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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-CF-2487
	)	
DEON SAMS,	)	Honorable
	)	George J. Bakalis,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Jorgensen and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly granted the defendant's motion in arrest of judgment because police department regulations were not laws within the meaning of the official misconduct statute.

¶ 2 Following a bench trial, the defendant, Deon Sams, was convicted of official misconduct (720 ILCS 5/33-3(c) (West 2012)). The trial court subsequently granted the defendant's motion in arrest of judgment. The State appeals from that order. We affirm.

¶ 3 BACKGROUND

¶ 4 On January 10, 2013, the defendant was charged by indictment with four counts of criminal sexual assault and two counts of official misconduct for actions that occurred while he was on duty as a Maywood police officer on March 24, 2012.

¶ 5 On November 6, 2014, following a bench trial, the defendant was acquitted of the criminal sexual assault charges and of one of the official misconduct charges. The trial court found the defendant guilty of the official misconduct charge in count 4 that alleged he “knowingly performed an act in excess of his lawful authority, in that he picked up Natasha Ewing in an official police vehicle, while on duty, and took [her] to a motel where he engaged in sexual penetration.”

¶ 6 On December 5, 2014, the defendant filed a motion in arrest of judgment. The motion alleged that the indictment charging count 4 did not charge an offense that was “subject to the jurisdiction” of the trial court. The motion stated that the indictment did “not allege a violation of an identifiable statute, rule, or tenet of professional code,” in that the Maywood police department rules and regulations that prohibited the alleged conduct “were not formally passed or enacted by the Village of Maywood as an ordinance.”

¶ 7 On February 17, 2015, the trial court granted the defendant’s motion. The trial court found that the defendant’s alleged actions in excess of his lawful authority consisted of violating police rules and regulations pertaining to: (1) not being on call during down time for meals; (2) taking consecutive meal and rest time in violation of rules; (3) leaving the jurisdiction of Maywood during work hours without permission; and (4) swapping his personal car for his assigned car during working hours. Relying on *People v. Williams*, 239 Ill. 2d 119 (2010), and *People v. Grever*, 222 Ill. 2d 321 (2006), the trial court found that, as these rules and regulations

were never enacted by a village ordinance, violations of those rules could not serve as the basis for a criminal conviction. The State thereafter filed a timely notice of appeal.

¶ 8

#### ANALYSIS

¶ 9 The State argues that the trial court erred in granting the defendant's motion in arrest of judgment as the indictment properly alleged the offense of official misconduct. The State argues that the policies the defendant violated were personnel regulations promulgated by the police chief as directed by the Village of Maywood Code of Ordinances and approved by the Village Manager in order to make them binding on police department personnel. As such, the State argues that the police department regulations constituted "laws" pursuant to our supreme court's decision in *Williams*.

¶ 10 The United States Constitution and the Illinois Constitution afford criminal defendants the right to be informed of "the nature and cause" of the accusations against them. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. Further, section 111-3 of the Code of Criminal Procedure of 1963 requires that a charging instrument set forth "the nature and elements of the offense charged." 725 ILCS 5/111-3(a)(3) (West 2014). A motion in arrest of judgment must be granted by the trial court when the indictment does not set forth the elements of an offense. 725 ILCS 5/116-2(b)(1) (West 2014); *People v. Grever*, 222 Ill. 2d 321, 327 (2006).

¶ 11 Section 33-3(c) of the Criminal Code of 1961 provides that a public employee commits misconduct when, in the public employee's official capacity, he seeks to obtain a personal advantage for himself or another by performing an act in excess of his lawful authority. 720 ILCS 5/33-3(c) (West 2014). The official misconduct statute was intended to prevent public officers and employees from using an official position in the commission of an offense. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 506 (1991). The statute requires that the charging

instrument specify the “law” allegedly violated by the officer. *Id.* The term “law” in the official misconduct statute includes a civil or penal statute, a supreme court rule, administrative rules or regulations, or a tenet of a professional code. *People v. Williams*, 239 Ill. 2d 119, 127 (2010). Rules that govern police officers’ conduct will only be considered “laws” under the official misconduct statute if (1) those rules were formally or informally approved by a governing body and (2) are of the type that the legislature intended to be subject to a felony prosecution. *Id.* at 132-33. A conviction under the statute is a Class 3 felony, and the employee forfeits his public employment. 720 ILCS 5/33–3(d) (West 2012); *People v. Dorrough*, 407 Ill. App. 3d 252, 254 (2011).

¶ 12 Here, the State focuses solely on first part of the *Williams* test and argues that the actions of the Village of Maywood amounted to informal approval of the rules at issue. However, even if we were to accept that premise, we would find that the second part of the *Williams* test is not met because the rules the defendant purportedly violated—(1) not being on call during down time for meals; (2) taking consecutive meal and rest time in violation of rules; (3) leaving the jurisdiction of Maywood during work hours without permission; and (4) swapping his personal car for his assigned car during working hours—are not the type that the legislature intended to be treated as a felony when it enacted the official misconduct statute. *Cf. Williams*, 239 Ill. 2d at 133 (violating police chief’s rules prohibiting disclosure of gossip, hearsay, or rumor did not subject one to felony prosecution for official misconduct); *People v. Gray*, 221 Ill. App. 3d 677, 685-86 (1991) (finding that violating rules against procrastination or deliberate disobedience may justify suspension without pay or immediate discharge but did not constitute felony behavior under the official misconduct statute).

¶ 13 Accordingly, we conclude that the rules at issue here do not rise to the level of a “law” within the meaning of the official misconduct statute. The State’s evidence that the defendant violated those rules is not sufficient to sustain a conviction of official misconduct. The trial court therefore properly granted the defendant’s motion for arrest of judgment.

¶ 14 Finally, we emphasize that our holding should not be interpreted as an approval of the defendant’s conduct. The conduct here is certainly troublesome and unjustifiable. We hold that the defendant did not commit the offense of official misconduct only because the rules at issue here cannot be construed as “laws” under the statute.

¶ 15 **CONCLUSION**

¶ 16 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 17 Affirmed.