

Reverse and Remand and Opinion Filed July 10, 2017



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00939-CR

No. 05-16-00940-CR

**THE STATE OF TEXAS, Appellant
V.
GEORGE DAVID RINGER, Appellee**

**On Appeal from the 203rd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F11-00284-P & F11-00285-P**

MEMORANDUM OPINION

Before Justices Francis, Brown, and Schenck
Opinion by Justice Francis

The State of Texas appeals the trial court's orders granting motions to quash the indictments filed against George David Ringer. In a single issue, the State contends the trial court erred in determining appellee did not receive sufficient notice as a matter of law. Because we conclude the information provided to appellee was sufficient to inform him of the nature of the accusations against him, we reverse the trial court's orders and remand both causes for further proceedings.

On June 7, 2011, appellee was indicted for theft of property and misapplication of fiduciary property with aggregate values of \$200,000 or more in each case. The indictment for the theft offense alleged appellee,

did pursuant to one scheme and continuing course of conduct, unlawfully appropriate property, i.e., acquire and exercise control over property other than real property, to wit: MONEY, the aggregate value of which was \$200,000 or more, without the effective consent of SOLAR SOCCER CLUB, the owner of the said property, in that there was no consent given and with intent to deprive the said owner of the said property, and without the said owner's effective consent, in that the defendant did induce consent by deception, i.e., by creating and confirming by words and conduct a false impression of fact that was likely to affect the judgment of another in the transactions, and the defendant did not believe to be true.

The indictment for misapplication of fiduciary property alleged appellee,

did intentionally, knowingly, and recklessly pursuant to one scheme and continuing course of conduct, misapply property, i.e., deal with property, to wit: MONEY, the aggregate value of which was \$200,000.00 or more, which the defendant held as a fiduciary, contrary to an agreement under which the defendant held the said property and in a manner that involved substantial risk of loss to SOLAR SOCCER CLUB, the owner of the said property, by MAKING UNAUTHORIZED PAYMENTS TO G. DAVID RINGER, P.C.

In both indictments, Mark Scholten, the current president of Solar Soccer Club, was listed as the complainant. The formal complaints signed by Scholten both stated,

Solar Soccer Club ("Solar") is a 501(c)(3) not-for-profit youth competitive soccer club comprised of approximately 50 teams in the Dallas/Fort Worth area. Players pay yearly fees to Solar of approximately \$3,000. G. David Ringer was the Chairman and President of Solar. He held that position for approximately 15 years (from approximately 1996 through early 2010). Ringer ran all aspects of Solar operations, inclusive of management, administrative and financial functions. All such operations were conducted out of the offices of Ringer's law firm, G. David Ringer, PC. Ringer also acted as legal counsel to Solar in litigation arising from the Solar's leasing of soccer fields from the Prince of Peace Lutheran School.

It was the understanding of others involved with Solar (see witnesses above) that with the limited exception of certain attorney's fees associated with the Prince of Peace litigation and out-of-pocket expenses, all of Ringer's time and work was being provided on a volunteer basis.

In January 2010, Solar became aware that over the previous five years Ringer had issued lump sum checks from the Solar account to his law firm account totaling over \$800,000. No invoices for legal or other services rendered were ever provided to Solar associated with these checks/payments (and to date, no invoices have been provided). No one associated with Solar either authorized or was aware of these payments, with the exception of certain limited attorney's fees associated with the Prince of Peace litigation.

At that time, Solar also became aware that Ringer had been obtaining loans and executing promissory notes with various third-parties outside of Solar to address a growing deficit in Solar finances. No one associated with Solar was aware of most of these third-party loans. Solar also later became aware of accounting entries indicating that Ringer was purportedly executing loans from G. David Ringer, P.C. to Solar, and subsequently making repayment of such loans from the Solar account. Solar has been unable to locate any loan documents confirming these purported loans between Solar and G. David Ringer, P.C.

Appellee acknowledged at oral argument that during the five years after the 2011 indictments were filed, the cases were set and reset for announcement and investigation until March 2016, when appellee moved to quash the indictments for failure to provide notice of the nature of the accusations against him. Appellee contended in his motions that the State was required to “provide the defense with information related to the specific transactions which the State intends to introduce as evidence of theft of [sic] misapplication of fiduciary property, the total amount of the theft or misapplication by a fiduciary being alleged, and the agreements that were violated.”

The trial court conducted two hearings on the motions. At the hearings, appellee essentially argued it was unclear from the indictments, complaint, and discovery how the payments he made to himself were illegal. The State responded that appellee was given more than adequate information to show the accusations made against him and to allow him to prepare his defense. The indictments tracked the language of the penal code provisions appellant was accused of violating and the Scholten complaint further detailed the substance of the allegations made by the State. The information provided to appellee specified that he was accused of taking money from Solar Soccer Club without its consent or authorization. In addition, the State submitted as an exhibit a document appellee had been given in discovery listing the specific checks the prosecution intended to rely on at trial to show both theft and misapplication of fiduciary property. According to the State, any other information appellee claimed was lacking

was evidentiary in nature and not required to be included in the charging instrument. The trial court granted appellee's motions to quash and the State brought this appeal.

In its sole issue, the State contends the trial court erred in granting appellee's motions to quash the indictments. We first address appellee's argument that the State failed to preserve this issue for review because it "did not complain" about the ruling. Appellee appears to suggest that, although the State clearly contested the motions to quash, and the arguments on appeal are the same ones raised in the trial court below, the State was required to further object to the trial court's decision in order to preserve error. Rule 33.1(c) specifically states that a party is not required to make a formal exception to a trial court's ruling to preserve error. *See* TEX. R. APP. P. 33.1(c). Further, article 44.01(a) of the Texas Code of Criminal Procedure specifically authorizes the State to appeal an order of a court in a criminal case that "dismisses an indictment." *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a) (West Supp. 2016). Accordingly, appellee's argument is without merit.

We next address the proper standard of review to be applied to the trial court's decision. Generally, the sufficiency of an indictment is a question of law we review de novo. *See State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004). Appellee urges us to apply an abuse of discretion standard because the trial court considered documents other than the indictment in making its decision. The consideration of documents outside the indictment - in this case the complaint and certain discovery documents - does not change the nature of the analysis. *See Kellar v. State*, 108 S.W.3d 311, 313 (Tex. Crim. App. 2003). No witnesses testified at the hearings and the trial court did not resolve any issues of fact. The determination was purely one of law. Accordingly, we review the trial court's decision in this case de novo. *Id.*; *Smith v. State*, 309 S.W.3d 10, 13-14 (Tex. Crim. App. 2010).

The sufficiency of an indictment is based on the right to notice as provided in both the United States and Texas Constitutions. *See Smith v. State*, 297 S.W.3d 260, 267 (Tex. Crim. App. 2009). The indictment must be specific enough to inform the defendant of the nature of the accusations against him so that he may prepare a defense. *Id.* A charging instrument that tracks the language of the criminal statute possesses sufficient specificity to provide a defendant with notice of the charged offense in most circumstances. *See State v. Edmond*, 933 S.W.2d 120, 128 (Tex. Crim. App. 1996). Where circumstances dictate that more than the statutory language is needed, the notice requirement may be satisfied by means other than the language in the charging instrument. *See Smith*, 297 S.W.3d at 267.

In this case, the indictments properly tracked the language of the statutes appellee was charged with violating. Appellee argues he was not provided with the specific transactions the State intended to rely on to show criminal liability. We agree that where large numbers of transactions are involved, the State may have to identify which ones comprise the offense the State intends to rely on to show a violation of the statute. *See Moff*, 154 S.W.3d at 603 (unreasonable to require defendant to prepare defense for every credit card and cash transaction in seven-year period). Here, the State provided appellee with a list of the checks it intended to rely on to show the illegal conduct. The Scholten complaint asserts appellee wrote checks to himself out of the Solar bank account without the knowledge, consent, or authorization of anyone associated with Solar. This information was more than sufficient to inform appellee of the transactions for which he needed to prepare a defense. *See Kellar*, 108 S.W.3d at 313-14 (itemized list showing date, check number, and amount of transaction sufficient to give defendant notice.).

Appellee argued to the trial court that, in addition to the list of transactions, the State was required to inform him how the payments he made to himself were unauthorized, who was

required to authorize them, and the nature of the agreement he allegedly violated. We find no authority to support appellee's contention that the State is required to provide this information. Furthermore, the complaint clearly provides appellee with notice of the allegedly unauthorized nature of his actions. The complaint states those involved with Solar understood that all work appellee did for the organization was done on a volunteer basis with the limited exception of certain legal work performed in connection with a specific lawsuit. The State identified in discovery numerous payments appellee made to himself and alleged those payments did not appear to have any connection to services he provided for which payment was authorized. The State further identified witnesses in the Solar organization who would testify about their understanding of the services for which the club agreed to pay appellee and those for which no one at Solar had authorized payment.¹ The complaint, therefore, alleges the actions upon which the State intends to rely to show appellee took Solar's money without the organization's consent and in violation of his agreement to work on a volunteer basis. Although appellee may dispute the existence of such an agreement or that he was required to receive authorization before making payments to himself, those are a fact issues to be resolved at trial. The specifics of the agreement are evidentiary and need not be alleged in the charging instrument. *See Romine v. State*, 722 S.W.2d 494, 501 (Tex. App.—Houston [14th Dist.] 1986, pet. ref'd). The State has clearly informed appellee of the nature of the accusations they intend to present at trial.

We conclude appellee was fully informed of the accusations made against him and could, based on this information, prepare his defense. The trial court erred in granting appellee's motions to quash the indictments.

¹ The complaint refers to an attached list of witnesses. Although our record does not contain the witness list, the discussion at the hearings on the motions to quash indicates appellee was provided with the list and he does not dispute he received it.

We reverse the trial court's orders granting the motions to quash and remand the causes to the trial court for further proceedings.

/Molly Francis/

MOLLY FRANCIS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-16-00939-CR V.

GEORGE DAVID RINGER, Appellee

On Appeal from the 203rd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F-1100284.

Opinion delivered by Justice Francis.

Justices Brown and Schenck participating.

Based on the Court's opinion of this date, the order of the trial court granting George David Ringer's motion to quash the indictment is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered July 10, 2017.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-16-00940-CR V.

GEORGE DAVID RINGER, Appellee

On Appeal from the 203rd Judicial District
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Trial Court Cause No. F-1100284.

Opinion delivered by Justice Francis.

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