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October 21, 2020

Corey Schneck  
Shakopee Police Department

RE: SUSPECT: John Robert Crooks  
ICR NO.: 20017281  
OUR FILE NO. 187074-20  
D/OFFENSE: August 18, 2020  
OFFENSE(S): Theft By Swindle

To Whom It May Concern:

We have reviewed the above-referenced investigation and, after analyzing the facts and applicable law, believe there is insufficient information to prove a criminal charge beyond a reasonable doubt.

The only potential viable charge under the circumstances would be a theft by swindle. Under Minn. Stat. § 609.52, subd. 2(a)(4), the state would have to prove that Mr. Crooks obtained property or services of another by swindling, whether by artifice, trick, device, or any other means. The essence of a swindle is “cheating another person by a deliberate artifice or scheme.” *State v. Lone*, 361 N.W.2d 854, 857 (Minn. 1985). While a swindle may be accomplished by a variety of techniques, “the gist of the offense is the cheating and defrauding of another of his property by deliberate artifice.” *State v. Wells*, 121 N.W.2d 68, 69 (Minn. 1963). In addition to proving the swindle itself, theft by swindle requires proving that the defendant had an intent to defraud. *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. Ct. App. 2003).

There are two primary issues presented in this case that prevent the State from being able to prove a theft by swindle: first, the actual swindle that occurred and second, whether the suspect had the requisite intent to defraud.

In summary, the investigation revealed the following facts. Mr. Crooks was named the Utilities Manager by the Shakopee Public Utilities Commission (SPUC) in April of 2010. SPUC is an independent entity that is governed by a board of commissioners. The SPU is owned by the City of Shakopee but run by the board of commissioners.

According to witnesses, Mr. Crooks was fairly aggressive in his years as Utilities Manager in seeking salary increases. He would have to present these salary increases to the board of commissioners who would then approve them. The discussions at these meetings do not appear to get very in depth. Mr. Crooks would be present at some point during these meetings. He would then leave and return to learn what raise he may have received. The commission relied heavily on the information provided by Mr. Crooks and rarely appeared to question his data.

Mr. Crooks's position has a salary cap proscribed by statute. Minn. Stat. 43A.17, subd. 9(a) states that the "salary and value of all other forms of compensation of a person employed by a political subdivision of this state, excluding a school district, may not exceed 110 percent of the salary of the governor . . . except as provided by this subdivision." As a general rule, the limit on salary seems pretty obvious—110% of the governor's salary. The statute goes on to provide what must or must not be included in this calculation. Relevant to this case, the statute provides:

(c) Deferred compensation and payroll allocations to purchase an individual annuity contract for an employee are included in determining the employee's salary . . . other forms of compensation which must **not** be included in a determination of an employee's total compensation for the purposes of this subdivision are:

(1) Employee benefits that are also provided for the majority of all other full-time employees of the political subdivision, vacation and sick leave allowances, health and dental insurance, disability insurance, term life insurance, and pension benefits or like benefits the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986.

Minn. Stat. § 43A.17, subd. 9(c)(1) (emphasis added).

For three years, Mr. Crooks received a base salary that exceeded the salary cap under the statute. Mr. Crooks was made aware of the salary cap issue in 2017 by the finance director. The finance director informed him that they could apply for a waiver. Mr. Crooks met with a law firm to ask about applying for a waiver in 2017 but was told that they are rarely given. Of note, Mr. Crooks did not ask the attorney about deducting vacation and sick leave from a salary. Over the years, there were several emails between Mr. Crooks and the finance director where the director would state that Mr. Crooks may be over the salary cap. Mr. Crooks would respond that he believed he was under the cap because his reading of the statute deducted vacation and sick leave from his compensation.

Mr. Crooks did not appear to inform the commission of the salary cap until 2019. At that time, he told the commission about the salary cap but also stated that his salary was under the cap when you take out vacation and sick leave. He also stated that they were getting close. At that meeting it appeared as though the commission was unaware of what the salary cap number actually was.

SPUC had an independent investigation done to determine whether Mr. Crooks was over the salary cap. The investigation determined that he was over the cap when including all the particular forms of compensation under the statute. The following chart shows the salary:

Year	Compensation Limit	Base Salary	Total Salary
2020	\$178,782	\$200,000	n/a
2019	\$175,621	\$190,000	\$197,386
2018	\$171,338	\$175,500	\$183,135
2017	\$167,978	\$166,000	\$173,654

All other years, Mr. Crooks's salary was under the cap. The investigation notes that, on its face, "an employee might think it would be acceptable to deduct monetary balances for vacation and sick leave when the statute states not to include 'vacation and sick leave allowances' when calculating salary." The report discusses how vacation and sick have monetary value, but it goes on to note that (for instance, when someone leaves employment and cashes out) when vacation may be cashed out, it then has value and would be added to salary. The report concludes that under that statute deducting vacation and sick leave in the manner Mr. Crooks presented is not allowed.

The primary issue arises with our ability to prove an intent to defraud. The State would have to prove that Mr. Crooks intended to defraud the board when he would ask for a raise and either hide his calculation or state that the salary and his calculation are within the statute's provisions.

Our main hurdle would be to prove that he knew his calculation of his salary was not permitted under that statute. The independent review that the board had conducted notes that a lay person reading the statute could readily conclude that vacation and sick are excluded. Also, a plain reading of the statute (which would be presented to a jury at a trial) can lead one to believe that his calculation was not so far removed that it's obvious he was intending to deceive the board.

A more fundamental issue also arises in proving that Mr. Crooks's actions were a swindle. It cannot be ignored is that Mr. Crooks's salary was ultimately determined and approved by the board of commissioners. A typical swindle case involves a misrepresentation that gives a defendant an unfair advantage and upon which the victim relies in parting with their property. The only argument here is that he deceived the board at the meetings where his salary was discussed. Still, this does not refute the fact that it does not appear that the commission fully informed themselves. One of the commissioners in an interview even conceded that they should have questioned things more. While they relied on information presented by Mr. Crooks, nothing prevented them from determining the governor's salary and what the allowable salary cap would be. Any capable defense attorney will be able to argue that Mr. Crooks simply presented the law as he understood it and left the ultimate decision up to the commission to determine his salary.

Once it was pointed out to him that his salary exceeded the statutory maximum, Mr. Crooks justified it by saying he thought his calculation was permissible. He no longer holds his position and promised to pay back the overpayments to his salary.

Please give me a call if you have any questions.

Sincerely,

Ron Hocevar  
Scott County Attorney

RBH:BMP

cc: Sgt. John Buetow  
Claudia Cassman