



SUPERIOR COURT OF NEW JERSEY
VICINAGE I

Bernard E. DeLury, Jr.
Presiding Judge

Atlantic County
Criminal Courts Complex
4997 Unami Boulevard
Mays Landing, N.J. 08330-2054
(609) 909-8135

March 27, 2018

Gina Y. Holmes
Court Administrator
Atlantic City Municipal Court
715 Atlantic Ave.
Atlantic City, NJ 08401

John A. Devlin
18 So. Aberdeen Place
Atlantic City, NJ 08401

Frank Gilliam, Jr.
1421 No. Ohio Ave.
Atlantic City, NJ 08401

Richard Winstead
17 1/2 Paine Ct.
Turnersville, NJ 08012

FILED

MAR 27 2018

Bernard E. DeLury, Jr., P.J.Cr.

Re: State of New Jersey v. Frank Gilliam, Jr.
Atlantic City Summons No.: 0102-5-2018-000874
State of New Jersey v. Richard Winstead
Atlantic City Summons No.: 0102-5-2018-000878
Probable Cause Determination

Dear Ms. Holmes, Mr. Devlin, Mr. Gilliam, and Mr. Winstead:

The above referenced Complaint-Summonses were referred to me pursuant to R. 7:2-2 for a determination of probable cause on the charges sworn out by John A. Devlin, a private citizen,

on or about March 19, 2018, alleging the crime of Theft in the Third Degree by Mr. Gilliam and Mr. Winstead¹ in contravention of N.J.S.A. 2C:20-3a on or about October 16, 2017 in Atlantic City. For the reasons set forth in this letter, the Court concludes and determines that there is NO PROBABLE CAUSE to believe that an offense was committed by either Mr. Gilliam or Mr. Winstead and that the accused committed an offense. As such, the Court directs that Complaint-Summonses 0102-5-2018-000874 and 0102-5-2018-000878 are and shall be DISMISSED.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The instant complaints have issued on the application of Mr. Devlin, a private citizen, who has alleged criminal wrongdoing by Mr. Gilliam and Mr. Winstead. The circumstances giving rise to Mr. Devlin's instant complaints stem from the apparent receipt and deposit of a campaign check by Mr. Gilliam. Mr. Devlin provided a copy of Ocean City Home Bank Check Number 3907 drawn on an account ending in 143 in the name of the Atlantic County Democratic Committee on October 12, 2017 in the amount of \$10,000 made payable to the Atlantic City Democratic Committee. The check appears to have been endorsed by Frank Gilliam and deposited on or about October 15, 2017 in Mr. Gilliam's campaign account at TD Bank. Mr. Devlin alleged that Mr. Winstead obtained the check and provided it to Mr. Gilliam rather than to a representative of the Atlantic City Democratic Committee. The complaint has alleged that Mr. Winstead "gained possession of check and failed to deliver the check to Atlantic City Chairman . . . Instead he handed it to Frank Gilliam knowing the check should have been delivered to Committee."² The complaints were forwarded to the Superior Court, Law Division, Criminal Part for a probable cause determination owing to Mr. Gilliam's position of mayor of the municipality in which the complaints were filed to avoid any potential conflict.

¹ The Complaint indicates "Winstead," however, the proper spelling of the Defendant's name is "Winstead."

² Mr. Devlin's Certification (undated) and the Complaint-Summonses are attached to this letter as Exhibit 1.

LEGAL ANALYSIS

New Jersey's court rules provide that a complaint-summons charging any offense made by a private citizen may be issued only by a judge with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. R. 7:2-2(a)(1). This Rule further provides that a judge finding no probable cause to believe that an offense occurred shall dismiss the complaint.

"Probable cause cannot be defined with scientific precision because it is a 'practical, nontechnical conception' addressing 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" State v. Basil, 202 N.J. 570, 585 (2010) (internal citations omitted) (citing State v. Evers, 175 N.J. 355, 381 (2003)). "[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." Ibid. (citing Illinois v. Gates, 462 U.S. 213, 231 (1983)). Probable cause is "more than mere naked suspicion but less than legal evidence necessary to convict," that would give "suspicion that a crime has been or is being committed," State v. Waltz, 61 N.J. 83, 87 (1972). In sum, probable cause can be described as "a well-grounded suspicion that a crime has been or is being committed." State v. Sullivan, 169 N.J. 204, 211, 777 A.2d 60 (2001); Basil at 585.

The Complaint-Summonses in this case charge Mr. Gilliam and Mr. Winstead with the crime of Theft of Moveable Property in the Third Degree in contravention of N.J.S.A. 2C:20-3a and 2C:20-2(b)(2)(a).³ In order to sustain a charge against a defendant for the Crime of Theft in

³ "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with purpose to deprive him thereof." "Theft constitutes a crime of the third degree if . . . the amount involved exceeds \$500.00 but is less than \$75,000.00."

the Third Degree the State would have to prove the following elements at trial beyond a reasonable doubt:

- 1) that defendant knowingly took or unlawfully exercised control over moveable property;
- 2) that the moveable property was the property of another;
- 3) that defendant's purpose was to deprive the other person of the moveable property.

In order for the instant Complaint-Summonses to stand, the complainant would have to show that there is reason to believe that theft of moveable property over \$500, as defined above, occurred on or about October 16, 2018 in Atlantic City and that there is reason to believe that Frank Gilliam and Richard Winstead committed the offense. Based on the Court's careful review of Mr. Devlin's certification and the complaints, and in view of the total circumstances, there is no reasonable basis to conclude that either of Frank Gilliam or Richard Winstead committed the offense of Theft of Movable Property.

Mr. Devlin's certification indicates that Mr. Gilliam exercised control over the check issued by the Atlantic County Democratic Committee made payable to the Atlantic City Democratic Committee in the amount of \$10,000 when Mr. Gilliam apparently received it from Mr. Winstead. Further, the certification shows that the check appears to have been endorsed and deposited by Mr. Gilliam on or about October 15, 2017 into his political campaign account at TD Bank.

However, nowhere in Mr. Devlin's certification does there appear even a scintilla of evidence that the purpose of either Mr. Gilliam or Mr. Winstead was to deprive another of the benefit, use or possession of the check and its proceeds. In order to find probable cause to believe

there, a theft has occurred in violation of N.J.S.A. 2C:20-3(a), there have to be sufficient facts and circumstances upon which to rely or from which to infer that the accused deprived another of the moveable property. For the purposes of our statutes, the term "deprive" means: "(1) to withhold or cause to be withheld property of another permanently or for so extended a period as to appropriate a substantial portion of its economic value, or with purpose to restore only upon payment of reward or other compensation; or (2) to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it." (emphasis provided).⁴

With these definitions firmly in mind, and giving the complainant the benefit of all reasonable inferences that can be drawn from the facts and circumstances set forth in the complaints and in the certification, the Court cannot find any basis to credit that it was the purpose of either Mr. Gilliam or Mr. Winstead to deprive permanently or for so extended a period either the Atlantic County Democratic Committee or the Atlantic City Democratic Committee of the benefit, use or possession of the check or its proceeds.

The certification sets forth far less than even "naked suspicion" of wrong-doing. The mere recitation of scant facts and circumstances do not establish sufficient facts upon which to base a finding of probable cause. Further, the bald and conclusory assertions in the certification, rather, bespeak a naked suspicion that the defendants' acts of openly obtaining, negotiating and depositing a check must be criminally actionable. The complainant seems to assert that such actions by the defendants admit to no other reasonable or probable conclusion. Based on the totality of the circumstances, the Court cannot conclude that the defendants had a criminal purpose. Whether the defendants' actions were careful, prudent or commercially reasonable may be in question.

⁴ Model Jury Charge, Theft of Movable Property, (N.J.S.A. 2C:20-3a), Revised 2/11/08, <http://www.judiciary.state.nj.us/attorneys/assets/criminalcharges/theft003.pdf>

Mar. 28. 2018 12:04PM

Atlantic City Municipal Court

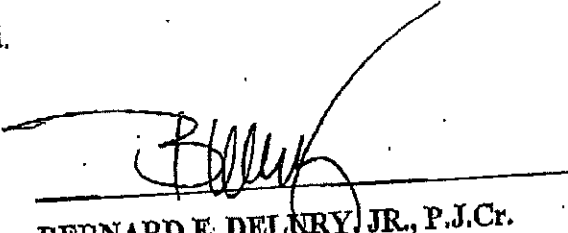
No. 3641 P. 9

IT IS as of the 27th day of March 2018,

DETERMINED AND FOUND that there is no probable cause to believe that an offense

occurred, and it is further

ORDERED that Complaint-Summons 0102-5-2018-000874 and Complaint-Summons 0102-5-2018-000878 are hereby dismissed.



BERNARD E. DELURY JR., P.J.Cr.

Mar. 28. 2018 12:04PM

Atlantic City Municipal Court

No. 3641 P. 8

FILED

MAR 27 2018

Bernard E. DeLury, Jr., P.J.Cr.

PREPARED BY THE COURT
Superior Court of New Jersey
Criminal Courts Complex
4997 Unami Boulevard
Mays Landing, NJ 08330

STATE OF NEW JERSEY :

v. :

FRANK GILLIAM, JR. :

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION
CRIMINAL PART

ATLANTIC CITY SUMMONS NO.:
0102-5-2018-000874

STATE OF NEW JERSEY :

v. :

RICHARD WINSTEAD :

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION
CRIMINAL PART

ATLANTIC CITY SUMMONS NO.:
0102-5-2018-000878

ORDER

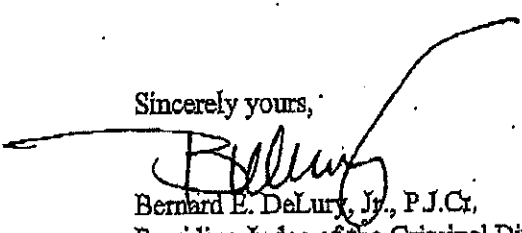
THIS MATTER having been brought before the Court for a determination of probable cause pursuant to Rule 7:2-2(a)(1) related to charges sworn out by John Devlin alleging the crime of Theft of Movable Property in the Third Degree by Frank Gilliam and Richard Winstead in contravention of N.J.S.A. 2C:20-3(a) and 20-2(b)(2)(a) on or about October 16, 2017; and the Court having thoroughly and carefully reviewed John Devlin's certification in support of probable cause; and the Court having concluded on the basis of that certification that there is no reason to believe that an offense was committed and that the Defendants committed an offense; and for the reasons set forth in the Court's letter decision of even date; and for other good cause shown;

However, the allegations presently before the Court leave no question. There is no probable cause to believe a theft occurred based on the allegations set forth in the certification.

CONCLUSION

Accordingly, for the reasons stated above, the Court concludes that Mr. Devlin has failed to establish sufficient facts and circumstances to believe that either Mr. Gilliam or Mr. Winstead committed the crime of Theft of Movable Property in the Third Degree. As such, the Court finds no probable cause upon which to issue the complaint-summonses against either defendant. Therefore, the complaint-summonses shall be dismissed. The Court has set forth this determination on the original complaint-summonses and in the attached Order. The Administrator of the Atlantic City Municipal Court shall forthwith ensure the proper entries in the Municipal Court's records to carry out the Court's determination.

Sincerely yours,


Bernard E. DeLury, Jr., P.J.C.
Presiding Judge of the Criminal Division
Atlantic and Cape May Counties

Attachments:

Complaint-Summonses 0102-5-2018-000874 and 0102-5-2018-000, with certification
Order

Copy to:

Hon. Louis Belasco, P.J.M.C.