

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RICHARD SCHUBARTH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46676

**FILED**

JUN 30 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. ...*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of theft by false pretenses and one count of theft by embezzlement. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge. The district court sentenced appellant Michael Richard Schubarth to two concurrent prison terms of 12 to 48 months, suspended the sentence and placed Schubarth on probation for a period not to exceed 5 years.

Schubarth first contends that the jury should have been instructed regarding specific intent rather than general intent as to the charge of theft by embezzlement. Specifically, Schubarth argues that the State should have charged him with embezzlement under NRS 205.300, rather than with theft by embezzlement under NRS 205.0832(1)(b). NRS 205.300 requires a showing of specific intent, whereas the crime with which Schubarth was charged is a general intent crime.

The jury was properly instructed as to intent for the crime with which Schubarth was charged. Moreover, "[t]he matter of the prosecution of any criminal case is within the entire control of the district

attorney."<sup>1</sup> Where multiple alternative statutes proscribe a defendant's criminal act, the State is not required to choose the one that is harder to prove.<sup>2</sup>

Schubarth also contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>3</sup>

In particular, we note that Schubarth was engaging in the mortgage brokerage business without a license. Schubarth obtained a debit card on a trust account into which one of the victim's funds were deposited and began using the debit card for his personal expenses. As to the other victim, she deposited a "commitment fee" into Schubarth's PayPal account but Schubarth failed to establish an escrow account with the funds. Instead, Schubarth began using the money for his own personal expenses.

The jury could reasonably infer from the evidence presented that Schubarth committed theft by embezzlement and false pretenses. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as

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<sup>1</sup>Henry v. Sheriff, 94 Nev. 66, 68, 574 P.2d 1011, 1012 (1978) (quoting Cairns v. Sheriff, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973)).

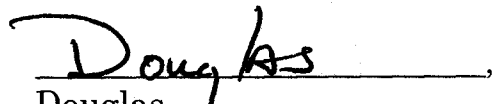
<sup>2</sup>See id.

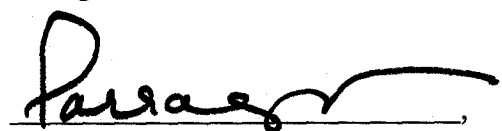
<sup>3</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

here, substantial evidence supports the verdict.<sup>4</sup> We also note that circumstantial evidence alone may sustain a conviction.<sup>5</sup>

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, Sr. J.  
Shearing

cc: Hon. Michael P. Gibbons, District Judge  
Law Offices of John P. Springgate  
Attorney General George Chanos/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk

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<sup>4</sup>See 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).

<sup>5</sup>See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

<sup>6</sup>The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.