

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42971

FILED

MAY 18 2005

J. A. Powell
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a bench trial, of one count of aiding and abetting in the commission of attempting to obtain money by false pretenses. Second Judicial District Court, Washoe County; James W. Hardesty, Judge. The district court sentenced appellant Ferrill Joseph Volpicelli to serve a prison term of 12 to 48 months.

Volpicelli first contends that there is insufficient evidence in support of his conviction. In particular, Volpicelli contends that there was no evidence presented that: (1) Washoe County sustained any economic injury; (2) the State relied on representations made by Volpicelli or his son; (3) Volpicelli had the specific intent to defraud; and (4) the State had lawful possession of the money. In a related argument, Volpicelli contends that it was legally impossible for him to be convicted of an attempt offense because there was insufficient evidence supporting four essential elements of the completed offense. We conclude that Volpicelli's contentions lack merit. Our review of the record on appeal reveals sufficient evidence to

establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

"The elements of the crime obtaining money by false pretenses are (1) intent to defraud, (2) a false representation, (3) reliance on that representation, and (4) that the victim be defrauded."² An attempt to commit a crime is proven when the State shows that the defendant engaged in some act toward the commission of an intended crime, but ultimately failed to accomplish it.³ A defendant aids or abets in the commission of an offense if he "directly or indirectly, counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony."⁴

At trial, the State presented evidence, including police officer testimony and audiotapes of telephone conversations, that Volpicelli, while in custody at the Washoe County Jail, spoke with his teenage son, Travis Volpicelli, by telephone and coaxed him into retrieving a check that Volpicelli knew had been confiscated from Travis by law enforcement

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

²Schertz v. State, 109 Nev. 377, 380, 849 P.2d 1058, 1060 (1993); NRS 205.380(1) ("A person who knowingly and designedly by any false pretense obtains from any other person any . . . money . . . with the intent to cheat or defraud the other person, is a cheat").

³NRS 193.330(1); Powell v. State, 113 Nev. 258, 263, 934 P.2d 224, 227 (1997) (quoting Crawford v. State, 107 Nev. 345, 351, 811 P.2d 67, 71 (1991)).

⁴NRS 195.020.

officers for evidentiary purposes. During the telephone call, Volpicelli specifically instructed Travis to go back to the Washoe County Jail, which had previously issued a check to Travis, and request that a new check be issued. When Travis questioned the propriety of his father's request, Volpicelli told Travis: "You're not lying; just tell them you don't have it anymore. Somebody took it. You just came home and it was gone." Travis agreed and, thereafter, went to the Washoe County Jail and lied to the clerk, telling her that the check had been misplaced and that he needed a new one. The clerk, who was aware that the prior check had been voided, contacted detectives and then issued Travis a new check. Travis was arrested as he attempted to exit the jail. Volpicelli was subsequently charged with aiding and abetting Travis in attempting to obtain money by false pretenses.

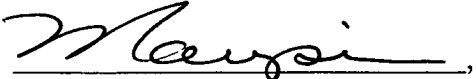
Although at trial Volpicelli argued that he and Travis were only trying to retrieve money rightfully belonging to them, the district court could reasonably infer from the evidence presented that the funds at issue were in the lawful possession of Washoe County and that Volpicelli aided in attempting to defraud Washoe County out of lawful possession of the check by encouraging Travis to make the false representation.⁵ It is for the trier of fact to determine the weight and credibility to give

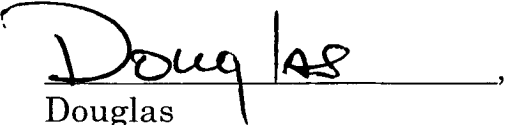
⁵See Kelly v. State, 59 Nev. 190, 89 P.2d 1 (1939) (recognizing that lawful possession by the victim, not actual ownership, of the property involved is required to prove a defendant obtained property from the victim by using false pretenses).

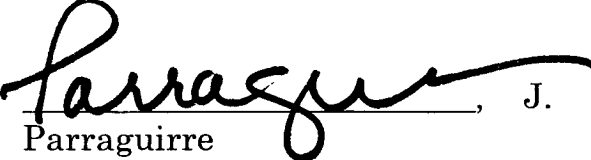
conflicting evidence, and the district court's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁶

Having considered Volpicelli's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Second Judicial District Court Dept. 9
Jack A. Alian
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).