

STATE OF INDIANA
COUNTY OF CLINTON

SS:

IN THE CLINTON CIRCUIT COURT
CAUSE NO. 12C01-2303-PL-000259

STATE OF INDIANA *ex rel.*
TODD ROKITA, ATTORNEY
GENERAL OF INDIANA,
Plaintiff,

v.

RICHARD KELLY, ASHLEY
KELLY, LEONNE, LLC,
WESTERN SURETY COMPANY,
and RLI INSURANCE COMPANY,
Defendants.

FILED

SEP 17 2025

Stephanie G. Heubarger
CLERK CLINTON CIRCUIT COURT

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT – AS TO DEFENDANTS RICHARD
KELLY, ASHLEY KELLY AND LEONNE, LLC FOR COUNT I**

This matter comes before the Court on Plaintiff's Motion for Summary Judgment as to Defendants Richard Kelly, Ashley Kelly, and Leonne, LLC ("Motion for Summary Judgment"), and Plaintiff's Motion to Strike, and the Court having reviewed the record, the briefs and designated evidence submitted by the parties, and having heard oral argument concerning the same on August 21, 2025 ("Summary Judgment Hearing"), which was attended by Plaintiff's counsel and Defendant Richard Kelly, Ashley Kelly and Leonne LLC, in person, and by counsel, and Defendant Western Surety Company, by counsel, and the Court being duly advised in the premises **HEREBY FINDS, CONCLUDES, AND ORDERS** there is no genuine issue of material fact and Plaintiff is entitled to summary judgment against Defendants as provided herein:

1. Any point identified herein as a finding of fact may be considered a conclusion of law to the extent it is appropriate to do so, and any point identified herein as a conclusion of law may also be considered to be a finding of fact to the extent it is appropriate to do so.

2. At the Summary Judgment Hearing, in order to simplify the issues presently before the Court, the Plaintiff orally withdrew, for purposes of its summary judgment motion only, its pursuit of summary judgment as to Count II for treble damages under the Crime Victim's Relief Act ("CVRA"). As such, this Court will consider Plaintiff's Motion for Summary Judgment a motion for partial summary judgment as to only Count I of Plaintiff's Complaint as to Richard Kelly, Ashley Kelly, and Leonne LLC. Plaintiff reserves all rights as to both Counts II and III of its Complaint and all other claims therein against the Defendants.

3. In support of its Motion for Summary Judgment, the Plaintiff argues the material facts and issues of law have already been determined in separate but related civil matters. This Court agrees. Further, Defendants have not pointed to any authority to indicate this Court is not bound by the factual findings and orders already entered against them and have made no meaningful or otherwise convincing effort to show those findings and prior orders were incorrect, distinguishable from this matter, and/or otherwise should not be followed by this Court.

4. In the Circuit Court of Tippecanoe County, under cause 79C01-2104-PL-000035 ("Declaratory Judgment Action"), the Clinton County board of commissioners and county council brought action against the Clinton County Sheriff's Office and

Sheriff Richard Kelley relating to his use of commissary funds, which are the same commissary funds that are at issue in this matter. Sheriff Richard Kelly and the County Sheriff's Office filed a counter claim and cross motions for summary judgment were filed. On July 7, 2022, the court entered its Declaratory Judgment Order. Among other issues, the trial court found that the County must approve contracts regarding the distribution of profits from the commissary fund. Sheriff Richard Kelly and the County Sheriff's Office appealed the Declaratory Judgment. The Indiana Court of Appeals issued its Order ("COA Order") under Court of Appeals Case No. 22A-PL-2640 on or about June 14, 2023, which affirmed the trial court's findings and Declaratory Judgment against Richard Kelly and the Clinton County Sheriff's Office.

5. On September 11, 2023, Appellants (the Clinton County Sheriff's Office and Sheriff Richard Kelly) filed a Petition to Transfer a portion of the Court of Appeals decision with the COA Order. The question presented on transfer was "*Does the opinion directly contradict Ind. Code § 36-8-10-21(d)(2) and substantially reduce the Sheriff's authority to perform his statutory duty to administer and take care of the jail, as recently upheld by Lake Cnty. Bd. Of Commissioners v. Martinez, 199 N.E.3d 366 (Ind. Ct. App. 2022) and Brewer v. Clinton Cnty. Sheriff's Off., 206 N.E.3d 1158 (Ind. Ct. App.), by impairing his discretion to disburse commissary funds to pay expenses of operating the jail commissary?*" On or about December 7, 2023, the Indiana Supreme Court denied the Petition to Transfer.

6. This Court HEREBY FINDS it is bound by the relevant and related material facts and orders set forth in the Declaratory Judgment Action and COA

Order, which are expressly incorporated herein. The below findings of fact and conclusions of law are intended to be consistent therewith.

THERE IS NO GENUINE ISSUE AS TO THE FOLLOWING MATERIAL FACTS, AND THE COURT THEREFORE FINDS AND ORDERS AS FOLLOWS:

7. The State Board of Accounts (the "SBOA") is a state agency with the responsibility of auditing the financial accounts and affairs of all public entities within the State. *See* Indiana Code § 5-11-1-1.

8. Pursuant to Indiana Code § 5-11-1-9, SBOA conducted an examination of the books, accounts, and records of the Clinton County Sheriff's Office and Jail Commissary in Clinton County, Indiana.

9. The results of said examination were set forth in SBOA Special Investigation Report B57892, dated November 23, 2021 ("Audit Report").

10. The Audit Report was attached as Exhibit 1 to Plaintiff's Complaint to Recover Public Funds ("Complaint") and properly designated for purposes of this summary judgment.

11. The Audit Report contains SBOA's findings from the examination of financial information of the Clinton County Sheriff's Office and Jail Commissary for the period of January 1, 2019, to September 30, 2021 ("Audit Period").

12. Richard Kelly was the Clinton County Sheriff at all relevant times.

13. Ashley Kelly was the jail matron for the Clinton County Sheriff and the commissary manager at all relevant times.

14. Leonne, LLC was a domestic limited liability company in which Richard Kelly and Ashley Kelly had ownership rights at all relevant times.

15. Richard Kelly and Ashley Kelly created Leonne to receive profits from the sale of commissary items.

16. Ashley Kelly was a 51% member, and Richard Kelly was a 49% member of Leonne.

17. At all relevant times Richard Kelly and Ashley Kelly received their respective ownership share of the payments made to Leonne from the Jail Commissary Fund.

18. Indiana Code § 36-8-10-21 provides for the Sheriff's commissary fund, and dictates that for the Sheriff to disburse profits of the commissary fund, there must also be County approval.

19. SBOA found that from January 1, 2019, to September 30, 2021, 85 checks were improperly issued from the Jail Commissary Fund to Leonne, LLC, totaling a sum of \$190,916.61 without a written agreement to support or authorize these payments, as required.

20. From January 1, 2019, to September 30, 2021, checks were issued from the Jail Commissary Fund to Ashley Kelly, totaling \$32,967.92, without a written agreement to support or authorize said payments (of which Ashley Kelly deposited at least \$28,718.04).

21. These checks from the Jail Commissary Fund totaling \$223,884.53 were calculated as 50 percent of commissary profits on merchandise sales.

22. SBOA concluded that funds totaling \$219,634.65 were improperly issued (and deposited) from the Jail Commissary Fund to Ashley Kelly and Leonne LLC, as charged in the Audit Report.

23. There was no written contract in place between the county fiscal body and the Defendants during the Audit Period, as required.

24. At all relevant times during the Audit Period, checks issued from the Jail commissary of the Sheriff's Department to Leonne, LLC did not have approval from the County fiscal body, as required by Ind. Code § 36-8-10-21(d)(9).

25. Defendants do not designate evidence disputing the funds at issue were in fact profits as contemplated by I.C. 36-8-10-21 and they do not designate evidence in opposition to the amount of commissary funds at issue.

26. In support of their opposition to Plaintiff's Motion for Summary Judgment, the Defendants argue that the State failed to prove the Defendant "intentionally" caused a loss to the County or Department through the commission of malfeasance, misfeasance, or nonfeasance. This Court is not persuaded, at least as to Count I of the Plaintiff's Complaint for misfeasance or nonfeasance. Upon review of *Montalvo v. State ex rel. Zoeller*, 27 N.E.3d 795 (2015), it is clear that "knowledge as to the wrongfulness of their conduct is irrelevant." In the case at hand, if funds have been misappropriated or diverted, the State may seek and secure recovery of those funds, which is irrespective of whether the person who wrongfully received public money knew that he or she was not lawfully entitled to receive it. Therefore, any evidence designated by Defendants in an attempt to create an issue of fact on this

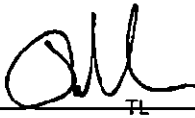
point and avoid summary judgment, while possibly relevant to the issue of treble damages under the CVRA and/or malfeasance, is not material to Count I of Plaintiff's Complaint relating to misfeasance or nonfeasance in consideration for summary judgment herein. At this time, the Court is not making any determination as to whether the Defendants intentionally caused the loss as charged, because it is not material to Count I for purposes of this Summary Judgment.

As for Plaintiff's Motion to Strike, the Court HEREBY FINDS the Defendants fail to designate relevant or admissible evidence with sufficient specificity as required by Trial Rule 56 to oppose the material facts and issues of law pending before the Court for purposes of summary judgment. However, regardless of the Court's findings in this regard, the material facts and legal issues have already been determined, or are otherwise not opposed by Defendants, thus rendering the striking of the evidence designated by Defendants herein a moot issue as it relates to the motion for summary judgment as to Count I.

This Court therefore finds that Plaintiff's Motion for Summary Judgment should be GRANTED as to Count I (Misfeasance/Malfeasance/Nonfeasance) of its Complaint in favor of Plaintiff and against the Defendants Richard Kelly, Ashley Kelly, and Leonne, LLC.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that summary judgment for a total of \$329,360.47 (broken down that is \$219,634.65 in pecuniary damages and \$109,725.82 in audit costs) as to Count I of the Complaint is granted in favor of Plaintiff and against Defendants Richard Kelly, Ashley Kelly, and Leonne, LLC, jointly and severally.

DATE: 9/17/2025



Special Judge, Honorable Thomas Lett

Distribution: Attorneys of Record