

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001120-MR

GLORIA A. BUCHANAN

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 09-CR-00036

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS, AND KELLER, JUDGES.

COMBS, JUDGE: Gloria A. Buchanan was convicted of wanton exploitation of a vulnerable adult pursuant to the provisions of Kentucky Revised Statute[s] (KRS) 209.990(6). She appeals from the conviction and argues: that the statute is unconstitutionally vague; that the evidence against her was insufficient as a matter of law to support the jury's verdict; and that the trial court erred by

imposing court costs, fines, or fees upon her following the conviction. After our review, we affirm.

The proof presented in this case indicated that Buchanan appropriated approximately \$20,000.00 of her mother's resources during a two-month period in 2008. Acting under a power of attorney from her mother, Buchanan overdrew her mother's checking account; redeemed numerous certificates of deposit; and exhausted a line of credit. She bought clothing, video game systems, furniture, satellite navigation units, jewelry, gift cards, and computers for herself and others. The evidence also revealed that Buchanan deceived and intimidated her mother in an effort to retain control of her mother's financial affairs. Witnesses testified that Buchanan's mother had been hospitalized for brain surgery during the early part of this period and had spent the remainder of the period convalescing.

In January 2009, Buchanan was indicted for violating provisions of Kentucky's Adult Protection Act. KRS Chapter 209. She stood trial in October 2009 and was convicted. She was sentenced to serve one year of imprisonment, probated for one year or until the agreed restitution had been made.

On appeal, Buchanan first challenges the trial court's decision concluding that KRS 209.990(6) is not unconstitutionally vague as applied to her. The statute provides as follows:

Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.

Adult is defined by the provisions of KRS 209.020(4) as follows:

A person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his own resources, carry out the activity of daily living, or protect himself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;

Exploitation is defined in KRS 209.020(9) as follows:

Obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources. . . .

In order to survive a challenge of void for vagueness, a statute must define a criminal offense with such specificity and certainty that ordinary people can understand what particular conduct is prohibited in such a manner as to prevent arbitrary and discriminatory enforcement. *Wilfong v. Commonwealth*, 175 S.W.3d 84 (Ky.App.2004) *citing Kolender v. Lawson*, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)). However, absolute precision in the language used is plainly not required. *Id.* Furthermore, the arbitrary enforcement prong of the analysis requires only “minimal guidelines” sufficient to limit the unfettered discretion of government officials. *Id.*

Buchanan concedes that the prohibition against “obtaining or using another person's resources . . . by deception, [or] intimidation” sufficiently defines the criminal offense. However, she contends that the inclusion of the phrase “or

similar means” renders the proscribed conduct too uncertain. For that same reason, she contends that the provision unlawfully encourages arbitrary enforcement.

Generally, a person to whom a statute may be applied constitutionally may not challenge it on the basis that it may arguably be applied unconstitutionally to others in different case scenarios. *Martin v. Commonwealth*, 96 S.W.3d 38 (Ky.2003). Buchanan has acknowledged that the provision which she challenges afforded her fair notice that the use of deception and/or intimidation to obtain the resources of a vulnerable adult was unlawful. She has not demonstrated that the statute under which she was convicted implicates any constitutionally protected activity. Therefore, she has failed to establish any basis for challenging its provisions. Thus, as applied to *her* conduct in *this* case, we conclude that the statute adequately defined the prohibited activity and provided guidance sufficient to prevent the unfettered discretion of government officials charged with enforcing it. The provision is not unconstitutionally vague.

Next, Buchanan argues that the trial court erred by failing to conclude that the evidence against her was insufficient -- as a matter of law -- to support the jury’s verdict. She contends that she was entitled to a directed verdict because the evidence failed to show that her mother suffered mental or physical dysfunction sufficient to trigger the protections of the act. We disagree.

The act permits a jury to find adult exploitation where the adult victim suffers from either mental or physical limitations severe enough to prevent the vulnerable adult from managing her own affairs. While evidence at trial indicated

that Buchanan's mother was at times lucid and perhaps not wholly limited by her mental state from managing her own affairs, it also demonstrated that her physical limitations forced her to seek assistance in managing her affairs throughout the two-month period covered by the indictment.

Throughout this period, Buchanan's mother was either hospitalized or was receiving care at a professionally-staffed nursing facility. During this time, Buchanan's mother was entirely dependent on her daughter and other care-givers to carry out her daily activities. The evidence clearly indicated that Buchanan's mother was unable to re-gain control of her resources from Buchanan and that she was otherwise unable physically (if not mentally) to manage her own resources, to carry out the activities of daily living, or to protect herself from exploitation without assistance from others. Buchanan was not entitled to a directed verdict on this basis.

In the alternative, Buchanan contends that she was entitled to a directed verdict because the evidence failed to show that she used her authority over her mother's financial affairs in any deceptive or intimidating manner or that she intended to deprive her mother of those financial resources. She emphasizes that her mother was "surrounded by people who were able and willing to render assistance, she apparently just decided not to ask them for such aid." After carefully reviewing the evidence, we disagree with this contention.

The evidence offered at trial indicated that Buchanan obtained and used her mother's property by means of deception and/or intimidation. Witnesses testified

that Buchanan reassured her mother that she was adequately tending to her financial affairs and that her mother need not be concerned with the checkbook, credit cards, or other personal financial information. Witnesses also indicated that Buchanan denied her mother any opportunity to collect and review her financial materials on her own. Buchanan indicated to her mother that she (Buchanan) could sell her mother's house and car.

When confronted by police officers, Buchanan offered multiple and conflicting explanations for the mass of merchandise that she warehoused in her mother's house and garage. She eventually admitted to the officers that she had indeed misused her mother's resources.

Buchanan contends that her mother was surrounded by others to whom she *might* have turned for help in getting her financial affairs in order. That argument is unavailing. Failing to complain or to consult with her lawyer or others concerning her daughter's handling of her financial affairs did not constitute evidence that Buchanan's mother was *not* vulnerable to Buchanan's exploitation.

The evidence as a whole substantially supported the verdict of the jury finding Buchanan guilty of the charged offense. Given our standard of review as set out by the Supreme Court of Kentucky in *Commonwealth v. Benham*, 816 S.W.2d 186 (Ky.1991), we conclude that the trial court did not err by denying Buchanan's motion for a directed verdict.

Finally, Buchanan argues that the trial court erred by imposing "court costs, fines, and/or fees in the amount of \$295.00" following her conviction. She

concedes that this issue is unpreserved, but she requests relief under the extraordinary provisions of Kentucky Rules of Criminal Procedure (RCr) 10.26.

Because we conclude that the court's error, if any, did not result in manifest injustice justifying relief in this case, we decline to consider the allegation of error.

RCr 10.26 cannot be properly invoked under these circumstances.

We affirm the judgment of conviction.

ALL CONCUR.

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