

United States v. Short, No. 08-30020

DEC 18 2008

GRABER, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I respectfully dissent, because the district court clearly erred in finding Defendant's mother to be especially vulnerable. The district court relied in part on a finding that Defendant's mother was "rather unsophisticated," but the record can support only the opposite conclusion. The mother had transferred about \$100,000 more from a Texas account into a Montana account than she was entitled to have from her late husband's estate; she then reinvested the proceeds in CDs in her own name and Defendant's name to keep funds out of the hands of the executor of her late husband's estate. In addition, in my view the record does not support a finding of isolation. It was the mother's idea to move to a nursing home in Montana, she could phone the bank at will, and she had access to staff members who helped her. Finally, the fact that her daughter forwarded her mail did not make her vulnerable to the kind of theft that occurred here.