

STATE OF MICHIGAN
IN THE THIRY-FOURTH DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

MICHAEL CHARLES ST. ANDRE,
SANDRA KAY VLAZ-ST. ANDRE,
RICHARD ALLAN BALZER,
RICHARD BRUCE LANDRY, DONALD
RALPH HOPKINS, JEREMY JAMES
CHANNELLS, and LARRY ROBERT
DROEGE,

Defendants.

CASE NOS: 11-3492-FY
11-3493-FY
11-3494-FY
11-3495-FY
11-3496-FY
11-3497-FY
11-3498-FY

HON. JAMES K. KERSTEN

PRELIMINARY EXAMINATION DECISION

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TABLE OF DEFINED TERMS

(Adopted from People's Omnibus Memorandum of
Law in Support of Motion to Bind Over all Defendants)

Appx. ___	Appendix to People's Omnibus Memo of Law in Support of Bind Over
Am. Compl.	Amended Complaint, filed on or about January 9, 2012
CCE	Continuing Criminal Enterprise, MCL 750.159f <u>et. seq.</u>
CCE Defendants	Defendants Michael St. Andre, Sandra St. Andre, Richard Balzer, Richard Landry, Donald Hopkins
PX-___	People's Exhibit
Relevant Time Period	April 2005 to September 2011
RPD-CI	Romulus Police Department-Retained Confidential Informant
RPD Inv. 10-86	Romulus Police Department-Initiated Investigation of "Landing Strip" and "Subi's Place" from January 6, 2010 up to and through January 7, 2011
RPD-SIU Defendants	Defendants Michael St. Andre, Richard Balzer, Richard Landry, Donald Hopkins, Jeremy Channells, Larry Droege
RPD-SIU CCE Defendants	Defendants Michael St. Andre, Richard Balzer, Richard Landry, Donald Hopkins
RPD-SIU 10-86 Defendants	Defendants Richard Balzer, Richard Landry, Jeremy Channells, Larry Droege
SIU	Special Investigations Unit of the Romulus Police Department
Tr.	Transcript of Preliminary Examination

INTRODUCTION

In response to a multi-year investigation, the People filed a 22 Count Complaint and

Warrant against Defendants alleging multiple felonies.

A Preliminary Examination was held in the Van Buren Township Hall. It began on April 23, 2012 and concluded April 30, 2012. During five days of testimony, the People introduced 14 witnesses that were examined and cross-examined and admitted 28 exhibits which included thousands of pages of materials. At the conclusion of the People's proofs, Defendants did not call any witnesses or introduce any additional information. At the conclusion of the Examination, the People moved to bind all Defendants over to Circuit Court for trial. The Court requested that the parties brief evidentiary issues pertaining to admissibility of various documents and People's motion to bind over Defendants to Circuit Court.

FINDINGS OF FACT

I. Introduction

During the Relevant Time Period, the Romulus Police Department ("RPD") in Wayne County, Michigan, operated a specialized unit ("SIU") organized by the RPD to conduct undercover police operations. The RPD-SIU unit consisted of four to five members of the RPD. The SIU unit primarily investigated and enforced State and Federal drug laws. Defendants, Michael St. Andre, Richard Balzer, Richard Landry, Donald Hopkins, Jeremy Channells and Larry Droege are all former police officers and/or command personnel employed by the RPD. Furthermore, the above Defendants were members of the RPD-SIU during various periods within the Relevant Time Period. As such members, the Defendants were either "public officials" or agents of a person holding public office.

Defendant Sandra St. Andre, is the wife and has been the wife of Defendant Michael St. Andre, during all times in the Relevant Time Period.

Michigan State Law allows law enforcement to seize property, including U.S. currency, in connection with illegal activity. After either an administrative or judicial procedure, the property seized is forfeited to the government or municipality whose law enforcement agency was responsible for the seizure. State law requires that property or money seized and awarded to the municipality be used solely for law enforcement purposes. In the case of drug forfeiture proceeds, the money must be used for the enhancement of the enforcement of controlled substance laws.

The City of Romulus maintains and controls a forfeiture account. The City would hold and disburse forfeited funds from the account. There was not a written policy for the disbursement, but a procedure was developed by the City of Romulus and the RPD for the disbursement of forfeiture account money. RPD personnel would periodically request and be provided with forfeited money from the city forfeiture account. The amounts requested and provided ranged from \$2,500 to \$10,000. A portion of the money received by the RPD would be allocated for use by the RPD-SIU for their investigations. The money provided to the RPD-SIU was referred to as "Chit" money. The "Chit" money was maintained in a cash box held by the RPD personnel. Joyce Clay was the RPD chief's secretary. She was responsible for the maintenance of the cash box until that responsibility was taken over by Michael St. Andre when he became police chief.

The RPD-SIU members requested and were provided with cash advances in anticipation of expenses incurred in connection with their work. The cash advances were normally in \$500 increments and came solely from forfeited proceeds awarded to the City of Romulus. In

exchange for the "Chit Money" the RPD-SIU member would sign a "Buy Receipt" which documented the advancement of the money to the officer. The "Buy Receipt" would be placed in the cash box as evidence of receipt of the money by the officer. The RPD-SIU officer would prepare an expense report when he had depleted the cash advancement. An expense report was used as an accounting from the officer to summarize his expenditures of forfeited money. The completed expense report was signed by the officers submitting the report. The RPD-SIU officer would also attach to the expense report supporting material, such as receipts, to document the expenses. The supporting documents included receipts signed by retained confidential informants for money paid to the confidential informants for work performed for the RPD-SIU. These receipts were called "Chits".

In regards to the payment of money to RPD confidential informants, "Chits" were generally signed by the confidential informants, the RPD-SIU officer who paid the confidential informant and by an RPD-SIU officer who witnessed the payment.

When the RPD-SIU officer depleted the money advanced to him and he was ready to receive more money, Mrs. Clay would retrieve the "Buy Receipt" and attach it to both the expense report and expense report supporting receipts and documents. If the officer had spent more money than had been advanced, he would be provided with an amount equal to the difference between the expended amount and the amount advanced. In those instances where the officer had expended less than what was provided, the officer would turn over the remaining money. After reconciliation of the account, the officer would receive an additional \$500 cash advance from the cash box. The expense reports and supporting materials were placed in a folder and held by Mrs. Clay.

II. Expense Reports and Corresponding Documentation

RPD-SIU retained the services of Confidential Informant 180 during the Relevant Time Period to assist in undercover police operations. CI 180 was periodically paid for his services by

members of the RPD-SIU. When paid, he would usually sign a "Chit" to acknowledge his receipt of the money. CI 180 did not receive payment for 164 "Chits" that purportedly bore his signature. Of the 164 chits, 114 were submitted on expense reports by Michael St. Andre, totaling \$22,100; Richard Balzer submitted expense reports with seven "Chits" totaling \$2,200; Donald Hopkins submitted expense reports with three "Chits" totaling \$1,255; and Richard Landry submitted expense reports with one "Chit" totaling \$250.

Confidential Informant 337 was also a paid informant for the RPD-SIU and worked during the Relevant Time Period. CI 337 was primarily paid for his services as a percentage of money recovered by the RPD-SIU when they sold drugs in exchange for money to criminal suspects. CI 337 did not receive payment on 37 separate "Chits" which were submitted by Defendants on their expense reports. Specifically, Richard Balzer submitted 28 "Chits" attached to his expense reports totaling \$6,160; Michael St. Andre submitted eight "Chits" attached to his expense reports totaling \$1,900; and Donald Hopkins submitted one "Chit" attached to his expense report totaling \$150.

III. Restaurant Receipts

During all Relevant Time Periods Mahmoud Farha managed a Subway Restaurant within the City of Romulus. In 2005, Michael St. Andre requested Mr. Farha provide him with receipts reflecting a bigger food purchase than he actually had purchased. Mr. Farha eventually provided all PRD-SIU CCE Defendants receipts for Subway purchases which reflected greater purchase amounts than the Defendants had in reality purchased. Mr. Farha either provided the Defendants

with receipts from other customers or provided them with "Preliminary Receipts". The RPD-SIU Defendants repeatedly submitted expense reports with supporting fraudulent receipts from Mr. Farha's Subway store and received reimbursement from the City of Romulus for the fraudulent expense reports and receipts.

Specifically, Michael St. Andre submitted 30 separate Preliminary Receipts totaling in excess of \$1,600; Richard Balzer submitted 30 Preliminary Receipts totaling in excess of \$1,200; Donald Hopkins submitted 39 separate Preliminary Receipts totaling in excess of \$1,300; Richard Landry submitted Preliminary Receipts in excess of \$900.

IV. Michael Raymond Account Used for Personal Purposes

RPD-SIU officers were assigned an "Alias" for undercover work. "Michael Raymond" was the name used by Michael St. Andre for undercover work during the Relevant Time Period. The City of Romulus maintained a checking account under the name of "Michael Raymond" which received money from the City of Romulus forfeiture funds. Michael St. Andre used the money in the account for personal purposes. In 2008, Michael St. Andre was in a romantic relationship with an employee of the Romulus Police Department, Christine Rohn. In the Fall of 2008, Michael St. Andre used the money from the account for a personal trip to California/Las Vegas, Nevada with Christine Rohn and Christine Rohn's daughter. Michael St. Andre used money from the "Michael Raymond" account to pay his and his companions' airfare, hotel charges, and ground transportation.

V. Sandra St. Andre and Michael St. Andre

Sandra St. Andre was married to Michael St. Andre during all Relevant Time Periods. Michael St. Andre had a romantic affair outside of the marriage with Christine Rohn in 2007 and 2008. Sandra St. Andre became aware of the affair and as a result, retaliated against Michael St.

Andre by reporting Michael St. Andre's misconduct to Linda McNeil, Marsha Gilstorf, and Captain John Leacher of the Romulus Police Department.

Michael St. Andre and Sandra St. Andre used in excess of \$15,000 of Romulus Police

Department forfeiture funds to purchase a tanning business in Westland, Michigan. Michael St. Andre and Sandra St. Andre also knowingly used Romulus Police Department forfeiture funds for their own personal enjoyment by gambling at casinos. The income received by Michael St. Andre and Sandra St. Andre from Romulus Police Department forfeiture funds was not reported on their 2007, 2008 or 2009 Michigan State Income Tax Returns.

VI. File 10-86 Investigation

On January 6, 2010, RDP-SIU started an investigation at "The Landing Strip", a strip club located in Romulus. The investigation was assigned Romulus Police Department, File No: 10-86. The investigation expanded to "Subi's Place", a strip club located in Southgate. From January 6, 2010 to January 7, 2011, the RDP-SIU 10-86 Defendants, (Richard Balzer, Richard Landry, Jeremy Channels, and Larry Droege) made numerous visits to the two clubs. Each officer prepared police reports from many of their visits detailing their own activities as well as making observations of activities of others including RPD-SIU 10-86 officers, CI 180, and other patrons and employees of the clubs. The police reports documented numerous sexual acts, including the 10-86 officers receiving multiple acts of fellatio from female employees of both clubs, multiple acts of masturbation from female employees, many lap dances from fully unclothed dancers of both clubs, observation of sexual acts performed by club employees with fellow RPD-SIU 10-86 members and confidential informants along with accosting and soliciting for sexual acts by club employees. The RPD-SIU 10-86 defendants did not make any arrests or issue any citations during this investigation.

The RPD-SIU Defendants prepared and submitted expense reports in connection with Investigation 10-86 totaling \$42,864.25 in expenses. The expense reports and attachments to the expense reports identified 46 separate dates of undercover operation at either The Landing Strip or Subi's Place. The police reports submitted under file 10-86 identified 26 separate dates of undercover operation at The Landing Strip and Subi's Place. There are 20 additional dates where RPD-SIU 10-86 officers submitted expense reports for activities at The Landing Strip or Subi's Place where they failed to prepare police reports.

Captain Darren Shelby of the Romulus Police Department was the officer in charge of the Investigation Bureau and supervisor over the RPD-SIU between January 6, 2010 and January 7, 2011. Around January of 2011, Captain Shelby was notified of an assault complaint by an employee of The Landing Strip against one of the owners of The Landing Strip. Captain Shelby consulted with then Chief Michael St. Andre about the complaint which resulted in planning a coordinated Liquor Control Commission raid on the club. Michael St. Andre made no comment to Captain Shelby about an ongoing Landing Strip investigation by RPD-SIU. Captain Shelby used Larry Droege and Jeremy Channels to go inside The Landing Strip undercover to conduct pre-raid surveillance. They were assigned the responsibility to count employees and patrons as well as determine if the owner, Subi Saad, was on the premises. Neither Larry Droege nor Jeremy Channels said anything to Captain Shelby about an on-going investigation of The Landing Strip or Subi's. On January 7, 2011, Droege and Channels went into The Landing Strip as part of the raid and provided the information requested.

Also, during the pre-raid surveillance, Larry Droege and Jeremy Channels each spent \$500 of Romulus Police Department forfeiture funds. Jeremy Channels paid for a nude lap dance and Larry Droege paid for alcohol for himself and club employees. Larry Droege reported

on the police report he prepared that he informed Captain Shelby of the pre-raid investigation violations prior to the raid. However, Captain Shelby was never informed of the violations purportedly reported by Larry Droege or the expenditure of forfeiture funds.

Captain Shelby was unaware of File No. 10-86 or the year long investigation until August of 2011. In August, 2011, the Michigan State Police requested File 10-86 from Captain Shelby. Captain Shelby was unaware of File 10-86 at the time but searched the computer records, offices' and file cabinets for the file. He was unsuccessful in locating any of the police reports. Captain Shelby requested the assistance of Chief Michael St. Andre with locating file 10-86. The next day, Larry Droege provided Captain Shelby with the contents of SIU 10-86.

VII. May 6, 2010, Police Report

On May 6, 2010, Richard Balzer contacted CI 180 and scheduled a meeting at Subi's Place in Southgate. Richard Balzer and Jeremy Channels were present when CI 180 arrived at Subi's Place. CI 180 was paid \$300 with City of Romulus forfeiture funds. CI 180 left Subi's Place with Richard Balzer. CI 180 did not participate in any sex acts with any employees at Subi's Place on May 6, 2010. Richard Balzer contacted CI 180 the next day to advise him that the police report from the Subi's visit would include a report that CI 180 received sexual acts performed on him that evening. Jeremy Channels wrote and submitted a police report under File 10-86 which falsely reported that CI 180 received sexual acts.

OPINION

I. Admissibility of People's Exhibits 1 Through 4 Admitted During the Course of the Preliminary Examination

A. Description of the Exhibits at Issue

People's Exhibits 1 through 4 include a myriad of expense reports and supporting materials presented for payment by Defendants Michael St. Andre, Balzer, Landry, and Hopkins. Exhibits 1 through 4 were admitted by the Court as evidence during the Preliminary

Examination but were only admissible against the submitting Defendant. The People moved for the admission of Exhibits 1 through 4 against all of the CCE Defendants without restriction, to which the Defendants objected.

The Court took the request under advisement and requested briefs.

B. Relevancy of Exhibits 1 Through 4

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted by the Supreme Court. Evidence which is not relevant is not admissible. *MRE 402*. To be deemed "relevant" for the purposes of admissibility at trial, evidence must have a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable.

The Amended Complaint alleges that Defendants Michael St. Andre, Balzer, Landry, and Hopkins engaged in a criminal enterprise. In order to prove a criminal enterprise, the People must prove that more than a single person was involved as part of the criminal enterprise.

The People have offered two reasons why Exhibits 1 through 4 are relevant not only to the submitting officer but also against all CCE Defendants. First, the Prosecution argues that the reports would provide evidence sufficient to establish that the CCE Defendants participated together in an illicit enterprise. Second, the People argue that the reports provide evidence for the charged crime of criminal enterprise conspiracy.

Defendant Sandra St. Andre argues that Exhibits 1 through 4 are not relevant, and thus not admissible, against her. Defendant Sandra St. Andre argues that she never worked for the Romulus Police Department and thus its expense reports are not relevant against her. She also argues that no proper foundation was laid in order to connect the Defendant to Exhibits 1 through 4 as to explain why the Exhibits would be relevant when used against her.

The expense reports and supporting documents tend to show that the CCE-Defendants participated in an illegal enterprise; that is, the theft of forfeiture funds from the City of Romulus. The exhibits also tend to show that the CCE-Defendants participated in a criminal enterprise conspiracy of the theft of forfeiture funds from the City of Romulus.

As it pertains to Defendant Sandra St. Andre, there is sufficient evidence to establish by probable cause that Defendant Sandra St. Andre knew about Defendant Michael St. Andre's activities. According to Ms. Linda McNeil's testimony, Defendant Sandra St. Andre contacted her to discuss how Defendant Michael St. Andre has taken \$15,000 of forfeiture money and used it to purchase a tanning salon for his wife. This testimony was supported by Ms. Marsha Gilstorf who was also present at the meeting with Ms. Linda McNeil and Defendant Sandra St. Andre.

Even though Defendant Sandra St. Andre did not work for the Romulus Police Department, when she accepted and/or used the funds given to her from Defendant Michael St. Andre and had knowledge that Defendant Michael St. Andre was taking the funds from the forfeiture account, she became part of the overall scheme to take and use money from the forfeiture division for personal gain.

Therefore, the Court finds People's Exhibits 1 through 4 relevant pursuant to MRE 402 against all CCE Defendants.

C. Applicability of Michigan Evidentiary Rules Concerning Hearsay and/or Hearsay Exemptions

"Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *MRE 801(C)*.

Generally, hearsay is not admissible unless it falls under one of the hearsay exemptions or exceptions. *MRE 802*.

The People have offered two reasons why Exhibits 1 through 4 should be admissible to all Defendants despite the hearsay rules. First, the People argue that the exhibits have not been offered to prove the truth of the matter asserted but offered to prove the falsity of the reports, which takes the reports out of the hearsay definition. Second, the People argue that the submission of expense reports and also the expense reports constitute a verbal act and therefore not within the hearsay definition as per Michigan jurisprudence.

First, the People argue that Exhibits 1 through 4 and supporting materials were introduced to demonstrate their falsity and therefore are not being offered to prove the truth of the matter asserted. Evidence that may otherwise be considered hearsay is admissible as nonhearsay if offered for such purposes including, but not limited to, to show motive, absence of mistake, common scheme, or knowledge. *United States v. Zenni*, 492 F.Supp. 464 (E.D.Ky., 1980) (unidentified telephone callers directing the placing of bets on sports events admissible as nonhearsay evidence that the premises were used for illegal bookmaking); *Guerra v. State*, 897 P.2d 447 (Wy., 1995) (daughter's letter found in defendant's possession and requesting drugs from the defendant admissible on charge of delivery of controlled substances); *United States v. Giraldo*, 822 F.2d 205 (C.A.2, 1987), cert. den. 484 U.S. 969, 108 S.Ct. 466, 98 L.Ed.2d 405 (1987) (messages on defendant's answering machine ordering drugs admissible on charge of distributing cocaine); *State v. Esposito*, 223 Conn. 299, 613 A.2d 242 (1992) (false exculpatory

alibi of defendant's accomplice not hearsay when offered to show similarity to defendant's false alibi and thus their joint guilt and collusion).

In the Michigan Court of Appeals decision *People v. Jones*, the Court explained,

If the statement only indirectly tends to prove a certain state of mind then it is not hearsay because the truth of the assertion and the credibility of the declarant are not relied upon. Rather, the fact that the statement was made, regardless of its truth, is relevant to show the speaker's knowledge, intent, or some other state of mind. *State v. Edwards*, 420 So.2d 663, 671 (La.1982); *State v. Sheppard*, 371 So.2d 1135, 1142 (La.1979); *McCormick*, supra, sections 249, 295; 6 *Wigmore*, supra, section 1790.

228 Mich.App. 191, 206, 579 N.W.2d 82 (1996)(reversed and remanded on other grounds). The People emphasize that the evidence is being introduced for the purpose of showing that certain assertions were in fact made by the submitting Defendant not that the assertions contained therein were or are factually correct.

Second, the People argue that the Exhibits 1 through 4 constitute non-hearsay verbal acts. Verbal acts are "out-of-court statements that are offered as evidence of legally operative verbal conduct are not hearsay." *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir. 2004); *See also Stuart v. UNUM Life Ins. Co. of America*, 217 F.3d 1145, 1154 (9th Cir.2000); *United States v. Arteaga*, 117 F.3d 388, 395-98 (9th Cir.1997).

Defendant Sandra St. Andre argues that Exhibits 1 through 4 have been offered to prove the matter asserted since Counts 16 and 19 have a statutory required monetary amount. However, this Court already ruled at the Preliminary Hearing that Exhibits 1 through 4 were admissible unconditionally against the submitting Defendant.

The use of Exhibits 1 through 4 against the non-submitting Defendants was not offered to prove that the minimum statutory monetary amount had been reached,¹ but rather to show knowledge, intent, and the existence of a conspiracy. The use of the Exhibits against Defendant

¹ As discussed in the preceding paragraph, this statutory amount can be achieved merely by using the Exhibits against the submitting officer.

Sandra St. Andre is not to prove that the submitting officer stole the amount listed in the Exhibit, but rather that she had knowledge such false reports² were in fact submitted and that she benefited from that submission.

This Court finds that Exhibits 1 through 4 are admissible against both the submitting officer as well as against all other Defendants because the Exhibits do not fall within the hearsay definition. The People correctly assert that the Exhibits are not being offered to prove the matter asserted, which in this case would be the contents of the Exhibits. The importance of the evidence is that the documents were in fact submitted, not what is specifically contained in each of the Exhibits. Additionally, the reports can be used and have been used in several nonhearsay manners including, but not limited to, to show intent to embezzle, to show a common scheme amongst co-conspirators to embezzle, and to show knowledge on how to embezzle using falsified receipts and reports. Furthermore, the act of submitting the reports contained in Exhibits 1 through 4 represents an independent legally significant act of the crime of embezzlement. So, the submission of the reports could also be viewed as a verbal act, which is also considered nonhearsay.

Therefore, Exhibits 1 through 4 are admissible against all CCE Defendants because they are considered nonhearsay. Because of this, the Court need not address if any hearsay exceptions would apply.

II. Admissibility of File 10-86 Involving Investigation into Landing Strip and Subi's Place – Exhibit 34

A. Description of the Exhibit at Issue

² The alleged falsity of the report would be shown when the Exhibit is admitted against the submitting officer. Then, that Exhibit could be used against all non-submitting Defendants to show knowledge, intent, or existence of a conspiracy.

During the course of the Preliminary Examination, the People moved to admit People's Exhibit 34, which was purported to be a set of police reports relating to RPD Inv. 10-86 authored by the RPD-SIU 10-86 Defendants during the course of a year long investigation.³

B. Relevancy of Exhibit 34

Before any evidence can be admitted it must first be determined to be relevant.⁴ As it pertains to Exhibit 34, it is relevant to support allegations of Misconduct in Office (lewd and immoral conduct and filing false police report) and conspiracy.

C. Applicability of Michigan Evidentiary Rules Concerning Hearsay and/or Hearsay Exemptions

"Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *MRE 801(C)*. Generally, hearsay is not admissible unless it falls under one of the hearsay exemptions or exceptions. *MRE 802*.

According to *MRE 801(d)(2)*, "[a] statement⁵ is not hearsay if- . . . [t]he statement is offered against a party and is . . . (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy."

The People's first main argument is that a police officer has a duty to prepare reports, like Exhibit 34, on behalf of both of the reporting officer as well as on behalf of the other officers present. The People argue that since there is a legal duty for police officers to report, delegating

³ For a full description of the report and the activities surrounding the report please refer to Finding of Facts section VI above.

⁴ For an explanation of *MRE 402*, please refer to section I, B.

⁵ A "statement" in this instance is a written assertion. *MRE 801(a)(1)*.

this duty to one officer creates an “agency-in-fact” relationship. Therefore, all statements contained in such a report would be considered either an admission by authorization or an admission by an agent.⁶

The People’s second main argument is that the police reports also constitute statements by co-conspirators in furtherance of a conspiracy.⁷ In order for this rule to apply, the proponent of the statement must establish three things. First, “independent proof must establish a conspiracy’s existence by a preponderance of the evidence.”⁸ *People v. Cunningham*, No. 217709 (Mich.App. 2001); *See also People v. Vega*, 413 Mich. 773, 782; 321 NW2d 675 (1982). Second, the proponent must establish that the statement was made during the course of the conspiracy. *People v. Bushard*, 444 Mich. 384, 394 (1993). Third, the statement must be made in furtherance of the conspiracy. *Id.*

The People argue that the evidence presented at exam is enough to establish the existence of a conspiracy by the preponderance of the evidence. The act of the officers submitting the reports associated with File 10-86, the expense reports, and the “Chits” in the same manner and for the same fraudulent purpose established a conspiracy by common scheme. The People argue that there is sufficient evidence independent of File 10-86 to establish the existence of a conspiracy by the preponderance of the evidence.

This Court finds that the statements contained within File 10-86 could fall under any of the hearsay rules identified by the People.⁹ The statements contained within File 10-86, Exhibit 34, were made during the course of an investigation as mandated by law and represented all

⁶ *MRE 801(d)(2)(c) and (d)*.

⁷ *MRE 801(d)(2)(e)*

⁸ Neither direct proof of the agreement, nor a formal agreement, need be shown to prove the conspiracy. *People v. Gay*, 149 Mich App 468, 471; 386 NW2d 556 (1986). Circumstances, acts, and conduct of the parties can sufficiently demonstrate an agreement in fact. *Id.* Furthermore, circumstantial evidence and inference may be used to establish a conspiracy. *Id.*

⁹ *MRE 801(d)(2)(c-e)*.

officers involved. Therefore, those statements were authorized and/or adopted through agency theory by all officers involved even though they may not have been the officer who wrote the report.

The statements also constitute statements made by co-conspirators. The People have presented enough testimony and exhibits independent of Exhibit 34 in order to establish the existence of a conspiracy by the preponderance of the evidence. File 10-86 was created during the Relevant Time Period, therefore was made during the conspiracy. Last, the outcome of filing the reports associated with File 10-86 was the disbursement of additional funds to the officers and thus was in furtherance of the conspiracy.

Therefore, File 10-86 is admissible against all RPD-SIU 10-86 Defendants under MRE 801(d)(2)(c)(d) or (e).

III. Common Law Offenses

Before addressing the merits of the People's case regarding Counts 12-15¹⁰, Count 20¹¹, and Count 21¹², it must first be determined if these are all separate and distinct crimes that may be charged under these circumstances.

¹⁰ Common Law Offenses: Defendant did commit Misconduct in Office, an indictable offense at common law, to wit: creat[ed] and submit[ed] expense reimbursement reports and/or corresponding documentation that contained materially false and/or misleading information and misappropriating, embezzling, and/or fraudulently converting to his/her own use U.S. currency, which belonged to City of Romulus and/or City of Romulus Police Department.

¹¹ Common Law Offense: Defendants did commit Misconduct in Office, an indictable offense at common law, to wit" on or between January 2010 up to and including February 2011, willfully and intentionally engaged in lewd, immoral, and/or sexual act(s) with another for personal gratification in or around 36431 Goddard Road, Romulus, Michigan (d/b/a "The Landing Strip") and/or 12916 Northline, Southgate, Michigan (d/b/a Subi's Place") in exchange for the payment of U.S. currency received by him in his official capacity of employment through Romulus Police Department-generated expense reports and corresponding support documentation submitted and present by defendant to the City of Romulus Police Department and/or City of Romulus in an effort to seek monetary reimbursement(s) and/or document expenditure(s) of U.S. currency previously provided, contrary to MCL 750.505.

¹² Willful Neglect of Duty: on or between January 2010 up to and including February 2011, did willfully neglect to perform in the enforcement of various state, federal, and/or local law(s) and/or city ordinance(s) in connection certain improper and/or illegal activities occurring in or around 36431 Goddard Road, Romulus, Michigan (d/b/a "The Landing Strip") and/or 12916 Northline, Southgate, Michigan (d/b/a "Subi's Place"), a duty enjoined upon him or her by MCL 752.11; contrary to MCL 750.478.

Defendants rely, in part, on the case *People v. Waterstone*, in arguing that Count 21 supersedes Counts 12-15 (as applicable to the individual Defendants) and Count 20. 2012 WL 1192137 (April 10, 2010). The *Waterstone* case involved a former Wayne County Circuit Court Judge Mary Waterstone who was charged with four counts of felony misconduct in office under MCL 750.505. *Id.* The case goes into a thorough analysis of the interplay of the common law offense of MCL 750.505 and the statutory offense of Willful Neglect of Duty under MCL 750.478.

The Michigan Supreme Court has defined common law misconduct in office as:

At common law, misconduct in office was defined as “corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office.” *People v Coutu*, 459 Mich 348, 354; 589 NW2d 458 (1999) . . . , quoting Perkins & Boyce, *Criminal Law* (3d ed), p 543. An officer could be convicted of misconduct in office (1) for committing any act which is itself wrongful, malfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance.

People v Perkins, 468 Mich 448, 540; 662 NW2d 727 (2003). The *Waterstone* Court then examined the meaning behind the statutory violation of Willful Neglect of Duty under MCL 750.478. After examining previous case law, the Court concluded:

[I]t is readily evident from the plain and unambiguous language of the statute, that MCL 750.478 is a statutory provision that makes it a violation of law for a public officer to willfully neglect to perform a legal duty; it squarely concerns omissions of duty. Stated otherwise, MCL 750.478 criminally punishes a public officer for “failing to perform any act that the duties of the office require of the officer, nonfeasance.” *Perkins*, 468 Mich at 456. It thus appears that the crime of willful neglect of duty under MCL 750.478 is the same as the crime of misconduct in office under the common law in relationship to a nonfeasance theory of prosecution.

2012 WL 1192137 at 8. The Court goes on to explain that Willful Neglect of Duty encompasses nonfeasance acts as it pertains to “ministerial or nondiscretionary acts.” *Id.* Therefore, in order to be charged under MCL 750.478, a defendant must have (1) had a legal duty to act and (2) failed

to act. The *Waterstone* Court then explains how these requirements are different than that of Misconduct in Office as it pertains to malfeasance or misfeasance. The Court explains:

[C]ommitting nonfeasance or acts of malfeasance or misfeasance are not enough to constitute misconduct in office. In the case of malfeasance and misfeasance, the offender also must act with a corrupt intent, i.e., with a “sense of depravity, perversion or taint.” In the case of nonfeasance, an offender must willfully neglect to perform the duties of his office.

Id. at 10. The Court proceeded to dismiss all four common law counts of misconduct in office against the defendant because “*all four charges*¹³ [were] predicated on nonfeasance and nonfeasance alone, and the counts themselves are drafted in terms of willful neglect of duty.” *Id.* at 6. Thus, the Court held that all four charges should be dismissed because MCL 750.478 was more applicable and when there is a statutory provision that expressly punishes the charged offense that provision must be charged. *Id.*

In this case, the Defendants¹⁴ argue that the charge of Willful Neglect of Duty under MCL 750.478 contain the same elements of the common law count of Misconduct in Office and must be dismissed under the *Waterstone* case. However, the mere presence of both Willful Neglect of Duty and Misconduct in Office in the People’s Complaint is not necessarily enough to automatically warrant dismissing all common law charges.

In *Waterstone*, the Court was very specific in looking at the complaint and the statutes and determining which one was appropriate. The Court concluded that the allegations were ones of nonfeasance of a legal public duty, which constituted Willful Neglect of Duty. Here, Counts 12-15¹⁵ allege creating and submitting false expense reports for fraudulent purposes. The Defendants had a legal duty to submit reports regarding their activities, however the Defendants

¹³ Counts 12 through 15 against *Waterstone* had one important feature in common; they all charge defendant with “willfully neglecting her judicial duties.” *Id.* at 6.

¹⁴ Articulated in Defendant Balzer’s Brief in Opposition to Bind Over, however supported by all Defendants charged in Counts 12-15, 20, and 21.

¹⁵ As applicable to each individual Defendant; and fully laid out in Footnote 10.

allegedly misrepresented the actual activities and monetary amounts involved. Thus, the Defendants were involved in a lawful act of submitting their reports, but in a wrongful manner; thus committing misfeasance. Since this act was allegedly done with the intent to steal or embezzle, the needed element of fraud or corruption is also met. This was an affirmative act done in a wrongful manner with a corrupt intent. Therefore, Misconduct in Office is the appropriate charge for this alleged conduct.

Count 20¹⁶ also alleged Misconduct in Office and has two main allegations. The first main allegation pertains to certain lewd and immoral acts allegedly conducted during an investigation. The second main allegation pertains to submitting false reports as it pertains to that investigation. The first main allegation is an act that is within itself wrongful. It is alleged that these acts were done knowingly and with a fraudulent intent. Thus, the first main allegation would constitute malfeasance. The second main allegation, as discussed above, is an affirmative act done in a wrongful manner with corrupt intent. So, the second main allegation would constitute misfeasance¹⁷. Therefore, Misconduct is the appropriate charge for this alleged conduct. This conduct is also separate and distinct from that alleged in Counts 12-15, and thus both can be charged against Defendants.

Count 21¹⁸ alleges Willful Neglect of Duty but as it pertains to not reporting the illegal activities allegedly going on at The Landing Strip and Subi's Place. Officers have a duty to report and prevent crimes. The allegations state that these officers were aware of crimes taking place and did nothing about it, thus constituting nonfeasance. This is different from Count 20 where it is alleged that the Defendants themselves engaged in illegal activity. It is also different from Counts 12-15 where it is alleged that the Defendants submitted false reports outside the

¹⁶ As fully laid out in Footnote 11.

¹⁷ The alleged misfeasance in this Count is separate and distinct from that in Counts 12-15.

¹⁸ As fully laid out in Footnote 12.

year long investigation. Since this Count alleges a failure to act where a legal duty existed, Willful Neglect of Duty is the appropriate charge for this alleged conduct.

Therefore, Counts 12-15, 20, and 21 all represent separate and distinct conduct. Counts 12-15 and 20 allege misfeasance and malfeasance with a corrupt intent and thus constitute the common law crime Misconduct in Office. Count 21 alleges nonfeasance and thus constitutes the statutory crime of Willful Neglect of Duty.

This Court finds that under the jurisprudence of Michigan all these Counts may be charged together.

IV. Sufficiency of Evidence and Burden to Bind Defendants Over to Circuit Court

A. District Court's Standard of Review for Preliminary Examinations

The primary function of a preliminary examination is to determine whether a felony has been committed and, if so, whether there exists probable cause to believe that the defendant committed the felony. *People v. Waltonen*, 272 Mich.App. 678, 680 (2006)(citing *People v Yost*, 468 Mich 122, 125-126; 659 NW2d 604 (2003), citing MCL 766.13). Probable cause requires evidence sufficient to make a person of ordinary caution and prudence to conscientiously entertain a reasonable belief of the defendant's guilt. *Id.* The magistrate, however, need not be without doubts regarding guilt. *Id.* Following the conclusion of the preliminary examination, if it appears to the district court that there is probable cause to believe that a felony was committed and that the defendant committed it, the court must bind the defendant over for trial. *Id.* citing MCL 766.13; MCR 6.110(E).

B. Count 1: Criminal Enterprises-Conducting (Michael St. Andre, Balzer, Landry, and Hopkins)

Count 1 of the Complaint is against Michael St. Andre, Balzer, Landry, and Hopkins and alleges Criminal Enterprise in violation of MCL 750.159i(1), which states, in part, “[a] person shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.” In the Michigan Court of Appeals case *People v. Martin*, the Court stated that in order to prove the crime of racketeering the People must show that,

(1) an enterprise existed, (2) defendant was employed by or associated with the enterprise, (3) defendant knowingly conducted or participated, directly or indirectly, in the affairs of the enterprise, (4) through a pattern of racketeering activity that consisted of the commission of at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain.

271 Mich.App. 280, 320-321 (2006).

First, as it pertains to whether an enterprise existed, MCL 750.159f(a) defines an enterprise as “individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, governmental unit, or other legal entity or a group of persons associated in fact although not a legal entity. Enterprise includes illicit as well as licit enterprises.”

All of the RPD-SIU Defendants were assigned to RPD-SIU during various times during the Relevant Time Period. Each Defendant allegedly repeatedly and systematically submitted materially false expense reports and “Chits” to the same confidential informants. Each Defendant allegedly also repeatedly sought reimbursement for expenditures of Subway Restaurant products through their submission of “Preliminary Receipts” which inflated the actual cost of the products as is supported by testimony from the Preliminary Examination. Therefore, an enterprise existed as it is defined by MCL 750.159f(a).

Second, all Defendants listed under this count were at some point employed by the Romulus Police Department during the Relevant Time Period. Third, the Defendants listed under this count knowingly participated in the enterprise.

Fourth, the Defendants must have “at least two racketeering offenses that (a) had the same or substantially similar purpose, result, participant, victim, or method of commission, or were otherwise interrelated by distinguishing characteristics and are not isolated acts, (b) amounted to or posed a threat of continued criminal activity, and (c) were committed for financial gain.”¹⁹

Defendants Michael St. Andre, Balzer, Landry, and Hopkins argue that there has not been sufficient evidence introduced to bind over Count 1. Defendants argue that the People’s three main witnesses: David Ciochetto, Milton DaSilva, and Mahmoud Farha lack credibility in order to support a bind over to Circuit Court. Defendants rely on case law that states an examining judge during a preliminary hearing may consider the credibility of the witnesses. *People v. Paille*, 383 Mich. 621, 621 (1970). In *Paille*, the District Court Judge did not bind over a case to Circuit Court due to lack of credible witnesses. *Id.* The District Court Judge noted in his opinion, “in spite of [the witnesses’] eagerness their incredible testimony could not possibly convince a disinterested arbiter of facts of their good faith or their truthfulness . . . [t]heir calculated prevarication to the point of perjury was so blatant as to defeat its object.” *Id.* at 624. In reviewing the District Court’s decision, the Supreme Court held, “[i]n determining whether the crime . . . had been committed, the magistrate had not only the right but, also, the duty to pass judgment not only on the weight and competency of the evidence, but also the credibility of the witnesses.” *Id.* at 627.

¹⁹ MCL 750.159f(c)

This standard is not met in the present case. A witness's criminal history or negative quality traits does not necessarily render the entire testimony a "calculated prevarication to the point of perjury." Whether there are conflicts or inconsistencies in a witness's testimony or with the testimony of others is a determination the Jury makes.

Additionally, Defendant Michael St. Andre argues that the People have failed to present sufficient evidence that he used the money for personal financial gain. However, the People have presented testimony from Ms. Linda McNeil and Ms. Marsha Gilstorf that Defendant Sandra St. Andre claimed that Defendant Michael St. Andre gave her \$15,000 from stolen forfeiture funds to purchase "Sandra's Always Tan."

Defendants Balzer and Landry also argue that given the informal nature of the submission of expense reports, including the "Chits," and the continued pressure from the department to seize more forfeiture funds, there is not enough evidence presented to establish by probable cause that a conspiracy existed.

The People have shown the following through the submission of various Exhibits: Defendant Michael St. Andre submitted over 152 separate and distinct false "Chits" or receipts that were appended to his expense reports for a total of \$30,054.82. Defendant Balzer submitted over 65 separate and distinct false "Chits" or receipts that were appended to his expense reports for a total of \$9,677.77. Defendant Landry submitted, or aided and abetted others in submitting over 21 separate and distinct false "Chits" or receipts that were appended to his expense reports for a total of \$1,449.48. Defendant Hopkins submitted, or aided and abetted others in submitting, over 53 separate and distinct false "Chits" or receipts that were appended to his expense reports for a total of \$4,968.85.

All of these actions were similar in nature, had a common purpose, had a common victim of the City of Romulus, and there was a threat of continued criminal activity given the length and number of times these submissions occurred.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre, Balzer, Landry, and Hopkins on Count 1 of Criminal Enterprise-Conducting.

C. Count 2 – Criminal Enterprise Acquire Maintain (Defendant Michael St. Andre and Defendant Sandra St. Andre)

Count 2 of the People’s Information alleges Defendants Michael and Sandra St. Andre knowingly acquired or maintained an ownership or beneficial interest in the tanning salon, “Sandra’s Always Tan,” with proceeds derived from embezzled City of Romulus-owned forfeiture funds in violation of MCL 750.159i(3).

According to MCL 750.159i(3),

(3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of racketeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.

As to the element of knowledge for Defendant Michael St. Andre, Mr. Mahmoud Farha testified that Defendant Michael St. Andre would ask for a “bigger receipt” than what reflected the actual amount spent. CI 180 testified that many of the “Chits” Defendant Michael St. Andre had submitted for reimbursement had never actually been paid to CI 180. This testimony, along with the expense reports and other evidence submitted by the People, is enough to establish by a probable cause standard that Defendant Michael St. Andre knowingly was engaged in racketeering activity as further discussed in Count 1.

As to the element of knowledge for Defendant Sandra St. Andre, Mr. John Leacher, a police captain with the Romulus Police Department, testified that Defendant Sandra St. Andre informed him how Defendant Michael St. Andre reported that he made multiple bets with a bookie and that if the bet was won, Defendant Michael St. Andre would keep the money; and if they lost, then it was simply a cost of the undercover operation. According to Defendant Sandra St. Andre, Defendant Michael St. Andre made thousands of dollars doing this. Mr. Leacher also testified about how Defendant Sandra St. Andre claimed that Defendant Michael St. Andre would give her “Chit” money while at various casinos. She claimed that he told her if she lost not to worry about it. This testimony along with the other evidence submitted by the People is enough to establish by a probable cause standard that Defendant Sandra St. Andre knowingly received proceeds either directly or indirectly from a pattern of racketeering activity.

Defendant Michael St. Andre argues that Defendant Sandra St. Andre’s statements about her husband are not admissible against her husband because they were not used in furtherance of a conspiracy²⁰. Defendant Michael St. Andre’s statements to his wife, which were later relayed to three separate witnesses, would constitute hearsay within hearsay.²¹ Hearsay within hearsay may not be admitted unless both statements²² satisfy an exception to the hearsay rule. *People v. Hawkins*, 114 Mich.App. 714, 719; 319 N.W.2d 644 (Mich.App. 1982). However, the statements can be offered for nonhearsay purposes including, but not limited to, to show that Defendant Michael St. Andre used a common scheme to embezzle, had knowledge what he was doing was a crime, had intent to keep the money, and/or intent to continue with the scheme.²³

²⁰ Such statements are admissible against Defendant Sandra St. Andre under 801(d)(2)(A).

²¹ Also known as “double hearsay.”

²² Or, unless each “level” has an exception.

²³ All of such examples also are elements required in Count 2.

Both Ms. McNeil and Ms. Gilstorf, as previously discussed, met with Defendant Sandra St. Andre when she explained that Defendant Michael St. Andre had embezzled money from the forfeiture fund and used and/or gave \$15,000 of that money to Defendant Sandra St. Andre for the purchase of "Sandra's Always Tan." This statement can be unconditionally used against Defendant Sandra St. Andre and supports the claim that she knew she received those funds as a result of embezzlement.

This testimony, along with the other evidence submitted by the People, is enough to establish by probable cause standard that Defendants Michael and Sandra St. Andre's acts posed a threat of continued criminal activity; such acts were committed for financial gain; and the Defendants did directly or indirectly use or invest any of those proceeds, or proceeds derived from the use or investment of those, in the acquisition of any title to, or right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre and Sandra St. Andre on Count 2 of Criminal Enterprise-Acquire Maintain.

D. Count 3 – Criminal Enterprise (Defendant Michael St. Andre, Defendant Sandra St. Andre, Defendant Balzer, Defendant Landry, and Defendant Hopkins)

Count 3 of the People's Information alleges Defendants Michael St. Andre, Sandra St. Andre, Balzer, Landry, and Hopkins conspired together to knowingly conduct or participate in the affairs of an enterprise directly or indirectly through a pattern of racketeering activity²⁴ and/or knowingly acquired or maintained an interest or control of certain real and/or personal property²⁵ in violation of MCL 750.159i(4).

MCL 750.159i(4) states that "[a] person shall not conspire or attempt to violate subsection

²⁴ As set out in Count 1, Section III, B.

²⁵ As set out in Count 2, Section III, C.

(1)²⁶, (2)²⁷, or (3)” of MCL 750.159i. The crux of the offense of conspiracy is the unlawful agreement between two or more persons to commit a crime. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). “Establishing a conspiracy requires evidence of specific intent to combine with others to accomplish an illegal objective.” *Id.* However, direct proof of the conspiracy is not required. *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997). Instead, the circumstances, acts, and conduct of the parties may be used to establish the offense, *id.*, and a *formal* agreement need not be proven. *People v Taurianen*, 102 Mich App 17, 31; 300 NW2d 720 (1980).

Conspiracy “is a crime that is separate and distinct from the substantive crime that is its object.” *People v Denio*, 454 Mich. 691, 712; 564 NW2d 13 (1997). The “crime of conspiracy does not merge into the offense committed in furtherance of the conspiracy.” *Id.* Therefore, Defendants can be charged with Counts 1, 2, and 3 without any repetition or double jeopardy violations.

The Court agrees with the People’s argument that the RPD-SIU CCE Defendants’ creation and submission of the expense reports constitute party admissions and can be used against the submitting officer as well as used against the other officers to show the existence of a conspiracy.²⁸ The Court also agrees with the People’s argument that the common mechanism used to perpetrate these crimes, the common methods through the submission of false expense reports, including fictitious payments to the same confidential informants, and the signing of each other officer’s “Chits” is enough to show by a probable cause standard that a conspiracy existed. As it pertains to Defendant Sandra St. Andre, she told three separate witnesses²⁹ about

²⁶ Fully set out in Count 1, Section III, B.

²⁷ Fully set out in Count 2, Section III, C.

²⁸ As discussed in Section I, this is a permissible nonhearsay use against the nonsubmitting officers.

²⁹ As more fully discussed in Section III, C.

her knowledge of her husband siphoning money from the City of Romulus.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre, Sandra St. Andre, Balzer, Landry, and Hopkins on

Count 3 – Criminal Enterprise – Conspiracy.

E. Counts 4 through Count 7 – Embezzlement – Public Official over \$50.00 (Defendant Michael St. Andre, Defendant Balzer, Defendant Landry, and Defendant Hopkins)

Counts 4 through 7 of the People’s Information allege individually Embezzlement by a Public Official over \$50.00 against Defendants Michael St. Andre, Balzer, Landry, and Hopkins in violation of MCL 750.175.

MCL 750.175, Embezzlement by a public official, states:

Embezzlement by public officer, his agent, etc.—Any person holding any public office in this state, or the agent or servant of any such person, who knowingly and unlawfully appropriates to his own use, or to the use of any other person, the money or property received by him in his official capacity or employment, of the value of 50 dollars or upwards, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by fine of not more than 5,000 dollars.

In any prosecution under this section the failure, neglect or refusal of any public officer to pay over and deliver to his successor all moneys and property which should be in his hands as such officer, shall be prima facie evidence of an offense against the provisions of this section.

The People argue that each of the RPD-SIU CCE Defendants have committed a multitude of felonious acts in support of bind over as to Counts 4 through 7. The People have alleged the following through the submission of various Exhibits: Defendant Michael St. Andre submitted over 152 separate and distinct fraudulent “Chits” or receipts that were appended to his expense reports for a total of \$30,054.82. Defendant Balzer submitted over 65 separate and distinct fraudulent “Chits” or receipts that were appended to his expense reports for a total of \$9,677.77. Defendant Landry submitted, or aided and abetted others in submitting, over 21 separate and

distinct fraudulent “Chits” or receipts that were appended to his expense reports for a total of \$1,449.48. Defendant Hopkins submitted, or aided and abetted others in submitting, over 53 separate and distinct fraudulent “Chits” or receipts that were appended to his expense reports for a total of \$4,968.85.

Defendants argue that there is no credible evidence to support a finding that Defendants embezzled any money, let alone more than \$50. Defendants also argue that there is no credible testimony that the money allegedly taken was converted for personal use. The Defendants also argue that the \$50 requirement cannot be an aggregate claim and the Subway receipts were never proven to be fraudulent.

As the People correctly pointed out³⁰, the submission of materially false expense reports and corresponding support documentation establishing that the at-issue monies were not spent as claimed is more than sufficient to support an inference that the RPD-SIU CCE Defendants were converting the funds for their own personal use.³¹

Here, Defendants did hold a public office or were the agent or servant of a public officer during the Relevant Time Period. The People have presented testimony that Defendants received money from the department that allegedly went to pay for expenses. The People also presented evidence from confidential informants, who were included on the expense reports as to receiving payment, but did not receive the alleged payments.

Given the alleged number of times of the embezzling, Defendants did such actions knowingly. Last, the People have presented evidence that the amount is more than \$50 as to each of the RPD-SIU CCE Defendants.

³⁰ See People’s Reply Brief page 10.

³¹ See *People v. Madejczyk*, No. 228023, 2003 WL 124302 (Mich.App. January 14, 2003).

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre, Balzer, Landry, and Hopkins on Counts 4 through 7 – Embezzlement of a Public Official of over \$50, as applicable.

F. Counts 8 through Count 11 – Uttering and Publishing (Defendant Michael St. Andre, Defendant Balzer, Defendant Landry, and Defendant Hopkins)

Counts 8 through 11 of the People’s Information alleges Defendants Michael St. Andre, Balzer, Landry, and Hopkins uttered and published false documents in an effort to defraud the City of Romulus in violation of MCL 750.249.

MCL 750.249(1), uttering and publishing, states:

A person who utters and publishes as true a false, forged, altered, or counterfeit record, instrument, or other writing listed in section 248 knowing it to be false, altered, forged, or counterfeit with intent to injure or defraud is guilty of a felony punishable by imprisonment for not more than 14 years.

The People argue as in the previous section that the number of “Chits” and expense reports filed falsely meet the elements of this crime.

Defendants argue that the expense reports are merely a collection of receipts and not a legal document as required for MCL 750.249. Defendants rely on the definition set out in MCL 750.248.

The statute does not specifically require that the document be a legal document but rather a “record, instrument, or other writing listed in section 248.” (emphasis added). The expense report submitted by a public officer to receive money from the City of Romulus falls within the category of a record. The People have presented testimony and evidence to show that Defendants took this money and it is a reasonable inference to assume the Defendants used the money for their own financial gain.

As discussed above, the submission of false expense reports and false supporting documents submitted with the expense reports presents a reasonable inference the money was ~~spent wrongly and for the Defendants' personal use.~~

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre, Balzer, Landry, and Hopkins on Counts 8 through 11 -- Uttering and Publishing.

G. Count 12 through Count 15 – Common Law Offenses (Defendant Michael St. Andre, Defendant Balzer, Defendant Landry, and Defendant Hopkins)³²

Counts 12 through 15 of the People's Information allege individually Misconduct in Office against Defendants Michael St. Andre, Balzer, Landry, and Hopkins. This common law crime has been generally codified in MCL 750.505. Specifically, the People alleged that the Defendants created and submitted expense reports and corresponding documentation that contained materially false and misleading information and misappropriated, embezzled, and fraudulently converted money to their own use which belonged to the City of Romulus.³³

This crime is published in the non-standard jury instruction in Michigan section 30:6, which states:

(1) The defendant either committed an act which is itself wrong, referred to in the law as malfeasance, or committed a lawful act in a wrongful manner, referred to in the law as misfeasance, or failed to perform an act that the duties of the office required, referred to in the law as nonfeasance;

(2) In the case of malfeasance and misfeasance, the defendant acted with corrupt intent, or in other words, acted with a sense of depravity, perversion, or taint. In the case of nonfeasance, the defendant willfully neglected to perform the duties of his office;

(3) The defendant's wrongdoing resulted from or directly affected the performance of his official duties.

For this offense, it is necessary not only that the defendant be a holder of public office, but that the misconduct, if not actually done in the exercise of the duties of his

³² As discussed in Section III, these counts are separate offenses than those alleged in Count 20 and 21.

³³ Fully laid out in Footnote 10.

office, must be done under color of his office. On the other hand, the act of one which is done because he is an officer, or because of the opportunity afforded him by that fact, is done under color of his office.

~~The People argue that these Defendants had a duty to keep and file accurate reports~~

including expense reports. By submitting false expense reports, each of the RPD-SIU Defendants committed Misconduct in Office. The People argue that because each of the RPD-SIU CCE Defendants were public officers at the time of their alleged repeated instances of misfeasance, conducted with corrupt intent, and their wrongdoing resulted directly in connection with the alleged performance of their duties and under color of their office, they should be bound over for Counts 12 through 15, as applicable.

The Defendants argue that this Count should be dismissed because there is a more appropriate provision expressed by statute. This argument is fully discussed in Section III.

This Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre, Balzer, Landry, and Hopkins on Counts 12-15, individually, Misconduct in Office.

H. Count 16 – Taxes-Failure to File/False Returns (Defendant Michael St. Andre and Defendant Sandra St. Andre)

Count 16 of the People's Information alleges Failure to File or Filing False Tax Returns against Defendants Michael and Sandra St. Andre in violation of MCL 205.27(1)(a), which states:

(1) In the performance of the duties and responsibilities required by a statute, the administration of which is subject to this act, a person shall not do any of the following:

(a) Fail or refuse to make a return or payment within the time specified, make a false or fraudulent return or payment, or make a false statement in a return or payment.

In order to bind Defendants Michael and Sandra St. Andre over on this count, the People must show by a probable cause standard that the Defendants (1) “made a false statement on a tax return, and (2) defendant did so with an intent to defraud or to evade the payment of a tax or part of a tax.” People v. Jones, No. 216956, 2001 WL 1277348 (Mich.App. October 23, 2001).

The People argue that there has already been sufficient evidence presented to establish that Defendant Michael St. Andre siphoned money from the City of Romulus numerous times and in excess of \$20,000³⁴. The People also argue that sufficient evidence has been established to show that Defendant Sandra St. Andre knew the proceeds were derived from illegal activities of Defendant Michael St. Andre³⁵. The People have also attached the Defendants’ tax returns for the years 2006, 2007, and 2008. None of these tax returns include information about the alleged embezzled money.

Defendant Sandra St. Andre argues that no evidence has been offered to prove that she personally received any money gained through illegal activity, which is a prerequisite to being able to proving Count 16. Defendant Michael St. Andre argues that there is no evidence that he ever kept the money or converted it for personal use.

There is testimony from John Leacher about how Defendant Sandra St. Andre would receive money from Defendant Michael St. Andre knowing it was department money then go to the casino and gamble with that money. As it pertains to Defendant Michael St. Andre, there is testimony from CIs as well as evidence from his expense reports showing he received a greater amount of money than he actually spent.

As shown in the People’s Exhibits 11-13, none of this money was reported in the Defendants tax returns.

³⁴ As explained more fully in Section III, B and C.

³⁵ As explained more fully in Section III, C.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael and Sandra St. Andre on Count 16 – Failure to File or Filing False Tax Returns.

I. Count 17 – Obstruction of Justice (Defendant Michael St. Andre)

Count 17 of the People’s Information alleges Obstruction of Justice against Defendant Michael St. Andre. This common law crime has been generally codified in MCL 750.505. “An obstruction of justice has been defined as an interference with the orderly administration of the law.” *People v Ormsby*, 310 Mich. 291, 299; 17 N.W.2d 187 (1945). See also 58 Am Jur 2d, Obstructing Justice, § 2, p 855, and 67 CJS, Obstructing Justice or Governmental Administration, §§ 2-3, pp 120-121. “It was an offense at common law to wilfully and corruptly hamper, obstruct, and interfere with a proper and legitimate criminal investigation.” 67 CJS, Obstructing Justice or Governmental Administration, § 9, p 134.

The People argue that Defendant Michael St. Andre attempted to secure CI 180’s assistance in covering up the RPD-SIU CCE Defendants’ fraudulent scheme through an unsolicited payment of \$500 and a subsequent demand that RPD-CI 180 “cover all the Chits and everything.”

The People argue that this is supported by a recorded telephone conversation that occurred on March 5, 2009. The People allege that during this telephone conversation Defendant Michael St. Andre requested the RPD-CI 180 make false statements of fact to the MSP and/or FBI pertaining to the “Chits.”

Defendant Michael St. Andre argues that there is no evidence that he actually gave CI 180 money for anything other than doing his job.

Here, the People have put on the record as well introduced as an exhibit evidence that Defendant Michael St. Andre told CI 180 to tell MSP and/or FBI that the CI had received all the money listed in the expense reports³⁶, "Chits." Also, there is the testimony from CI 180 detailing that encounter that Defendant Michael St. Andre and he had regarding the "Chits."

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendant Michael St. Andre on Count 17 – Obstruction of Justice.

J. Count 18 – Witnesses-Bribing/Intimidating/Interfering-Criminal Case Punishable by more than 10 years (Defendant Michael St. Andre)

Count 18 of the People's Information alleges Bribing, Intimidating, or Interfering with a Witness against Defendant Michael St. Andre in violation of MCL 750.122(7)(b). The People must show by a probable cause standard that Defendant Michael St. Andre (1) (a) gave, offered to give, or promised money to a witness in an effort to discourage the individual from attending as a witness, testifying, or giving information at a criminal case, and/or (b) willfully impeded, interfered with, prevent, or obstruct or attempt to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for; (2) case where the crime was punishable by maximum term of imprisonment of more than 10 years, or imprisonment for life or any term of years. MCL 750.122(7)(b).

The People presented an audio recording made by CI 180 having a discussion with Defendant Michael St. Andre. In the recording, Defendant St. Andre handed CI 180 \$500 for his work at the "Playhouse" bar but informed CI 180 to "not bother going." CI 180 testified this was the first time he had ever received money "for nothing."³⁷

³⁶ Tr. at 475; PX-33

³⁷ Tr. at 459-472.

Defendant Michael St. Andre again argues that there is no evidence to support that this was done to bribe CI 180 but was rather payment for work done for the Romulus Police Department.

Based on CI 180's recordings and supporting testimony, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendant Michael St. Andre on Count 18 - Bribing, Intimidating, or Interfering with a Witness.

K. Count 19 – Stolen Property-Receiving and Concealing - \$20,000 or more (Defendant Michael St. Andre and Defendant Sandra St. Andre)

Count 19 of the People's Information alleges that Defendant Michael and Sandra St. Andre received, concealed, and aided in the concealment of over \$20,000 in City of Romulus Forfeiture Proceeds in violation of MCL 750.535(2)(a).

According to MCL 750.535(1-2a):

(1) A person shall not buy, receive, possess, conceal, or aid in the concealment of stolen, embezzled, or converted money, goods, or property knowing, or having reason to know or reason to believe, that the money, goods, or property is stolen, embezzled, or converted.

(2) If any of the following apply, a person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the property purchased, received, possessed, or concealed, whichever is greater, or both imprisonment and a fine:

(a) The property purchased, received, possessed, or concealed has a value of \$20,000.00 or more.

As it pertains to Defendant Sandra St. Andre, Mr. John Leacher testified that Defendant Sandra St. Andre explained to him how her husband was taking money from the forfeiture fund and they were both using it while gambling and at casinos. Both Ms. McNeil and Ms. Gilstorf also testified that on a different occasion Defendant Sandra St. Andre admitted that part of her business, "Sandra's Always Tan," was purchased with forfeiture funds.

As it pertains to Defendant Michael St. Andre, the People have introduced expense reports submitted by Defendant Michael St. Andre, testimony from CI 180 about not being paid despite receipts from Defendant Michael St. Andre saying that he was, testimony from Mr. Farha regarding being asked to enlarge the receipts from his restaurant for Defendant Michael St. Andre, and Defendant Sandra St. Andre's statements.³⁸

The exhibits of Defendant Michael St. Andre's expense reports, as well as Defendant Sandra St. Andre's statements, establish by a probable cause standard that Defendant Michael and Sandra St. Andre received and/or concealed more than \$20,000, which Defendant Sandra St. Andre both knew about, received, and aided in concealment.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Michael St. Andre and Sandra St. Andre on Count 19 of Stolen Property: Concealing and Receiving more than \$20,000.

L. Count 20 – Common Law Offenses (Defendant Balzer, Defendant Landry, Defendant Channells, and Defendant Droege)³⁹

Count 20 of the People's Information alleges that Defendants Balzer, Landry, Channells, and Droege willfully and intentionally engaged in lewd, immoral, and/or sexual acts with another for personal gratification in violation of MCL 750.505⁴⁰.

The People argue that during the year long investigation, the RPD-SIU 10-86 Defendants made numerous trips to the strip clubs known as The Landing Strip and Subi's Place. CI 180 testified that he had interactions with Defendants Balzer, Landry, Channells, and Droege. CI 180 testified that he went into both The Landing Strip and Subi's Place each twice during the year 2010 as part of the investigation. CI 180 testified that while with the RPD-SIU 10-86 Defendants

³⁸ As discussed under Count 2, these statements maybe used for nonhearsay purposes such as to show knowledge and intent to conceal or embezzle.

³⁹ As fully discussed, this is a separate crime than those alleged in Counts 12-15 and 21.

⁴⁰ Fully set out in Footnote 11.

at these clubs they would drink and act like normal customers. CI 180 also explained how the Defendants would tell him about being involved in sexual acts at the clubs.⁴¹

CI 180 specifically identified Defendant Balzer as receiving fellatio both at the Landing Strip and at Subi's. He stated that Defendant Landry reported some sort of sex act at the Landing Strip. CI 180 could not remember what Defendant Droege said but did remember him going into the VIP room. Last, CI 180 stated that Defendant Channells was in the VIP room and the dancer did some sexual act.⁴²

CI 180 testified that on May 7, 2010, Defendant Balzer called him and asked him to lie and say he had sexual contact with the dancers on May 6, 2010. CI 180 states that he did not have any sexual contact with the dancers on May 6th, the date of the report written by Defendant Channells.

The People argue that this supports the argument that the RPD-SIU 10-86 Defendants did not advance any legitimate investigation; thus, all the sexual acts were for personal gratification. This would constitute a wrongful act, malfeasance, and thus would qualify as Misconduct in Office.

Defendants argue that the Corpus Delicti Rule bars this Count from bind over. Defendant Balzer articulated, which was supported by the other RPD-SIU 10-86 Defendants, that the only evidence offered by the Prosecution were the police reports submitted by the Defendants. Defendants argue that outside the alleged confessions there is no independent proof that the Defendants engaged in lewd behavior.

First, this Court agrees with the People that such reports are not considered "confessions" as those protected under the Corpus Delicti Rule. The People distinguish correctly that there is a

⁴¹ Tr. at 480-486

⁴² Tr. at 487-488

difference between an admission of fact and a confession of guilt. If every admission by a defendant was also considered a confession, then there would be no need for a specific hearsay exemption for a defendant's admissions.⁴³ Upon reviewing the reports, the Court finds that the statements contained within are only admissions and do not rise to the level of a confession of guilt.

The Court also finds that the admissions contained in File 10-86 (Exhibit 34) are more than sufficient evidence to establish by probable cause that the RPD-SIU 10-86 Defendants committed Misconduct in Office by intentionally engaging in lewd, immoral, and/or sexual acts for personal gratification.

Even ignoring the fact that the reports constitute an admission not a confession, there was independent evidence to establish the existence of a crime. Besides the alleged statements made by the Defendants, CI 180 testified to witnessing the Defendants entering the VIP room. He also testified that he was asked to lie about receiving sexual acts that he did not in fact receive, but allegedly that Defendant Channells had received. Both of these facts are outside the alleged confessions and thus can be used to satisfy the Corpus Delicti Rule.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendants Balzer, Landry, Channells, and Droege on Count 20 -- Misconduct in Office.

M. Count 21 – Public Officer-Willful Neglect of Duty (Defendant Balzer, Defendant Landry, Defendant Channells, and Defendant Droege)⁴⁴

This is a misdemeanor and thus will get bound over with the rest of the Counts.

N. Count 22 – Common Law Offenses (Defendant Channells)

⁴³ MRE 801(d)(2).

⁴⁴ As fully explained in Section III, this is a separate chargeable crime that Counts 12-15 and 20.

Count 22 of the People's Information alleges Defendant Channells did commit Misconduct in Office, an indictable offense at common law in violation of MCL 750.505. The People allege that on or about on May 6, 2010, Defendant Channells intentionally made a false report in connection with certain improper and/or illegal activities occurring in or around 12916 Northline, Southgate, Michigan, also known as "Subi's Place."

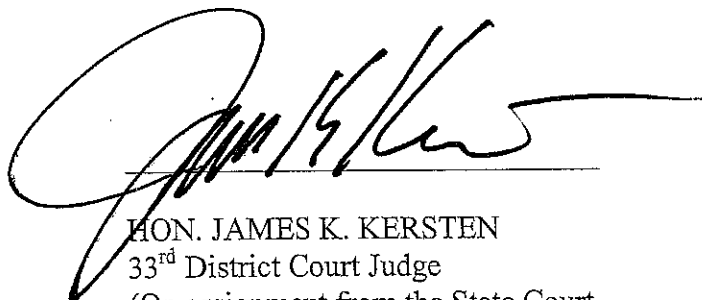
The People argue that Defendant Channells reports regarding the investigation of The Landing Strip and Subi's Place contain numerous misstatements of material fact. Defendant Channells reported on May 6, 2010, that CI 180 received fellatio on two separate occasions. However, CI 180 testified that he did not receive fellatio on May 6, 2010 and was asked to lie about it by Defendant Balzer.

Therefore, this Court finds that there is sufficient evidence to establish probable cause to bind over Defendant Channells on Count 22 – Common Law Offenses.

CONCLUSION

As discussed at length above, this Court finds that there is sufficient evidence on record to establish probable cause on all Counts. Thus, this Court orders bind over on all Defendants for all Counts.

Date: 9-26-12



HON. JAMES K. KERSTEN
33rd District Court Judge
(On assignment from the State Court
to the 34th District Court)