

Affirmed and Opinion filed March 30, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00134-CR
NO. 14-98-00135-CR

HOMOUZ K. NABULSI, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 737,679 & No. 737,686**

OPINION

Appellant Homouz K. Nabulsi pleaded no contest to two counts of theft. After a presentence investigation, the trial court sentenced him to eight years' imprisonment. In one point of error, Nabulsi appeals that the trial court violated his right to compulsory process by quashing two subpoenas duces tecum. Finding that the trial court did not err, we overrule Nabulsi's point of error and affirm the trial court's judgment.

BACKGROUND

Nabulsi was the in-house accountant for a small company owned by the complainant, Gale Oliver. Over several years, appellant billed the company using fraudulent invoices, signed company checks for the invoices, and deposited the checks into bank accounts that he controlled. In total, he diverted \$204,108.72 from the company for his own use and benefit. Nabulsi claims he had become a gambling addict and that he stole the money to cover his gambling debts.

Before the sentencing hearing, Nabulsi issued subpoenas duces tecum to Gail Oliver and to Clay Wilkins, the company's office manager. The subpoena to Gail Oliver requested all company profit and loss statements from 1993 to 1997, lists of employee bonuses from 1991 to 1995, personal income tax returns from 1993 to 1997, and documents pertaining to a company loan from Texas Commerce Bank. The subpoena to Clay Wilkins requested only his personal income tax returns from 1993 to 1997. The State sought to quash these subpoenas as overbroad, irrelevant, and an unwarranted invasion of the employees' personal privacy. Nabulsi argued that the evidence was relevant to counter allegations that he caused hardship for the company. In letters included in the presentence investigation report, Gail Oliver and another company owner had claimed that Nabulsi's theft adversely effected employee bonuses and caused the company to obtain a million-dollar loan.

After considering these arguments, the trial judge replied that she would disregard those portions of the owners' letters that spoke of business financial hardship. She determined that the alleged hardship was not closely related to Nabulsi's theft. Given this determination, the trial judge then quashed the subpoenas because the documents requested were not relevant.

COMPULSORY PROCESS

Nabulsi contends that he had a constitutional right to present evidence for his defense. He thus claims that by quashing the subpoenas duces tecum, the trial court infringed upon his right to compulsory process. The Sixth Amendment right to compulsory process is "the

right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the [factfinder] so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 1923, 18 L. Ed.2d 1019 (1967). To exercise the right to compulsory process, the defendant must make a plausible showing to the trial court, by sworn evidence or agreed facts, that the evidence would be both material and favorable to the defense. *See Coleman v. State*, 966 S.W.2d 525, 528 (Tex. Crim. App. 1998); *Sparkman v. State*, 997 S.W.2d 660, 667 (Tex. App.—Texarkana 1999, no pet.).

There is no showing that the requested evidence would be material and favorable to Nabulsi. Once the trial court disregarded evidence in the presentence investigation report about the company's alleged hardship, evidence that the company was fiscally sound was immaterial. Further, Nabulsi did not offer any other reason for the materiality of the requested evidence. Accordingly, the trial court did not err in quashing the subpoenas duces tecum. We thus overrule Nabulsi's point of error.

Having overruled the sole point of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed March 30, 2000.

Panel consists of Justices Robertson, Sears, and Lee.*

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* Senior Justices Sam Robertson, Ross A. Sears, and Norman Lee sitting by assignment.