IN THE SUPREME COURT OF THE STATE OF NEVADA

YEAT VON HOUT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40101

FILED

NOV 21 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

Yeat Von Hout appeals from a judgment of conviction entered after a jury found him guilty of embezzlement and obtaining money by false pretenses. Hout raises several issues on appeal.

First, Hout contends that his conviction is not supported by sufficient evidence. This court has observed that the standard of review for sufficiency of the evidence is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt.'"[1] If supported by substantial evidence, a verdict will not be disturbed on appeal.[2]

On appeal, the State acknowledges that, by the nature of the crimes involved, Hout could not be convicted of both embezzlement and obtaining money by false pretenses.[3] Nonetheless, the State argues that

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[1]Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original)).

[2]Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 2 (1975).

[3]See Ex Parte Ricord, 11 Nev. 287, 292 (1876) (concluding that one can not have both the authority to obtain money lawfully, satisfying an element of the crime of embezzlement, and, at the same time, obtain the same money by false pretenses).

Hout's conviction of embezzlement should be upheld because it is supported by substantial evidence. When an accused cannot be convicted of both crimes, both convictions are reversible unless this court can ascertain upon which count a properly instructed jury would have convicted the defendant.[4]

NRS 205.300(1), defining embezzlement, provides for the punishment of a manager who is entrusted with a corporation's money, property, or effects and uses or appropriates such for any purpose other than that for which he was entrusted. Here, Walgreen's entrusted Hout with $9,290 at the beginning of his shift as assistant general manager. Although Hout maintained that the store was robbed, the State presented evidence to support its theory that Hout appropriated the money: none of the employees saw or heard the alleged robbers; Hout had the opportunity to take the money; Hout had a motive to take the money given his dire financial position; the police found $2,000 in cash, among other monies, at Hout's residence; and when confronted with the surveillance tape from the Ballpark Market, Hout stated that the robbers may have exited out the front of the store, contrary to his earlier claim that they exited out the back door.

Looking at the evidence in the light most favorable to the State, we conclude that a reasonable jury could have found Hout guilty of embezzlement.[5] Accordingly, we affirm his conviction for embezzlement.

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[4]Point v. State, 102 Nev. 143, 147, 717 P.2d 38, 41 (1986).

[5]See Jackson v. State, 117 Nev. 116, 123, 17 P.3d 998, 1002 (2001) (observing that it is the jury's function, not that of this court, to assess the weight of the evidence and determine the credibility of the witnesses).

However, we order the district court to vacate Hout's conviction for obtaining money by false pretenses, as he cannot be convicted of both crimes.[6]

Second, Hout contends that he was denied his speedy-trial right; however, he never raised this issue below. Hout did not ask the district court to dismiss his case on the basis that his right to a speedy trial had been violated, and this court has observed that "before error for failure to accord a speedy trial can be raised on appeal, objection to the trial date set must have been made in the trial court."[7] Although this court will generally not entertain an argument first raised on appeal,[8] we will consider Hout's speedy-trial argument given its constitutional magnitude.[9]

In assessing whether a speedy-trial right has been violated, this court must conduct a balancing test.[10] In doing so, this court should consider the length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.[11] Although Hout

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[6]See Ex Parte Ricord, 11 Nev. 287, 292 (1876).

[7]Anderson v. State, 86 Nev. 829, 834, 477 P.2d 595, 598 (1970).

[8]See Perelman v. State, 115 Nev. 190, 193 n.5, 981 P.2d 1199, 1201 n.5 (1999).

[9]See McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983) (observing that this court has the power to address constitutional issues when raised for the first time on appeal).

[10]Middleton v. State, 114 Nev. 1089, 1110, 968 P.2d 296, 310 (1998) (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)).

[11]Id.

clearly asserted his speedy-trial right and approximately eight months passed between Hout's arraignment and the commencement of his trial, we conclude that Hout was not prejudiced.[12] Additionally, the majority of the delays were due to either appointed counsel's inability to contact Hout or scheduling conflicts.[13] Accordingly, we conclude that Hout's right to a speedy trial was not violated.

Third, Hout contends that the district court committed reversible error by removing Glade L. Hall as his counsel of choice. While the right to counsel of one's choosing is not absolute,[14] one's choice of counsel "should not be obstructed unnecessarily by the court."[15] But, when a potential conflict of interest arises, the district court must conduct a hearing to determine "whether a conflict exists such as would prevent the accused from receiving advice and assistance sufficient to afford him the quality of representation guaranteed by the Sixth Amendment."[16]

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[12]Prince v. State, 118 Nev. ___, ___, 55 P.3d 947, 951 (2002) (observing that prejudice generally derives from (1) oppressive incarceration, (2) anxiety and concern caused by excessive confinement and delay, or (3) impairment of the defendant's ability to present a defense).

[13]See Furbay v. State, 116 Nev. 481, 485, 998 P.2d 553, 555 (2000) (concluding that, despite a five-and-one-half-year delay, the defendant's right to a speedy trial was not violated when all but one of the continuances was for good cause or occasioned by defense motions or tactics).

[14]Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978).

[15]Abraham v. United States, 549 F.2d 236, 239 (2d Cir. 1977).

[16]Id.

In this instance, we conclude that the district court did not abuse its discretion by removing Hout's counsel of choice.[17] The district court held a hearing where it learned of various financial arrangements between Hout and Hall that created potential conflicts of interest. Additionally, the State informed the district court that Hall's wife would definitely be called as a trial witness, and that Hall himself might be called to testify as well, thereby creating additional potential conflicts of interest.

Finally, Hout contends that he should have been provided with an interpreter. This court has recognized that a defendant has a due process right to an interpreter at all crucial stages of the criminal process if he does not understand the English language.[18] However, if the district court determines that the defendant is sufficiently fluent in the English language so as to understand the proceedings in a meaningful sense, the district court need not appoint an interpreter.[19]

Here, the district court inquired into Hout's educational background and work experience. Ultimately, the district court concluded that based on Hout's conduct at prior proceedings and his work experience, Hout had demonstrated that he understood the English

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[17]Cf. Baker v. State, 97 Nev. 634, 636, 637 P.2d 1217, 1218 (1981) (observing that whether to grant a motion for substitute counsel is a matter within the discretion of the trial court).

[18]Ton v. State, 110 Nev. 970, 971, 878 P.2d 986, 987 (1994).

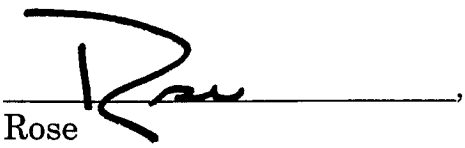
[19]Id.

language well enough to continue without an interpreter. We conclude that the district court did not abuse its discretion in so ruling.[20]

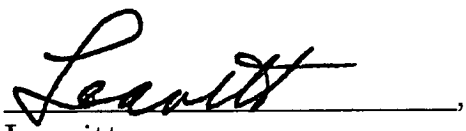
We note that Hout raises an ineffective-assistance argument; however, we will not address this argument on direct appeal.[21]

Having considered Hout's arguments on appeal, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.



_____, J.
Rose



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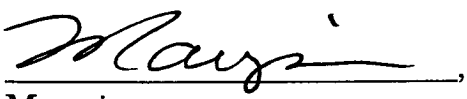

_____, J.
Maupin

cc: Hon. Steven R. Kosach, District Judge
Jonathan H. King
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[20]See id. at 972, 878 P.2d at 987 (observing that the decision of whether to appoint an interpreter is within the district court's discretion).

[21]See Pellegrini v. State, 117 Nev. 860, 883, 34 P.3d 519, 535 (2001) (concluding that the more appropriate vehicle for presenting a claim for ineffective assistance of counsel is through post-conviction relief).