

By Jeff Headley

Keith County News

On Friday, the Nebraska Supreme Court reversed a Keith County District Court decision involving former County Attorney Blake Edwards' conviction on a theft by unlawful taking charge.

The case involves the use of funds from the county's diversion program. Edwards initiated the county's diversion program and had control of the program's fund during his tenure as county attorney.

The mistake that caused the Supreme Court to reverse the conviction came in instructions to the jury, which shifted the burden of the state from having to prove guilt beyond a reasonable doubt to Edwards having to prove his innocence or be found guilty by the jury.

In its decision, the Supreme Court wrote, "The error in instruction No. 4 implicates both the presumption of innocence and the state's burden to prove guilt beyond a reasonable doubt. The state carries the burden to prove all elements of the crime charged.

"At worst, the jury could have concluded that if Edwards failed to prove his affirmative defense, it was required to find him guilty. We conclude that the last sentence of instruction No. 4 resulted in plain error which necessitates reversal."

Edwards took office as Keith County Attorney in January 2007 and, subsequently, established a pre-trial diversion program, which allowed for dismissal of criminal charges after the offender completed the program requirements. The participants paid an enrollment fee, court costs and entered into a contract with the county attorney's office.

The program, which was approved by the Keith County Board of Commissioners on March 7, 2007, included Edwards as the only signer on a separate bank account that included the diversion program funds.

The charges stem from a complaint from a Keith County commissioner, a complaint that was filed with the state Attorney General's office. The complaint alleged the public funds were available only to Edwards and not being remitted to the county treasurer, and were being misused.

The charge that was reversed involves a \$3,681.09 check that Edwards wrote to the junior and senior high trapshooting team. Edwards, a longtime coach and fundraiser for the team, wrote the check to the non-profit entity.

In mid 2010, the State Auditor's office conducted an audit, in which the charges stemmed. Edwards was charged on Sept. 19, 2011, with three counts of theft by unlawful taking, two counts of income tax evasion and three counts of filing a false income tax return.

A Keith County Court preliminary hearing determined that the state did not meet the burden of proof on the income tax evasion and filing a false income tax return charges, and those five charges were dismissed.

Edwards pleaded not guilty to the three theft charges, two of which were subsequently dismissed.

The lone remaining charge involved the trap team check.

A jury found Edwards guilty on the remaining charge and his lawyer's motion for a new trial was overruled. He was sentenced to 36 months of community-based intervention probation and was subsequently barred from practicing law by the State Bar Association.

Edwards filed the appeal with the state's High Court and the state also filed a cross appeal,

asserting that the sentence was "excessively lenient."

As a result of the ruling, the state's cross complaint has no merit as Edward's conviction was reversed.

While the Supreme Court reversed the conviction, it did remand the case back to the District Court and the case could be tried again.

Shannon Kingery, director of communications with the state Attorney General's office, said the AG's office will review the Supreme Court's decision and determine whether or not it will re-try Edwards on the lone remaining charge.