

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION ONE**

PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	
Plaintiff and Respondent,	)	Court of Appeal
	)	No. A125019
v.	)	
	)	Napa County Superior Court
HAROLD DANIEL SCHULTZ,	)	No. CR138779
Defendant and Appellant.	)	
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**APPELLANT’S OPENING BRIEF**

**STATEMENT OF APPEALABILITY**

This appeal is from orders entered on June 4, 2009, following conviction after a court trial, sentencing Harold Schultz to three years of formal probation.

(ACT 2-3.) /1 It is authorized by Penal Code section 1235. /2

/1 The record consists of a Clerk’s Transcript (CT) and 20 volumes of Reporters’ Transcripts (RT), referenced herein by date. Following a request under California Rules of Court, rule 8.340, the record has been augmented with the minute orders (Augmented Clerk’s Transcript, or “ACT”) and Reporters’ Transcripts (Augmented Reporters’ Transcripts or “ART”) of proceedings held after appellant filed his notice of appeal. This Court also granted appellant’s request to augment the record. The augmented record is denominated “AR.”

2/ All non-specified statutory references herein are to the Penal Code.

## STATEMENT OF THE CASE

On September 24, 2008, the Napa County District Attorney filed an information charging appellant with count one, a felony violation of section 368, subd. (d), theft from an elder; count two, a felony violation of section 487, subd. (a), grand theft; count three, a felony violation of section 484b, diversion of construction funds; and count four, a misdemeanor violation of Business and Professions Code section 7159.5, subd. (a) (3), charging an excessive down payment. (CT 35-36.)

Following presentation of the prosecution case in a court trial, the trial court, on March 23, 2009, granted appellant's motion to dismiss counts one and two, pursuant to section 1118. (CT 62-63.) On March 24, 2009, the court found appellant guilty of counts three and four. (CT 64-65.)

Appellant filed a premature notice of appeal on May 21, 2009. (CT 73.)

On June 4, 2009, the trial court sentenced appellant to three years of formal probation, with the conditions including a 30-day county jail commitment and restitution in the amount of \$40,320.00. (ACT 2-3.)