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2001 IL App (3) 100124-U

Order filed August 3, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Henry County, Illinois,
	)	
v.	)	Appeal No. 3-10-0124
	)	Circuit No. 09-CF-185
DEBORAH D. DAVIS,	)	
	)	Honorable
Defendant-Appellant.	)	Charles H. Stengel,
	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justice Schmidt concurred in the judgment.  
Justice McDade dissented.

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**ORDER**

¶ 1 *Held:* The evidence was sufficient for the jury to find defendant guilty of the offense of financial exploitation of an elderly person.

¶ 2 On June 2, 2009, the State charged defendant Deborah Davis, the victim's daughter, with the Class 1 felony of financial exploitation of an elderly person, Ella Carter. The charge alleged that defendant obtained unauthorized control over Carter's social security checks, valued between \$5,000 and \$100,000, by falsely leading Carter to believe that defendant was signing

those checks over to the Kewanee Care Nursing Home, where Carter resided, to pay Carter's nursing home bills. The evidence showed that defendant did not pay the nursing home bills from October 2008 through April 2009. On November 5, 2009, a jury found defendant guilty of financial exploitation of an elderly person.

¶ 3 On appeal, defendant claims the State's evidence did not prove she was guilty of this offense beyond a reasonable doubt since the State failed to establish that defendant obtained control over Carter's property by deception and that defendant intended to permanently deprive Carter of the use, benefit or possession of her social security funds. Defendant requests this court to reverse her conviction and vacate her sentence. We affirm.

¶ 4 **FACTS**

¶ 5 The State filed an information on June 2, 2009, charging defendant Deborah Davis with financial exploitation of the elderly, a Class 1 felony (720 ILCS 5/16-1.3(a) (West 2008)). The State alleged defendant financially exploited an elderly person, between the dates of October 2008 and April 2009, by exerting unauthorized control over the property of Ella Carter, a person 80 years of age or older, by falsely leading Carter to believe defendant was signing social security checks over to Kewanee Care Nursing Home to pay Carter's residential nursing home bill.

¶ 6 At trial, Ella Carter testified that she was 95 years old and her daughter, defendant, had the power of attorney to handle all of her financial affairs during the relevant time period. Carter testified that, before October 4, 2008, she resided with her daughter at Carter's home located at 411 West Fourth Street in Kewanee, Illinois. However, due to kidney problems, Carter moved to Kewanee Care on October 4, 2008, and resided at that location on the date of trial. According to Carter, defendant continued to live at the address on West Fourth Street with

defendant's children after Carter moved into the nursing home.

¶ 7 Carter explained that, when she moved into the nursing home, Carter's social security checks were being sent to the West Fourth Street address and deposited by her daughter into a joint bank account held in the name of both Carter and defendant. Defendant signed the contractual agreement with the nursing home. This agreement provided that defendant would pay the nursing home bill with Carter's monthly social security checks as they arrived. This was nursing home policy because Carter was also a public aid recipient.

¶ 8 In April 2009, the nursing home staff informed Carter that her nursing home bill was not paid to date. Consequently, after learning her account was not up to date, Carter sent a letter to the Social Security Administration requesting that her social security checks be mailed directly to the nursing home. Carter testified that defendant had permission to pay Carter's bills, and only Carter's bills, rather than defendant's own personal expenses. Carter also agreed she wanted defendant to maintain the house in good repair and to pay the bills for the residence.

¶ 9 Heather Brown, a former employee of the nursing home where Carter resided, testified that defendant signed a contract admitting Carter into the nursing home. This contract provided that Carter's social security checks, less \$30, would be the only source of funds to pay for the nursing home charges each month. Brown testified that the remaining balance of \$30 was to be deposited into Carter's private account at the nursing home for incidental expenses. Attached to the admissions contract, signed by defendant, was a document explaining the procedure for delivering Carter's social security checks to the nursing home.

¶ 10 Former marketing coordinator at the nursing home, Michelle Peterson, testified that defendant caused Peterson to believe that Carter's stay at the nursing home would not be

temporary and would be “forever.” On the day Carter was admitted to the nursing home, Peterson requested defendant to make the first payment, for October 2008, but defendant refused to do so. Peterson discussed with defendant the need to pay the social security checks over to the nursing home each month.

¶ 11 Kendra Austin, a former employee of Kewanee Care Nursing Home, testified that Carter was admitted on October 4, 2008. She explained that the nursing home did not receive any of Carter’s social security checks or other payments for Carter’s housing from the date of admission in October 2008 until the first payment was finally made in April 2009. Austin spoke with Carter on June 1, 2009, about the status of her outstanding bill and explained to Carter the negative effect non-payment could have on her ability to continue her residency at the nursing home. According to Austin, Carter became upset and expressed her desire to remain in the nursing home rather than return to her previous home. Austin stated that there had been discussions with the nursing home administration suggesting that Carter should be evicted for non-payment, but the eviction process was not initiated.

¶ 12 Kewanee Police Officer Tim Pence testified that he reviewed the joint banking account records which revealed defendant deposited her mother’s social security checks into the account each month, from October 2008 through April 2009, for a total of \$8,075 in deposits. According to Pence, the only check drawn on the account and payable to Kewanee Care Nursing Home in the amount of \$1,089 was written by defendant in April 2009. Pence testified that, after subtracting \$30 from each monthly social security check, which was to be placed into Carter’s private nursing home account, the unpaid and outstanding balance owed to the nursing home for Carter’s care totaled \$6,778.

¶ 13 Pence testified that defendant wrote other checks on the account during the time period from October 2008 through April 2009 which included checks for Comcast bills, insurance bills,

mortgage payments, and water and sewer bills. There were also cash withdrawals totaling \$3,500. During these months, defendant did not deposit any of her own paychecks into the joint account.

¶ 14 Defense witness Deborah Ann Richter, an employee at Fresenius Medical Care Dialysis, stated that Carter was a patient at the facility. Richter saw Carter once a month for 30 minutes and once a week for 10 minutes. Richter testified that, during Carter's dialysis treatments, Carter was alert and coherent and never voiced any complaints to Richter.

¶ 15 The jury found defendant guilty of the offense of financial exploitation of an elderly person. At the sentencing hearing on January 15, 2010, the judge sentenced defendant to a term of 24 months conditional discharge and ordered her to pay \$6,988 in restitution. Defendant appealed.

¶ 16 ANALYSIS

¶ 17 Defendant contends that the State's evidence did not establish her guilt for the offense of financial exploitation of an elderly person beyond a reasonable doubt. Specifically, she argues the State failed to establish that defendant obtained control over Carter's property by deception or that defendant intended to permanently deprive Carter of the use, benefit, or possession of her property. The State asserts the evidence was sufficient to allow a rational trier of fact to find defendant guilty of all elements of the crime of financial exploitation of an elderly person beyond a reasonable doubt.

¶ 18 The applicable standard of review for a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime to have been proved beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002); *People v. Collins*, 106 Ill. 2d 237 (1985). A reviewing court should not set aside a criminal conviction unless the evidence is so

unreasonable, improbable, or unsatisfactory as to cause reasonable doubt as to the guilt of the accused. *People v. Rowell*, 229 Ill. 2d 82, 97 (2008).

¶ 19 To find the defendant guilty beyond a reasonable doubt of financial exploitation of an elderly person, the jury must have found that defendant stood in a position of trust and confidence with Carter, that Carter was an elderly person, that defendant knowingly and by deception obtained control over Carter's property, valued at \$5,000 or more, and that defendant intended to permanently deprive Carter of the use, benefit, or possession of that property. 720 ILCS 5/16-1.3(a) (West 2008).

¶ 20 Defendant concedes the State has proven that she was in a position of trust and confidence with Carter. The evidence established that defendant was power of attorney for her mother's financial affairs and that her mother, Carter, was an elderly person under the statute, in that she was 95 years of age.

¶ 21 However, defendant argues that the State's evidence failed to prove at least two elements of this offense beyond a reasonable doubt. First, she contends the valid power of attorney negates the element of deception or unauthorized control. Second, she argues that the State's evidence did not establish, beyond a reasonable doubt, that she intended to permanently deprive Carter of the use, benefit, or possession of her social security checks.

¶ 22 In support of her contentions, defendant argues the March 30, 2009, letter that Carter wrote to the Social Security Administration requesting her social security checks be sent directly to the nursing home, demonstrates that Carter intended for defendant to use funds from Carter's social security checks to pay Carter's household bills for as long as the checks were sent directly to the house. In addition, defendant asserts the evidence demonstrated that defendant used the social security funds to pay the bills associated with Carter's home on West Fourth Street, a home that Carter hoped to return to at some point in time.

¶ 23 In contrast, the State's evidence established that, in October 2008, defendant advised the nursing home staff that Carter would not be returning to her home and this would be a long term placement. In addition, the jury learned that defendant signed a contract and agreed, as a condition of that agreement, to deliver all social security checks to the nursing home. In addition, the bank records revealed the funds withdrawn by defendant from Carter's bank account included a large amount of cash withdrawals which were not directly tied to the care and upkeep of Carter's previous home.

¶ 24 In this case, the jury was presented with evidence that supported defendant's contention that some expenses were consistent with past practice between mother and daughter regarding the joint checking account. However, the jury also received evidence supporting the view that defendant signed a contract, when admitting her mother into the nursing home, that she would deliver all social security checks directly to the nursing home to pay for her mother's monthly residential care expenses. When Carter learned that defendant was not abiding by that agreement, Carter took steps to discontinue receiving her social security checks at her former home address. In addition, the evidence at trial established that defendant was aware that Carter's stay at the nursing home would not be temporary.

¶ 25 It is solely within the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses in light of the evidence, and to decide what weight should be given to each witness's testimony. *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). Based on the evidence established at trial, a rational trier of fact could have found all of the elements of the offense of financial exploitation of an elderly person proven beyond a reasonable doubt and the evidence was not so unreasonable, improbable or unsatisfactory to overturn the jury's verdict. See *Rowell*, 229 Ill. 2d at 97. Consequently, we conclude that the defendant's conviction should be sustained.

CONCLUSION

¶ 26

¶ 27 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 28 Affirmed.

¶ 29 JUSTICE McDADE, dissenting:

¶ 30 The majority has concluded that the State’s evidence sufficiently proved defendant’s guilt beyond a reasonable doubt of the offense of financial exploitation of an elderly person. In doing so, the majority has concluded that the State proved beyond a reasonable doubt that defendant obtained control of Carter’s social security checks by deception. In support of this conclusion, the majority notes that defendant signed a contract with the nursing home requiring defendant to pay Carter’s bill with Carter’s monthly social security check, and also that Carter directed the social security administration to send her checks directly to the nursing home once she determined her bill was past due. Because I do not believe that the State’s evidence proved beyond a reasonable doubt that defendant obtained control over Carter’s social security checks by deception, I respectfully dissent.

¶ 31 The burden is on the State to prove each and every element of the charged offense beyond a reasonable doubt. *People v. Maggette*, 195 Ill. 2d 336 (2001). Thus, on review, we must consider a challenge to the sufficiency of the evidence by viewing the evidence in the light most favorable to the State and determining whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 32 In order to sustain a conviction for financial exploitation of an elderly person, the State must prove, among other things, that defendant knowingly and by deception obtained control over the elderly person’s property. 720 ILCS 5/16-1.3(a) (West 2008). Here, citing the common

law record, the State's appellate brief states that deception means to knowingly create or confirm another's impression which was false and which defendant did not believe to be true, or to promise performance which defendant did not intend to perform or knew would not be performed.

¶ 33 Even viewing the evidence in the light most favorable to the State, I do not believe that the State proved beyond a reasonable doubt that defendant obtained control over Carter's social security checks by deception for two reasons. First, defendant did not promise Carter that she would pay Carter's nursing home bill; rather, the promise was between defendant and the nursing home. Second, Carter had appointed defendant her power of attorney over a decade prior to Carter's admission to the nursing home, and defendant used at least a portion of the money to pay the mortgage and utilities for Carter's former home. Given this evidence, I do not believe that the State met its burden of proving that defendant obtained control of Carter's social security checks by deception.

¶ 34 First, I acknowledge that defendant signed a contract to pay Carter's monthly nursing home bill. However, this agreement involved defendant and the nursing home. Carter was not a party to this agreement. Consequently, while Carter may have believed that defendant was going to pay her nursing home bill based on defendant's agreement with the nursing home, no rational trier of fact could have found that defendant obtained control of her mother's checks by knowingly creating or confirming an impression to Carter that she would pay Carter's nursing home bill, or that defendant promised this performance to Carter.

¶ 35 Next, Carter appointed defendant as her power of attorney. This power granted defendant control over all of Carter's property, including her social security checks. Therefore, defendant could not have obtained control over Carter's social security checks by deception, as she had a legal power to exert authority over them and had possessed that power for a decade

prior to Carter entering the nursing home. Additionally, the evidence adduced at trial reveals that after defendant deposited the monthly social security checks into the joint bank account she shared with Carter, defendant paid the mortgage and bills for the home that Carter owned. Carter's own testimony revealed that she wanted to move back home at some point, and also that she wanted defendant to pay the mortgage and bills for this home. Although the record also indicates that defendant withdrew cash from the joint account in which she deposited Carter's social security checks, the State did not establish how defendant used this cash.

¶ 36 I also acknowledge the testimony that defendant informed a nursing home staff member that Carter's stay would be long-term and that after Carter learned that her nursing home bill was not paid, she directed the social security administration to send her checks directly to the nursing home. However, this evidence does not indicate that during the relevant time, defendant obtained control over Carter's social security checks by deception. Rather, it only indicates that Carter wanted to receive her social security checks at the nursing home once she learned her bill was not paid to date.

¶ 37 Overall, I believe that defendant has only violated the contract she entered into with the nursing home. For the reasons stated above, when viewed in the light most favorable to the State, I do not believe its evidence proved beyond a reasonable doubt that defendant obtained control of Carter's nursing home checks by deception. Consequently, I would reverse her conviction for the offense of financial exploitation of an elderly person.