment argument. Specifically, the People argue that, when the trial court asked Moshrefi's counsel whether he was moving under the Fourth or Fifth Amendment, he responded that he was moving for suppression under the Sixth Amendment, thereby waiving his right to argue under the Fourth (and Fifth) Amendment on appeal. However, we need not consider the People's waiver argument because even if Moshrefi did not waive her Fourth Amendment argument, the detectives did not unlawfully search or seize Moshrefi in violation of her Fourth Amendment rights.

¶ 26 Under the Fourth Amendment to the United States Constitution, the government may not conduct unreasonable searches or seizures. U.S. Const. amend. IV; *see also* Colo. Const. art. II, § 7. If a government has no warrant to search, a search is per se unreasonable unless an exception to the warrant requirement applies. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

¶ 27 One such exception is a search conducted pursuant to consent. *Id.* Where a residence is jointly occupied by more than one person, the consent of one occupant with common authority

over the premises is sufficient to permit a warrantless search.

People v. Peluso, 2021 CO 16, ¶ 13. This is true even if, after one occupant consents to a search and invites officers inside the residence, another occupant later objects. *Williams v. People*, 2019 CO 108, ¶¶ 3, 42.

¶ 28 There are three types of “[e]ncounters between police officers and citizens in the context of suppression . . . : (1) consensual interviews; (2) investigative stops; and (3) arrests.” *People v. Padgett*, 932 P.2d 810, 813 (Colo. 1997). “A consensual interview between a citizen and law enforcement personnel is not subject to Fourth Amendment protection.” *Id.* “The test for determining if the encounter is a consensual one is whether a reasonable person under the circumstances would believe . . . she was free to leave . . . or to disregard the official’s request for information.” *Id.* (quoting *People v. Thomas*, 839 P.2d 1174, 1177–78 (Colo. 1992)). “Taking into account all of the circumstances surrounding the encounter, a consensual encounter is negated if ‘the police conduct would “have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.”’” *Id.* at 814 (quoting *Florida v. Bostick*, 501 U.S. 429, 437 (1991)).

¶ 29 Moshrefi first argues that the detectives acted unlawfully by remaining in her home after she revoked her consent to their presence. However, Zalewski — a co-occupant with common authority over Moshrefi’s home — consented to the detectives’ entry. Moshrefi initially did not challenge their presence in the residence. It was only after speaking with them for over ten minutes that she exhibited discomfort. Because Moshrefi did not object when Zalewski “allowed the [detectives] inside,” her subsequent objection during the interview “could not vitiate [Zalewski’s] previously given consent.” *Williams*, ¶ 3.

¶ 30 Further, even if Moshrefi’s objection had been timely, she never directed the detectives to leave her home. Rather, she suggested that she would “talk to [them] later” after they obtained a warrant and she spoke with an attorney. *See United States v. Lopez–Mendoza*, 601 F.3d 861, 867 (8th Cir. 2010) (holding that, although a suspect may withdraw consent during a search, such a withdrawal must be “clearly inconsistent with the apparent consent,” “an unambiguous statement challenging the officer’s authority to conduct the search,” or both (quoting *United States v. Sanders*, 424 F.3d 768, 774 (8th Cir. 2005))). And she did not

insist that the detectives leave her home after Calhoun continued talking. Instead, she continued speaking with them. Thus, the detectives did not unlawfully remain in the home.

¶ 31 Moshrefi also argues that the detectives unlawfully seized her by refusing to honor her request to end the conversation. However, the detectives gave Moshrefi multiple chances to end the conversation and, as discussed, did not threaten, intimidate, physically seize, or coerce her. Thus, a reasonable person in this situation would have felt free to terminate the conversation or disregard the detectives' questions. *See Padgett*, 932 P.2d at 813; *see also Bostick*, 501 U.S. at 434 ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968))). Moshrefi did not insist that the detectives leave her home and continued answering their questions after stating that she would "talk to [them] later," indicating that the encounter remained a consensual interview.

¶ 32 Accordingly, we conclude that the detectives did not unlawfully search or seize Moshrefi under the Fourth Amendment. *See Padgett*, 932 P.2d at 813; *Williams*, ¶ 3.

E. Fifth and Sixth Amendment Claims

¶ 33 The Fifth Amendment of the United States Constitution guarantees that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amends. V & XIV, § 1. The Sixth Amendment guarantees a criminal defendant the right to have counsel present at interviews with law enforcement authorities after an adversary judicial process has been initiated. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009).

¶ 34 However, the Fifth Amendment privilege does not apply outside of “the context of some legal proceeding in which an individual is being asked to testify against herself” or a “custodial interrogation,” which occurs when “a reasonable person in the suspect’s position would have felt that her freedom of action had been curtailed to a degree associated with formal arrest.” *Coke*, ¶¶ 12-14 (quoting *People v. Garcia*, 2017 CO 106, ¶ 20). Similarly, the Sixth Amendment right to counsel attaches only when charges have been filed. *Id.* at ¶ 14 n.2.

¶ 35 Moshrefi does not dispute that she was not in custody when speaking with the detectives and that charges had not yet been filed against her. Because Moshrefi's Fifth and Sixth Amendment rights had not attached, the detectives could not have violated them. See *id.* at ¶ 14.

¶ 36 Accordingly, the trial court did not err in denying Moshrefi's motion to suppress the statements she made to the detectives during the April interview in her home.

III. CRE 404(b)

¶ 37 Moshrefi next argues that the trial court abused its discretion by admitting evidence under CRE 404(b) that another man, T.H., gave her money because the prosecution used the evidence to prove that she had a bad character and acted in conformity therewith. We disagree.

A. Additional Background

¶ 38 Before trial, the prosecution gave notice that it intended to introduce other acts evidence pursuant to CRE 404(b). The evidence — that Moshrefi accepted money from T.H. after telling him that she had cancer — was offered to prove intent and knowledge and to rebut defenses. The trial court later issued an

order finding the evidence admissible to show that Moshrefi acted knowingly when she deceived W.M. into giving her money and to rebut Moshrefi's defense that she did not make false statements to W.M.

¶ 39 During trial, T.H. testified that he met Moshrefi in 2012 or 2013, and they went on a few dates. At first, they saw each other about once per month, but less frequently later. In 2014 or 2015, Moshrefi told T.H. that she had cancer, her treatment was expensive, her business was struggling, and she was getting divorced. When T.H. asked if he could "help in any way," Moshrefi was receptive. On April 3, 2016, T.H. gave her a check for \$5,000, which Moshrefi requested be made out to cash. Although they had not spoken since 2016, T.H. considered Moshrefi a friend.

¶ 40 While preparing the jury for its deliberation, the court gave the following limiting instruction:

The evidence and testimony of [T.H.], which you heard concerning other acts by the defendant, was admitted for the limited purpose of showing the defendant acted knowingly as it relates to the crime of theft from an at-risk victim and criminal exploitation of an at-risk elder. The evidence can be used to rebut her defense that she did not make any false statements to [W.M]. . . .

The court gave a similar instruction before T.H. testified.

B. Standard of Review and Applicable Law

¶ 41 We review the trial court’s admission of CRE 404(b) evidence for an abuse of discretion. *Yusem v. People*, 210 P.3d 458, 463 (Colo. 2009). A trial court abuses its discretion if its ruling is manifestly arbitrary, unreasonable, or unfair, or is based on a misapplication of the law. *See People v. Kendrick*, 2017 CO 82, ¶ 36.

¶ 42 CRE 404(b) provides in pertinent part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

¶ 43 Before admitting other acts evidence under CRE 404(b), a trial court must determine if it is admissible by considering if the evidence (1) “relates to a material fact”; (2) is “logically relevant”; (3) has such relevance “independent of the intermediate inference . . . that the defendant has a bad character”; and (4) has probative

value that is not “substantially outweighed by the danger of unfair prejudice.” *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990).

C. Analysis

¶ 44 Moshrefi argues that the other acts evidence is inadmissible under CRE 404(b) because (1) it lacks logical relevance to a material fact as it occurred after W.M. stopped giving her money; (2) its inference is dependent on propensity since it is otherwise unrelated to the crime; and (3) the danger of unfair prejudice substantially outweighs its probative value.

1. Material Fact

¶ 45 The first prong of the *Spoto* test, requiring that the evidence relate to a material fact, “only requires the court to decide whether the fact is of consequence to the determination of the action.” *Yusem*, 210 P.3d at 464. If the purposes for which the other acts evidence is offered are probative of an ultimate fact — such as an element of the charged offense — the first prong is satisfied. *See id.*

¶ 46 “A person commits criminal exploitation of an at-risk person when he or she knowingly uses deception, harassment, intimidation, or undue influence to permanently or temporarily

deprive an at-risk person of the use, benefit, or possession of any thing of value.” § 18-6.5-103(7.5)(a), C.R.S. 2020.

¶ 47 A person commits theft from an at-risk victim when she knowingly obtains anything of value from an at-risk person by deception and intends to deprive them permanently of the use or benefit of the thing of value. § 18-6.5-103(5); § 18-4-401(1)(a), C.R.S. 2020.

¶ 48 For each charge, the prosecution had to prove, beyond a reasonable doubt, that Moshrefi knowingly used deception to deprive W.M. of his money. § 18-4-401(1)(a); § 18-6.5-103(7.5)(a). The other acts evidence was admitted to show Moshrefi’s intent — that she knowingly used deception to elicit gifts from W.M., a material element of the charges. Thus, as the trial court concluded, the other acts evidence was properly offered to meet that material element, satisfying the first prong of *Spoto*. 795 P.2d at 1318.

2. Logical Relevance

¶ 49 *Spoto* next requires that the court ensure that the evidence logically relates to a material element. *Id.* Other acts evidence is logically relevant if it has any tendency to make the existence of the material fact more or less probable than it would be without the

evidence. CRE 401. In assessing relevance, we consider the similarity of the other acts to the charged acts. *People v. Villa*, 240 P.3d 343, 351 (Colo. App. 2009).

¶ 50 The record establishes substantial similarity between Moshrefi's interactions with T.H. and W.M. There is evidence that she lied to both men about having cancer, needing expensive medical treatment, and struggling financially. The similarity between the false information Moshrefi told T.H. and W.M. made it more probable that she intentionally deceived W.M. into giving her money.

¶ 51 Moshrefi's argument — that the other acts evidence is not logically relevant because T.H. gave her money three days after W.M. had ceased his giving — fails because the deceptive interactions must logically relate to her intent, not the timing of the gifts. *See Spoto*, 795 P.2d at 1318; § 18-6.5-103(7.5)(a).

¶ 52 Since these deceptions continued over much of the same time period leading up to the gifts and were substantially similar, the other acts evidence is logically relevant. *See Spoto*, 795 P.2d at 1318; *Villa*, 240 P.3d at 351.

3. Independent of Propensity Inference

¶ 53 Next, *Spoto* requires assurance that the other acts evidence is admissible independent of the inference that the defendant committed the crime charged because she acted in conformity with her bad character. *Spoto*, 795 P.2d at 1318. This prong does not demand the absence of a propensity inference, “but merely requires that the proffered evidence be logically relevant independent of that inference.” *Villa*, 240 P.3d at 352 (quoting *People v. Snyder*, 874 P.2d 1076, 1080 (Colo. 1994)).

¶ 54 Here, the other acts evidence is logically relevant independent of the inference that Moshrefi has a bad character and acted in conformity therewith. An important fact in determining whether Moshrefi knowingly deceived W.M. was whether she told him that she had cancer. Defense counsel recognized the importance of this fact by telling the jury in closing argument, “This case is about one thing and one thing only. Did Nahid Moshrefi tell [W.M.] she had cancer?” Based on Moshrefi’s interaction with T.H., the jury could logically infer that Moshrefi intentionally lied about having cancer to men she dated to receive money from them. T.H.’s and W.M.’s interactions with Moshrefi were similar enough that the inference “arises not from the criminal character of the accused but from the

demonstration of [her] pattern of using a particular technique to accomplish a particular end.” *People v. Rath*, 44 P.3d 1033, 1041 (Colo. 2002).

¶ 55 The third *Spoto* prong is satisfied because Moshrefi’s interaction with T.H. made it more probable that she acted with the requisite intent. 795 P.2d at 1318.

4. CRE 403

¶ 56 Finally, the fourth prong of the *Spoto* test requires the court to determine whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *Id.*; CRE 403. In deference to the trial court’s discretion, “we must assume the maximum probative value and the minimum unfair prejudice to be given the evidence.” *Yusem*, 210 P.3d at 467.

¶ 57 Evidence is not unfairly prejudicial simply because it is damaging since “[a]ll effective evidence is prejudicial in the sense of being damaging . . . to the party against whom it is offered.” *People v. Dist. Ct.*, 785 P.2d 141, 147 (Colo. 1990). Unfair prejudice occurs if “otherwise admissible evidence has ‘an undue tendency to suggest a decision [made] on an improper basis,’ which is ‘commonly but not necessarily an emotional one, such as sympathy, hatred,

contempt, retribution, or horror.” *People v. Cousins*, 181 P.3d 365, 370 (Colo. App. 2007) (quoting *Dist. Ct.*, 785 P.2d at 147).

¶ 58 We are not persuaded by Moshrefi’s argument that the other acts evidence lacked probative value based on the timing of T.H.’s gift, which was made three days after W.M. stopped giving her money. The deceptive interaction between Moshrefi and T.H. — the most relevant portion of the evidence — occurred concurrently with the charged criminal acts. The other acts evidence is highly probative because its similarity to the charged crime evinces Moshrefi’s intent.

¶ 59 We also reject Moshrefi’s argument that the evidence was unfairly prejudicial because it resulted in an inference that she had a bad character and acted in conformity therewith. Any prejudice is limited by T.H.’s positive characterizations of her. Moshrefi never asked for any money, and T.H. considered Moshrefi a friend. Thus, the danger of the jury making an emotional decision out of hatred, contempt, or another improper basis is low and does not substantially outweigh the evidence’s probative value. Also, any prejudice was mitigated by the court’s limiting instructions. See *Villa*, 240 P.3d at 352.

¶ 60 Ultimately, given the court’s substantial discretion under CRE 403, *see Yusem*, 210 P.3d at 463, and because CRE 403’s balancing test strongly favors the admission of evidence, *see People v. Dist. Ct.*, 869 P.2d 1281, 1286 (Colo. 1994), we cannot conclude that the trial court abused its discretion in admitting this other acts evidence.

IV. Cumulative Error

¶ 61 Moshrefi last argues that the doctrine of cumulative error requires reversal because, when analyzed in the aggregate, the alleged errors undermined the fundamental fairness of the proceedings. Under the doctrine of cumulative error, reversal is required when numerous errors “collectively prejudice the substantial rights of the defendant.” *Howard-Walker v. People*, 2019 CO 69, ¶ 25. A conviction will not be reversed unless the cumulative effect of multiple errors created “cumulative prejudice” and “substantially affected the fairness of the trial proceedings and the integrity of the fact-finding process.” *Id.* at ¶¶ 24-25 (citation omitted).

¶ 62 We have identified no individual trial court errors, and thus Moshrefi is not entitled to relief under the cumulative error

doctrine. *People v. Phillips*, 91 P.3d 476, 484 (Colo. App. 2004) (If “there is no individual error or when the individual errors do not show an absence of a fair trial, reversal for cumulative error is not justified.”).

V. Conclusion

¶ 63 The judgment is affirmed.

JUDGE DUNN and JUDGE PAWAR concur.

Exhibit 2

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 22, 2021 CASE NUMBER: 2021SC503
Certiorari to the Court of Appeals, 2017CA1929 District Court, Jefferson County, 2016CR3088	
Petitioner: Nahid Kadir Moshrefi, v. Respondent: The People of the State of Colorado.	Supreme Court Case No: 2021SC503
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 22, 2021.
JUSTICE BERKENKOTTER does not participate.