STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE COUNTY OF IOSCO

PEOPLE OF THE STATE OF MICHIGAN,

vs.

FILE NO. 16-707-FY

CATHERINE ANNE ANDERSON,

Defendant. /
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OPINION AND ORDER FOLLOWING PRELIMINARY EXAMINATION

Having heard and observed the testimony and reviewed exhibits, listened to argument and reviewed briefs, I make the following observations and findings.

2007/2008

Even though the complaint alleges criminal activity during the years 2011 to 2014, the prosecutor, Ms. Palumbo, began her case with testimony from 2007/2008. Defense objected on the grounds of relevance. I took the objection under advisement and listened to the testimony offered by the prosecutor.

There seemed to be two reasons that the prosecutor wanted to present testimony regarding 2007/2008. First, she believed she had a MRE 404b situation that she could

use. Second, she wanted to show that, as a result of incidents in 2007/2008, County Treasurer Elite Shellenbarger advised Ms. Anderson that she could not borrow money from the till.

Michigan Rules of Evidence 404(b)

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

MRE 404(b) is often referred to as a "prior bad acts" rule or "similar acts" rule.

Regarding this issue; just before there was to be a promotion in the Treasurer's Office in 2008, Jane Hackborn accused Catherine Anne Anderson of stealing money at the Treasurer's Office. It is important to keep in mind that a mere accusation or allegation is not evidence of a crime or other wrongdoing.

During her testimony, Ms. Hackborn admitted that she did not see Ms. Anderson take any money. The audit for 2008, which Ms. Hackborn apparently reviewed, but did not seem to want to talk about, did not show any money missing. There was no evidence in 2008 and there is no evidence now, that there was any action of Ms. Anderson that would initiate a MRE 404(b) claim.

Regarding directions from Mr. Shellenbarger to Ms. Anderson about use of the cash till, Ms. Palumbo claimed, at page 7, lines 14-17 of the transcript, that there were specific discussions regarding the cash till in 2007 and 2008. Ms. Palumbo failed to back up her claims with evidence. It would have been pretty simple for her to have called Mr. Shellenbarger as a witness and simply ask him if such conversations occurred, and, if so, what was the content of the conversations. For whatever reason, she did not call him.

For the reasons stated above, I find that the testimony regarding allegations from 2007 and 2008 are irrelevant to 2011-2014 issues. Defendant's attorney, Mr. Nichols' objection regarding relevance is sustained and the testimony is stricken.

Credibility

There were two witnesses who testified. Detective Sergeant Craig Johnson of the Michigan State Police testified. His testimony was pretty much unremarkable. He was asked questions, and he simply answered them.

The other witness was Jane Hackborn, an employee of the Treasurer's Office. I noted during the examination that Ms. Hackborn had made allegations regarding Ms. Anderson during two important time frames. First, shortly before there was to be a promotion at the office. Second, essentially contemporaneously with announcing that she was going to seek to replace Mr. Shellenbarger as Treasurer. As with all witnesses, I observed Ms. Hackborn during her testimony. Depending on who was questioning, and what the line of questioning was, she was at times smirking and at times scowling. Her

bias was readily apparent.

I did not find Ms. Hackborn to be a very credible witness.

2011-2014

Michigan Criminal Jury Instructions 27.3 sets forth the elements of Embezzlement by a Public Officer, Agent or Servant, that the prosecutor has to prove.

- First, that the defendant either held public office or was the agent or servant of a public official.
- Second, that the defendant received [money/property] in [his/her] official position.
- Third, that the defendant knew that the [money/property] was public property.
- Fourth, that the defendant used the [money/property] for an unauthorized purpose. It is charged in this case that the defendant used the [money/property] for [state purpose]. Such use of public [money/property] is unauthorized.
- Fifth, that [the property was worth \$50 or more/more than \$50 was involved].

Before a defendant's inculpatory statements can be introduced into evidence, the prosecutor has to prove that a crime has actually been committed. This concept is known as the corpus delecti rule. It requires evidence that proves, first, that a specific injury/loss/wrong occurred and, second, that the injury/loss/wrong was the result of someone's criminal actions. The prosecutor must meet <u>both</u> prongs of the rule prior to being able to introduce a defendant's inculpatory statements.

The first three elements in this case are "no brainers". It is with elements four and five that the prosecutor needs to offer real evidence.....not just allegations.

What admissible evidence is there that there was a specific injury, wrong or loss in this case? In a word - NONE.

Ms. Hackborn testified that she did not see Ms. Anderson take any money out of the till. She testified that she did not see Ms. Anderson put any money back into the till. She testified that she did not see the sticky note being prepared. (Peoples exhibit 6). She testified that she took it out of the garbage. She did testify that there were times that money would be missing, then show back up. That is an allegation, but there was not any corroborative evidence to back that up. She never told the auditors, during 2011 to 2014, that she was aware of any fraud in the office. She never, during 2011 to 2014, went to Mr. Shellenbarger with any concerns. She never, during 2011 to 2014, went to the police with any concerns. She never, during 2011 to 2014, went to the prosecutor with any

concerns. Coincidentally, she did not go to the prosecutor until she decided to run against Mr. Shellenbarger in 2016. Ms. Palumbo did not offer any evidence of one single audit, either internal or external, that shows one single penny missing at any time.

People's exhibit 6, the sticky note consists of the following:

Cathy 1-ten 6-fives Wednesday

It is not dated. One can assume, but it does not say, that it is referring to money. Assuming it refers to money; what exactly is it referring to? Without some other information to give it context, it is meaningless.

That is it. That is all there is. The only other evidence that there would be are the statements of Ms. Anderson; and we do not get anywhere close to accepting them because the prosecutor has not come close to showing that there was an injury, loss or wrong suffered. (First prong of corpus delecti rule.)

Mr. Nichols' objection to the testimony of Det. Sgt. Johnson as it relates to any inculpatory statement of the defendant, Catherine Anne Anderson, is granted. That testimony is stricken.

Because of the failure of the prosecutor to meet her initial burden of proof, I did not go into an analysis of how a bona fide belief regarding office policy between coworkers might affect any mens rea requirement. I have not addressed the issue of aggregating unproven alleged amounts to reach a \$50 threshhold when there can be no showing of anything missing. I also have not addressed legislative intent as it would relate to criminalizing employee activity that is normally subject to disciplinary action from elected officials/supervisors (and, frankly, subjecting elected officials/supervisors to criminal charges of aiding and abetting if they try to discipline employees for certain minor rule violations instead of calling the police).

As an aside, the Statement In Support Of Complaint For Warrant is also devoid of necessary information for a probable cause finding. It is a combination of pure conclusion and unusable defendant statements. The non-attorney magistrate should not have endorsed the complaint and warrant.

For the reasons stated above;

IT IS HEREBY ORDERED that the charges against Catherine Anne Anderson are dismissed.

10-12-16

Honorable Allen C. Venior

81st District Court Judge