



## IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

*vs.*

MICHAEL ANTHONY BLAKELY,

DEFENDANT.

CASE NO. CC19-476

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MOTION TO DISMISS

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COMES NOW Michael Anthony Blakely, the accused, by and through his undersigned counsel and moves this Honorable Court to dismiss counts 1-4 of the indictment returned in this action, and as grounds thereof, respectfully shows unto the Court as follows:

1. That upon listening to the opening statement given by the Alabama Attorney General's Office in this matter, it is abundantly clear that the State intends to use the theft of property statutes cited in counts 1-4 of the indictment beyond their intended purpose to apply to cases not intended by the Legislature.
2. That Counts 1-4 of the indictment returned in this matter each charge the Defendant with two (2) counts of theft of property in the first degree and two (2) counts of theft of property in the second degree. Each of the aforementioned counts of the indictment are defective, insufficient and prejudicial to Mr. Blakely.
3. The procedure for charging a defendant is of constitutional significance having been included in the Constitution of Alabama as one of the

Declarations of Rights.... and the proper means of testing the legality or sufficiency of the indictment is by a motion to dismiss.<sup>1</sup>

4. Further, in support of this, his Motion to Dismiss the Defendant sets forth the following:

### ARGUMENT

Ala. Code §13A-8-1(9) (1975) defines an “ Owner” as “ [a] **person, other than the defendant, who has possession of or any other interest in the property involved**, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property.”<sup>2</sup>

The theft of property offenses charged in counts 1-4 of the indictment returned in this matter read as follows:

#### COUNT 1: §13A-8-4, Theft of property in the second degree.

The Grand Jury of Limestone County charges that, before the finding of this indictment, MICHAEL ANTHONY BLAKELY, whose name is otherwise unknown to the Grand Jury, did knowingly obtain or exert unauthorized control over, or did knowingly obtain by deception control over, lawful U.S. currency and/or a check, to wit: a \$1,500 check from the Alabama Realtors Political Action Committee, a better description of which is unknown to the grand jury, the **property of the principal campaign committee for Mike Blakely, a/k/a Friends of Mike Blakely**, of some value between \$1,500 and \$2,500, with the intent to deprive the **owner** of the property, in violation of Section 13A-8-4 of the Code of Alabama, against the peace and dignity of the State of Alabama.

#### COUNT 2: § 13A-8-3, Theft of property in the first degree.

The Grand Jury of Limestone County charges that, before the finding of this indictment, MICHAEL ANTHONY BLAKELY, whose name is otherwise unknown to the Grand Jury, did knowingly obtain or exert unauthorized control over, or did knowingly obtain by deception control over, lawful U.S. currency and/or a check, to wit: a \$4,000 check from Red Brick Strategies, a better description of which is unknown to the grand jury, the property of

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<sup>1</sup> See R. 13.5 and R. 15, Ala. R. Cr P.

<sup>2</sup> See Ala. Code §13A-8-1(9) (1975)

the **principal campaign committee for Mike Blakely, a/k/a Friends of Mike Blakely**, of some value exceeding \$2,500, with the intent to deprive the **owner** of the property, in violation of Section 13A-8-3 of the Code of Alabama, against the peace and dignity of the State of Alabama.

**COUNT 3: § 13A-8-4, Theft of property in the second degree.**

The Grand Jury of Limestone County charges that, before the finding of this indictment, MICHAEL ANTHONY BLAKELY, whose name is otherwise unknown to the Grand Jury, did knowingly obtain or exert unauthorized control over, or did knowingly obtain by deception control over, lawful U.S. currency and/or a check, to wit: a \$2,500 check from Austin Hinds Motors, Inc. ,a better description of which is unknown to the grand jury, the property of the **principal campaign committee for Mike Blakely, a/k/a Friends of Mike Blakely**, of some value between \$1,500 and \$2,500, with the intent to deprive the **owner** of the property, in violation of Section 13A-8-4 of the Code of Alabama, against the peace and dignity of the State of Alabama.

**COUNT 4: § 13A-8-3, Theft of property in the first degree**

The Grand Jury of Limestone County charges that, before the finding of this indictment, MICHAEL ANTHONY BLAKELY, whose name is otherwise unknown to the Grand Jury, did knowingly obtain or exert unauthorized control over, or did knowingly obtain by deception control over, lawful U.S. currency and/or a check, to wit: a \$3,000 check from Friends of Mike Blakely, a better description of which is unknown to the grand jury, the property of the **principal campaign committee for Mike Blakely, a/k/a Friends of Mike Blakely**, of some value exceeding \$2,500, with the intent to deprive the **owner** of the property, in violation of Section 13A-8-3 of the Code of Alabama. (Emphasis added)

The owner named and identified in each of the respective aforementioned counts is the “principal campaign committee a/k/a Friends of Mike Blakely”. The term “**principal campaign committee** is “a political action committee established **primarily to benefit** an individual candidate or **an individual elected official**.”<sup>3</sup> “[A]ny candidate may declare himself or herself as the person chosen to serve as the principal campaign committee”. The personal campaign committee, or its treasurer, **shall have exclusive custody of all moneys contributed, donated, subscribed, or in any manner furnished to or for the candidate represented by such committee.**”<sup>4</sup>

The principal campaign committee at issue consists of Mike Blakely and his treasurer. Sheriff Blakely, as the listed candidate for the principal campaign committee is both the

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<sup>3</sup> Ala. Code §17-5-2 (1975)

<sup>4</sup> Ala. Code §17-5-4 (1975)

beneficiary and custodian of the monies contributed and donated to his campaign. This at a bare minimum gives the Defendant an interest in the property at issue in counts 1-4 of the indictment and according to Ala. Code §13A-8-1(9) (1975) the Defendant is an "Owner" as defined by the statute.

Further, the Fair Campaign Practices Act sets out the regulations and record keeping requirements for campaign contributions and donations. The Fair Campaign Practices Act further provides for the violations of said Act. Ala. Code §17-5-19(e) (1975), states that "[n]o prosecution for violation of this chapter **shall** be commenced later than two years after the date of the violation." (emphasis added).

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to apply to cases not covered by the words used. . . .' *United States v. Resnick*, 299 U.S. 207, 209, 57 S.Ct. 126, 127, 81 L.Ed. 127 (1936). See also, *Ex parte Evers*, 434 So.2d 813, 816 (Ala. 1983); *Fuller v. State*, 257 Ala. 502, 60 So.2d 202, 205 (1952). Moreover, 'criminal statutes should not be "extended by construction."' *Ex parte Evers*, 434 So.2d at 817 (quoting *Locklear v. State*, 50 Ala. App. 679, 282 So.2d 116 (1973)). Section 13A-1-6 provides in part: 'All provisions of [the Criminal Code] shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law. . . .'

"Because the meaning of statutory language depends on context, a statute is to be read as a whole. *King v. St. Vincent's Hospital*, 502 U.S. 215, 112 S.Ct. 570, 574, 116 L.Ed. 2d 578 (1991). Subsections of a statute are in pari materia and 'should be construed together to ascertain the meaning and intent of each.' *McCausland v. Tide-Mayflower Moving & Storage*, 499 So.2d 1378, 1382 (Ala. 1986)."

*Ex parte Jackson*, 614 So.2d 405, 406 (Ala. 1993). See also *Ex parte Mutrie*, 658 So.2d 347, 349 (Ala. 1993) ("No person is to be made subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused."). See also, *State of Alabama v. St. Paul Fire and Marine Insurance Company*, 835 So.2d 230 (Ala.Crim.App. 2000).

The Legislature has expressly provided for the criminal liability for candidates and public officials who violate the Fair Campaign Practices Act. Further, the Legislature intentionally limited the time to prosecute such violations to two (2) years from the date the offense occurred. The Legislature clearly intended the "Owner" as defined in Ala. Code §13A-8-

1(9) (1975), to be inclusive of anyone who has any interest in the property at issue. However, the Legislature did not intend for the theft of property statutes to be extended to cover violations of the Fair Campaign Practices Act; nor, did the Legislature to intend for violations of the Fair Campaign Practices Act to be prosecuted beyond their two (2) year limitations period.

**WHEREFORE, PREMISES CONSIDERED**, the Defendant prays this Honorable Court will dismiss counts 1-4 of the indictment returned in this case.

Respectfully submitted on this the 18<sup>th</sup> day of July, 2021.

*/s/ Robert Tuten*

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### CERTIFICATE OF SERVICE

I certify that I have filed the foregoing with the Clerk of the Court using the Alabama Judicial System electronic filing system which will send notification of such filing to those parties of record who are registered for electronic filing, and further certify that those parties of record who are not registered for electronic filing have been served by mail by depositing a copy of same in the United States mail, first class postage prepaid and properly addressed, on this the 18<sup>th</sup> day of July, 2021.

*/s/ Nickolas R. Heatherly*

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**Nickolas R. Heatherly**