

IN THE THIRTIETH JUDICIAL DISTRICT
DISTRICT COURT, SUMNER COUNTY, KANSAS
CRIMINAL DEPARTMENT

FILED
DISTRICT COURT
2016 JAN -8 AM 11:30
SUMNER COUNTY, KS.

STATE OF KANSAS,)
)
 Plaintiff,)
)
v.)
)
JASON BOYD,)
)
 Defendant.)
)
_____)

Case No. 2015 CR 278

BY: C

**MEMORANDUM OPINION DISMISSING COMPLAINT DUE TO
STATE'S FAILURE TO PROVE PROBABLE CAUSE AT
PRELIMINARY EXAMINATION**

NATURE AND HISTORY OF CASE

The defendant is charged with theft by deception, misuse of public funds, and interference with law enforcement, all felonies. The court heard the preliminary examination on November 25, 2015. At the conclusion of the preliminary examination, the court ordered the parties to brief several legal issues as set forth below. The state filed its brief on December 28, 2015, and the defendant filed his brief on January 6th, 2016.

FACTS:

The facts are on record with the court reporter and will be referenced only as needed in explaining the legal rulings on the very specific issues pinpointed by the court at the conclusion of the preliminary examination.

ISSUES

With regard to Count 2, misuse of public funds, did the state establish probable cause that the check Skrdla gave to the defendant for \$2,650 was "public money" as defined by K.S.A. 21-6005 (c)?

With regard to Count 1, theft by deception from alleged owner City of South Haven: Did the City of South Haven have an ownership interest in the \$2,650, and if it did, what deception was employed by Boyd to get the City's money?

With regard to Count 1, theft by deception from alleged owner Skrdla: Did the state establish probable cause to believe that the defendant, at the time he received the blank check for \$2,650 from Skrdla, had the intent to permanently deprive Skrdla of the property by use of deception?

MEMORANDUM OPINION

With regard to Count 2, misuse of public funds, did the state establish probable cause that the check Skrdla gave to the defendant for \$2,650 was "public money" as defined by K.S.A. 21-6005 (c)?

"Public money" is defined as "money or a negotiable instrument which belongs to the state of Kansas or any public subdivision thereof."

K.S.A. 21-6005 (c). “‘Owner’ means any person who has any interest in property.” K.S.A. 21-5111(s).

The evidence presented at the preliminary hearing by the State establishes that the City of South Haven never possessed the check or the funds, nor did the city ever have any ownership interest in the check or the funds. In simpler terms, the money never belonged to the City—the money never became public money. Indeed, Skrdla’s act of giving the check directly to Boyd to be filled out by Boyd was a deliberate one, meant as a hedge against the City of South Haven becoming the owner of that money with the power to use the money as it saw fit, which would include spending the money on something other than the designated list of law enforcement items.

The cases cited by the State do not support its position.

Accordingly, count 2 is dismissed for lack of probable cause.

With regard to Count 1, theft by deception from alleged owner City of South Haven:

Did the City of South Haven have an ownership interest in the \$2,650, and if it did, what deception was employed by Boyd to get the City’s money?

Even more puzzling than the allegation in Count 2 of the misuse of public funds that were clearly never public, is the state’s allegation in Count

1 that the City of South Haven was deceived into giving up the property which it never possessed and never owned. It's no surprise there is zero evidence of any deception employed against the City—such deception would have been lost on them—they never had the money. Accordingly, the part of the complaint in count 1 alleging theft by deception from owner (City of South Haven) is dismissed for lack of probable cause.

With regard to Count 1, theft by deception from alleged owner Skrdla:

Did the state establish probable cause to believe that the defendant, at the time he received the check for \$2,650 from Skrdla, had the intent to permanently deprive Skrdla of the property by use of deception?

“Deception’ means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise.” K.S.A. 21-5111(e).

Skrdla was clearly the owner of his \$2,650. The question becomes, did Boyd employ deception to convince Skrdla to give up his \$2,650? In other words, did the State show probable cause that Boyd intended to get a check from Skrdla for \$2,650 on the ruse that the money would be used for law enforcement purpose, knowing, at the time he got the check, he was instead going to use the funds for himself personally.

In employing such a scheme to steal by deception, one might expect to see such pedestrian moves as dealing in cash and not telling anyone else about the existence of Skrdla's contribution. Instead, the evidence shows Boyd talked to the Mayor of South Haven about Skrdla's contribution prior to receiving the check. Boyd receives a traceable check from Skrdla, and wrote his name all over it with his very recognizable handwriting—the big J and the big B. Boyd's actions are wholly inconsistent with an intent to deceive Skrdla *at the time he received the check from Skrdla*. Other evidence is troublesome for the state as well: there was evidence Boyd bought some items for the police department, and there was no time frame for purchasing the items put on Boyd by Skrdla.

The state seems to be solely relying on the fact that Boyd has not yet performed his promise, in full, to Skrdla to use all of the money to buy items for the police department. The theft by deception statute actually forbids such an inference, standing alone: "Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise." K.S.A. 21-5111(e).

At best, the evidence suggests Boyd *may* have used some of the money for his own use later as it seems to be missing from Boyd's known accounts. The State's own charging document reveals an ambivalence rarely

seen in charging documents as to the element of intent to permanently deprive. The State alleges in count 1 an intent to permanently deprive, while in Count 2, plainly stating “perhaps [Boyd] did not intend to permanently deprive” the owner of the property. Even assuming Boyd intentionally decided to dip into the Skrdla contribution for his own use after having already received the property with best intentions, it does not help the State. It would not satisfy the requirements of the theft by deception statute as it is currently written for the reasons set forth above.

Accordingly, count 1 is dismissed for lack of probable cause.

For the reasons mentioned on the record at the preliminary hearing, Count 3 is dismissed as well. The complaint is dismissed entirely, for lack of probable cause on the charges brought.

IT IS SO ORDERED

A handwritten signature in black ink, appearing to read 'W. R. Mott', is written over a horizontal line.

THE HONORABLE WILLIAM R. MOTT
DISTRICT COURT JUDGE