

NMDPS - EMBEZZLEMENT – ENTRUST

Defendant worked for the accounting department of a small business in Sunland Park, New Mexico. She would help with payroll and other duties. Only the owners, however, could sign checks. Sometimes, when they went out of town, they would leave pre-signed blank checks with Mr. Ramirez who put them in a locked filing cabinet. Defendant had access to the filing cabinet, where a number of items were stored, but only after getting a key from an authorized person.

The Defendant took two of the pre-signed checks, filled them out, and got over \$6,000. She was convicted in a jury trial of two counts of embezzlement. These were the wrong charges, however, and the Court of Appeals ordered her case dismissed. The State did not prove entrustment, an element of embezzlement.

Embezzlement consists of a person embezzling or converting to the person's own use anything of value, **with which the person has been entrusted**, with fraudulent intent to deprive the owner thereof. NMSA 1978, Section 30-16-8. "Entrustment" occurs when property is **committed or surrendered** to another with a certain confidence regarding the care, use, or disposal of that property.

It is not enough that Defendant was in a position of trust as an employee, or had access to the filing cabinet. Her access to the filing cabinet was for other reasons, not to gain possession of the checks. In fact, the owners entrusted the pre-signed checks to Mr. Ramirez only, thereby expressly not entrusting the checks to Defendant. Larceny would have been more appropriate. State v. Kovach (2006). - - ADA Elliott



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