

from Matthew G. Kelty to the Kelty Exploratory Committee.” But the State does not allege which of those facts is deceptive or dishonest thereby making the report fraudulent, which at a minimum is what is required by art. I, section 13 of the Indiana Constitution and I.C. § 35-34-1-4(a)(4).

For instance, is the report fraudulent because it was on form CFA-11, and should have been reported on a different form? Was the campaign contribution from someone other than Steve and Glenna Jehl? Or a contribution by either Steve or Glenna Jehl? Was the contribution in an amount other than \$2,000? Was it improperly reported as a *personal* loan from Matthew Kelty? Should it have been reported as a business loan or a loan from the Jehls to the campaign committee? Should the loan have been reported as being given to a different campaign committee, perhaps Kelty’s official campaign committee? Did Kelty simply misidentify the payment as a loan rather than a contribution? Did Kelty violate a provision of I.C. § 3-9 that he was supposed to follow? If so, which provision and how were the reporting requirements in I.C. § 3-9 violated? If I.C. § 3-9 was not violated, how could the report be “fraudulent”? The answers to all of these questions are unknown and therefore, unclear. Instead, Kelty is simply left to guess as to what was “fraudulent” with this report. If Kelty was left to guess, then one wonders whether five of the six grand jurors all had the same understanding of what was fraudulent when they voted on counts III through VII. *See* I.C. § 35-34-2-12.²

Because of the lack of clarity, the State is also allowed to avoid adopting a theory as to how these reports are “fraudulent” but attempts to advance multiple theories, some of which may not constitute criminal conduct. A dismissal of counts III through VII would require the State to be more precise in its charging documents. Kelty anticipates that it will become clear to the

² We also do not know because the State has refused Kelty’s requests to see the grand jury transcripts detailing how the State instructed the grand jury on the law.

Court that the entries that the State believes were fraudulent in fact fully comply with the law. Both this Court and Kelty deserve to know what specifically the State is alleging before this case advances to trial, and the defense should have to look no further than the four corners of the indictment to have that understanding.

The law on this point favors Kelty. “It is neither fair nor reasonable to have [a criminal defendant] speculate, at his peril, as to the particular procedure or mandates he failed to follow.” *Moran* at 104. It is “improper” to use “language from a statute which defines a crime in general terms when many different acts could fall within that general definition.” *Id.* (emphasis added). Without greater specificity, the State could also be exposing Kelty to double jeopardy since it could prosecute Kelty for certain “fraudulent” entries on reports and then prosecute a second time based on a different set of entries. Such ambiguity is *per se* impermissible. *See Wurster v. State*, 708 N.E.2d 587, 596 (Ind. Ct. App. 1999).

If Kelty cannot understand from simply reading the face of the indictment how he has violated the law and how his conduct was “fraudulent,” then counts III through IX should be dismissed.

B. Counts III through IX fail to allege essential elements of the crimes charged.

In order to be valid, an indictment must set forth all of the legal elements of the offense. *See* I.C. § 35-34-1-2. *See Embry v. State*, 96 N.E.2d 274, 275 (Ind. 1951). Furthermore, “when a statute makes knowledge, or *scienter*, an essential element of an offense, such knowledge on the part of the accused *must be* charged in the indictment or affidavit.” *Id.* (emphasis added).

I.C. § 3-14-1-13 clearly states that to be a crime a criminal defendant must “knowingly file” a report required by I.C. § 3-9. Yet, in counts III through VII, the State does not allege that Kelty “knowingly filed” *any* report. In fact, the word “knowingly”—an essential element of this