IN THE COURT OF APPEALS 07/02/96

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00591 COA

RICHARD DANIEL FARRELL A/K/A DANNY FARRELL

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT H. WALKER

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHESTER D. NICHOLSON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY W. GLENN WATTS

DISTRICT ATTORNEY: CONO CARANNA

NATURE OF THE CASE: FELONY-EMBEZZLEMENT

TRIAL COURT DISPOSITION: SENTENCED TO SERVE 10 YEARS IN THE CUSTODY OF THE MDOC, WITH ALL BUT 6 MONTHS SUSPENDED AND THOSE 6 MONTHS TO BE SERVED UNDER HOUSE ARREST; ORDERED TO PAY RESTITUTION.

BEFORE FRAISER, C.J., COLEMAN, AND KING, JJ.

FRAISER, C.J., FOR THE COURT:

Daniel Farrell (Farrell) was tried by a jury in the Harrison County Circuit Court and convicted of embezzlement. He was sentenced to ten years in the custody of the Mississippi Department of Corrections, with all but six months suspended. The last six months of his sentence were under house arrest. On appeal, Farrell presents the following issues:

> I. THE COURT ERRED IN DENYING FARRELL'S MOTION FOR THE STATE TO ELECT AS TO WHETHER IT WAS CHARGING HIM WITH CONVERTING THE VEHICLE TO HIS OWN USE OR WITH CONVERTING THE PROCEEDS FROM THE SALE OF THE VEHICLE.
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> II. THE TRIAL COURT ERRED IN DENYING FARRELL'S MOTION FOR JUDGMENT OF ACQUITTAL AND IN REFUSING JURY INSTRUCTION D-1, THE PEREMPTORY INSTRUCTION.
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> III. THE TRIAL JUDGE ERRED IN EXCLUDING EVIDENCE RELATED TO THE DISPOSITION OF THE PROCEEDS OF THE SALE OF THE VEHICLE AND OTHER EVIDENCE CONNECTED TO THE EXISTENCE AND OPERATION OF JEFF DAVIS AUTO SALES, INC., IN VIOLATION OF THE DUE PROCESS CLAUSES OF THE 5TH AND 14TH AMENDMENTS AND THE 6TH AMENDMENT RIGHT TO A FAIR TRIAL.

We find no error and affirm.

FACTS

Farrell worked as a used car salesman at Jeff Davis Auto Sales, Inc. (Jeff Davis) in Long Beach, Mississippi. Jeff Davis was owned by Michael Duran (Duran), the sole stockholder of the corporation. Farrell's wife, Deborah Farrell (Deborah), was the secretary/treasurer. Farrell managed the car lot and received one half of the profits from vehicle sales. Duran, Deborah and Farrell were the only people authorized to sign checks on the corporate account.

Duran incorporated Jeff Davis in April 1992. He opened a corporate checking account at Merchants Bank with $25, 000.00 start up capital. From this money, Farrell was authorized to go to auction and bid on cars or otherwise purchase vehicles for the lot. According to Duran's testimony, the bank would hold title to the vehicles until they were sold, and then release the titles. Anything above the cost of selling the car was the commission which was split 50/50 between Farrell and Duran.

In November 1992, Emma Hyde, recently widowed, contacted Farrell about selling her late

husband's pickup truck. Hyde testified that she and her husband had dealt with Farrell on numerous occasions in the past, with Farrell selling cars for them over the past twenty or so years. Hyde testified that she trusted Farrell and was aware of the confidence her late husband had in Farrell. Hyde contacted Farrell and asked him to sell the truck for her. While there was no written agreement, it was agreed that Farrell was to sell the truck. Hyde testified as follows:

> Q. How long had you known Mr. Farrell?
>
> A. Well, for several years because we had done a lot of business with him. My husband was in construction, and he bought a lot of trucks from him. I bought cars. My in-laws on both sides, my sister bought cars and trucks from him, and we knew him quite well, and my husband thought he was, you know, dependable and wanted to help him in every way he could to the point that he really offered to get him into construction work, which my husband was in.
>
> . . . .
>
> Q. Okay. You said you took the truck there. Where did you take it?
>
> A. To his lot on Davis Avenue in Long Beach.
>
> Q. Okay. The--when you arrived with the truck, did you have an opportunity to discuss the matter with Farrell?
>
> . . . .
>
> A. Well, I told him that I wanted $11,800 for it. That is what it had kind of been appraised for, and he told me right up front that he would not charge me a commission on it. He sat in my truck with his grandbaby in his lap and we talked about it, and he went over a lot of stuff that he, my husband had done for him and how much he appreciated it, and he said he wasn't sure he could get me that much for the truck, but he would get as much as he could.
>
> . . . .
>
> Q. . . . .How many vehicles, ma'am, would you say that you or your husband either sold or purchased from Danny Farrell over the years?
>
> A. Well, I really don't know. We had been there--my husband had been there since about '74, and he bought a new truck every couple of years. He sent all of his family and my family. I bought a couple of cars, and he sent his friends there.

. . . .

Q. Did Mr. Farrell explain to you, ma'am, about Mr. Duran and the corporation?

A. No.

Q. This is the first you heard about that?

A. Right.

Q. You were never contacted by Mr. Duran?

A. No.

Q. Or by Mr. Jones?

A. No.

In January 1993, Farrell found a buyer willing to pay $10,000.00 for Hyde's truck. Farrell contacted Hyde about the selling price, and while Hyde had hoped for more money, she authorized Farrell to sell the truck for $10,000.00. Virginia Herbert (Herbert), gave Farrell a cashier's check made out to Jeff Davis Auto Sales, Inc. in the amount of $10,000.00. Farrell endorsed the check and deposited it in the corporate checking account. Farrell wrote numerous checks out of the corporate checking account, including checks for personal expenses. The corporate checking account was written down so low as to preclude payment to Hyde for her truck. Hyde testified that she continuously tried to contact Farrell after he supposedly sold her truck so she could collect her money:

Q. Okay. Now, did you make efforts to contact Mr. Farrell after the early part of January of 1992 [1993]?

A. Oh, yeah, several times.

Q. Okay. Were you successful?

A. No.

. . .

A. Well, I would call his office, and he was never available and never returned my call.

Q. Would you leave messages as to what you were calling in reference to?

A. Yes.

Q. Okay. Did you ultimately have a telephone conversation with the defendant, Danny Farrell?

A. Well, I did the latter part of February.

Q. All right. And in the latter part of February when you had this discussion, had anyone delivered the truck back to you?

A. No.

Q. Had anyone delivered any of the proceeds from a sale of the truck to you?

A. No.

Q. And when you spoke to Mr. Farrell in the latter part of February of 1993, what happened? What was said during that conversation?

A. He said they were--they had messed up the title to the truck and that they were--they had ordered a new title, and they were waiting for that title to come in, and he thought it would be in the next few days.

Q. Okay. Did he mention anything about the proceeds from the sale?

A. No.

Hyde asked Farrell about the truck and he said that it was in Gulfport and that although he was not sure, he thought the people were using it. Hyde testified that she asked for her truck to be returned and Farrell replied that he had collected $5,000.00 on the truck, but because of the problem with the title, he could not get the rest of the money. Hyde checked with the people in Jackson who told her that they had no record of what Farrell said had occurred. Ultimately Hyde went to the Long Beach Police Department and reported Farrell's actions.

Farrell was indicted and charged with embezzlement. It was the form of the indictment that leads to Farrell's first issue on appeal:

> I. THE COURT ERRED IN DENYING FARRELL'S MOTION FOR THE STATE TO ELECT AS TO WHETHER IT WAS CHARGING HIM WITH CONVERTING THE VEHICLE TO HIS OWN USE OR WITH CONVERTING THE PROCEEDS FROM THE SALE OF THE VEHICLE.

Farrell was charged under section 97-23-25 of the Mississippi Code of 1972 (revised 1994). That section is entitled "Embezzlement; property held in trust or received on contract", and reads as follows:

> If any person shall fraudulently appropriate personal property or money which has been delivered to him on deposit, or to be carried or repaired, or on any other contract or trust by which he was bound to deliver or return the thing received or its proceeds, on conviction, he shall be punished by imprisonment in the penitentiary not more than ten years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year, or either.

The indictment charging Farrell with embezzlement followed the language of the statute and read as follows:

> RICHARD DANIEL FARRELL in the First Judicial District of Harrison County, Mississippi, on or about January 11, 1993 did wilfully, unlawfully, feloniously and fraudulently appropriate one 1990 Chevrolet C-15, brown in color, Mississippi tag # 8BHN218, VIN # 2GCEC14KXL1123294, valued at Twelve Thousand and 00/100 Dollars ($12,000.00), which had been delivered to the said Richard Daniel Farrell in trust,

> for the purpose of selling the vehicle, and thereafter failed to return said vehicle and/or proceeds to Emma Hyde, the owner thereof, when the right of use of possession ceased, with the intent to deprive said owner of said property and/or proceeds, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

At trial, Farrell motioned the court to have the State elect whether it was charging him with converting the truck or converting the proceeds of the truck. The trial court denied the motion. On appeal, Farrell claims that the trial court's refusal to order the State to elect deprived him of the right to be informed of the nature and cause of the accusation against him. The Mississippi Supreme Court has spoken to the issue of sufficiency of the embezzlement statute:

> "In considering the sufficiency of the indictment we recall to mind that embezzlement is a statutory crime not derivative of the common law. It is necessary, therefore, that the indictment contain the words of the statute or use their equivalent in charging the crime of embezzlement. In State v. Hinton, 139 Miss. 513, 104 So. 354 (1925), in addition to citing other related cases, we stated:
>
> In alleging a statutory offense, the language of the statute or its equivalent must be used, . . . (139 Miss. at 515, 104 So. at 355).

Grantham v. State, 284 So. 2d 523, 524 (Miss. 1973); *see Love v. State*, 211 Miss. 606, 610, 52 So. 2d 470, 471 (1951) ("Generally the charge is sufficient if the indictment adopts and follows the language of the statute or is in language substantially equivalent to it."). In the case sub judice, the indictment properly tracked the language of the statute. However, Farrell claims that his right to be informed of the nature and cause of the accusation against him was violated.

The Mississippi Supreme court spoke to the sufficiency of the wording of the statute in stating, "[c] ertainly the indictment need not (though it may) charge in the exact language of the statute said to have been offended." *Harbin v. State*, 478 So. 2d 796, 799 (Miss. 1985). " If from a reading of the indictment as a whole the accused is in fact given fair notice of that with which he has been charged, the indictment is legally sufficient." *Id.* Hyde testified that she asked for the truck to be returned when Farrell did not have the proceeds from the sale. Farrell lied to her and said he did not have the entire sum. He was unable to return the truck to Hyde. Farrell was also unable to give Hyde her $10, 000.00. There is no doubt that from the reading of the indictment Farrell knew that he was charged with embezzlement as the result of his taking Hyde's truck in trust, and then refusing to return either the truck itself or the proceeds.

> II. THE TRIAL COURT ERRED IN DENYING FARRELL'S MOTION FOR JUDGMENT OF ACQUITTAL AND IN REFUSING JURY INSTRUCTION D-1, THE PEREMPTORY INSTRUCTION.

> The standard of review used in determining the sufficiency of the evidence after the denial

of a directed verdict motion or motion for a peremptory instruction is found in *Wetz v. State*, 503 So.2d 803 (Miss.1987). In *Wetz*, the State challenged the defendant's ability to challenge the sufficiency of the evidence after the trial judge overruled the defendant's motion for a directed verdict. *Id*. at 807-08. This Court in an often quoted footnote stated:

> [I]n his brief before the court, the Attorney General argues that we should not consider the propriety of the Circuit Court's denial of the motion for a directed verdict made at the end of the prosecution's evidence, on the premise that Wetz waived any rights he might have in that regard by offering evidence in his own behalf. We have, of course, stated this waiver rule on numerous occasions, generally without bothering to explain its limited procedural meaning. *See, e.g., Weeks v. State*, 493 So.2d 1280, 1282 (Miss.1986); *Ruffin v. State*, 481 So.2d 312, 316 (Miss.1985); (further citations omitted) Because the point is often misunderstood an explanation may be helpful. By offering evidence of his own, the defendant in no way waives the right to challenge the sufficiency or weight of the evidence in the event of an adverse jury verdict. What the waiver rule means is that the defendant must proceed on the basis of the evidence before the court at the time the challenge is made and not in the limited state of the record which may have existed back when the motion for a directed verdict was originally made. Put otherwise, all of these motions--the motion for directed verdict made at the end of the case for the prosecution, the request for a peremptory instruction at the end of all of the evidence or the motion for a directed verdict at that point, or, finally, a motion for judgment of acquittal notwithstanding the verdict--are procedural vehicles for challenging the sufficiency of the case for the prosecution. Each requires that the court considers all of the evidence before it at the time the motion is considered. When the sufficiency of the evidence is challenged on appeal, this Court properly should review the Circuit Court's ruling on the last occasion when the sufficiency of the evidence was challenged before the trial court. Here, of course, that was when the Circuit Court overruled the motion for a new trial which contained at least two paragraphs challenging the legal suffi ciency of the evidence. *Cf. Clements v. Young*, 481 So.2d 263, 268 (Miss.1985). See also *Griffin v. State*, 495 So.2d 1352, 1353 (Miss.1986). *Wetz*, 503 So.2d at 807-08, n. 3. (emphasis added).

Smith v. State, 646 So. 2d 538, 542 (Miss. 1994). Farrell claims the trial court erred in denying his motion for directed verdict and peremptory instruction for two reasons: (1) under instruction S-1, the State had to prove criminal intent and it failed to do so; (2) the State failed to prove that Farrell put the proceeds of the truck to his own personal use. "In considering a motion for directed verdict, this Court on review must consider the evidence in the light most favorable to the State, accepting all evidence introduced by the State as true, together with all reasonable inferences therefrom. If there is sufficient evidence to support a guilty verdict, the motion for a directed verdict must be overruled." *Smith*, 646 So. 2d at 542.

State’s instruction S-1 read as follows:

> The Court instructs the jury that the defendant, Richard Daniel Farrell, has been charged by an indictment with the criminal offense of embezzlement of property held in trust. If you find from the evidence in this case beyond a reasonable doubt that:
>
> 1. Richard Daniel Farrell, on or about January 11, 1993, in the First Judicial District of Harrison County, Mississippi.
>
> 2. fraudulently appropriated one 1990 Chevrolet C-15, brown in color, Mississippi tag no. 8BHN218, VIN #2GCEC14KXL1123294, valued at approximately Ten Thousand and 00/100 Dollars ($10,000.00), that belonged to Emma Hyde,
>
> 3. which had been delivered to Richard Daniel Farrell in trust for the purpose of selling said vehicle, and 4. Richard Daniel Farrell failed to return the 1990 Chevrolet CV-15, brown in color, Mississippi tag no. 8BHN218, VIN #2GCEC14KXL1123294 and or proceeds to Emma Hyde, when the right of use of possession ceased after Richard Daniel Farrell's right to use had ended, then you shall find the defendant, Richard Daniel Farrell, guilty as charged. If the prosecution has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find the defendant, Richard Daniel Farrell, not guilty.

Farrell claims that the use of the word "fraudulently" requires the State to prove criminal intent on Farrell's behalf. In embezzlement cases, the criminal intent is formed after the embezzler comes into possession of the goods. In contrast to larceny, embezzlement occurs when one has lawful possession of goods belonging to another. In Farrell's case, he held Hyde's truck in trust. Therefore, he had lawful possession. However, the indictment and Instruction S-1 clearly charge Farrell with wrongfully appropriating Hyde's truck and ensuing proceeds to his own use after his right to possession ended. Farrell's intent to deprive Hyde of her truck and the resulting proceeds was proven to the jury by evidence of his conduct. Hyde testified that she contacted Farrell personally and presumed she was dealing with him personally as she and her husband had done in the past. Her testimony revealed that she put her trust in Farrell and assumed he would simply sell her truck and deliver the proceeds. Instead, Farrell sold the truck, deposited the proceeds in the corporate account, and proceeded to write the account down until there were insufficient funds to pay Hyde. He lied to Hyde about the title, the whereabouts of the truck and the amount of proceeds he received from the sale of the truck. Farrell denied lying about the title, instead testifying that it was not his fault that there were insufficient funds to pay Hyde. Farrell blamed Duran for not putting more funds in the checking account to pay Hyde. However, Duran testified that during the existence of the corporation, he had no involvement in the day to day operations. When asked what was his involvement in the business checking account, Duran responded, "None." The proof showed that Farrell deposited the $10, 000.00 check for the sale of the truck in the corporate account, but in his exercise of control over the account, he used the $10,000.00 to pay various expenses, including his salary and his own horses' boarding expenses. Farrell owed Hyde a dut y to either return the truck to her if unsold, or deliver the proceeds to her per their agreement. Instead, he deceived Hyde and caused her economic loss. Therefore, in response to Farrell's argument that the State did not prove his criminal intent to embezzle, it was proven by his own acts. The Mississippi Supreme Court has spoken to the proof

needed to prove criminal intent:

> However, criminal intent of a defendant, dwelling in his mind, invisible to the outward sight, can never be proven by direct testimony of a third person, (except when verbally expressed or admitted), and it need not be, because a person is presumed to intend that which he does, or which is the natural and necessary consequence of his act. Moreover, the court and the jury are not bound by the evidence of the accused as to what his intention was in the doing of a particular act.

Lee v. State, 244 Miss. 813, 146 So. 2d 736, 738 (1962) (citations omitted). We find that there was sufficient evidence of Farrell's criminal intent for the jury to find him guilty.

Farrell's second complaint under his charge that the court erred in denying his motion for directed verdict and peremptory instruction is that the State failed to prove that he put the truck and its resulting proceeds to his personal use. Farrell bases this argument on his testimony that the $10, 000.00 was made out to Jeff Davis, and not himself; the check went into the corporate checking account, not his personal account; and Farrell wrote checks off of the corporate account not knowing there was not going to be enough funds left to pay Hyde. However, Farrell's defense that the money went to the corporation and not his own personal use is belied by the decision of the Mississippi Supreme Court in *Boteler v. State*, 363 So. 2d 279, 283 (Miss. 1978), *cert. denied* 441 U.S. 943 (1979). In that case, a state official was charged with embezzling funds, but defended himself by claiming he did not use the money himself. *Id.* at 282. The court held that directing the disposition of the funds was converting the funds to his own use:

> If defendant could be acquitted of the charge of embezzlement on the defense offered in this case, any embezzler could be acquitted upon a simple showing that he did not retain the embezzled funds for his own use but gave them to another person. Whether the defendant chose to use the money for his personal obligations or give it to Herschel Jumper for lobbying purposes does not matter, because, in either event, he directed its disposition and thereby applied it to his own use. The element of conversion was established.

Id. at 283. The evidence presented to the jury plainly showed that Farrell exercised control over the corporate checking account and he personally, not the corporation, directed the disposition of the proceeds received from the sale of Hyde's truck. Under the familiar standard of review, taking all the evidence and reasonable inferences favorable to the State, we find that the trial court did not err in denying Farrell's motion for directed verdict and peremptory instruction.

> III. THE TRIAL JUDGE ERRED IN EXCLUDING EVIDENCE RELATED TO THE DISPOSITION OF THE PROCEEDS OF THE SALE OF THE VEHICLE AND OTHER EVIDENCE CONNECTED TO THE EXISTENCE AND OPERATION OF JEFF DAVIS AUTO SALES, INC., IN VIOLATION OF THE DUE PROCESS CLAUSES OF THE 5TH AND 14TH AMENDMENTS AND THE 6TH

AMENDMENT RIGHT TO A FAIR TRIAL.

Farrell contends that if certain evidence about the way Duran operated the corporation had been admitted, then the jury would have seen that it was the corporation, and not Farrell that was to blame for Hyde's loss. He claims that the exclusion of certain evidence denied him the opportunity to present his defense to the jury. We disagree.

Duran was extensively examined and cross-examined about his relationship and responsibility to the corporation. The trial court in making various rulings during Duran's testimony sustained objections by the State to the defense asking questions which called for legal conclusions on the behalf of Duran. Nonetheless, the jury heard ample testimony about Duran's control over and daily participation in the corporation. Duran testified that he did not participate in the day-to-day operations of the corporation; he did not control distributions from the corporate checking account; and he was not aware of the debt owed to Hyde. Farrell was allowed to testify extensively and presented his case to the jury. The following jury instructions provided the jury with his defense and theory of the case:

JURY INSTRUCTION D-6M

If you find from the evidence beyond a reasonable doubt that the truck or proceeds from the sale of the truck were appropriated, nevertheless, if you further believe from the evidence that others besides the defendant had access to the vehicle or the money misappropriated, you should find the defendant not guilty of embezzlement, unless you are satisfied beyond a reasonable doubt by the evidence that the defendant and no other person is responsible for converting the money.

JURY INSTRUCTION D-2

Mr. Farrell has been charged by an indictment with the crime of embezzlement by trust for having fraudulently appropriated the personal property of Emma Hyde, to wit, one 1990 Chevrolet C-15 pickup truck after same had been entrusted to him pursuant to a contract. If you find from the evidence in this case beyond a reasonable doubt that :

1. Emma Hyde and the defendant entered into a contract; and 2. under the terms of the contract the defendant, Richard Daniel Farrell, received one 1990 Chevrolet C-15 pickup truck from its owner, Emma, for the purpose of selling the truck; and 3. that under his contract with Mrs. Hyde, Mr. Farrell had a duty to return to her either the vehicle or the proceeds from its sale; and 4. That he thereafter took the vehicle for his own use, or

5. That he took the proceeds from the sale of the vehicle for his own use, then you shall find the defendant guilty of embezzlement.

However, if the State of Mississippi has failed to prove any one or more of these elements beyond a reasonable doubt, then you shall find the defendant not guilty of embezzlement.

JURY INSTRUCTION 2/D-5

> The term "appropriate" as used in this case and these instructions, means to unlawfully convert the property of another to one's own use. An unlawful conversion is an element of the offense of embezzlement. If you find from the evidence, beyond a reasonable doubt, that Richard Daniel Farrell directed the disposition of the proceeds from the sale of the vehicle in question, and thereby applied it to his own use, then the element of conversion has been established. It is not necessary to show that the defendant retained the proceeds from the sale of the vehicle for his personal use.

These instructions informed the jury of Farrell's theory of the case. Farrell claimed that he was just doing his job as an employee of Jeff Davis Auto Sales, Inc., and that as a mere employee, he was not responsible for the debt owed to Hyde. Additionally, Farrell argued that because he did not put the money to his own personal use, he is not guilty of appropriating the proceeds. However, testimony at trial directly contradicts Farrell's contentions. Hyde testified that she never believed she was working with a business or corporation of any kind, but with Farrell in his individual capacity. Farrell claimed that he was only an employee, but Duran testified that he relied on Farrell to run the daily operations of the car lot. Duran entrusted Farrell with the responsibility of meting out corporate funds. Farrell exercised control over the corporate checking account. Testimony proved that he accepted a check for $10,000.00 in exchange for Hyde's truck, and he deposited that check in the corporate account. Instead of paying Hyde the proceeds from the sale of her truck, Farrell used those funds for other corporate accounts and his own personal expenses. In not fulfilling his duty to Hyde to pay her the proceeds from the truck, and choosing instead to use her money to other purposes, Farrell converted the money to his own use and directed the disposition of those funds. The Mississippi Supreme Court spoke to the exclusion of evidence in *Hoover v. State*, 552 So. 2d 834, 840 (Miss. 1989):

> Rule 103(a)(2) requires that we affirm unless the exclusion affects a substantial right of the party offering the evidence. However, when dealing with Constitutional issues such as the right to a fair trial involved here, reversal is not required if "on the whole record, the error was harmless beyond a reasonable doubt." *United States v. Hastings*, 461 U.S. 499 (1983); *Chapman v. California*, 386 U.S. 18, 23-24 (1967).

Hoover, 552 So. 2d at 840. The trial court did not commit error in excluding portions of Duran's testimony. The jury had more than enough evidence of Duran's involvement and Farrell's responsibility with the corporation. Farrell was not prejudiced by the exclusion of evidence. We affirm.

THE JUDGMENT OF THE HARRISON COUNTY CIRCUIT COURT CONVICTING RICHARD DANIEL FARRELL OF EMBEZZLEMENT AND SENTENCE TO TEN (10)

YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH ALL SUSPENDED WITH THE EXCEPTION OF SIX (6) MONTHS TO SERVE UNDER THE PROVISIONS OF THE INTENSIVE SUPERVISION PROGRAM IS AFFIRMED. COSTS ARE TAXED TO APPELLANT.

BRIDGES P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.