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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45642
)	
v.)	BLAINE COUNTY NO. CR 2016-3203
)	
CHAD SCHIERMEIER,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

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

HONORABLE JONATHAN BRODY
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUES PRESENTED ON APPEAL.....	2
ARGUMENT.....	3
I. The State Did Not Meet Its Burden To Prove The Elements Of Grand Theft Beyond A Reasonable Doubt.....	3
II. The District Court Abused Its Discretion When It Sentenced Mr. Schiermeier To Fourteen Years, With Six Years Fixed, For One Count Of Grand Theft.....	6
CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	7

STATEMENT OF THE CASE

Nature of the Case

Chad Schiermeier appeals from his judgment of conviction for one count of grand theft following a jury trial. For this offense, the district court sentenced him to fourteen years, with six years fixed. Mr. Schiermeier raised two issues on appeal. First, he argued the State failed to present sufficient evidence to prove the essential elements of grand theft beyond a reasonable doubt. (App. Br., pp.5–15.) Second, he argued the district court abused its discretion by imposing an excessive sentence. (App. Br., pp.15–26.) The State responded. This Reply Brief is necessary to address some, but not all, of the State’s arguments. For those arguments not addressed herein, Mr. Schiermeier respectfully refers this Court to his Appellant’s Brief.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were articulated in Mr. Schiermeier’s Appellant’s Brief. (App. Br., pp.1–3.) They are not repeated here, but are incorporated by reference.

ISSUES

- 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?

ARGUMENT

I.

The State Did Not Meet Its Burden To Prove The Elements Of Grand Theft Beyond A Reasonable Doubt

Mr. Schiermeier argues the State failed to present sufficient evidence to sustain the jury's guilty verdict for grand theft. (*See* App. Br., pp.5–15.) Below, the State alleged Mr. Schiermeier committed grand theft in two ways: wrongfully taking, obtaining, or withholding money from DARE/PAL or exercising unauthorized control over DARE/PAL money. (App. Br., pp.7–8, 12–13.) The State failed to prove, however, Mr. Schiermeier's taking or control over DARE/PAL money was wrongful or unauthorized. (*See* App. Br., pp.8–15.) This sufficiency argument hinges on Mr. Schiermeier's sole authority as the manager of DARE/PAL. DARE/PAL's articles of incorporation and by-laws vested Mr. Schiermeier, as the manager, with unbridled discretion to act in the best interests of DARE/PAL. (*See* State's Ex. 1¹ (DARE/PAL articles of incorporation); State's Ex. 2 (DARE/PAL by-laws); App. Br., pp.8–11.) He alone could determine how to use DARE/PAL funds, including for his compensation. (State's Ex. 2, pp.10, 16–17; App. Br., pp.8–10.) And he had authorization to access the funds in DARE/PAL's checking account. (Def.'s Ex. A, pp.1–4; State's Ex. 31, pp.143–44; *See* Tr. Vol. I, p.806, L.5–p.807, L.24.) In light of this authority, Mr. Schiermeier argues the State failed to prove his use or control of DARE/PAL money was wrongful or unauthorized. (App. Br., pp.12–15.) He further contends the State's case-in-chief relied upon the assumption that any cash withdrawals during winter months and any purchases it deemed non-DARE/PAL-related were improper. (App. Br., pp.12–15.)

¹ Citations to the State's exhibits refer to the exhibit number, and any citation to a specific page refer to the pagination of the 548-page electronic document containing these exhibits.

In response, the State argues Mr. Schiermeier used DARE/PAL money as “his personal piggy bank.” (Resp. Br., p.4.) The State asserts, for example, Mr. Schiermeier’s purchase of archery sights, hunting equipment, winter clothing, and hunting books and CDs had no connection to DARE/PAL’s advertised activities during the summer months. (Resp. Br., p.6.) Similarly, the State asserts those summer activities did not explain “the necessity or timing for the large cash withdrawals.” (Resp. Br., p.6.) And, later on, the State argues the jury could have found Mr. Schiermeier’s purchase of a hunting bow sight and cold-weather hunting gear was not intended to be or actually used during DARE/PAL’s summer activities. (Resp. Br., p.8.) The State’s reliance on DARE/PAL’s summer activities is misplaced. First, the State simply assumes DARE/PAL conducted no other activities because it advertised certain activities in the summer. (See State’s Exs. 10, 12, 17, 20, 22, 23.) That assumption is insufficient to sustain a finding of grand theft. Second, DARE/PAL’s advertised summer activities did not represent all DARE/PAL activity or its use of funds. Mr. Schiermeier presented evidence to show he conducted other programs beyond the summer activities. (Tr. Vol. II,² p.1150, Ls.1–18, p.1164, L.20–p.1165, L.12 (former teacher testified to observing Mr. Schiermeier teach archery and show hunting movies to students).) As the manager, Mr. Schiermeier had authority to conduct any program he deemed proper to serve DARE/PAL’s interests, and the advertised summer activities did not limit his authority.

The State also claims Mr. Schiermeier committed theft because he took money belonging to DARE/PAL and “spent it on himself rather than apply it to DARE/PAL’s charitable purpose.” (Resp. Br., p.7.) Again, the State assumes Mr. Schiermeier spent DARE/PAL money on himself

² There are four transcripts in the record on appeal. The second volume (Volume II) cited herein contains jury trial days 5–7 (August 30 and 31, 2017, and September 1, 2017) and the sentencing hearing, held on November 7, 2018.

without any evidence to support its assumption. The State presented no evidence on Mr. Schiermeier's use of the cash. (*See App. Br.*, p.14.)

Along the same lines, the State asserts Mr. Schiermeier's argument that he could have used the items purchased with DARE/PAL money for DARE/PAL activities was not relevant as a matter of law. (*Resp. Br.*, p.7.) The State maintains Mr. Schiermeier "still stole the funds" to purchase those items. (*Resp. Br.*, p.7.) The State's argument again assumes a theft without any evidence of wrongfulness or lack of authority. Mr. Schiermeier has not stolen any funds from DARE/PAL if his use of the funds was consistent with DARE/PAL's articles of incorporation and by-laws. The State had the burden to prove otherwise to satisfy the "wrongful" or "unauthorized" element of grand theft. It did not meet this burden at trial.

Next, the State argues the evidence of cash withdrawals "leads to a reasonable inference, if not inevitable conclusion, that the cash withdrawals were theft." (*Resp. Br.*, p.8.) The State's only evidence to support its conclusion is simply the cash withdrawals themselves. By pointing to other DARE/PAL activities purchased with the financial transaction card, the State posits the cash withdrawals were for unauthorized purposes. (*Resp. Br.*, p.9.) The State's very argument highlights the problem with its evidence—Mr. Schiermeier's use of the cash is unknown. It was not Mr. Schiermeier's burden to prove his innocence and explain the cash withdrawals to the jury. It was the State's burden to prove guilt. Unknown use of cash does not prove, beyond a reasonable doubt, Mr. Schiermeier's cash withdrawals were unauthorized or wrongful. The State again did not meet its burden because the mere fact of the cash withdrawals does not prove that element.

In sum, Mr. Schiermeier disputes the State's contention the evidence showed "he simply took and spent DARE/PAL's money on himself for his personal purposes." (*Resp. Br.*, p.9.) As

the manager, Mr. Schiermeier had the same authority as a director to disburse funds, compensate for projects, and execute any other measures deemed proper to promote DARE/PAL's objectives. By arguing Mr. Schiermeier spent the money on himself, the State has not shown Mr. Schiermeier's taking of the money was unauthorized or wrongful (because he had the authority to compensate), and, moreover, the State has not shown Mr. Schiermeier actually spent the money on himself and not in furtherance of DARE/PAL objectives. For these reasons, and those stated in his Appellant's Brief, Mr. Schiermeier respectfully requests this Court vacate his judgment of conviction and remand this case for a judgment of acquittal.

II.

The District Court Abused Its Discretion When It Sentenced Mr. Schiermeier To Fourteen Years, With Six Years Fixed, For One Count Of Grand Theft

Mr. Schiermeier also challenges the district court's decision to impose a sentence of fourteen years, with six years fixed, for his first offense. (App. Br., pp.15–26.) In his opening brief, Mr. Schiermeier highlighted the many mitigating factors in his case: (1) lack of any past arrests, criminal charges, or convictions; (2) full compliance pending trial; (3) absence of substance abuse or mental health issues; (4) supportive, healthy relationships with his family and children; (5) stable employment; (6) positive interests, activities, and values; (7) drastically deteriorating health once incarcerated; (8) acceptance of responsibility and remorse; and, finally, (9) numerous letters of support and testimony from long-time family friends. (App. Br., pp.17–26.) The State does not refute these mitigating circumstances, and its response is otherwise unremarkable. (Resp. Br., pp.9–12.) For the reasons stated in his Appellant's Brief, Mr. Schiermeier maintains the district court did not exercise reason by failing to give adequate

weight to the mitigating factors and thus abused its discretion by imposing an excessive sentence of fourteen years, with six years fixed. (App. Br., pp.15–26.)

CONCLUSION

Mr. Schiermeier respectfully requests this Court vacate the district court’s judgment of conviction and remand this case to the district court with instructions to enter a judgment of acquittal. In the alternative, he respectfully requests this Court reduce his sentence as it deems appropriate or vacate the district court’s judgment of conviction and remand this case for a new sentencing hearing.

DATED this 19th day of February, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2019, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas