

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-000145-MR

ADRIENNE PARK

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 05-CR-000257

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: VANMETER AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Adrienne Park appeals from the Jefferson Circuit Court's judgment sentencing her after she entered a conditional guilty plea to five counts of theft by deception (TBD) over \$300, and one count of attempted TBD over \$300. Park argues on appeal that the circuit court erred by failing to dismiss the charges against her pursuant

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

to KRS 368.100(16),² which exempts individuals who have entered into deferred deposit transactions from being convicted of TBD. For the following reasons, we affirm.

Park wrote six personal checks to Check Into Cash, a licensed deferred deposit transaction business, between November 15 and November 23, 2004. In return for five of the checks, Check Into Cash gave Park less than the face value of the checks and agreed not to present the checks for payment for approximately two weeks. Check Into Cash did not accept the sixth check. Eventually Check Into Cash learned that the five checks it had accepted were drawn on an account in Park's name which was not authorized for checks. Moreover, Park had given four different social security numbers in presenting the checks to Check Into Cash.

The grand jury indicted Park of five counts of TBD over \$300 and one count of attempted TBD over \$300. Thereafter, Park moved the circuit court to dismiss the indictment pursuant to KRS 368.100(16), which prohibits the conviction of TBD for an individual who enters into a deferred deposit transaction with a licensee, as defined in KRS 368.010(7). After the circuit court denied her motion, Park entered a conditional guilty plea to the charges in exchange for the Commonwealth's recommendation of concurrent sentences of two years' imprisonment for each count of TBD, and twelve months' imprisonment for attempted TBD. The circuit court accepted Park's guilty plea and entered a judgment sentencing her as the Commonwealth recommended. This appeal followed.

² Effective July 12, 2006, this provision was renumbered without change as KRS 286.9-100. 2006 Ky. Acts, ch. 247, § 38. In fact, all of KRS Chapter 368 has been renumbered at KRS Chapter 286.9. *Id.* However, we refer to the statutes in this opinion as they were set forth in KRS Chapter 368 at the time of Park's conviction.

A “deferred deposit transaction” is defined at KRS 368.010(4) as meaning “for consideration, accepting a check and holding the check for a period of time prior to deposit or presentment in accordance to an agreement with or any representation made to the maker of the check, whether express or implied.” Further, KRS 368.100 provides with regard to deferred deposit transactions:

- (16) No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040 [theft by deception].
- (17) No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.
- (18) Each licensee shall conspicuously display in every deferred deposit business location a sign that gives the following notice: “No person who enters into a post-dated check or deferred deposit check transaction with this business establishment will be prosecuted or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040.[”]

At first glance these provisions appear to exempt from conviction of TBD all individuals who enter into deferred deposit transactions. However, we agree with the circuit court that the checks at issue here were atypical, as they were drawn upon an account which was not authorized for writing checks. As the checks therefore were negotiated without proper legal authority, they fell under KRS 368.100(6), which provides as follows:

Within five (5) business days after being advised by the payor financial institution that a check, draft, or money order has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the department and the Commonwealth's attorney for the judicial circuit in which the check was received. If a

check, draft, or money order is returned to the licensee by the payor financial institution for any of these reasons, the licensee shall not release the check, draft, or money order without the consent of the Commonwealth's attorney or other investigating law enforcement authority.

As this provision clearly contemplates criminal prosecution when, as here, a financial institution returns a check that has been negotiated without proper legal authority, we must conclude that the legislature did not intend to exempt from conviction of TBD an individual who engages not in a typical deferred deposit transaction, but instead in a transaction involving an unauthorized check as described in KRS 368.100(6). This is not a case in which the check was returned for insufficient funds. As a result, the trial court did not err by failing to dismiss the charges against Park.

A different result is not compelled by the fact that the basis for Park's motion to dismiss was lack of subject matter jurisdiction. As the Kentucky Supreme Court has explained, "[s]ubject matter jurisdiction is determined from the indictment." *Commonwealth v. Adkins*, 29 S.W.3d 793, 794 (Ky. 2000). Here, Park was indicted of five counts of TBD over \$300 and one count of attempted TBD over \$300. As TBD over \$300 is a class D felony pursuant to KRS 514.040(8), jurisdiction over those charges is vested in the circuit court. *See* KRS 23A.010(1) (circuit court "has original jurisdiction of all justiciable causes not exclusively vested in some other court"); KRS 24A.110(1)(a) (district court has "exclusive jurisdiction to make final disposition of all criminal matters" except felony or capital offenses). Any "[l]atent deficiencies in the facts leading to the issuance of the indictment affects only the legal sufficiency of the charge, not the circuit court's ability to hear the case." *Adkins*, 29 S.W.3d at 794. As such, we believe that any

argument regarding the effect KRS 368.100(16) might have on the charges against Park relates to the issue of legal sufficiency, which we have resolved above, rather than to the issue of the circuit court's jurisdiction.

The Jefferson Circuit Court's judgment is affirmed.

ALL CONCUR.

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