MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

LINDSAY MICHELLE FORBES

APPELLANT.

DOCKET NUMBER WD84052

DATE: May 3, 2022

Appeal From:

Saline County Circuit Court
The Honorable Dennis Allen Rolf, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Anthony Rex Gabbert, Judge and W. Douglas Thomson, Judge

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Attorneys:

Gregory L. Barnes, Jefferson City, Missouri, for respondent.

Anthony W. Bonuchi, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
LINDSAY MICHELLE FORBES, APPELLANT.

WD84052 Saline County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Anthony Rex Gabbert, Judge, and W. Douglas Thomson, Judge

Lindsay Michelle Forbes ("Forbes") appeals the judgment of the Circuit Court of Saline County, Missouri ("trial court"), convicting her, following a jury trial, of the Class B felony of financial exploitation of an elderly person (Forbes's father, "Father"), section 570.145, RSMo. On appeal, Forbes alleged that the trial court: (1) erred by submitting the verdict directing instruction because it criminalized a legal act in that it required the jury to find that Forbes "knowingly obtained control of a bank account and proceeds from the sale of a [vehicle] . . . with the intent to deprive [Father] permanently of the property, and. . . [that Forbes] did so by use of undue influence" while Forbes in fact obtained control of the bank account and vehicle by order of the probate court when she was appointed as guardian and conservator over Father and his estate; (2) erred by submitting the verdict directing jury instruction because it submitted an aggregation of acts over a period of fifteen months and failed to differentiate between various acts that would have ensured the jury unanimously convicted her of the same act or acts; (3) plainly erred by submitting the verdict directing instruction because the instruction aggregated various acts that may have been a series of misdemeanor offenses into a felony offense; (4) plainly erred by submitting the verdict directing instruction because there was no evidence to support that Father was detrimentally affected by Forbes's actions, only that he may be detrimentally affected at some unknown future time; (5) erred in refusing to instruct the jury on the lesser-included offense of stealing; (6) erred in overruling Forbes's motion to dismiss because the probate court had exclusive jurisdiction in the matter; and (7) erred in denying Forbes's motion for new trial after having originally properly and timely sustained the motion because the trial court erroneously concluded that its original ruling on the motion for new trial was untimely.

REVERSED, AND TRIAL COURT IS DIRECTED TO DISCHARGE FORBES.

Division Three holds:

Forbes was charged in the information with financial exploitation of the elderly by, between June 29, 2016, and September 10, 2017, having "knowingly obtained control of the assets and bank account" of Father, with a value of over $25.000, and with the use of undue influence. The verdict directing instruction differed from the charge in that it required the jury to

find that Forbes "knowingly obtained control of a bank account and the proceeds from the sale of [Father's vehicle]…that [Forbes] did so by undue influence [, and] the property had a value of at least $25,000." There is no evidence that Forbes "obtain[ed] control over" Father's bank account and assets by undue influence, because the probate court ordered Forbes to take control over these assets when it appointed her Father's guardian and conservator, an appointment to which no one objected at the time and no one argues that she acted inappropriately in securing the appointment. Forbes had been intermittently caring for Father for some years before her appointment by the probate court, and there was evidence that Father required the appointment of a guardian and conservator for his own safety. Forbes was not charged with inappropriately spending the corpus of Father's assets. Because there was no evidence to support the offense as charged and instructed, the trial court should have granted Forbes's motion for acquittal. "If the information did not state an offense, the court had no [authority] to proceed. If the evidence was not sufficient to support the verdict, then the defendant was entitled to a judgment of acquittal, and the state [is] not entitled to proceed with a new trial." *State v. Urban*, 796 S.W.2d 599, 602 (Mo. banc 1990). Forbes conviction and sentence are reversed and the trial court is ordered to discharge her. The remainder of Forbes's points on appeal are moot.

Opinion by: Gary D. Witt, Judge May 3, 2022

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