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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45642**
Plaintiff-Respondent,	)	
	)	**Blaine County Case No.**
v.	)	**CR-2016-3203**
	)	
CHAD SCHIERMEIER,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Chad Schiermeier appeals from his conviction for grand theft.

Statement Of The Facts And Course Of The Proceedings

The state charged Schiermeier with grand theft. (R., pp. 140-41.) The information alleged Schiermeier "did wrongfully take, and/or obtain, and/or withhold, and/or exercise unauthorized control over" money belonging to Blaine County DARE/PAL, Inc. (Id.)

In the early 1990's the Blaine County Sherriff's Office started DARE and PAL programs to discourage drug use by and provide activities for youth. (Tr., vol. I, p. 303, L. 22 – p. 325, L. 4; State's Exhibits 1-3.) Schiermeier began working for DARE/PAL in 1999. (Tr., vol. I, p. 324, L. 5 – p. 326, L. 13; State's Exhibit 4.) From 2009 to 2014, in leadership roles in the organization, he stole over $86,000 by making cash withdrawals from DARE/PAL accounts and using DARE/PAL financial transaction cards to buy himself hunting gear and other personal items. (See, e.g., State's Exhibit 40.)

During trial, Schiermeier moved for an acquittal on the grounds that his status as the director gave him permission to use and spend DARE/PAL's money, and therefore spending it on himself instead of for purposes that advanced DARE/PAL's mission was not theft. (Tr., vol. II, p. 1070, L. 3 – p. 1083, L. 19; p. 1088, L. 12 – p. 1090, L. 4.) The district court denied the motion, concluding that the money belonged to DARE/PAL; that lack of training or supervision as to how the money was spent "doesn't mean a taking of the property is therefore rightful or unlimited control of the funds is authorized"; that there was "substantial evidence in the record concerning what programs were authorized, what the money was supposed to be used for, and the importance of following the purposes of a

nonprofit corporation"; that there were factual questions for the jury to decide regarding the cash withdrawals and "substantial evidence upon which they could base a conviction"; and that power to make expenditures of corporate funds did not create an "automatic defense" to the theft charge. (Tr., vol. II, p. 1090, L. 5 – p. 1096, L. 8.)

At the conclusion of the trial, the jury convicted Schiermeier as charged. (R., p. 443.) After trial, Schiermeier moved to dismiss the case. (R., pp. 509-35.) Relevant to this appeal, Schiermeier argued that, "as a matter of law, the DARE/PAL corporation did not retain any right to possesssion [sic] of the funds allegedly taken in this case, superior to that of the taker, and cannot be an owner thereof." (R., pp. 527-30 (underlining omitted, capitalization altered).) The district court rejected this argument, finding the evidence of guilt "substantial." (Tr., vol. II, p. 1447, L. 2 – p. 1448, L. 23.)

The district court sentenced Schiermeier to serve 14 years with six years determinate. (R., pp. 607-10.) Schiermeier filed a timely notice of appeal. (R., pp. 631-37.)

ISSUES

Schiermeier states the issues on appeal as:

> I. Did the State meet its burden to prove the elements of grand theft beyond a reasonable doubt?
>
> II. Did the district court abuse its discretion when it sentenced Mr. Schiermeier to fourteen years, with six years fixed, for one count of grand theft?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

1. Has Schiermeier failed to show error in the district court's conclusion that authorization to spend money for purposes consistent with DARE/PAL was not an automatic defense to appropriating the money for Schiermeier's personal uses?

2. Has Schiermeier failed to show that the district court abused its sentencing discretion?

ARGUMENT

I.
Schiermeier Has Failed To Show Error In The District Court's Conclusion That Authorization To Spend Money For Purposes Consistent With DARE/PAL Was Not An Automatic Defense To Appropriating The Money For Schiermeier's Personal Uses

A. Introduction

In claiming the state presented insufficient evidence that he committed theft, Schiermeier admits "the State showed Mr. Schiermeier purchased expensive, high end outdoor equipment and clothing, among other items, with the DARE/PAL debit card." (Appellant's brief, p. 13.) He argues that buying himself expensive hunting equipment, clothing, hunting videos, and other personal items was not theft, however, because the "DARE/PAL articles of incorporation and by-laws allowed him to use the money, and he could use it for any purpose he deemed fit to further the corporate objectives." (Appellant's brief, pp. 13-14.) He likewise argues that cash withdrawals when there was no reason for cash expenditures related to DARE/PAL activities were not shown to be theft because the state did not absolutely exclude the possibility that the cash was spent on DARE/PAL related activities, such as "tickets for events," "equipment," or "non-perishable food items." (Appellant's brief, p. 14.) "Whether his use of the money was extravagant, the articles of incorporation and by-laws gave him discretion to use the funds as he deemed proper and expedient to promote the [objectives] of DARE/PAL." (Appellant's brief, p. 15.) Contrary to Schiermeier's argument, it was theft for Schiermeier to treat DARE/PAL as his personal piggy-bank.[1]

[1] As noted by the district court at sentencing, Schiermeier was "using the DARE/PAL account and card for his own purposes." (Tr., vol. II, p. 1516, Ls. 8-9.)

B. Standard Of Review

"In assessing the sufficiency of evidence, we will uphold a judgment of conviction entered upon a jury verdict so long as there is substantial evidence upon which a rational trier of fact could conclude that the prosecution proved all essential elements of the crime beyond a reasonable doubt." State v. Jones, 154 Idaho 412, 417, 299 P.3d 219, 224 (2013) (internal quotation omitted). The Court "must view the evidence in the light most favorable" to upholding the jury verdict and will not substitute its own judgment on issues of weight, credibility or reasonable inferences. Id. The Court reviews "all of the trial evidence, including the evidence offered by the defendant." State v. Cortez, 135 Idaho 561, 563, 21 P.3d 498, 500 (Ct. App. 2001).

C. The Evidence Supports The Conviction

Where a criminal defendant challenges the sufficiency of the evidence supporting his conviction on appeal, the "relevant inquiry is not whether this Court would find the defendant guilty beyond a reasonable doubt, but whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Eliasen, 158 Idaho 542, 546, 348 P.3d 157, 161 (2015) (emphasis original). See also State v. Young, 138 Idaho 370, 372, 64 P.3d 296, 298 (2002) (evidence is sufficient if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"); State v. Daniels, 134 Idaho 896, 898, 11 P.3d 1114, 1116 (2000) (verdict reviewed for substantial evidence upon which "any rational trier of fact" could have found guilt (internal quotations omitted)). If there are multiple possible bases for supporting a general verdict "the inquiry on appeal becomes whether there was sufficient evidence to uphold any one of the bases

of conviction." Cortez, 135 Idaho at 564, 21 P.3d at 501. In reviewing the sufficiency of the evidence, "this Court will construe all of the evidence in favor of upholding the verdict." State v. Glass, 139 Idaho 815, 818, 87 P.3d 302, 305 (Ct. App. 2003).

The evidence shows that Schiermeier used DARE/PAL's financial transaction cards to buy himself hunting gear and other items for personal use and made several large cash withdrawals when DARE/PAL had no activities that would justify the expenditure of the cash. (See, e.g., State's Exhibit 40.) To take one representative year, in 2011 Schiermeier used DARE/PAL financial transaction cards to purchase a bow sight, a camping air mattress, a sleeping bag, hunting clothing (especially winter hunting clothing), hunting books and CDs, boots and gaiters, a watch, hunting equipment, a bivy sack, and mittens. (State's Exhibit 40, pp. 52-53.) He also made $16,125 in cash withdrawals when no DARE/PAL activities were taking place. (State's Exhibit 40, pp. 2, 42 (showing $3,640 cash withdrawals in June through August out of total cash withdrawals of $19,765 in 2011).) DARE/PAL conducted regular activities in June, July and August of 2011, most of which were outdoor activities. (State's Exhibit 12.) Notably absent from the activities are anything that would have involved the use of archery sights, hunting equipment, winter clothing, and hunting books and CDs. In addition, the activities fall far short of explaining the necessity or the timing for the large cash withdrawals.

"A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof." I.C. § 18-2403(1). An owner under the theft statute is "any person who has a right to possession thereof superior to that of the taker, obtainer or withholder." I.C. § 18-2402(6). A person deprives the owner of

property if he withholds it "permanently" or disposes of it "in such manner or under such circumstances as to render it unlikely that an owner will recover such property." I.C. § 18-2402(3). To appropriate means to "exercise control over it" or to "dispose of the property for the benefit of oneself." I.C. § 18-2402(1). DARE/PAL was organized "exclusively for charitable and educational purposes" such as "coordinating, educational, fundraising and service" in order to "foster, promote, encourage and increase the knowledge and understanding of alcohol and drug addictions or related problems." (State's Exhibit 1.) When Schiermeier took money belonging to DARE/PAL and spent it on himself rather than applying it to DARE/PAL's charitable purposes he committed theft.

Schiermeier argues that although it is possible to "second guess" his use of DARE/PAL funds, he "was the only individual with authority to exercise DARE/PAL's objectives" and therefore all expenditures were within his "discretion to use the funds as he deemed proper and expedient." (Appellant's brief, p. 15.) Schiermeier's claim that he was authorized to spend DARE/PAL funds on himself is without support in the law or the evidence.

Schiermeier argues that the evidence did not show the items he purchased were used "exclusively" for "non-DARE/PAL purposes," speculates he could have used the equipment he bought on the DARE/PAL activities, and asserts that the articles of incorporation and by-laws did not prohibit personal use of DARE/PAL property. (Appellant's brief, p. 13.) He cites no law indicating that this argument is relevant. Even if Schiermeier wore the boots or watch he purchased for himself with DARE/PAL funds on an activity, he still stole the funds by which he purchased those items. Moreover, the

evidence *does* establish that he used much of the purchased property "exclusively" as his own.

For example, on February 8, 2011, Schiermeier purchased a sight for a hunting bow. (State's Exhibit 40, p. 52.) No archery activities were scheduled for DARE/PAL that year. (State's Exhibit 12.) On March 3 and 4, 2011, Schiermeier purchased cold-weather hunting jackets, pants and mittens. (State's Exhibit 40, p. 52.) The jury could reasonably conclude he did not intend to or in fact wear these items during DARE/PAL's summer activities. (State's Exhibit 12.)

Schiermeier also argues the state's evidence "fails to show wrongfulness or lack of authority" for the cash withdrawals. (Appellant's brief, p. 14.) Specifically, he asserts he "could have used the cash to reserve tickets for events, buy equipment, or purchase non-perishable food items for future programs." (Id.) This argument lacks merit, because the evidence leads to a reasonable inference, if not an inevitable conclusion, that the cash withdrawals were theft.

In 2011 Schiermeier withdrew a total of $19,765 in cash from DARE/PAL's accounts, $3,640 of which was during the summer months when DARE/PAL was running activities and $16,125 when it was not. (State's Exhibit 40, pp. 2, 42.) The total cash withdrawals were less than half of DARE/PAL's total expenditures for that year. (State's Exhibit 40, pp. 19-24.) The evidence shows that DARE/PAL's regular bills and other expenses, including expenditures for specific activities, were being paid other than with the cash withdrawals. (Id. (matching activities to purchases).) By way of example, the evidence shows that Boise Hawks tickets, two of the activities sponsored that year, were purchased on the financial transaction card on March 7, 2011, and July 11, 2011. (Id., pp.

19, 22.) The expenses for the Roaring Springs activity were likewise paid for on the day it occurred, August 2, 2011. (Id., p. 22.) Schiermeier's argument that the $16,125 in cash Schiermeier withdrew when no activities were going on was paying for these activities is without merit. The evidence shows the opposite.

Contrary to Schiermeier's argument, he did not merely make questionable choices about spending DARE/PAL's funds to achieve the ends of that organization. The evidence shows he simply took and spent DARE/PAL's money on himself for his personal purposes. (Tr., vol. II, p. 1518, L. 7 – p. 1519, L. 4 (evidence of guilt was "overwhelming"); p. 1527, Ls. 3-6 (based on evidence presented there is "no question" of Schiermeier's guilt).) With intent to deprive DARE/PAL of its money, or to appropriate the same to himself, he wrongfully took, obtained, or withheld that money from DARE/PAL. See I.C. § 18-2403(1).

II.
Schiermeier Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The district court imposed a sentence of 14 years with six years determinate on Schiermeier's conviction for grand theft. (R., pp. 607-10.) The district court discussed the facts of the case, concluding that the crime was "theft on a large scale, over many years." (Tr., vol. II, p. 1514, L. 16 – p. 1519, L. 9.) It noted that Schiermeier had done "a lot of positive," which was shown by support of family and friends. (Tr., vol. II, p. 1519, Ls. 10-23.) The district court applied and balanced the goals of sentencing. (Tr., vol. II, p. 1520, L. 1 – p. 1530, L. 4.) The district court concluded that "the sentencing factors support" a

sentence of 14 years with six years fixed and a "lesser sentence would depreciate the serious nature of the crime." (Tr., p. 1531, Ls. 6-13.)

Schiermeier argues the district court imposed an excessive sentence in light of his "lack of any criminal history, absence of any substance abuse or mental health issues, acceptance of responsibility and remorse, and strong support network." (Appellant's brief, p. 17.) The district court did in fact consider all of these issues; Schiermeier merely disagrees with the weight it gave them. He has failed to show an abuse of discretion.

B. Standard Of Review

"An appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that is it unreasonable and, thus, a clear abuse of discretion." State v. Bonilla, 161 Idaho 902, 905, 392 P.3d 1243, 1246 (Ct. App. 2017).

C. Schiermeier Has Failed To Show Any Abuse Of Sentencing Discretion

"In determining whether the sentencing court abused its discretion, this Court reviews all the facts and circumstances of the case. To show an abuse of discretion, the defendant must show that in light of the governing criteria, the sentence was excessive, considering any view of the facts." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). "A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case." State v. Reed, 163 Idaho 681, 417 P.3d 1007, 1013 (Ct. App. 2018). "When considering whether the district court abused its sentencing discretion, we

review the entire sentence, but we presume that the defendant's term of confinement will probably be the fixed portion of the sentence, because whether or not the defendant's incarceration extends beyond the fixed portion of the sentence will be within the sole discretion of the parole board." State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017).

Schiermeier stole tens of thousands of dollars over several years from a charitable organization meant to combat teen alcohol and drug use, using the organization's bank account as his own. (Tr., vol. II, p. 1514, L. 16 – p. 1519, L. 9.) The maximum applicable sentence is 14 years determinate and a fine of up to $5,000. I.C. § 18-2408(2)(a). The sentence imposed, 14 years with six years presumably to be served and no fine, was within the district court's discretion.

Schiermeier has failed to show otherwise. He argues that because he "had no past convictions, charges, arrests, or compliance issues pending trial, the district court should have imposed a more lenient sentence for his first criminal offense." (Appellant's brief, p. 17.) The district court did consider this and weighed it in its analysis, but also considered the ongoing nature of the crime and the harm it caused. (Tr., vol. II, p. 1520, L. 22 – p. 1521, L. 3; p. 1522, Ls. 6-9; p. 1522, L. 23 – p. 1523, L. 3.)

Schiermeier argues that he had good support from family and friends and no issue with substance abuse or mental health. (Appellant's brief, pp. 17-18, 20-25.) The district court acknowledged his support with family and friends, which came from the good he had done, but balanced that against the fact he "let a lot of people down" and the fact that many of the laudatory feelings did not take into account Schiermeier's criminal conduct. (Tr., vol. II, p. 1519, Ls. 10-25.) The district court also noted the lack of substance abuse and

mental health issues, concluding that because of that it was not "the kind of case" that could be addressed by "a retained jurisdiction program or a drug treatment program." (Tr., p. 1521, Ls. 4-11.)

Schiermeier argues his "acceptance of responsibility and remorse warrant a lesser sentence." (Appellant's brief, pp. 19-20.) He does not, however, challenge the district court's factual finding that he showed "minimal remorse." (Tr., vol. II, p. 1525, L. 14 – p. 1529, L. 12.)

The district court ultimately concluded that the sentencing factors supported a sentence of 14 years with six years determinate. (Tr., vol. II, p. 1531, Ls. 9-10.) "A lesser sentence would depreciate the serious nature of the crime, would not protect the public interest, would not be an appropriate deterrent to others, and would not appropriately punish you." (Tr., p.1531, Ls. 10-13.) The district court acted within its sentencing discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 8th day of January, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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