No. A08-0218

STATE OF MINNESOTA

IN COURT OF APPEALS

State of Minnesota,

Appellant,

vs.

Timothy Alan Campbell,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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As phrased, the district court did not rule on this issue.

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PROCEDURAL HISTORY

February 2003 - August 2003:	Date of offense charged in counts I and II.
August 2003 - January 2004:	Date of offense charged in counts III and IV.
March 2004 - September 2004:	Date of offense charged in counts V and VI.
February 16, 2006:	Complaint filed charging respondent with three counts of financial exploitation of a vulnerable adult and three counts of theft by swindle.
March 23, 2006:	First appearance (original first appearance of March 10, 2006 was continued by request of respondent).
April 7, 2006:	Respondent waived 28-day probable cause time limit.
May 15, 2006:	Omnibus hearing before the Honorable Heather L. Sweetland on respondent's motion for dismissal of counts II, IV, and VI (theft by swindle charges) for lack of probable cause.
May 19, 2006:	Order of Judge Sweetland finding probable cause for counts II, IV, and VI.
October 31, 2006:	Civil trial between respondent and Scott Campbell, as personal representative for L.C., set to begin, however, a civil settlement was reached.
March 6, 2007:	Plea hearing (original plea date set for February 26, 2007, continued to March 2, 2007 and subsequently to March 6, 2007); however, respondent changed his mind, and the matter was set for jury trial on July 24, 2007.
July 16, 2007:	District court granted motion by respondent to continue jury trial due to scheduling conflict. Pre-trial scheduled for October 8, 2007.

July 23, 2007:	Appellant filed motion to amend counts II, IV, and VI of the criminal complaint from theft by swindle, to theft by false representation.
October 1, 2007:	Appellant filed motions requesting that the court rule on the admissibility of statements made by L.C. (deceased) to family, friends, and her attorneys.
October 8, 2007:	Pre-trial hearing held.
October 25, 2007:	Order from the Honorable Mark A. Munger granting the appellant's motion to amend the complaint and allowing the admissibility of L.C.'s statements to family, friends, and her attorneys.
November 13, 2007:	Jury trial begins.
November 20, 2007	Respondent moves for dismissal of counts II, IV, and VI for lack of probable cause. District court found counts II, IV, and VI, lacked probable cause, and dismissed said counts.
November 21, 2007	Respondent filed a motion and argued that the financial exploitation statute (counts I, III, and V) is unconstitutional. District court reserved ruling on the constitutional argument until the conclusion of the jury trial.
November 26, 2007	Counts I, III, and V submitted to the jury.
November 27, 2007	District court declares a mistrial based on the jury's inability to reach a unanimous verdict. District court orders parties to brief the issue of the constitutionality of the financial exploitation of a vulnerable adult statute.
January 28, 2008:	Motion hearing on the constitutionality of the financial exploitation of a vulnerable adult statute.
	District court finds, on the record, the financial exploitation of a vulnerable adult statute is unconstitutionally vague as applied to the

	respondent, and dismissed with prejudice the three remaining counts of the appellant's criminal complaint.
January 29, 2008:	District court's written order and findings are filed, ruling that the financial exploitation of a vulnerable adult statute is unconstitutionally vague as applied to respondent.
February 4, 2008:	Notice of appeal filed.
April 7, 2008	State's receipt of trial transcripts.
April 21, 2008	Appellant's brief filed with this Court and served by U.S. mail on respondent.

STATEMENT OF THE CASE

Respondent, Timothy Campbell, was charged by complaint filed in St. Louis County with three counts of financial exploitation of a vulnerable adult and three amended counts of theft by false representation. The complaint alleged respondent breached his fiduciary obligation to his mother, L.C., by unlawfully taking $107,686.29 while named as a joint tenant on her checking and savings accounts. Respondent's unlawful use of L.C.'s funds was facilitated by his account status as a joint tenant. Respondent did not contribute any assets to L.C.'s bank accounts.

L.C., at the time of the thefts, had a diagnosis of "dementia, Alzheimer's type," and was functionally a vulnerable adult. L.C. was later admitted to a hospital, and thereafter a nursing home, which classified her categorically as a vulnerable adult. L.C. executed a power of attorney (hereinafter POA) naming respondent as attorney-in-fact shortly after placing respondent on her accounts as a joint tenant. Respondent's authority to act as attorney-in-fact for L.C. was not used until L.C. was hospitalized, and later admitted to a nursing home.

During the jury trial, respondent filed a motion asking the district court to declare the financial exploitation of a vulnerable adult statute, Minn. Stat. § 609.2335 subd. 1 (1), unconstitutionally vague. Judge Munger deferred ruling on the constitutional motion until the conclusion of the jury trial. At the conclusion of the state's case-in-chief, respondent moved for judgment of acquittal on the three counts of theft by false representation under Rule 26.03 subd. 17(1) of the Rules of Criminal Procedure. Judge Munger granted respondent's motion.

The jury was unable to reach a unanimous decision on the remaining counts and Judge Munger declared a mistrial. After briefing and argument by both parties, Judge Munger found the financial exploitation of a vulnerable adult statute unconstitutionally vague as applied to the respondent. Rather than schedule a new trial, the district court dismissed the complaint.

This pre-trial appeal followed.

STATEMENT OF FACTS

Family Background

L.C. was born in Massachusetts and was living there when she met respondent's father, Gerald Campbell, who was serving in the military out east. (Trial Transcript [hereinafter "TT."] 26, 224). L.C. and Gerald Campbell moved to Duluth, Minnesota, Gerald Campbell's hometown. (*Id.*) L.C. and Gerald Campbell had two sons, Scott Campbell ("Scott") and respondent. (TT. 25, 224). When Scott was three and respondent 8 months, Gerald Campbell committed suicide. (TT. 27, 29). L.C. never remarried, and she raised the boys on her own. (*Id.*) L.C. worked as a Licensed Practical Nurse (LPN) at Park Point Manor, a nursing home in Duluth, for 20 years. (TT. 26, 224-25, 286-87). L.C. owned a home on Park Point which she subsequently sold to Scott in March of 1991 under a contract for deed for $25,000. (TT. 30-33, exh. 5). After the sale, L.C. rented an apartment on Park Point. (TT. 30-33). Respondent lived at L.C.'s apartment on Park Point for a period of time starting around the fall of 2002. (TT. 37, 169).

Scott worked for the Duluth Police Department. (TT. 23). He retired as Supervising Sergeant of the Violent Crimes Unit. (*Id.*) Respondent also worked for the Duluth Police Department. (TT. 576). Respondent was an investigator in the Financial Crimes Unit; the unit that investigates financial exploitation of vulnerable adult cases. (*Id.*)

Over time, L.C. developed a romantic relationship with Jack Fawcett ("Fawcett"). (TT. 28-30, 223). Eventually, after the boys left home, L.C. began living with Fawcett. (*Id.*) However, L.C. always maintained a separate residence, her apartment on Park Point, "just in case." (TT. 30). L.C. was boisterous and a joy to be around. (TT. 225). She had an opinion about everything, right or wrong. (*Id.*) L.C. also enjoyed cooking, and was "thrifty" when it came to money. (TT. 26, 228).

L.C.'s Health Issues

In the fall of 2002, L.C.'s behavior began to change. (TT. 35-37, 142, 178, 299). She began exhibiting delusional/paranoid behavior regarding the death of her husband. (*Id.*) As time went on, L.C. had cognitive difficulties and lost approximately 40 pounds. (TT. 35-37, 142, 178, 248, 299). L.C. was hospitalized on November 22, 2002. (TT. 37).

Dr. Tracy Tomac is a psychiatrist; she is an expert in geriatric psychiatry. (TT. 132-33, exh. 15). Dr. Tomac testified that dementia is a cognitive impairment process that generally affects older individuals. (TT. 136). The most common cause of dementia is Alzheimer's disease, which exhibits itself by way of extreme forgetfulness, poor short-term memory, poor decision-making, an inability to multi-task, i.e., a person who is "generally, incapable of functioning well independently." (TT. 138-39). A clinical

diagnosis of "dementia, Alzheimer's type" is 90% accurate, but for 100% accuracy, an autopsy is required. (TT. 137). Dementia progresses differently in each individual, but with most, onset is fairly slow, meaning the disease often sneaks up on the families of the individual. (TT. 141).

Dr. Tomac was L.C.'s treating psychiatrist. (TT. 160). When L.C. was brought in by family in November of 2002, Dr. Tomac ordered testing. (TT. 143). Based upon information from the family, observations from trained nursing staff, an occupational therapy assessment, and cognitive testing, Dr. Tomac diagnosed L.C. with "dementia, Alzheimer's type." (TT. 141-56, 159). A family meeting was held, wherein L.C., Scott and respondent met with Dr. Tomac regarding her evaluation and diagnosis of L.C. (TT. 38, 157-58). Dr. Tomac advised the family at this meeting that L.C. had dementia and that "she would have special needs." (TT. 38-40, 157-58, 249). Dr. Tomac recommended L.C. be placed in an assisted living facility for her own safety. (*Id.*)

Dr. Tomac continued as L.C.'s treating psychiatrist until L.C.'s death. (TT. 160). It was Dr. Tomac's expert opinion that, based on L.C.'s "dementia, Alzheimer's type," she had an inability to protect herself, and was therefore a vulnerable adult as of November of 2002. (TT. 179, 181-82). Later, in the fall of 2004, L.C. was a patient in the hospital and a resident in a nursing home. (*Id.*) This made her categorically a vulnerable adult within the meaning of Minn. Stat. § 609.232, subd. 11 (2).

When L.C. was released from the hospital in 2002, she went to live with Scott until mid-January 2003. (TT. 39). Scott, following Dr. Tomac's recommendation, began looking for an assisted living facility for L.C., and placed a deposit at Edgewood Vista in

Duluth. (TT. 40-42). L.C. was aware of the conditions of nursing homes, having worked as an LPN at a nursing home for 20 years. (TT.43, 237). L.C. did not want to go to an assisted living facility or nursing home. (*Id.*) While residing with Scott and his wife, Doreen Campbell, L.C. showed signs she was losing her ability to retain short-term information; L.C. could not remember phone numbers and had repetitive conversations. (TT. 46, 250-51).

L.C.'s ability to live independently and in a safe manner was discussed with Dr. Tomac in mid-January 2003. (TT. 44, 164-66). Soon thereafter, L.C. returned to live with Fawcett under his supervision. (*Id.*) However, Dr. Tomac recommended that if L.C.'s safety could not be maintained while living independently with Fawcett, assisted living would need to be considered. (*Id.*)

After the initial hospitalization, L.C. began to forget and failed at simple tasks. She forgot to take her medications, lost the ability to cook, and had trouble operating a clothes dryer that she had been using for years. (TT. 47, 167, 169, 171-72, 228-29, 250). She needed to be reminded to pay her medical insurance and got lost driving. (TT. 229-30, 290). L.C.'s personality also changed--she became distant, quiet, and conversations became short. (TT. 48, 227).

In the summer and fall of 2004, L.C. was diagnosed with Myelodysplasia, which later developed into Leukemia. (TT. 49, 175, 305-08). L.C. was hospitalized on August 30, 2004, and moved to Bayshore Health Center ("Bayshore"), a nursing home, on September 7, 2004. (TT. 306, 565, 559, exhs. 49 & 50). Respondent signed the

admission paperwork at Bayshore on September 8, 2004. (TT. 561-62, exh. 50). L.C. died of leukemia on November 7, 2004. (TT. 53, exh. 8).

L.C.'s Legal and Financial History

Scott was named L.C.'s attorney-in-fact by a POA drafted by attorney Jean Johnson in 1998. (TT. 56-58, 266-69, exh. 9). L.C.'s POA did not allow for self-gifting. (*Id.*) L.C. named Scott as her attorney-in-fact because she trusted him, and she could not trust respondent with money. (TT. 211). At this time, Scott was also named joint tenant on L.C.'s checking and saving accounts. (TT. 55, 58). L.C. wanted Scott on the accounts "just in case." (TT. 55). In November of 2000, L.C. had attorney Melanie Ford draft a will and health care directive. (TT. 337-38, exh. 18-19). L.C.'s will named Scott as executor of her estate and split her assets evenly between her two sons, Scott and respondent. (*Id.*)

In January 2003, L.C. had approximately $98,000 in her checking and saving accounts. (TT. 58-59, exhs. 53 & 54). She had monthly income of approximately $2,500 from social security benefits and from the Public Employee Retirement Association from her late husband's pension. (TT. 59, exh. 57).

Respondent was aware of the extent of L.C.'s assets. (TT. 60). Scott spoke to respondent about L.C.'s assets when he was looking into assisted living facilities. (TT. 59-60). Scott told respondent that L.C.'s assets would allow her to pay for 10 to 11 years of assisted living care. (*Id.*) Respondent expressed to Scott that he was not happy that L.C.'s assets would be depleted for her care. (TT. 61).

L.C. believed that Scott's status as attorney-in-fact gave him the ability to determine where she lived, and she worried that he would force the issue of her residing in an assisted living facility. (TT. 237-38). Therefore, L.C. decided to change her POA and remove Scott as attorney-in-fact. (*Id.*)

On January 21, 2003, L.C. went back to attorney Johnson and revoked her 1998 POA. (TT. 269-72, exh. 16). She asked Johnson to prepare a new POA naming respondent as her new attorney-in-fact, however, Johnson would not prepare the document because she was concerned about L.C.'s mental state. (TT. 269-72, 285). Johnson believed naming respondent as L.C.'s attorney-in-fact was not in L.C.'s best interest. (*Id.*) On February 17, 2003, respondent brought L.C. to his attorney, Matthew Beaumier, to draft a new POA. (TT. 363-64). After signing the new POA, respondent received a letter outlining his obligations as attorney-in-fact. (TT. 394-96, exh. 23). L.C. executed new POA documents naming respondent as her attorney-in-fact on March 24, 2003, which respondent signed. (TT. 384-85, exhs. 24 & 25). The Gerlach & Beaumier law firm, per firm policy, held on to L.C.'s POAs (short form and durable POAs) until Dr. Groves, her treating physician, confirmed her incapacity. (TT. 385, 434-36). Respondent obtained the POA document from the Gerlach & Beaumier firm on September 3, 2004. (TT. 436-37, exh. 28).

L.C. had an ATM card for accessing cash and checking her account balance, but she did not know how to use it. (TT. 231-33). Fawcett knew L.C.'s pin number and would use her card to get cash for L.C. or to check L.C.'s account balance. (*Id.*) During the period respondent lived in L.C.'s apartment, her only access to her account balance

was when Fawcett would check her balance at the ATM, as the bank statements were sent to the apartment on Park Point. (*Id.*) With one exception, Fawcett always had L.C.'s permission to use L.C.'s ATM Card. (*Id.*)

In the spring of 2003, Scott learned from L.C. that respondent purchased a new Subaru car for $27,000 to $30,000 with L.C.'s funds; L.C. was extremely upset and concerned. (TT. 62, 578). Scott intended to notify the authorities; however, L.C. forbid him to do so as it would compromise respondent's position with the Duluth Police Department. (TT. 63).

Fawcett testified that L.C.'s initial reaction to the depletion of her funds was to get angry, but then she would forget. (TT. 233). Attorney Melanie Ford received a phone call on May 21, 2003 from L.C. who stated that the son on her accounts was taking money out of them. (TT. 341-42).

In September of 2004, Scott became aware that L.C.'s account had been depleted to almost zero, and he brought the matter to the attention of the Duluth Police Department. (TT.63). Scott, as a mandatory reporter under Minn. Stat. § 626.557, filed a vulnerable adult report with the St. Louis County Common Entry Point. (TT. 96). Scott believed that L.C. was a vulnerable adult, and as such, had no control over the money being taken from her accounts. (*Id.*) Scott was also concerned about how L.C. would pay for her care in the nursing home without any money. (TT. 64, 92-95).

Toward the end of September 2004, Scott brought L.C. to attorney Karen Olson who, at the request of L.C., drafted documents revoking the POA naming respondent as attorney-in-fact and executing a new POA naming Scott again as attorney-in-fact. (TT.

65, 446-53, exhs. 10 & 32). L.C. told Olson that she had not voluntarily given her money to respondent. (TT. 523). Bank records at the time showed L.C. had about $700 left in her accounts. (TT. 66). Scott also obtained records from Northwest Airlines showing that in October 2003, four tickets to Las Vegas were purchased with L.C.'s funds for respondent's in-laws and friends. (TT. 72-73, exh. 13). Scott began the process of obtaining a guardianship/conservatorship for L.C., in order to obtain an accounting from respondent to determine where respondent spent L.C.'s funds. (TT. 456-61). However, L.C. died before a guardian/conservator was appointed. (TT. 461-62).

Investigation and Financial Analysis.

The matter was referred to the Attorney Generals Office ("AGO"). (TT. 578). The AGO worked with the Duluth Police Department to obtain search warrants for L.C.'s and respondent's bank accounts. (*Id.*) A search warrant was executed on Hayes Subaru; the records obtained showed that respondent purchased a vehicle for $27,016.37 on March 7, 2003. (TT. 579, exh. 51 & 52). A check was written from L.C.'s savings account for the vehicle, as well as for the license and the registration of the vehicle in respondent's name. (TT. 578-80, exhs. 1[bates #1118 & 0974], 51 & 52).

L.C.'s financial records showed she opened new checking and savings accounts on February 6, 2003, naming respondent as a joint tenant on the accounts; respondent signed the card opening the accounts. (exhs. 1 & 2).

Investigative Auditor Heidi Hunter reviewed respondent and L.C.'s financial records. (TT. 602-03). Her analysis determined that respondent took $107,071.29 from L.C.'s checking and saving accounts from February 6, 2003, through September 20,

2004. (TT. 676, exh. 57). Respondent spent L.C.'s money on purchases of a new vehicle, airline tickets, home construction supplies and labor -- items that were not for the benefit of L.C. (exh. 57). On September 7, 2004 (the day L.C. was admitted to the nursing home), respondent emptied and closed L.C.'s savings account, and took from her checking account, an amount totaling $18,048.48, by way of a cashier's check written to himself. (exhs. 1, 2[bates #0242], 3, 53, 54, & 55). L.C.'s remaining bank account was closed the end of September 2004. (exhs. 1 & 2). Respondent deposited the total sum of $18,048.48 into his own personal savings account. (TT. 667, exh. 55).

ARGUMENT

I. THE TRIAL COURT'S ORDER DISMISSING THE REMAINING CHARGES AGAINST RESPONDENT HAD A CRITICAL IMPACT ON THE STATE'S ABILITY TO PROSECUTE RESPONDENT.

A. Standard of Review

This matter is a pre-trial appeal because this case was dismissed after a mistrial but before a second trial was convened. Pre-trial appeals by the prosecution pursuant to Minn. R. Crim. P. 28.04, subd. 1, are subject to a two-pronged review. First, the state must establish clearly and unequivocally that the district court's order will have a "critical impact" on the state's ability to prosecute the defendant successfully. *See* Minn. R. Crim. P. 28.04, subd. 2(1); *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. Ct. App. 2004) (citing *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977)). A dismissal of a complaint unquestionably has a critical impact on the outcome of a prosecution. *State v. Ohrtman*, 466 N.W.2d 1, 2 (Minn. Ct. App. 1991).

Second, the state must establish that the district court erred in its judgment. *State v. Kim*, 398 N.W.2d 544, 547 (Minn. 1987). Constitutional challenges are questions of law, which are reviewed *de novo*. *State v. Bussmann*, 741 N.W.2d 79, 82 (Minn. 2007) (citing *In re Blilie*, 494 N.W.2d 877, 881 (Minn. 1993)).

B. The Trial Court's Order Had Critical Impact On The State's Ability To Prosecute The Respondent.

The state's obligation to establish that the district court's order had a critical impact on the state's ability to prosecute respondent is easily met in this case. The complaint against the respondent was filed on February 6, 2006, and amended on October 26, 2007. On November 20, 2007, the district court dismissed the three counts of theft by false representation for lack of probable cause. (TT. 750-52). By verbal order of the court on January 28, 2008, and by written order of the court on January 29, 2008,[1] the district court dismissed the remaining three counts in the complaint. (Motion Hearing Transcript [hereinafter "MT."] 7-9). This Court has specifically held that where the district court's order is based, as here, on the constitutionality of a statute that bars further prosecution of a defendant, the state has met its critical impact burden. *See Ohrtman*, 466 N.W.2d at 2.

In this case, by finding the financial exploitation of a vulnerable adult statute unconstitutional, the district court order bars further prosecution of respondent. The district court's order dismissing the charges against respondent has a critical impact on

[1] The Dismissal Order, dated January 29, 2008, is attached in Appellant's Appendix AA-1 and AA-2.

the state's ability to prosecute respondent. Accordingly, this Court is appropriately positioned to review the district court's order for error.

II. THE TRIAL COURT ERRED BY CONCLUDING THAT THE FINANCIAL EXPLOITATION OF A VULNERABLE ADULT STATUTE IS UNCONSTITUTIONALLY VAGUE AS APPLIED TO THE RESPONDENT.

A. Standard of Review

Laws are presumed to be constitutionally valid. *Bussmann*, 741 N.W.2d at 82. A court's power to declare a statute unconstitutional "should be exercised with extreme caution and only when absolutely necessary." *State v. Machholz*, 574 N.W.2d 415, 419 (Minn. 1998). A party challenging the constitutionality of the statute bears a heavy burden. Specifically, the challenging party must demonstrate beyond a reasonable doubt that the challenged statute is unconstitutional. *State v. Merrill*, 450 N.W.2d 318, 321 (Minn.), *cert. denied*, 496 U.S. 931 (1990); *State v. Kimmons*, 502 N.W.2d 391, 394 (Minn. Ct. App. 1993).

Minnesota's Constitution, Article I, Section 7, provides that no person "shall be held to answer for a criminal offense without due process of law…." Due process requires that criminal statutes be sufficiently clear and definite to warn a person of what conduct is punishable. *State v. Simons*, 258 N.W.2d 908, 910 (Minn. 1977).

The courts have developed a two-part test to determine the constitutionality of a statute based on a due process challenge. The void-for-vagueness doctrine requires that a penal statute define the criminal offense first with sufficient definiteness that ordinary people can understand what conduct is prohibited, and second, in a manner that does not encourage arbitrary and discriminatory enforcement. *Bussmann*, 741 N.W.2d at 83;

(*citing Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). Preventing arbitrary enforcement is one of the concerns in vagueness cases, but "the speculative danger of arbitrary enforcement does not render the [law] void for vagueness." *State v. Reha*, 483 N.W.2d 688, 692 (Minn. 1992). A law need not, and normally cannot, be drawn with mathematical precision. *Id*.

As long as the statute gives fair warning that certain kinds of conduct are prohibited, general language in a statute does not render it unconstitutionally vague.

> The root of the vagueness doctrine is a rough idea of fairness. It is not a principal designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.

Kimmons, 502 N.W.2d at 394 (*quoting Colten v. Kentucky*, 407 U.S. 104, 110 (1972)). A law that is "flexible and reasonably broad" will be upheld so long as it is clear "as a whole" what it prohibits. *Reha*, 483 N.W.2d at 692.

The requirement of clarity does not forbid laws in areas where there are no "bright line" distinctions and the actor must determine an issue of degree. The Minnesota Supreme Court observed Justice Oliver Wendel Holmes as saying: "The law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it…. The criterion in such cases is to examine whether common social duty would, under circumstances, have suggested a more circumspect conduct." *State v. Eich*, 282 N.W. 810, 813 (Minn. 1938) (*citing Nash v. U.S.*, 229 U.S. 373, 377 (1913)). Consequently, the fact that a penal law requires conduct to be "reasonable" or "non-negligent" does not make a law unconstitutionally vague. *United States. v. Ragen*,

314 U.S. 513, 523 (1942) (upholding criminal prosecution for claiming tax deductions in excess of "reasonable compensation" for services); *Nash*, 229 U.S. at 377 (negligence standard); *State v. Grover*, 437 N.W.2d 60, 63-64 (Minn. 1989) (upholding criminal reporting law for failing to report child abuse when the reporter knows or has reason to know of abuse). Requiring people to exercise judgment does not impose an undue hardship on citizens.

B. The Financial Exploitation Of A Vulnerable Adult Statute Is Sufficiently Definite That An Ordinary Person Can Understand What Conduct Is Prohibited.

An ordinary person in the respondent's position would understand that his act of self-dealing was prohibited. Constitutional challenges based on the void-for-vagueness doctrine require that a penal statute define a criminal offense with sufficient definiteness that an ordinary person can understand what conduct is prohibited. *Kimmons*, 502 N.W.2d at 394.

Respondent's vagueness challenge must be based on the specific facts of this case and not based upon hypothetical situations. "Speculation about possible vagueness in hypothetical situations not before the court will not support a facial attack on the statute when it is surely valid in the vast majority of its intended applications." *Bussmann*, 741 N.W.2d at 83 (*citing Hill v. Colorado*, 530 U.S. 703, 733 (2000)) (additional citations omitted). The district court ruled that the statute is void as applied to the respondent; therefore, the challenged statute must be examined in light of the facts of this particular case.

The district court committed error when it found that the wording in the financial exploitation of a vulnerable adult statute, "breach of a fiduciary obligation recognized elsewhere in the law," does not put an individual on notice of what conduct is prohibited. *See* attached Appendix AA-1 and AA-2. The district court went on to state that a lay person, such as the respondent, does not have "notice of the duties he is allegedly shirking;" "unlike a guardianship, a trust, or a conservatorship" there is nothing outlining the duties and responsibilities of a person in respondent's position as a joint account holder with L.C. *Id.* In other words, "the breach of undefined and nebulous fiduciary duties becomes a crime." (MT. 9, attached Appendix AA-1 and AA-2).

The financial exploitation of a vulnerable adult statute reads as follows:

> Whoever does any of the following acts commits the crime of financial exploitation:
>
> (1) in breach of a fiduciary obligation recognized elsewhere in the law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the vulnerable adult; or…

Minn. Stat. § 609.2335 subd. 1 (1) (2008).

Minnesota is a "code state." Minn. Stat. §609.015 (2008). This means that an analysis of the application of a penal statute must begin with a plain reading of the statute. *State v. Forsman*, 260 N.W.2d 160, 164 (Minn. 1977). The plain reading of the financial exploitation of a vulnerable adult statute directs that a fiduciary obligation may be "recognized elsewhere in the law." Although common law crimes have been abolished in Minnesota, Minn. Stat. § 609.015 is clear that this does not prevent the use

of common law rules in the interpretation of other statutes. Moreover, Minn. Stat. §645.08 (1) (2008), directs that words and phrases as used in statutes are to be construed according to their common and approved usage. "The requirements of due process are satisfied by specifying standards of conduct in terms that have acquired meaning involving reasonable definite standards either according to the common law or by long and general usage." *State v. Bolsinger*, 21 N.W.2d 480, 489 (Minn. 1946). Even if a term lacks precision, it is not necessarily unconstitutionally vague for "its inexactness." *See State v. Davidson*, 481 N.W.2d 51, 56 (Minn. 1992). By referring to the "breach of a fiduciary obligation recognized elsewhere in the law," the statute does not fail to give fair warning to respondent.

1. Respondent put himself in a fiduciary relationship with L.C.

The term "fiduciary" is a well defined common law term. A fiduciary relationship is characterized by a "fiduciary," a person who possesses a superior position in terms of knowledge and authority and in whom the other party places a high level of trust and confidence. *Vacinek v. First Nat. Bank of Pine City*, 416 N.W.2d 795, 799 (Minn. Ct. App. 1987); *Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324 (Minn. Ct. App. 2007). Depending on the nature of the fiduciary relationship, the person who places the high level of trust and confidence in the fiduciary has been referred to in various ways, for example, as a client or a principal. *See e.g. Rice v. Perl*, 320 N.W.2d 407, 410 (Minn. 1982) (speaking of the fiduciary duty owed by an attorney to a *client*) (*emphasis added*); *In re the Estate of Nordoff*, 364 N.W.2d 877, 879 (Minn. Ct. App. 1985) (articulating that

"one acting in a fiduciary capacity must exercise the utmost fidelity toward the *principal*...") (*emphasis added*).

Whether or not a fiduciary relationship exists is a question of fact. *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985). The Minnesota Supreme Court has found a fiduciary relationship to exist "when confidence is reposed on one side and there is resulting superiority and influence on the other; and the relations and duties involved in it need not be legal, but may be moral, social, domestic, or merely personal." *Toombs*, 361 N.W.2d at 809 (*citing Stark v. Equitable Life Assur. Society*, 285 N.W. 466, 470 (Minn. 1939)); *see also* Minn. Practice, CivJig 57.30 (5th ed. 2007). Fiduciary relationships have been found between general partners with limited partners, attorneys with clients, and trustees with beneficiaries. *Commercial Associates, Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 779 (Minn. Ct. App. 2006). Courts have also found fiduciary relationships to exist where there is a disparity in business experience and invited confidence, and where there is a familial relationship between the parties. *Toombs*, 361 N.W.2d at 809. More specifically, as in the case at bar, a fiduciary relationship has been found to exist where a party has been added as a joint tenant on a bank account for the purposes of convenience where the party added has not contributed assets to the account. *See Hopper v. Rech*, 375 N.W.2d 538, 542 (Minn. Ct. App. 1995); *Nordorf*, 364 N.W.2d at 879; *Carlson v. Carlson*, 363 N.W.2d 803, 805-806 (Minn. Ct. App. 1985).

There is no question that respondent sought to be added to L.C.'s account for the purpose of convenience only. In finding the existence of a fiduciary relationship, this Court, in *Hopper v. Rech* found a fiduciary relationship existed when it looked at the will,

executed by the deceased principal before the establishment of the joint bank accounts (decedent principal was the sole contributor of money to the accounts), as evidence to support a finding that the deceased principal wanted the fiduciary's name to be included on the accounts for convenience, to manage the accounts. *Hopper v. Rech*, 375 N.W.2d at 541-542. This court also looked at the deceased principal's limited ability to understand the details of financial matters as evidence that supported the deceased principal's intent to add the fiduciary's name for convenience only. *Id*. This Court in *Carlson*, 363 N.W.2d at 805, found that a fiduciary relationship may exist between a decedent and her daughter and son when decedent provided all the funds in the account, and where daughter and son were added for convenience only.[2]

L.C.'s will, executed in December 2000, named Scott and respondent as joint heirs. (exh. 18). L.C. never changed the will when she had attorney Gerlach review it in the spring of 2003, even though she executed new POA documents naming respondent as attorney-in-fact. (TT. 382-383). L.C. previously had a joint account with Scott "just in case." (TT. 55). Additionally, L.C. made several statements to family, friends, and attorneys that indicated she never consented to respondent taking the money from the account, which showed that her purpose in putting respondent on the account was for her convenience only. (TT. 62, 233, 341-342, 523). All of the funds in the accounts came from L.C. (TT. 624, 626, exh. 1, 2, 53, 54 & 57).

[2] This court remanded the case to the district court to make a factual determination on whether the accounts were created through a violation of a fiduciary duty, as "the presumption of ownership of a joint bank account arises only when the account is validly created." *Id*.

Finally, L.C. clearly lacked the ability to understand financial matters and relied on others to assist in handling them. L.C.'s inability to understand financial matters is evidenced by her diagnosis of "dementia, Alzheimer's type." Because of this disease, L.C. exhibited poor judgment in testing at the hospital in 2002, forgetfulness, and an inability to cook--which requires the ability to multi-task (TT. 139, 151, 162, 176). Dr. Tomac clearly articulated how dementia affects the handling of financial affairs when she stated that L.C. would not remember from one moment to the next if she had written a check. (TT. 178). This was confirmed by Fawcett's testimony that L.C. would get upset when she learned of the depletion of her accounts, but would then forget. (TT. 233). There is no doubt that respondent was in a fiduciary relationship with L.C. Respondent was added to L.C.'s accounts for convenience only, and he did not contribute any assets to the accounts.

A person in respondent's position would have known that he was in a position of trust and confidence as a joint tenant on L.C.'s accounts, and that he had superior knowledge and authority over L.C. Respondent knew he did not contribute any assets to L.C.'s accounts. Respondent also had knowledge of L.C.'s diagnosis and condition, as evidenced by his attendance at the family meeting in November 2002 with Dr. Tomac. (TT. 38, 157-158). Respondent was also aware of the recommendation that L.C. reside in an assisted living facility. (TT. 38, 157-58). It is inconceivable that respondent did not notice L.C.'s memory issues and decline during the time period charged. It is also inconceivable that an experienced police investigator in a Financial Crimes Unit that

investigates financial exploitation of vulnerable adult cases, would not be aware of the nature of the relationship existing on a joint account held with a vulnerable adult.

2. Respondent's fiduciary relationship gave rise to a "fiduciary obligation" to L.C.

In looking at the definition of "obligation," Black's law dictionary defines obligation as "a legal or moral duty to do or not do something," and it defines "duty" as "a legal obligation that is owed or due to another." Black's Law Dictionary (8th ed. 2004). Arguably, an obligation encompasses a broader scope of conduct with the inclusion of moral duties; however, the words are treated synonymously in Minnesota case law. Therefore, for the purposes of this brief, the legal arguments presented interpreting the language and legislative intent of the financial exploitation of a vulnerable adult statute, the words "duty" and "obligation," will be used interchangeably and will be construed as having the same meaning.

The existence of the duty (obligation) itself is an issue for the courts to determine. *See generally H.B and S.B. Clark v. Whittemore, SLS*, 552 N.W.2d 705, 707 (Minn. 1996). "The law imposes on a fiduciary the highest obligation of good faith, loyalty, fidelity, fair dealing, and full disclosure of material matters affecting the client's interests." *Commercial Assoc's, Inc.*, 712 N.W.2d at 779. A fiduciary obligation is premised on trust. *Id.*

A breach of a fiduciary obligation is hardly a novel concept and the particular type of breach present in this case, self-dealing, is well recognized in the law. *See* 36A C.J.S. Fiduciary at 388-89 (1961)) ("It is a well-settled equitable rule that anyone acting in a

fiduciary relation shall not be permitted to make use of that relation to benefit his own personal interest," except with the other person's consent and full knowledge.) (Appellant's Appendix, AA-3 through AA-6); *see also In the Matter of the Trust Created by Boss*, 487 N.W.2d 256, 260 (Minn. Ct. App. 1992), *rev. denied* (Minn. Aug. 11, 1992) (holding that fraud is presumed where there is a transaction in a fiduciary relationship whereby an agent obtains benefits from the principal without adequate consideration (*citing Village of Burnsville v. Westwood Co.,* 189 N.W.2d 392, 397 (1971)).

In this case, the district court articulated the fiduciary obligation owed by the respondent to L.C. in its instructions to the jury: "An agent cannot profit from the subject of the agency without the principal's consent, freely given after full disclosure of any facts that might influence the principal's judgment." (TT. 934-35). *See Carlson*, 363 N.W.2d at 807 (using the same language as the district court in articulating the obligation).

Putting the terms together in the context of the financial exploitation of a vulnerable adult statute, a "fiduciary obligation" is therefore a person's legal, moral, social, domestic, or personal duty to act, or refrain from acting, with respect to a vulnerable adult who places confidence in the person, and the person assumes a position or relationship of superiority or influence over the vulnerable adult. A breach of a fiduciary obligation occurs when a fiduciary engages in self-dealing.

Moreover, as used in the financial exploitation of a vulnerable adult statute, the phrase "breach of a fiduciary obligation" is a qualifier and cannot be read in isolation. The phrase must be construed with reference to the rest of the statutory provision, which,

in turn, defines the nature of the breach that is proscribed as the failure to use a vulnerable adult's financial resources for the vulnerable adult's basic needs. Thus, not any breach of a fiduciary obligation falls within the purview of the statute.

This is not a case at the fringes of the statute. Rather, this case fits squarely within the general parameters set forth by the statutory language, and respondent's conduct appears to be precisely the type of situation the legislature intended to address. An individual who is a joint tenant on a bank account with an elderly parent suffering from "dementia - Alzheimer's type," who contributes no assets to the account, would know that he is taking money that does not belong to him. Common sense dictates that an ordinary person would know that draining the life savings of an elderly person with dementia is wrong. The statute's reference to a fiduciary obligation does not make that less clear. Further, an individual who is a police officer in the Financial Crimes Unit investigating financial exploitation of vulnerable adult cases, would know about the existence of the law itself and would know what it means.

3. Respondent had notice of his fiduciary obligation.

The district court also committed error when it found that the respondent did not have notice of the duties he allegedly shirked. It is deeply rooted in American jurisprudence that "a defendant's ignorance of the law is no excuse." *State. v. King*, 257 N.W.2d 693, 698 (Minn. 1977). "All members of an ordered society are presumed either to know the law or, at least, to have acquainted themselves with those laws that are likely to affect their usual activities." *Id.* at 698-99. Likewise, knowledge of the law is not an element that must be affirmatively proven by the state. *See* Minn. Stat. § 609.02 subd.

9(5) ("Criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute.").

The state is not required to prove that respondent had actual knowledge of the fiduciary obligation that he violated. Respondent's alleged lack of knowledge that his status as a joint account holder with L.C. created a fiduciary obligation and that his use of L.C.'s funds for his own purposes constituted a breach of that obligation, is not a defense to the crime of financial exploitation of a vulnerable adult. The district court erred in its analysis: a person's alleged lack of knowledge of his obligations as a fiduciary does not support finding the financial exploitation of a vulnerable adult statute unconstitutional.

4. Respondent had a fiduciary duty as joint tenant on L.C.'s accounts.

In support of finding the financial exploitation of a vulnerable adult statute unconstitutionally vague, the district court noted in its opinion that six[3] attorneys could not agree on what a fiduciary's obligation is. The district court clearly misstated the facts of this case. A review of the testimony of the attorneys shows that, while six attorneys did testify in this case, Jean Johnson (TT. 265-85),[4] Matthew Beaumier (TT. 362-78),

[3] In the district court's oral opinion of January 28, 2007, the court articulated that five lawyers could not agree on what a fiduciary's duty was. (MT. 9) In its written opinion of January 29, 2007, the court stated that six attorneys could not agree on what a fiduciary duty was. (Attached as Appellant's Appendix - AA-1 and AA-2)

[4] Johnson discussed the ability of an attorney-in-fact under a POA as having the ability to self-gift if the box was checked on the document, but in L.C.'s POA naming Scott Campbell as attorney-in-fact, the box was not checked as Scott did not have the power to self-gift. TT. 267-68).

and Karen Olson (TT. 443-532), never testified to the definition of a fiduciary or a fiduciary obligation.

Attorney Melanie Ford testified that an attorney-in-fact under a POA has a fiduciary duty. (TT. 322-24). The obligation of a fiduciary under a POA is to put oneself in the position of the person that granted the power, to act in the way that the person granting the power would have acted had the person been able to, to act in his/her best interest. (TT. 324-25). Ford went on to say that besides a POA, a person can be in a fiduciary position as a trustee of assets, as a guardian, or conservator, as a co-owner of property, or as a joint tenant on bank accounts when an individual is added for convenience and does not contribute any assets to the account. (TT. 325-26). Ford's testimony went to what a fiduciary is, and under what circumstances an individual may have fiduciary duties. Ford never expressed an opinion on whether respondent's actions violated his fiduciary duties to his mother.

Attorney Michael Gerlach testified that a POA creates a fiduciary status, which is a position of trust with respect to the principal. (TT. 395). "A POA creates a fiduciary duty, which means that they must act solely for the benefit of the person who has created the powers and it is not intended that the powers benefit themselves or other parties…that you are expected to act reasonably, prudently, and in good faith, and to take actions for the benefit of the person creating the power of attorney." (TT. 395-96). Gerlach testified that other relationships that create a fiduciary obligation are that of a broker, or a joint account holder where a party is added for convenience only and does not contribute any

assets to the account. (TT. 398-99). Gerlach termed such a situation as a poor man's POA. (*Id.*)

Attorney Larry Stauber testified that a person in the position of a POA has a fiduciary responsibility and must act in the best interest of the person conferring the powers. (TT. 799- 800).

A majority of the testimony elicited from Gerlach and Stauber by the respondent centered on a competent principal's ability to gift, regardless of the existence of a POA; an attorney-in-fact's ability to self gift; and whether such gifting is a breach of a fiduciary duty. (TT. 420-22, 766-69, 783). Essentially, this testimony was elicited to show that the respondent did not breach his fiduciary obligation because L.C. wanted him to have the money; L.C. consented to respondent's use of her funds. (TT. 987, 1006).

The testimony from the two attorneys, Ford and Gerlach, is consistent: a joint account holder added for convenience, who contributes no assets to the account, creates a fiduciary relationship, and the person added must act in the principal's best interest. Ford and Gerlach's opinions are also consistent with this Court's prior opinions. *See e.g. Carlson*, 363 N.W.2d 803, 806 (Minn. Ct. App. 1985); *Hopper*, 375 N.W.2d at 542.

5. Respondent was not entitled to L.C.'s money as a joint tenant on the accounts.

The district court erroneously applied Minn. Stat. § 524.6-204 (incorrectly citing Minn. Stat.§ 524.6-203) to the facts of this case. The district court used this statute in support of its position that the civil presumption of ownership in a joint account at the death of the primary account holder is that ownership of the money goes to the joint

account holder. (MT. 8-9, Appellants Appendix AA-1 and AA-2). Applying Minn. Stat. § 524.6-204 to the facts of this case, the district court found support for respondent's use of L.C.'s money. (*Id.*) The district court also used this reasoning to support its conclusion that respondent had no knowledge of his obligations as a fiduciary. (*Id.*) Under this statute, the presumption of ownership arises at the time of the primary account holder's death. Respondent was not a joint tenant on L.C.'s checking and saving accounts at the time of her death; therefore this statute does not apply.

The proper analysis in determining the ownership of the assets in a joint account prior to death is under Minn. Stat. § 524.6-203 (a), which states that a "joint account belongs, during the lifetime of all parties, to the parties in proportion to net contributions by each." It is undisputed that L.C., as the primary account holder, contributed all of the assets to the accounts. (TT. 624, 626, exhs. 1, 2, 53, 54 & 57). Respondent contributed nothing--the joint account belonged to L.C. during her lifetime, not to respondent. *See Hefner v. Estate of Ingvoldson*, 346 N.W.2d 204, 207 (Minn. Ct. App. 1984) (a party who has contributed nothing to funds deposited in a joint account has no right of possession before the depositor's death). There is no presumption under the law that gave respondent ownership rights to the funds in L.C.'s accounts. Respondent knowingly took money that did not belong to him. And he took it from his own mother, who was vulnerable and who placed trust in him by adding him to her accounts.

The district court's order suggests that a joint account holder in respondent's position can take all of the funds out of the account before the death of the joint account holder because it will eventually belong to him. This analysis calls for absurd results and

is clearly contrary to the law. Take for example an attorney with a trust account. The district court's analysis suggests that, so long as the attorney will be earning the fees, the funds can be taken from the trust account. It is clear under Minnesota law that an attorney cannot take funds from a trust account until the funds are earned.

6. Respondent breached his fiduciary obligation as attorney-in-fact.

The fifth count of the complaint, covers the time period of March 2004-September 2004. During a portion of this charging period, L.C. was in the hospital and subsequently admitted to a nursing home; L.C. was categorically a vulnerable adult. (TT. 306, 565, 559, exhs. 49 & 50). Respondent had the POA released from the Gerlach & Beaumier firm and had it in hand on September 3, 2004. (TT. 394-96, exh. 23). Respondent nearly cleaned out L.C.'s bank accounts on September 7, 2004. (exhs. 1, 2, 53, 54, & 55). In fact, respondent chose to go to the bank and to steal L.C.'s money rather than admit her to the nursing home. It wasn't until the next day, September 8, 2004, that respondent was able to sign L.C.'s admission paperwork. (TT. 436-37, exh. 28). The facts of this case as applied to Count V fit squarely within the parameters set by the district court. Respondent had reason to know his fiduciary obligations as attorney-in-fact, and even with that knowledge he proceeded to steal L.C.'s money--money she needed to pay for her nursing home bills.

Therefore, assuming arguendo that respondent did not have reason to know what his fiduciary obligations were as joint tenant on L.C.'s accounts, that alone would not make the financial exploitation of a vulnerable adult statute unconstitutionally vague as applied to respondent with respect to Count V. Based on the testimony from the

attorneys, there is no question that a POA creates a fiduciary duty. *See* Minn. Stat. § 523.21 (2008) (detailing the duties of an attorney-in-fact to a principal). There is little doubt that an ordinary person, who acts as an attorney-in-fact, would know his obligations to act in the best interest of the person who created those powers. In fact, respondent knew what his obligations were as attorney-in-fact. Respondent received a letter from attorney Gerlach detailing his obligations as attorney-in-fact and was with L.C. when she met with her attorney to have her POA changed. (TT. 394-96, exh. 23). Respondent also worked in the Financial Crimes Unit of the Duluth Police Department and was familiar with crimes against vulnerable adults. Respondent had sufficient notice of his fiduciary obligations under the POA and what conduct was prohibited. Even if this Court were to accepts the district court's conclusion that respondent did not have reason to know his fiduciary obligations as a joint tenant, it must uphold the financial exploitation statute as sufficiently definite as applied to respondent on Count V of the complaint because respondent had actual notice of the prohibited conduct at issue. Respondent's conduct fits squarely within Count V of the complaint.

C. The Financial Exploitation Of A Vulnerable Adult Statute Is Sufficiently Definite As To Prevent Arbitrary And Discriminatory Enforcement.

A law fails to meet due process standards when "it leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." *Bussmann*, 741 N.W.2d at 83 (*citing Giaccio v. Pennsylvania*, 382 U.S. 399 (1966)). Due process is satisfied "by specifying standards of conduct in terms that

have acquired meaning involving reasonably definite standards either according to common law or by long and general usage." *Id*.

The financial exploitation of a vulnerable adult statute contains two factors that limit criminal liability for breaches of fiduciary obligations. These limiting factors serve to prevent arbitrary and discriminatory enforcement of the statute. First, the principal must be a vulnerable adult. Second, the breach must be specific to the fiduciary's intentional failure to use the vulnerable adult's resource for her basic needs. In other words, not all breaches of fiduciary obligations rise to the level of criminal liability.

As explained in paragraph B (above), a "breach of fiduciary obligation" is well settled law, particularly the breach that occurs with self dealing. The conduct prescribed in the statute at issue is sufficiently definite when applied to respondent's conduct under the facts of this case.

D. The Language "In Breach Of A Fiduciary Obligation Recognized Elsewhere In The Law" Clearly Includes Statutorily Defined Fiduciary Relationships And Fiduciary Relationships Implied In Law.

The plain reading of "in breach of a fiduciary obligation recognized elsewhere in the law, *including* pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501…," Minn. Stat. § 609. 2335 subd. 1(1) (*emphasis added*), shows that the legislature did not intend to limit fiduciary obligations formally acknowledged[5] only by the legislature. "The word "includes" is usually a term of enlargement, and not limitation." *Janssen v.*

[5] Merriam-Webster's on-line dictionary at www.merriam-webster.com defines "recognize" as "to acknowledge formally."

Janssen, 331 N.W.2d 752, 756 (Minn. 1983). If a statute construed according to ordinary rules of grammar is unambiguous, a court may engage in no further statutory construction and must apply its plain meaning. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996). Not only does the use of the term "including" require a more encompassing definition of fiduciary obligations, the fact that the statute does not delineate common law versus statutory law, suggests that the legislative intent was to include both.[6]

Various relationships are described in statute where fiduciary obligations are established statutorily. *See, e.g.*, Minn. Stat. § 523.21 (2008) (detailing the duties of an attorney-in-fact to a principal). There is also a large body of law involving constructive trusts, where courts have looked to the specific facts of each case and found fiduciary relationships exist based even where there is no corresponding statutorily described relationship. *See, e.g., Dietz v. Dietz*, 70 N.W.2d 281, 334 (Minn. 1955) (stating that where the parties are parent and child, evidence supports the conclusion that mother relied upon son for business advice and counsel, the relationship is deemed of a confidential nature and fiduciary character). In cases of this nature, fiduciary relationships are implied in the law, when confidence is reposed by one party and a trust accepted by the other party. *Parkhill v. Minn. Mutual Life Ins. Comp.*, 995 F.Supp. 983,

[6] Even if this Court finds that the financial exploitation of a vulnerable adult should be limited to relationships and duties found in statute, there is a statute that addresses respondent's obligation on L.C.'s accounts. As noted in B (5) above, Minn. Stat. § 524.6-203 (a) details the ownership rights of the funds in joint accounts. Therefore, statutorily, respondent's obligation as a joint tenant on L.C.'s account was limited to his ability to access the funds, with no legal right to ownership of the funds.

991 (D. Minn. 1998). The premise behind this is that the specific factual situation surrounding the transaction and the parties give rise to a fiduciary relationship. *Id*.

Narrowing the scope to only statutorily recognized fiduciary relationships would also go against the intent of the legislature. In construing the financial exploitation statute, the objective of this Court must be to ascertain and effectuate the intention of the legislature. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986); *see also* Minn. Stat. § 645.16 (2008). While penal statutes are to be strictly construed with all reasonable doubts concerning legislative intent to be resolved in favor of the defendant, the court should not assign the narrowest interpretation of the statute, particularly when such an interpretation conflicts with the legislative intent or produces absurd or unreasonable results. *State v. Alli*, 613 N.W.2d 796, 797-798 (Minn. Ct. App. 2000); *State v. Murphy*, 545 N.W.2d. 909, 916 (Minn. 1996) (rejecting narrow interpretation of terrorist threats statute that would produce absurd results); *State v. Ford*, 397 N.W.2d 875, 879-880 (Minn. 1988) (rejecting narrow interpretation of statute that would conflict with legislative intent).

In 1995, the legislature substantially modified Minnesota's Vulnerable Adults Act to include various criminal offenses, including the crime of financial exploitation. *See* 1995 Minn. Laws Ch. 229. The stated purpose of the legislation is, in part, to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment. *See id.*, Section 1, subd. 1.

In enacting the financial exploitation statute, the legislature clearly expressed the view that financial abuse warrants criminal sanctions. By including a separate provision

directed at the conduct of fiduciaries, the legislature also made it clear that individuals who violate their special duty to the vulnerable adults who entrusted them with that duty were to be singled out for special treatment. Therefore, regardless of whether the relationship and corresponding duties are delineated statutorily or under common law, the intent was to protect vulnerable adults.

Finally, Minn. Stat. § 609.2335 is titled "financial exploitation of a vulnerable adult." The common sense meaning of this title is the taking advantage of a vulnerable adult for the financial benefit of one's self or another. Therefore, it is irrelevant whether the manner of taking advantage of a vulnerable adult is detailed in statute or whether it is based on the facts surrounding a relationship with a vulnerable adult. *See Hylund v. Metropolitan Airports Com'n*, 538 N.W.2d 717, 720 (Minn. Ct. App. 1995) (It is proper to consider a statutory title when attempting to ascertain legislative intent.). This is exactly what respondent did in this case.

CONCLUSION

Appellant respectfully requests that this Court reverse the dismissal order of the district court.

Dated: April 21, 2008

Respectfully submitted,

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