**IN THE COURT OF APPEALS OF IOWA**

No. 7-579 / 06-0691
Filed October 24, 2007

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**ROD WOLFORD SR.,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Rod Wolford Sr. appeals his convictions for ongoing criminal conduct, first-degree theft, securities fraud, transacting business as an unregistered broker/dealer, and the sale of unregistered securities. **AFFIRMED.**

John Roehrick and Kim J. Rogers Smith of Roehrick Law Firm, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Denise A. Timmins, Assistant Attorney General, John P. Sarcone, County Attorney, and George Karnas, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Miller and Eisenhauer, JJ. Vaitheswaran, J., takes no part.

**MAHAN, P.J.**

Rod Wolford Sr. appeals his convictions for ongoing criminal conduct, first-degree theft, securities fraud, transacting business as an unregistered broker/dealer, and the sale of unregistered securities. We affirm.

**I. Background Facts and Prior Proceedings**

Rod Wolford, along with his son and daughter, operated the Wolford Corporation and the Wolford Group (referred to collectively herein as the "Wolford Company"). Rod was the person in charge of the Wolford Company. At first, his business plan was to buy homes from distressed buyers and then sell the houses at a higher price. Rod initially bought the houses on contract, but then began buying houses pursuant to real estate lease option agreements in which a trust was created in the name of the seller with the Wolford Company as trustee. Typically, he would sell a house to a buyer on contract with a balloon payment due in twelve months. The buyer would make monthly payments to the Wolford Company, and the Wolford Company would make the monthly payments on the preexisting mortgage. The buyer would then find a lender before the balloon payment was due. When the loan was approved, the lender would issue checks to the Wolford Company to pay off the balloon payment, and in turn, pay off the preexisting mortgage. In 2002 Rod decided not to pay off the preexisting mortgages on some properties. Instead, he used the money for other purposes, but continued to make the monthly payments on the preexisting mortgages so as to avoid detection.

Even though he had entered into an agreement with the Iowa Securities Bureau in 2000 whereby he agreed that he would no longer solicit public funds

for investment, Rod continued to solicit investors for the Wolford Company. He promised investors a fifteen percent return payable in monthly installments and also told them their investments were secured by an interest in specific properties. However, Rod did not record the investors' interests in the property. By the end of the summer of 2003, the Wolford Company had been forced into receivership. When the extent of his dealings became apparent, Rod was charged by trial information with seventeen counts of criminal conduct, including theft, securities fraud, transacting business as an unregistered broker/dealer, sale of unregistered securities, and ongoing criminal conduct. The case proceeded to trial, and a jury found Rod guilty on all counts. The district court sentenced Rod to a term of incarceration totaling seventy-five years.

Rod appeals his convictions. He argues: (1) the district court failed to instruct the jury on the identity of the victims of some of the theft charges, (2) the district court erred in instructing the jury on the elements of securities fraud, (3) the district court erred in rejecting his proposed instructions regarding the timing of the deception, (4) the district court erred in overruling his motion for judgment of acquittal because there was insufficient evidence of theft by deception, (5) the district court erred because it did not tailor the intent instructions to each individual charge, and (6) the district court erred in instructing the jury on theft as it related to the theft of the investors' funds and in including the allegation that the defendant aided and abetted these thefts.

**II. Standard of Review**

Alleged errors in jury instructions are reviewed for corrections of errors at law. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). A district court is

required to instruct the jury on the law as it applies to the material issues in the case. *State v. Stallings*, 541 N.W.2d 855, 857 (Iowa 1995). The court may phrase the instructions "in its own words as long as the instructions given fully and fairly advise the jury of the issues they are to decide and the law which is applicable." *State v. Rupp*, 282 N.W.2d 125, 126 (Iowa 1979). Error in giving a jury instruction does not merit reversal unless it results in prejudice to the defendant. *Kellogg*, 542 N.W.2d at 516. Issues of statutory interpretation are also reviewed for errors at law. *State v. Cartee*, 577 N.W.2d 649, 652 (Iowa 1998).

We review his challenges to the sufficiency of the evidence for correction of errors of law. *See State v. Corsi,* 686 N.W.2d 215, 218 (Iowa 2004). "'Evidence is substantial if it could convince a rational jury of the defendant's guilt beyond a reasonable doubt.'" *Id.* (citation omitted). "In assessing the sufficiency of the evidence, we consider all the evidence in the record, but we view the record in the light most favorable to the State." *Id.*

**III. Merits**

**A. Failure to Identity the Victim for the Crimes of Theft by Deception**

Rod contends the following jury instruction pertaining to the charge of theft by deception was incorrect because it did not identify, by name, the victim of the deception.[1]

> INSTRUCTION NO. 23
>
> In Count II, the state must prove all of the following elements of Theft:

[1] This same jury instruction, except for changes to the month of refinancing and the address of the property, was used for the five similar counts of theft by deception. Our discussion of this instruction will also control the five other counts of theft by deception.

> 1. During November of 2002, the defendant or someone he aided and abetted represented to others that liens and mortgages on property located at 1905 E. 32nd Court in Des Moines, Iowa would be satisfied.
>
> 2. The defendant or someone he aided and abetted knowingly deceived others in one or more of the following ways:
>
> a. By creating or confirming a belief or impression in another as to the existence or nonexistence of a fact or condition which was false and which the defendant or someone he aided and abetted did not believe to be true; or
>
> b. By failing to correct a false belief or impression as to the existence or nonexistence of a fact or condition which the defendant or someone he aided and abetted had previously had created or confirmed; or
>
> c. By promising payment or other performance which the defendant or the person he aided and abetted did not intend to perform, or knew he or the person he aided and abetted would not be able to perform. Failure to perform, standing alone, is not evidence that the defendant did not intend to perform.
>
> 3. The defendant or someone he aided or abetted obtained the transfer of possession, control, ownership or the beneficial use of the funds which were to have been used to satisfy the liens and mortgages against 1905 E. 32nd Court by the deception.
>
> If the state has proved each element, the defendant committed Theft. If the state has failed to prove any one of the elements, the defendant is not guilty as to Count II.

Rod contends this instruction is erroneous because it is impossible to have a specific intent to deceive "the world." He claims that, by instructing in this manner, "the Court permitted the State to establish deception without the necessity of showing that there was a victim to whom the representation was made." In essence, he contends theft by deception requires proof that the victim—the one who lost ownership of the "funds" because of the deception—was the one to whom the representation was made.

The State counters that the statute does not mandate that the victim be identified nor does it specify that the "deception" must be directed to the victim of the theft.

First, we note that the identity of the victim is not a material element of the offense of theft by deception. At most, Iowa Code section 714.1 (2003) indicates that the property must be taken from "another." Other states which have addressed the matter as to marshalling identity have found that identity of the victim is not a material element of the offense of theft. *See State v. Woodward,* 66 P.3d 556, 559 (Or. App. 2003) (holding the "identity of the victim is not a material element of the crime of theft"); *State v. McReynolds*, 71 P.3d 663, 675 (Wash. Ct. App. 2003) ("It has long been the rule in Washington that the identity of the property's owner is not an element of crimes involving larceny or theft."); *State v. Emmons*, 386 N.E.2d 838, 841 (Ohio App. 1978) (indicating all that is necessary in a receiving stolen property case with respect to the element of "property of another" is evidence of a wrongful taking from the possession of another). Although we find it is the better practice to indicate the name of the victim in the jury instruction, we find no error in this case because the victim of the deception was clearly the party from whom the "funds" were obtained.

Second, we find that the statutory crime of theft by deception does not require the State to prove the deception was directed to the owner of the property. Iowa Code section 714.1(3) states that a person commits theft when he or she "[o]btains the labor or services *of another*, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, *by deception*." (Emphasis added.) This section does not indicate that the deception must be directly aimed at the owner of the property taken. Section 702.9, which defines the term "deception," also does not contain any language directly linking the actual deception to the owner of the property. The thrust of

section 714.1(3) is that an individual obtains property through deception. The statute does not specify that the individual's actions had to be aimed directly at the ultimate victim of the deception.

This coincides with Iowa case law interpreting of the crime of theft by deception. Our supreme court has indicated that the crime of theft by deception is different than other types of theft because "[t]heft by deception is meant as a catch-all crime to encompass the full and ever changing varieties of deception." *State v. Hogrefe*, 557 N.W.2d 871, 878 (Iowa 1996). As explained below, Rod's plan was to use his close relationship with the lender's settlement agent to ultimately deceive the lender. Rod's complex and pervasive method of transferring funds from unsuspecting victims falls squarely within the goal of the statute—"to encompass the full and ever changing varieties of deception." *Id.* Accordingly, we find the crime of theft by deception only requires proof of the deception, not proof that the deception was made *directly* to the victim. We find no error here.

**B. Securities Fraud under *State v. Tyler***

Rod contends the district court erred when it did not instruct the jury that there must have been a specific intent to defraud in order to find him guilty of securities fraud under Iowa Code section 502.401. The basis for Rod's claim that the district court should have included specific intent language is our supreme court's holding in *State v. Tyler*, 512 N.W.2d 552, 554 (Iowa 1994). In *Tyler*, the supreme court stated:

> The elements of a securities fraud under Iowa Code sections 502.401 and 502.605 (1991) are:

> (1) The defendant sold or offered to sell a security;
>
> (2) The defendant *willfully and knowingly* either
>
> (a) Made an untrue statement of material fact, or
>
> (b) Omitted a nonmisleading statement of material fact and, under the circumstances, the omission rendered defendant's statements misleading.
>
> (3) The defendant did so *with a specific intent to defraud*.

*Tyler*, 512 N.W.2d at 554 (emphasis added). As noted by our supreme court, the basis for the elements of the crime of securities fraud was the 1991 version of Iowa Code section 502.605. At that time, section 502.605 stated:

> 1. Any person who *willfully and knowingly* violates any provision of this chapter, or any rule or order under this chapter, shall be guilty of a class "D" felony.

(Emphasis added.) Iowa Code chapter 502 underwent significant revisions after the *Tyler* decision. In 2001 the legislature specifically amended section 502.605 so as to eliminate the requirement that a person must "knowingly" violate section 502.401. *See* 2001 Iowa Acts ch. 118, §13. Therefore, at the time these crimes were allegedly committed, section 502.605 only required proof that the defendant "willfully" violated section 502.401.

When crafting the jury instructions for this case, the trial court followed the version of the Iowa Code in force when Rod solicited the investments and only required proof that Rod willfully violated section 502.401. In doing so, the court used the language from section 502.401 to instruct the jury in the following manner:

> In Count VII, the state must prove all of the following elements of Securities Fraud:

> 1. On or about January 16, 2003, the defendant sold or offered to sell a security to James Hensley.
>
> 2. In connection with the sale or offer to sell, the defendant willfully either:
>
> a. Directly or indirectly made an untrue statement of material fact to James Hensley or omitted to state a material fact to James Hensley necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; or
>
> b. Directly or indirectly engaged in an act, practice, or course of business that operated to defraud or deceive James Hensley.
>
> If the State has proved all of these elements, the defendant is guilty of Securities Fraud. . . .

Upon our review of the court's instruction and the controlling statutes, we find the district court properly instructed the jury on the elements of the crime of securities fraud under sections 502.401 and 502.605. In light of the recent decision in *State v. Keeton*, 710 N.W.2d 531, 533-34 (Iowa 2006), whereby the supreme court held that attaching a label of specific intent or general intent is secondary to the State's burden to prove that the defendant possessed the mens rea required by the statute, we find the district court did not err when it did not assign a label of specific intent or general intent in this case. The crucial portion of this statute is the State's burden to prove that Rod either (1) willfully engaged in an act, practice, or course of business to defraud or deceive James Hensley in connection with the sale of securities or (2) willfully made an untrue statement of material fact to James Hensley or omitted to state a material fact to James Hensley in connection with the sale of securities. The jury instruction adequately addressed the elements set forth in sections 502.401 and 502.605. We find no error here.

**C. Failure to Include Requested Instruction**

After the close of the evidence, Rod requested that the court instruct the jury in the following manner:

> DEFENDANT'S REQUESTED INSTRUCTION NO. 32
>
> With respect to Element No.2(a) of (deception), you are instructed that "knowingly creating or confirming another's belief or impression as to the existence of a fact or condition which is false and which the actor does not believe to be true" means that the representation was false and untrue when it was made or represented. It is not sufficient that it may now be untrue or that it became false at a time after it was represented as being true. It must have been false at the time it was made.

> DEFENDANT'S REQUESTED INSTRUCTION NO. 55
>
> With respect to requirement of "knowingly deceived . . . in one or more of the following ways" as used in Instructions . . . . and the requirement of "made an untrue statement of material fact" as used in Instructions [on securities fraud]. . . , means that the fact or condition which formed the basis of the representation was false and untrue when it was represented or made to the party who is alleged to have been deceived. It is not sufficient that it may now be untrue or that it became false at a time after it was represented as being true. It must have been false at the time it was made.
>
> Additionally, the defendant must have believed the representation to be false, which refers to whether, under the facts and circumstances as they existed at the time the representations were made, the defendant believed them to be untrue when made.

These instructions were not given to the jury by the court. Rod claims that denial of either requested instruction constituted error because the jury needed to be informed that the deception must have been false when made and not later. The State contends that the substance of this issue was properly conveyed in the following instruction given to the jury:

> To act with a "specific intent" or "knowingly" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it *with a specific purpose in mind*.

> Because determining the specific intent of a person requires you to decide *what he was thinking when an act was done*, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the person's specific intent. You may, but are not required to, conclude a person intends the natural results of his acts.

(Emphasis added.)

This instruction informs the jury that to act knowingly meant that the act was done with a specific purpose in mind. This instruction requires the jury to find the defendant had the specific intent to deceive *when the act was done*. The defendant's proposed instructions would have added nothing new to the instructions and would only have served to emphasize the already existing language. We find that the court's refusal to submit Rod's requested instructions was not error because the substance of these instructions was adequately incorporated in the court's own instructions.[2] *See State v. Musser*, 721 N.W.2d 758, 762 (Iowa 2006) ("A trial court need not give a requested instruction, however, if the subject is already covered in the court's own instructions."); *State v. Carpenter*, 334 N.W.2d 137, 141 (Iowa 1983) ("The court was not obliged to express this concept in defendant's words so long as it was adequately conveyed to the jury.").

**D. Insufficient Evidence of Deception**

Rod contends the district court erred in overruling his motion for judgment of acquittal because there was insufficient evidence of any representations which

[2] As noted above, the jury was not informed that the specific intent instruction applied to the securities fraud charges. However, we find Rod has failed to show why these instructions are an incorrect statement of the law in relation to the securities fraud charges, which do not require the State to prove that Rod acted "knowingly."

could constitute deception at the time any funds were transferred from the lending companies.

Rod was charged with using deception to obtain "funds" which were to have been used to satisfy liens and mortgages. These funds came from lenders who were loaning the funds to buyers so that they could purchase a home form the Wolford Company. Rod claims there is no evidence that he "or someone for him made a promise or representation which induced the owner of the funds to transfer the ownership of the mortgaged funds." Stated another way, Rod contends there was no evidence to show that he or any of his workers made the false assertion that the mortgages would be paid in order to influence the lending companies to transfer the funds.

As Rod points out, there is no direct evidence of a statement between the Wolford Company and a buyer's lender whereby the Wolford Company told the lending company to send funds so the Wolford Company could satisfy the existing mortgages on the property. However, because of the close relationship between Rod and the owner of the mortgage broker/closing company and the prior dealings and transactions between the two, such direct statements were not necessary to facilitate payments from the lending companies. *See* Iowa R. App. P. 6.14(6)(*p*) ("Direct and circumstantial evidence are equally probative.").

The record reveals that after a buyer purchased a home on contract with the Wolford Company, Rod, or one of his employees would direct the potential buyers to David Winterfeld's mortgage broker business, Metropolitan Mortgage. Metropolitan Mortgage would find a lender willing to lend funds to the buyer so the buyer could purchase the home outright. The lender would then hire a title

company to do the title work and a closing/settlement company to handle the loan closing and the disbursement of the funds from the loan. On virtually all loans brokered by Metropolitan Mortgage for a Wolford Company customer, the closing/settlement company used by the lenders was Lenders Management, another company owned and operated by Winterfeld.

There was a very close working relationship between the Wolford Company, Metropolitan Mortgage, and Lenders Management. Employees from Metrolpolitan Mortgage and employees from Lenders Management had offices within the Wolford Company's office building. During the loan approval process, Lender's Management would contact someone from the Wolford Company to determine the amount of the preexisting mortgage on the property. Someone from the Wolford Company would send Lenders Management a letter describing the funds necessary to satisfy the contract and pre-existing mortgages. Once Lenders Management received the funds from the lender, it would disburse those funds to the appropriate parties. In doing so, Lenders Management would send the Wolford Company a check so that it could pay off the preexisting mortgages on the property. Once the Wolford Company received the check, it would pay off the preexisting mortgages on the properties so the new lender would have a first lien on the property.

This process was repeated numerous times prior to, during, and after the time frame of the six transactions at issue in this case.[3] However, for the six transactions involved in this case, Rod did not pay off the preexisting mortgages.

[3] The six transactions at issue in this case occurred between April 2002 and March 2003.

Instead, Rod used the funds for other purposes. To avoid detection, Rod continued to pay the amounts due on the preexisting mortgages. In the spring of 2003, Winterfeld discovered that some of the pre-existing mortgages had not been paid off. In order to protect himself, Winterfeld asked Rod for a payoff statement indicating that he had properly paid off the preexisting mortgages. Rod complied and sent Winterfeld phony letters indicating that he had paid off these preexisting mortgages soon after the funds were originally transferred to the Wolford Company.

In light of this ongoing business relationship, we find there was ample circumstantial evidence to prove that Rod induced Lenders Management, as an agent working for the individual lenders, to transfer funds to the Wolford Company under the false belief that Rod would use these funds to pay off the preexisting mortgages. The numerous prior transactions between Rod and Winterfeld established that the Wolford Company would use the funds from the lender to pay off the preexisting mortgages on the properties. At some point, Rod decided not to pay off certain mortgages. In doing so, Rod did not inform Lenders Management or any of the lenders that he was not going to disburse the funds earmarked for the preexisting mortgages.

Wolford's son, Rodney, testified as a witness for the State.[4] Rodney testified that he had conversations with Rod about these inappropriate transactions starting in April of 2002. Rod told Rodney that he was not paying off

[4] Rodney is not a party to this appeal. Prior to this trial, Rodney entered into a plea agreement with the State in which he pled guilty to three charges in exchange for his testimony against his father.

the preexisting mortgages because he "had to do this for now to keep the business going."

We find the foregoing is clear evidence of deception. Rod's past actions led Lenders Management, as an agent for the lenders, to believe that he would use the funds to pay off the preexisting mortgages. Rod gave Lenders Management no reason to know that he would not pay off the preexisting mortgages for these transactions. In doing so, Rod failed to correct a false impression which he had previously created or confirmed with Lenders Management. *See* Iowa Code § 702.9(2). We find there was sufficient evidence of deception on all six counts.

**E. Jury Instructions on Specific Intent and General Intent**

Rod contends the trial court erred when it gave instructions on general intent and specific intent but then did not tailor each instruction to the marshalling instruction to which it applied. Rod claims that when multiple offenses are charged, the definition of the terms, if not applicable to all offenses, must refer to the instructions to which they apply. As stated in his appellate brief, "It is simply too much to ask that a jury, by the use of a word in a marshalling instruction, can relate that back to the definition and understand what it means. It will create confusion."

We disagree. We find the instructions provided the jury with appropriate guidance as to when to apply the "specific intent" definition. In instruction nineteen, the court defined the term "specific intent." In the very next instruction, the jury was informed that "The crimes of Theft which have been charged require a specific intent." The jury could easily apply this definition of specific intent to

the ten counts of first-degree theft that were clearly identified in the jury instructions. The jury was free to apply the general criminal intent instruction to the remaining charges.[5] We find no error here.

**F. Failing to Strike the Word "Payment" from Four Jury Instructions**

Rod claims there was insufficient evidence to include the word "payment" in the jury instructions on the four counts of theft by deception from his investors. The State contends there was sufficient evidence to support the instructions.

The jury was instructed in the following manner for each charge of the four counts of theft from his investors:

> [T]he State must prove all of the following elements of theft:
>
> 1. One or about [a specific date or span of dates], the defendant promised to secure [the investor's] investment by filing a mortgage.
> 2. The defendant knowingly deceived [the investor] in one or more of the following ways:
>
> a. By creating or confirming a belief or impression held by [the investor] as to the existence or nonexistence of a fact or condition which was false and which the defendant or someone he aided and abetted did not believe to be true; or
> b. By failing to correct a false belief or impression held by [the investor] as to the existence or nonexistence of a fact or a condition which the defendant or someone he aided and abetted previously had created or confirmed; or
> c. By promising *payment* or other performance to [the investor] which the defendant or the person he aided and abetted did not intend to perform, or knew he or the person he aided and abetted would not be able to perform. Failure to perform, standing alone, is not evidence that the defendant did not intend to perform.

[5] Rod does not present any argument as to why the jury should have been instructed that the crimes of ongoing criminal conduct, transacting business as an unregistered broker, and selling unregistered securities were specific intent crimes. As to the remaining counts of securities fraud, we find the aforementioned instructions on the statutory elements of securities fraud and the corresponding burden of proof for the State adequately informed the jury of the points of law necessary to resolve these remaining counts.

> 3. The defendant obtained the transfer of possession, control, ownership or the beneficial use of property from [the investor] by the deception.

(Emphasis added.)

Rod concedes that each investor who testified was assured that his or her investment would be secured by the filing of a mortgage. He also concedes there was evidence that he or someone from his company had promised each investor a monthly interest payment. However, he claims that promise of payment "clearly was not an issue nor was it a method by which the deception was alleged to have been committed." Rod claims this instruction was prejudicial because it allowed the jury to use the evidence of the collapse of the business as a method of deception.

We reject Rod's claim that promise of payment was "not an issue" or "method by which the deception was alleged to have been committed" because the trial information indicates otherwise. The minutes of testimony attached to the trial information indicate that the State would present evidence that Rod promised investors a fifteen percent return, paid monthly, and that their investment would be backed by a mortgage on a specific piece of real estate. The minutes specifically allege that Rod did not secure the note and he did not inform the investors that he could not realistically meet the fifteen percent return.

The evidence also supports a reasonable inference that when Rod promised to make the scheduled payments, he intended not to fully perform on these payments or he knew that he would not be able to fully perform on these payments. The evidence showed the Iowa Securities Bureau first investigated Rod in 2000 when it received information that he was soliciting funds from the

public by guaranteeing an insured fifteen percent rate of return on investment. Pursuant to these investigations, Rod signed an affidavit on August 25, 2000, agreeing that he would not accept additional investment funds from the public. Subsequently, the Wolford Company experienced noticeable cash-flow problems. In early 2002, Rod started the aforementioned scheme by not paying off certain preexisting mortgages. Even this scheme did not solve the Wolford Company's financial problems. By late 2002, the company's financial condition was severe, and Rod told a key internal employee that he feared the Wolford Company would not survive.

Despite his doubts about the viability of his businesses and his agreement not to solicit funds from the public, Rod used promises of fifteen percent monthly interest payments to induce more investments. He did not tell the investors about the critical financial condition of the company. Instead, he assured them their investments were secure because they were secured by a mortgage on the property. As noted above, the investments were not secured with a mortgage. At trial, Rod claimed he intended to pay back his investors, but also stated that he kept taking investor money because he thought that the worst that could happen to him was that he would incur a civil lawsuit. Based on the foregoing evidence, we find the jury could have reasonably inferred that Rod never intended to make all of these scheduled payments, or that he promised to make these payments even though he knew they would not be able to be made. The court did not err when it included the term "payment" in these instructions.

In light of the complex and pervasive deceptive actions carried out by Rod, with the help of his children and other employees in the Wolford Company, we

also find no merit to Rod's claim that the court should not have used the aiding and abetting instruction in certain circumstances.

**IV. Conclusion**

Having considered all arguments claimed on appeal, whether or not specifically addressed in this opinion, we affirm the district court's decision entering judgments on the convictions.

**AFFIRMED.**