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**IN THE
COURT OF APPEALS OF INDIANA**

SHEILA TAYLOR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 15A01-1106-CR-238

INTERLOCUTORY APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Jonathan N. Cleary, Judge
Cause No. 15D01-1001-FC-001

December 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Sheila Taylor brings this interlocutory appeal, claiming that the trial court abused its discretion in denying her motion to dismiss the theft and fraud on a financial institution charges against her. Taylor argues that dismissal was warranted because her withdrawal of funds from joint accounts shared with her aunt cannot constitute a criminal action. Because we determine that the trial court did not abuse its discretion in denying Taylor's motion, we affirm.

Facts and Procedural History

Taylor is the niece of Millie Wright. In July 2004, Wright allegedly gave Taylor power of attorney with regard to her finances. Wright maintained three financial accounts in Indiana: accounts at People's Community Bank and Fifth Third Bank worth \$129,475.74 and \$77,408.56 respectively and a certificate of deposit at Dearborn Savings worth \$110,910.64. The Dearborn Savings account was allegedly created as a joint account. *See* Appellant's App. p. 128. The other two accounts were allegedly created in Wright's name alone but changed to joint accounts by Taylor using her power of attorney.¹

¹ The record does not clearly indicate which accounts were created as joint accounts. *See* Tr. p. 31 (stating that the People's Community Bank account was created as a joint account); *but see* Appellee's Br. p. 2 (stating that the same account was not originally a joint account but was changed to a joint account by Taylor). We note that in her brief, Taylor states that the Dearborn Savings account was created as a joint account, while the origination of the remaining two accounts is "not known." Appellant's App. p. 8. The State argues that at least one of the accounts was changed to a joint account by Taylor using her power of attorney. *See* Appellee's App. at 3, 10. Taylor disputes this claim. *See* Appellant's App. p. 8.

In December 2007, Wright revoked Taylor's power of attorney.² Taylor received notice of the revocation by mail on January 15, 2008. The next day, Taylor visited People's Community Bank, Dearborn Savings, and Fifth Third Bank. At People's Community Bank, Taylor closed the joint account and withdrew the balance, \$129,457.74. Taylor similarly closed the joint account at Fifth Third Bank and withdrew the balance, \$77,408.46. At Dearborn Savings, Taylor cashed the \$100,910.94 certificate of deposit. After a withdrawal penalty, Taylor received \$99,645.94 from Dearborn Savings.

Eight days later, Taylor opened an account at Friendship Bank and deposited a total of \$229,121.68. Taylor opened a second account there, where she deposited a check from Fifth Third Bank for \$77,408.56. Less than a month later, Taylor closed both bank accounts. In February 2008, Wright was declared incompetent. *See* Appellant's App. p. 203.

In December 2008, Taylor had a conversation with local authorities in which she acknowledged closing all three of the joint bank accounts. Taylor claimed, however, to have power of attorney at the time she closed the accounts. Taylor explained that she had access to the funds from the accounts, but they were no longer in Wright's name.

The State charged Wright with Class C felony theft and Class C felony fraud on a financial institution. Taylor filed a motion to dismiss, contending that the facts alleged by the State did not constitute a criminal offense under Indiana Code Section 35-34-1-

² While the record includes Wright's revocation of Taylor's power of attorney, it does not include any documents establishing the power of attorney claimed by Taylor. *See* Appellant's App. p. 98.

4(5). After an evidentiary hearing, the trial court denied the motion to dismiss.³ The trial court stated, “[T]he elements of these crimes are highly fact sensitive” and noted, “the factual evidence . . . is clearly in conflict.” *Id.* at 146-47. The court concluded, “A fact finder would need to hear and weigh numerous layers of facts to make this determination” and those facts “do not lead inescapably to the conclusion that Taylor is entitled to a dismissal.” *Id.* Taylor sought leave to pursue this interlocutory appeal. The trial court granted certification, and we accepted jurisdiction.

Discussion and Decision

Taylor contends that the trial court erred in denying her motion to dismiss. Taylor argues that her withdrawals of funds from joint accounts shared with Wright cannot constitute a criminal action. More specifically, Taylor claims that the State cannot prosecute her for theft because as joint account holder, she had authorization to withdraw funds from the bank accounts in question. Taylor also argues that the State has alleged no acts that would provide a factual or legal basis for a fraud charge.

We review a trial court’s denial of a motion to dismiss for an abuse of discretion. *State v. Durrett*, 923 N.E.2d 449, 453 (Ind. Ct. App. 2010). We therefore reverse only where the decision is clearly against the logic and effects of the facts and circumstances. *Id.* Indiana Code section 35-34-1-4(5) provides that an information may be dismissed when the facts alleged do not constitute an offense. A trial court considering a motion to dismiss need not rely exclusively on the text of the charging information but may hear

³ Taylor was not present at the hearing. Taylor’s counsel did not submit any affidavits and called no witnesses. *See* Appellant’s App. p. 146.

and consider evidence in determining whether a defendant may be charged with the crime alleged. *See Zitlaw v. State*, 880 N.E.2d 724, 728 (Ind. Ct. App. 2008), *trans. denied*.

Resolution of the parties' contentions on appeal depends upon multiple factual issues currently in dispute. Taylor argues that her actions with regard to the joint accounts were authorized, but the parties dispute which accounts were created as joint accounts and which were later changed to such. The parties also dispute Taylor's motivation for opening joint accounts. Further, the State contends—and Taylor denies—that Taylor abused her power of attorney, yet the State also questions the validity of Taylor's power of attorney, noting the absence of documentation establishing this authority in the record.

The record before us does not resolve these issues, and thus we are unable to reach the arguments regarding theft and fraud on a financial institution as they are presented on appeal. As the trial court aptly noted, the evidence is in conflict, and there are numerous questions of fact for the trier of fact to determine. We conclude that the trial court did not abuse its discretion in denying Taylor's motion to dismiss.

Affirmed.

ROBB, C.J., and NAJAM, J., concur.