

NOT DESIGNATED FOR PUBLICATION

No. 110,344

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LANCE GREATHOUSE,
Appellant.

MEMORANDUM OPINION

Appeal from Atchison District Court; MARTIN J. ASHER, judge. Opinion filed November 26, 2014. Reversed.

Randall L. Hodgkinson, of Kansas Appellate Defender Office, for appellant.

Gerald R. Kuckelman, county attorney, and *Derek Schmidt*, attorney general, for appellee.

Before HILL, P.J., STEGALL, J., and JOHNSON, S.J.

Per Curiam: On August 25, 2012, Lance Greathouse arrived at the Atchison, Kansas jail intending to post bail for Angela Thornton. Greathouse paid the bail of \$500 in cash. The correctional officer, Tammy Jones, noticed that the feel and color of some of the bills was "off." Jones took the bills back to another correctional officer who noticed that some of the bills had identical serial numbers. The sergeant on duty, Jeremy Peak, took the bills and confronted Greathouse. Greathouse told Peak he had borrowed all but \$60 of the money from friends to make the bail. Peak noted that the total value of the bills believed to be counterfeit was \$60.

After an investigation, the State charged Greathouse with one count of making false information, one count of felony theft, and one count of possession of methamphetamine. Ultimately, the State dismissed the felony theft and possession of methamphetamine charges. At trial, a jury convicted Greathouse of making false information, and Greathouse was sentenced to 18 months' prison with 12 months' post-release supervision. Greathouse now brings this appeal arguing: (1) the facts alleged by the State do not, as a matter of law, support a conviction for making false information and (2) an alleged jury instruction error. Because we find in favor of Greathouse on his first claim and reverse his conviction, we do not reach his second claim as it is rendered moot.

The issue Greathouse presents on appeal is straightforward and turns on the interpretation of a statute. We review questions of law de novo. *State v. Gotti*, 273 Kan. 459, 460, 43 P.3d 812 (2002). Our Supreme Court has often said:

"[T]he most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. [Citation omitted.] An appellate court's first attempt to ascertain legislative intent is through an analysis of the language employed, giving ordinary words their ordinary meaning. [Citation omitted.] If a statute is plain and unambiguous, an appellate court does not need to speculate further about legislative intent and, likewise, the court need not resort to canons of statutory construction or legislative history. [Citation omitted.]" *State v. Coman*, 294 Kan. 84, 92, 273 P.3d 701 (2012).

Our Supreme Court has noted, however, "even crystal clear language cannot always save a statutory provision from the specter of ambiguity." *Coman*, 294 Kan. at 93 (citing *State v. Horn*, 288 Kan. 690, 692, 206 P.3d 526 (2009) ["conundrum arising not from lack of clarity in statutory language, but from existence of two apparently controlling but conflicting statutes"]). When statutes conflict, the canons of statutory construction, legislative history, or other background sources may be consulted for

indications of legislative intent. *Hays v. Ruther*, 298 Kan. 402 Syl . ¶ 3, 313 P.3d 782 (2013). Generally, criminal statutes must be strictly construed in favor of the defendant. *Coman*, 294 Kan. at. 96. This rule, however, is ""subordinate to the rule that judicial interpretation must be reasonable and sensible to effect legislative design and intent." [Citation omitted.]"" *State v. Paul*, 285 Kan. 658, 662, 175 P.3d 840 (2008).

The crime of making false information is

"making, generating, distributing or drawing, or causing to be made, generated, distributed or drawn, any written instrument, electronic data or entry in a book of account with knowledge that such information falsely states or represents some material matter or is not what it purports to be, and with intent to defraud, obstruct the detection of a theft or felony offense or induce official action." K.S.A. 2013 Supp. 21-5824(a).

To convict a person for the crime of making false information, the State must prove the defendant "(1) knowingly made a written instrument, (2) that [the defendant] knew to be false, (3) with the intent to defraud or obstruct the detection of a felony." *Gotti*, 273 Kan. at 461. By the language of the statute, "made" can also be "generating, distributing or drawing," and the third element may also include the intent to "induce official action." K.S.A. 2013 Supp. 21-5824(a). The term "written instrument" includes both "any paper" and "any money." K.S.A. 2013 Supp. 21-5111(gg).

At first blush, the facts alleged by the State in this case would appear to satisfy the statutory definition of making false information. However, our analysis cannot end there. In contrast to making false information, the crime of forgery is, with the intent to defraud:

"(1) Making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed by another person, either real or fictitious, and if a real person without the authority of such person; or altering any written instrument in such manner that it purports to have been made at another time or with

different provisions without the authority of the maker thereof; or making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed with the authority of one who did not give such authority;

"(2) issuing or distributing such written instrument knowing it to have been thus made, altered or endorsed; or

"(3) possessing, with intent to issue or distribute, any such written instrument knowing it to have been thus made, altered or endorsed." K.S.A. 2013 Supp. 21-5823.

Our Supreme Court has summarized the elements of forgery as requiring that "(1) [the defendant] made a writing, (2) so it appeared to have been made by another, and (3) with the intent to defraud." *Gotti*, 273 Kan. at 462. As such, the two crimes have been construed in such a way that forgery requires a writing in the name of another while making false information is a writing in one's own name or concerning oneself. This distinction has been the source of some confusion over the years.

In *State v. Rios*, 246 Kan. 517, 519-20, 792 P.2d 1065 (1990), a Dillard's employee was convicted of making false information for counterfeiting customer refund vouchers that he used to facilitate embezzling money. Our Supreme Court contrasted older cases where "[t]he false statements were related to the defendant's own business or affairs," with the defendant's actions in creating documents to appear as if made by customers. *Rios*, 246 Kan. at 529. The *Rios* court found the falsified receipts were "forged instruments" under the forgery statute and were not making false information, noting that, "[t]he forgery statute specifically proscribed the making of an instrument which appears to have been made by another without that person's consent. Such other person may be real or fictitious." *Rios*, 246 Kan. at 529. As such, the defendant's crime was not making false information. *Rios*, 246 Kan. at 529-30; see also *Gotti*, 273 Kan. at 463-65 (K.S.A. 2001 Supp. 21-3711 requires "that the making of false information be

done in the writer's own name," while "[a] forgery is a writing which purports to be that of another."). As such, the two crimes are mutually exclusive.

The State relies on decisions from this court that have distinguished *Gotti* and *Rios* from factual scenarios where a connection between the false information and the defendant existed. For example, in *State v. Dahlke*, No. 92,755, 2006 WL 851235 (Kan. App. 2006) (unpublished opinion), the defendant was convicted of making a false information for cashing a falsified check written by Primerica Financial Services to himself. The panel found that the defendant "appears to misconstrue the legal issue as acting in one's own name when the real question is whether the false statements are related to the defendant's own business or affairs." *Dahlke*, 2006 WL 851235, at *11. Because the falsified check was made out to the defendant, it related to his own business or affairs, and the crime was making false information.

In *State v. Spencer*, No. 102,339, 2010 WL 3731585 (Kan. App. 2010) (unpublished opinion), the defendant gave the local treasurer's office a falsified insurance card so they could renew his vehicle's tags. The crime in *Spencer* was making a false information because, "[a]lthough [defendant] alleged the card was made by the insurance company, it was a falsification of [defendant's] own insurance card in an effort to renew his license plates. [Defendant's] conduct was not a forgery done entirely in someone else's name, as in *Rios* and *Gotti*." 2010 WL 3731585, at *2.

Most recently, in *State v. Odegbaro*, No. 108,493, 2014 WL 2589707 (Kan. App. 2014) (unpublished opinion), the defendant was convicted of making a false information after she gave falsified paychecks purporting to be from her employer to her probation officer. The defendant argued that since the paychecks purported to have been made by someone else, the proper charge was forgery rather than making false information. 2014 WL 2589707, at *2. The panel found that the defendant made false information when she

distributed a written instrument she knew to falsely state a material fact regarding herself with the intent to induce official action. 2014 WL 2589707, at *4.

Here, the facts alleged by the State put this case in the same category as the facts alleged in *Rios* and *Gotti*. Greathouse was accused of making or distributing counterfeit bills to bail someone out of jail. Like in *Rios* and *Gotti*, the counterfeit instruments did not contain information related to the defendant's own business or concerns, nor were they made in the writer's own name. The instruments were simply counterfeit legal tender. These facts would support a conviction for forgery. Because forgery and making false information are mutually exclusive crimes, the State failed to present sufficient evidence to support a conviction of making false information. As such, we reverse Greathouse's conviction and vacate his sentence.

Reversed.