STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1876

State of Minnesota,
Respondent,

vs.

Gloria Richards,
Appellant.

Filed November 5, 2018
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-15-33304

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

In this direct appeal from her conviction of gross-misdemeanor financial exploitation of a vulnerable adult, appellant argues that the state's evidence was insufficient to prove beyond a reasonable doubt that she financially exploited the victim. We affirm.

FACTS

In 2014, R.A.F. turned 67 years old. Her husband had died several years earlier, and she had no children or close family members. She sought help managing her affairs from her few remaining connections. One of those connections was her former insurance agent, appellant Gloria Hidalgo.[1] R.A.F. ultimately granted appellant power of attorney.

Appellant was not R.A.F.'s first attorney-in-fact. K.J. previously held that position. He worked at the same company as R.A.F. between 2008 and 2011. K.J. and R.A.F. rarely, if ever, met face to face, but they struck up a friendship. On August 26, 2013, R.A.F. signed a document granting power of attorney to K.J., with appellant listed as successor attorney-in-fact. The 2013 power-of-attorney document contained a provision adopted by R.A.F. that maintained the powers granted even if R.A.F. became incapacitated or incompetent. It also contained a gift-giving provision authorizing the attorney-in-fact to make gifts to certain individuals, but that provision was not adopted by R.A.F.

Law enforcement became concerned about R.A.F.'s well-being in March 2014. A bank manager thought that R.A.F. was being scammed after she requested cashier's checks for an international wire transfer. He reviewed R.A.F.'s account and noticed a significant drop in the balance. He contacted law enforcement, and on March 12, an officer went to R.A.F.'s residence. R.A.F. was reticent to talk about the money transfer and was not interested in pursuing charges. The officer left his contact information. About two months later, R.A.F. contacted the officer. She kept repeating herself during the conversation, and

[1] Gloria Richards is appellant's maiden name. Though Gloria Richards is listed in the case caption, appellant goes by the name Gloria Hidalgo.

the officer thought that she might be having a stroke. He and another officer went to her apartment. R.A.F. seemed confused, and paramedics were requested. By the time paramedics arrived, R.A.F. began speaking more clearly and coherently. She refused to be transported to the hospital.

In May 2014, R.A.F. was hospitalized after falling and suffering an arm fracture. At the hospital, she showed signs of confusion. She did not know why she was there and was not oriented to time and date. Doctors suspected progressive dementia. R.A.F. started to clear mentally and was oriented upon discharge. She was transferred to Augustana, a transitional-care facility. She remained at Augustana until the end of July, except for a couple days of hospitalization. During her stay, she showed signs of confusion and memory loss and underwent cognitive testing, which indicated issues with insight and judgment. Towards the end of her stay at Augustana, R.A.F. was diagnosed with mild to moderate unspecified neurocognitive disorder.

On June 19, 2014, during R.A.F.'s stay at Augustana, K.J. revoked his power of attorney. Appellant facilitated the revocation by contacting K.J., but R.A.F. spoke with K.J. by phone and confirmed that she wanted the revocation. That day, appellant and R.A.F. entered into a contract. Appellant agreed to render caretaking and power-of-attorney services to R.A.F. for $25 per hour. The contract gave appellant access to R.A.F.'s bank accounts and money and allowed her to use that money for caretaking and power-of-attorney duties.

On July 25, R.A.F. left Augustana and returned home with the assistance of a 24-hour home-care service. She still showed signs of confusion. The home-care service was

soon terminated, and appellant began providing and facilitating care. On August 11, 2014, R.A.F. signed a new document granting appellant power of attorney. The document contained a gift-giving provision that authorized appellant to make gifts to herself or to anyone appellant had a legal obligation to support. R.A.F. adopted the gift-giving provision. A bank manager notarized the document in the presence of R.A.F. He did not have any concern that appellant was forcing R.A.F. to sign the document and felt that R.A.F. was competent, as she presented identification and was able to hold a conversation.

R.A.F.'s cognitive abilities and health declined. On October 6, R.A.F. was hospitalized for health issues, including swelling in her legs, and she remained at the hospital until October 16, when she was placed into a long-term-care facility. Appellant used her basement to store R.A.F.'s possessions. That month, the department of commerce opened an investigation into appellant's handling of R.A.F.'s affairs. On October 14, appellant gave a statement to investigators. She indicated that she was being paid in cash by R.A.F. for care services, and acknowledged that cash withdrawals from R.A.F. were for that purpose. Appellant stated that she tracked the hours that she worked for R.A.F. A spreadsheet was subsequently prepared documenting those hours, and it indicated 1,359 hours worked, entitling appellant to $33,975 based on the $25 per hour compensation rate. Appellant denied using R.A.F.'s funds to pay for her own personal expenses. In November 2014, a search warrant was executed at appellant's home.

The state charged appellant with one count of theft by swindle and one count of financial exploitation of a vulnerable adult (in excess of $5,000). In June 2017, a jury trial was held. Evidence at trial showed numerous transfers of funds from R.A.F.'s account to

appellant's account. For example, on July 25, 2014, the date that R.A.F. left Augustana and returned home, R.A.F. opened a new account and made a $2,000 cash withdrawal, and that same day appellant made a $2,000 cash deposit into her own account. Also that day, appellant made a mortgage payment of $2,235.94 on a mortgage held in the name of appellant's ex-husband. A June 2014 notice of foreclosure admitted into evidence indicated that the mortgage had a past-due amount of $3,787.88, and additional evidence of other delinquent accounts was admitted. From July 25 through November 17, 2014, appellant made regular deposits into her accounts totaling $12,970, deposits that were inconsistent with the deposits made prior to July 2014. R.A.F.'s account indicated numerous cash withdrawals corresponding with appellant's deposits. From July 25 to November 17, 2014, the cash withdrawals from R.A.F.'s account totaled $24,120.

Evidence at trial showed that appellant made numerous payments and purchases using R.A.F.'s funds. An AT&T payment for $230.99 was made on appellant's account on October 28, 2014. The payment was made using $240 in cash, and testimony was received indicating that the payment corresponded with a cash withdrawal from R.A.F.'s account. Cash withdrawals in $500 increments were made from R.A.F.'s account every day from October 1 to October 6. An AT&T cash payment for $545 was made on appellant's account on October 26, 2014. Evidence was admitted indicating that appellant purchased a $287.50 Sanyo LED TV on October 2, 2014. R.A.F.'s credit card was used for that transaction. Evidence was admitted indicating that appellant purchased a $198.88 TV on October 1, 2014, as well as other items totaling $532.56, and R.A.F.'s funds were used for that transaction. Testimony was received indicating that two computers were

purchased, a $559 HP laptop purchased on October 7 using R.A.F.'s funds, and a $449 HP stand-alone computer purchased with cash on October 15, 2014. These payments and purchases all occurred during the same month that R.A.F.'s cognitive abilities declined and she was placed into a long-term-care facility. Evidence at trial indicated that some of R.A.F.'s bills were not being paid, including a large outstanding bill owed to Augustana.

The jury found appellant not guilty of theft by swindle, but guilty of financial exploitation of a vulnerable adult. The jury found that the total taken was $1,000 or less, a gross misdemeanor. Appellant received a 365-day stayed sentence. This appeal followed.

D E C I S I O N

Appellant's sole argument on appeal is that there was insufficient evidence for a conviction. When considering a claim of insufficient evidence, we conduct "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Appellant was convicted under Minn. Stat. § 609.2335, subd. 1(1)(ii) (2014),[2] which criminalizes intentionally using, managing, or taking either temporarily or permanently the property or financial resources of a vulnerable adult for the benefit of someone other than the vulnerable adult in breach of a fiduciary obligation recognized by law.[3] The jury was instructed to find the following seven elements:

(1) R.A.F. was a vulnerable adult;
(2) appellant knew or had reason to know R.A.F. was vulnerable;
(3) appellant was in a fiduciary relationship with R.A.F.;
(4) appellant breached a fiduciary obligation recognized in the law and arising from the fiduciary relationship;
(5) appellant used, managed, or took either temporarily or permanently the real or personal property or other financial resources of R.A.F., whether held in the name of R.A.F. or a third party, for the benefit of someone other than RA.F.;
(6) appellant acted intentionally; and
(7) appellant's acts took place in Hennepin County between June 19 and November 17, 2014.

Appellant concedes that R.A.F. was a vulnerable adult, appellant knew that R.A.F. was vulnerable, appellant was in a fiduciary relationship with R.A.F., and appellant's acts took place in Hennepin County between June and November of 2014. However, appellant argues that there was insufficient evidence to establish that she breached a fiduciary

[2] The complaint alleged that the offense occurred between June 2014 and November 2014. Our sufficiency analysis focuses on acts committed after August 1, 2014, and we therefore generally cite to the 2014 statutes in this opinion.

[3] The sentencing order lists the penalty statute as Minn. Stat. § 609.52, subd. 3(2) (2014) (theft exceeding $5,000). It appears that the sentencing order is incorrect, and the actual penalty statute being utilized is Minn. Stat. § 609.52, subd. 3(4) (2014) (theft exceeding $500 but less than $1,000). This issue was not raised, and because there is sufficient evidence that the theft here exceeded $500, we do not delve further into the matter.

obligation and intentionally financially exploited R.A.F. Appellant raises two primary arguments. She asserts that she never intentionally misused R.A.F.'s funds, and she argues that R.A.F. gave her competent consent for expenditures by granting her power of attorney. If a person is competent and approves of expenditures made by his or her attorney-in-fact, the attorney-in-fact is permitted to make those expenditures, even if the person consenting is a vulnerable adult. *State v. Campbell*, 756 N.W.2d 263, 274 (Minn. App. 2008), *review denied* (Minn. Dec. 23, 2008).

Appellant's arguments are unavailing. Evidence showed that appellant overbilled R.A.F. for care services. For example, appellant documented that she provided 24 hours of "homecare" on August 9, 2014, but a Facebook posting was submitted into evidence indicating that appellant was at a YMCA that day working out for over an hour. Likewise, appellant indicated 24 hours of care on August 11 and September 6, but Facebook posts indicated that appellant was working out during portions of those days. An investigator opined at trial that appellant overbilled R.A.F. This evidence supports the verdict.

Evidence was also admitted that appellant made payments and purchases for her own benefit, and not for the benefit of R.A.F. Appellant acknowledges that, as attorney-in-fact, she was under a duty to exercise her power "in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs" with "the interests of the principal utmost in mind." Minn. Stat. § 523.21 (2014). Evidence indicated that appellant made AT&T payments, purchased two TVs, two computers, and other items using R.A.F.'s funds. A $449 computer was purchased the day before R.A.F. entered a long-term-care facility. Evidence indicated that

R.A.F. did not have the TVs or computers in her long-term-care facility, and appellant was using the TVs and computers at her residence. The jury could have reasonably concluded that appellant intentionally made some or all of these purchases and expenditures for her own benefit in breach of her fiduciary obligations.

The power-of-attorney document from August 11, 2014, contained a gift-giving provision. Under Minn. Stat. § 523.24, subd. 8(2) (2014), the gift-giving provision authorized appellant to make gifts to herself for purposes which she deemed "to be in the best interest of the principal, specifically including minimization of income, estate, inheritance, or gift taxes." The jury could have reasonably concluded that some or all of the purchases and expenditures were not made in accordance with the gift-giving provision, or were made without R.A.F.'s interests "utmost in mind." *See* Minn. Stat. § 523.21.

Viewed in a light most favorable to the verdict, the evidence of overbilling and unwarranted purchases was sufficient to permit the jurors to find appellant guilty, beyond a reasonable doubt, of gross-misdemeanor financial exploitation of a vulnerable adult.

Finally, while neither party asserts that a circumstantial evidence standard of review is applicable, this court has previously applied that standard when reviewing the sufficiency of the evidence for a conviction of financial exploitation of a vulnerable adult. *See State v. Campbell*, No. A11-1847, 2012 WL 6554410, at *3 (Minn. App. Dec. 17, 2012); *see also State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (recognizing that because intent is a state of mind, it is generally proved by circumstantial evidence). Even under that standard, the evidence is sufficient. The circumstances proved, including the overbilling, purchases, and payments that benefited appellant and not R.A.F., are consistent with

appellant's guilt and inconsistent with any rational hypothesis other than guilt. *See State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016) (setting forth circumstantial evidence standard of review).

Affirmed.