IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

CHERYL D. KELLY,

Appellant.

DOCKET NUMBER WD82085

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 10, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Joel P. Fahnestock, Judge

JUDGES

Division One: Chapman, P.J., and Pfeiffer and Gabbert, JJ. CONCURRING.

ATTORNEYS

Eric S. Schmitt, Attorney General, and Nathan J. Aquino, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

Christian E. Lehmberg, Assistant State Public Defender, Columbia, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
CHERYL D. KELLY, Appellant.

WD82085 **Jackson County**

Before Division One Judges: Thomas N. Chapman, Presiding Judge, and Mark D. Pfeiffer and Anthony Rex Gabbert, Judges

Ms. Cheryl Kelly ("Kelly") appeals her convictions following a jury trial in the Circuit Court of Jackson County, Missouri ("trial court"), of two counts of making or causing to be made a false statement to receive a health care payment, and one count of financial exploitation of the elderly.

In 2013 and 2014, Kelly was employed by two healthcare companies—Another Day Companies and Cascade Health Services. Another Day Companies provided home healthcare services, such as assisting elderly clients with cognitive difficulties with home tasks such as home cleaning, cooking meals, dressing, transporting clients to doctor's appointments, and assisting clients with prescription medications. Cascade Health Services provided replacement staff for hospitals and nursing homes. Kelly was assigned to be a home health aide to two elderly clients, H.B. and H.C., both of whom had cognitive issues that prevented their ability to provide independently for themselves.

Both healthcare companies had trained Kelly emphasizing submitting accurate time sheets for services rendered, as those time sheets would be used to submit Medicaid claims relating to services for the Medicaid-eligible recipients, and falsified time sheets would subject the company to Medicaid fraud claims. Kelly was also extensively trained about elder exploitation and the absolute prohibition of such. Kelly was trained about abuse, neglect, her ethical obligations to the clients, and that home healthcare aides were not to use the client's money "in any way, shape, or form." Kelly received specific training about financial exploitation—that she should not act as a client's financial power of attorney; that she should not be listed as a joint holder of a client's bank account; and that she should not accept any monetary gifts from clients.

Over the course of fifteen months in 2013 and 2014, Kelly intentionally falsified time sheets—double billing H.B. and H.C. by submitting time sheets to both of the healthcare companies she worked for (and getting paid "double" by the companies)—and Kelly financially exploited H.B. and used H.B.'s money to pay her mortgage, car insurance, and gambling debts. Kelly covered up her financial exploitation by having H.B. execute a power of attorney to her and she was thus able to manipulate H.B.'s communications with doctors and family members.

At trial, the State of Missouri (the "State") presented overwhelming evidence of Kelly's scheme by way of meticulous testimony from twenty-one witnesses. Through this testimony, the State presented evidence showing 168 times—encompassing hundreds of hours—in which Kelly had falsified time records to submit reimbursement for health care services she allegedly rendered to H.B. and H.C. wherein she would have had to be in two places at the same time. Additionally, through this testimony, the State presented evidence that clearly demonstrated that Kelly obtained a power of attorney from H.B.; she then placed herself as a joint owner of his bank account; she then used H.B.'s bank account for her personal uses, including to pay her mortgage payment, paying her car insurance, and funding her gambling habits at numerous Kansas City casinos. The State also presented testimony from H.B.'s family and investigators that H.B.'s apartment was filthy and unattended, that Kelly would misrepresent herself as a "daughter" or "niece" to healthcare providers, and that she was moving H.B. to different apartments to make it difficult and sometimes impossible for H.B.'s siblings to communicate with H.B.

The State charged Kelly with two counts of making a false statement to receive a health care payment, occurring May and July 2013, and one count of financial exploitation of the elderly, occurring on or between May 2013 and July 2014. The case proceeded to jury trial and the jury found Kelly guilty of all three counts. She was sentenced to seven years' imprisonment on Count I, seven years' imprisonment on Count II, and eight years' imprisonment on Count III. The sentences were ordered to run concurrently. Execution of the sentences was suspended, and Kelly was placed on probation of five years. Kelly appealed.

AFFIRMED.

Division One holds:

Because the trial court below used the identical not-in-MAI definitional instruction that our Missouri Supreme Court had previously approved in a very similar factual scenario, the trial court did not abuse its discretion in submitting the identical instruction to the jury in Kelly's trial. The trial court did not abuse its discretion in concluding the evidence about H.B. missing his brother's funeral because his family could not locate him was relevant to establish Kelly's intent and scheme.

Opinion by: Mark D. Pfeiffer, Judge March 10, 2020

* * * * * * * * * * * *

THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.