

The following is a modified transcript from a real trial. The names of everyone involved have been changed and some information was altered to protect anonymity of all participants.

Motions And Defense Evidence Presentation

COURT: We're still on the record in the State of Kansas versus Client X, 12AB3456. The defendant and all counsel are present. The jury has been excused. Are there any motions or anything that we need to take up at this point?

MR. DAVIES: Judge, I want to make a motion for acquittal, judgment for a matter of law. Can I see that exhibit, the actual card? Thank you. Thank you, Judge. May I speak on that motion, Judge?

COURT: Go ahead.

MR. DAVIES: Judge, as Deputy Carter testified, the only thing that could possibly be construed as a representation was the handing of this Basehor department card labeled Defense Exhibit 1. If we read the literal language of this card, I think that the State has failed to form a prima facie case to submit to a jury. This is the only thing they're relying on as any communication from my client to anyone. It says, "This is to certify that Client X is hereby commissioned as a patrol officer, Basehor, City of Basehor, County of Leavenworth, State of Kansas, is hereby commissioned..." hereby means with this utterance or this document. So essentially, with the date on the back of it, of an issuance date of 9-27, taken those two in conjunction, he is, at best, certifying that on this date that this was issued, by the utterance that he was commissioned as an officer. The State must prove that the defendant represented himself to be a public officer. At best from this, the only statement that was communicated as far as to his credentials is "hereby commissioned." In other words, at the utterance of this or creation of this document, he was commissioned, and there's been no evidence to the contrary to that. He was commissioned on this date as an officer. I think that based on this statement alone, the State has failed to make a prima facie case, and it should be submitted to the jury.

COURT: Okay. Mr. Abrams?

MR. ABRAMS: Judge, as the Court is aware of the standards of whether the evidence is viewed in light that's favorable to the prosecution, the jury could find the defendant guilty beyond a reasonable doubt. The evidence has been presented. The State agrees that there wasn't any verbal

presentation to the officer, or the defendant said he was an officer. However, representation is not that narrow. I think it's very reasonable for a jury; the officer in this type of a situation, when you're pulled over in a traffic stop where a police commission card has absolutely no utility or purpose in that stop – handing them over – you're representing yourself to be a police officer. And I think we've heard testimony even from questions and openings from the defense that there was a hope of some type of professional courtesy. I think it's a little disingenuous for the defense to claim that this card doesn't indicate that he's a police officer because it says he's been commissioned, and there's no expiration date. Since, it turned out he was not a police officer anymore, there is absolutely no reason for him to be handing that card over. And I think that when we look at the evidence in the light most favorable to the prosecution, a jury could find beyond a reasonable doubt that the defendant knowingly represented himself to be a police officer by handing this card over during this traffic stop in the hopes of either being let go or lesser charges or something like that. And I would ask that the defense's motion be denied.

COURT: Okay. And I will note the defense's motion, and I understand the point of statutes K.S.A. 21-5917. The Court believes that the State has presented a prima facie case on the issue on Count Number 1, so the defense motion will be denied.

Review of Jury Instructions with Counsel

COURT: We're back on the record in the State of Kansas versus Client X, 12AB3456. The defendant and all counsel are present. The jury is in the jury room. When the jury is recalled, we will move to the defense case, and Mr. Davies has indicated that they will be resting at that point. The Court is going to take up instructions with counsel at this point. And I think that Sarah made you a copy of the Court's proposed set.

MR. ABRAMS: Yes, Judge.

COURT: After the title page, PIK 50.040 is the first instruction. Any objects to that?

MR. ABRAMS: Not from the State, Judge.

MR. DAVIES: Not from the defense, Judge.

COURT: That will be 1. And the next one, 50.050?

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That will be 2. 50.060?

MR. ABRAMS: No objection.

MR. DAVIES: No objection from the defense.

COURT: Okay. That will be 3. 50.070?

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That will be 4. 50.080?

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That will be 5. The next on is PIK 51.010, State has the burden?

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That's number 6. PIK 51.060, it is for you to determine the weight and credit.

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That will be 7. The next one is the defendant has the right not to be compelled to testify.

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: That will be Number 8. The next is the charging instructions for Count I.

MR. ABRAMS: No objection.

MR. DAVIES: No objection, Judge.

COURT: All right. That will be Jury Instruction 9. The next one is the definition of knowingly.

MR. ABRAMS: No objection.

MR. DAVIES: No objection.

COURT: All right. And that's Instruction Number 10. The next one is the charging instruction on Count Number 2.

MR. ABRAMS: No objection.

MR. DAVIES: No objection, Judge.

COURT: All right. And that's Number 11. The next one is PIK 68.060, each crime charged is a separate and distinct offense.

MR. ABRAMS: No objection.

MR. DAVIES: None from the defense.

COURT: All right. That's 12. And then 13, 14, and 15 are just kind of the housekeeping ones that are usually given at the end about when you retire to the jury room, contacting the bailiff for any reason, you'll be provided with each exhibit, and then telling them about written transcripts.

MR. ABRAMS: No objection.

MR. DAVIES: No objection from us.

COURT: All right. And those will be 13, 14, and 15. And the final one is PIK 68.010, the jury instruction that says, "You'll select one of your members as the presiding juror," and that "Their verdict must be unanimous."

MR. ABRAMS: No objection.

MR. DAVIES: No objection, Judge.

COURT: All right, and that will be Number 16, and then the verdict form is for Count 1 and 2. All right. Sarah is making seven sets of that final set right now, and as soon as she's back, we'll have the jury. How much time would each side like for closing arguments?

MR. ABRAMS: I need 20 minutes.

COURT: All right. And Mr. Abrams, how would you like to split your time?

MR. ABRAMS: 10 and 10 is fine, Judge.

COURT: All right. And we'll have 10 and 10 splits for total of 20 minutes from the prosecutor and 20 minutes for the defense. And would you all like warnings?

MR. ABRAMS: I'd like a one-minute warning, Judge.

MR. DAVIES: One minute is fine, Judge.

COURT: Okay. And if you elect to go over the 10, I'll just take it off from the 10 minutes on your second part.

And the Court has State's Exhibits 1 and 2 and Defendant's Exhibit 1. The Defendant's Exhibit 1A was for demonstrative purposes and will not go back to the jury. Anything else that either side needs to take up before we bring the jury back?

MR. ABRAMS: Not from the State, Judge

MR. DAVIES: Not from the defense, Judge.

COURT: And you both okay to just go ahead, as soon as Sarah is here with the copies of the instructions in a few minutes? And when the jury's here, move to defense's case, you can rest, and then go right to the instructions, and then directly to closing.

MR. ABRAMS: Yes, Judge.

COURT: All right.

MR. DAVIES: Yes, on both, Judge.

Defense Witness Testimony & Cross Examination

COURT: We're back on the record in the State versus Client X, 12AB3456. The defendant and all counsel are present. The jury is in the jury box. Ladies and gentlemen, the State rested their case. Mr. Davies, is the defense ready to proceed?

MR. DAVIES: Judge, the defense won't be calling witnesses presenting any evidence. We'll rely on our cross-examinations.

COURT: All right. The defense has rested.

