

NOT DESIGNATED FOR PUBLICATION

No. 102,449

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

ANTONIO RODRIGUEZ,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Seward District Court; CLINT PETERSON, judge. Opinion filed August 20, 2010.  
Reversed and remanded.

*Joshua S. Mikkelsen*, legal intern, and *Randall L. Hodgkinson*, of Kansas Appellate Defender Office, for appellant.

*Maria Kaminska*, assistant county attorney, *Don L. Scott*, county attorney, and *Steve Six*, attorney general, for appellee.

Before STANDRIDGE, P.J., GREEN and HILL, JJ.

*Per Curiam:* Antonio Rodriguez was convicted of forgery in violation K.S.A. 21-3710(a)(1), a severity level 8 nonperson felony. In this direct appeal, Rodriguez asserts his act of placing a false name on booking documents did not deprive the State of any property interest, an essential element of the forgery crime charged. For the reasons stated below, we agree. Accordingly, we reverse and remand the matter to the district court.

## FACTS

In July 2004, Rodriguez was arrested and booked into the Seward County jail for transporting an open container. During his arrest and while being booked into jail, Rodriguez told officers that his name was Pedro Javier Talabera (a fictional person) and provided them with a fictional Social Security number (SSN). He also signed various booking documents using the Pedro Javier Talabera name and false SSN.

In 2008, an officer with the Liberal Police Department discovered that Rodriguez had lied in 2004 on his booking documents about his real identification. As a result, the State charged Rodriguez with aggravated false impersonation, identity theft, forgery, and obstructing official duty. The aggravated false impersonation and obstructing official duty charges were eventually dismissed, and Rodriguez proceeded to trial on the identity theft and forgery charges.

A jury acquitted Rodriguez of identity theft but convicted him of forgery. The district court sentenced Rodriguez to an underlying prison sentence of 17 months and placed him on probation for 18 months. On appeal, Rodriguez asserts this conviction must be reversed because his act of placing a false name on the booking documents did not deprive the State of any property interest, an essential element of the forgery crime charged.

## ANALYSIS

Forgery is defined as knowingly and with "intent to defraud" endorsing a written instrument so that it purports to have been endorsed by another person, either fictitious or real, without that person's authority. K.S.A. 21-3710(a)(1). "Intent to defraud" is defined as "an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or

power *with reference to property*." (Emphasis added.) K.S.A. 2009 Supp. 21-3110(10). "Property" is defined as "anything of value, tangible or intangible, real or personal." K.S.A. 2009 Supp. 21-3110(17). "Personal property" is defined as "goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed." K.S.A. 2009 Supp. 21-3110(16).

Based on these statutory definitions, the State was required to prove at trial that Rodriguez fraudulently endorsed a written instrument with the intent to deceive and induce a person or entity to transfer or alter a property right. In its brief on appeal, the State argues it sufficiently demonstrated at trial that it had been deprived of two discrete intangible property rights when Rodriguez signed a false name to numerous booking documents at the jail: (1) the ability to impose harsher penalties upon Rodriguez due to his extensive criminal history and (2) the ability (at least temporarily) to add the conviction of transporting an open container to his criminal history.

We are not persuaded by the State's argument. First of all, there was no evidence presented at trial to establish the penalties or consequences (if any) that Rodriguez avoided in 2004 by using a false name while being booked into jail for transporting an open container. Moreover, we find no merit in the State's conclusory assertion that imposing criminal penalties and maintaining accurate criminal history records are intangible property interest held by the State.

With regard to the issue presented, we find persuasive the case of *State v. Fisher*, 24 Kan. App. 2d 103, 942 P.2d 49 (1997). In *Fisher*, the defendant was charged and convicted of five counts of forgery for signing a fictional name to fingerprints and palmprint documents while being booked into jail. On appeal, the defendant argued that that the government's interest in recording the fingerprints of arrestees was not a

sufficient property interest to serve as the basis for a forgery conviction under the Kansas Criminal Code. The State countered by arguing that the purpose of finger printing arrestees is to identify the arrestee and to allow law enforcement agencies to maintain records of those arrestees. Thus, the government had an interest in such records, and once such records are compiled, they are a valuable source of information.

In rejecting the State's argument that the government had a property interest in fingerprint and palmprint documents, the *Fisher* panel stated:

"The fact that the government has *an* interest in obtaining fingerprint records of arrestees does not establish that the government has a *property* interest, as distinguished from an administrative interest, in obtaining accurate fingerprint records of arrestees.

"In *State v. Rios*, 246 Kan. 517, 530, 792 P.2d 1065 (1990), the court construed and applied the definition of 'intent to defraud' in [now K.S.A. 2009 Supp. 21-3110(10)]. In *Rios*, two managers at two Dillard's department stores in Wichita were convicted of making false writings under K.S.A. 21-3711 for taking money from the stores' tills and attempting to cover up the thefts by signing fictitious customer refund vouchers. The *Rios* court vacated the managers' convictions for making false writings. The court held that the managers did not falsify the vouchers with the 'intent to defraud' because the managers had already deprived Dillard's of its property—the money from the cash registers—before falsifying the vouchers. 246 Kan. at 530.

"Here, the State asks this court to define 'property' so broadly as to be inconsistent with the essential holding in *Rios*. In *Rios*, if the customer refund records had amounted to a property interest, the court would have affirmed the convictions, despite the lack of an intent to defraud regarding the money in the cash registers. 'Penal statutes must be strictly construed in favor of the persons sought to be subject to them.' *State v. Schlein*, 253 Kan. 205, 209, 854 P.2d 296 (1993). Although fingerprint/palmprint records, once obtained, are a valuable law enforcement tool, such records, like the customer refund vouchers in *Rios*, do not have the sort of intrinsic value necessary to fall within the definition of 'property' in [now K.S.A. 2009 Supp. 21-3110(17)] for purposes of crimes in Kansas." 24 Kan. App. 2d at 108.

The holding in *Fisher* is equally applicable to the facts presented in this case. Although the State may have an interest in maintaining accurate booking documents, thereby making it easier to impose criminal penalties and keep accurate criminal records, this interest does not have the sort of intrinsic value necessary to be considered "property" as defined by K.S.A. 2009 Supp 21-3110(17).

In sum, the State failed to establish it had a property interest that was harmed by Rodriguez' act of signing a false name to the booking documents; thus, the State failed to prove an essential element of forgery required under K.S.A. 21-3710(a)(1). Accordingly, Rodriguez' conviction must be reversed. See *State v. Star*, 27 Kan. App. 2d 930, 934, 10 P.3d 37, *rev. denied* 270 Kan. 903 (2000) ("A conviction can be sustained only upon evidence which proves every element of a crime beyond a reasonable doubt.").

Reversed and remanded.

