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Utah v. Lewis : Brief of Respondent

Utah Court of Appeals

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DOCKET NO. 870089 ~~IN THE~~ UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 870089-CA
-v- : ~~20048~~
JOSEPH M. LEWIS, : Priority 2
Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM CONVICTION OF FORGERY A SECOND
DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN.
§ 76-6-501 (1978), IN THE SECOND JUDICIAL
DISTRICT COURT, IN AND FOR WEBER COUNTY,
STATE OF UTAH, THE HONORABLE RONALD O. HYDE,
JUDGE, PRESIDING.

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Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 20048
-v- :
JOSEPH M. LEWIS, : Priority 2
Defendant-Appellant. :

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of forgery, a second degree felony, after a trial in the Second District Court. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(e) (Supp. 1987).

STATEMENT OF ISSUE PRESENTED ON APPEAL

Did the State present sufficient evidence to support defendant's conviction?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-6-501 (1978) provides:

(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a) Alters any writing of another without his authority to utters any such altered writing; or

(b) Makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of

another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(2) As used in this section "writing" includes printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification.

(3) Forgery is a felony of the second degree if the writing is or purports to be:

(a) A security, revenue stamp, or any other instrument or writing issued by a government, or any agency thereof; or

(b) A check with a face amount of \$100 or more, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

STATEMENT OF THE CASE

Defendant, Joseph M. Lewis, was charged with forgery, a second degree felony, in violation of Utah Code Ann. § 76-6-501 (1978).

Defendant was convicted of forgery in a jury trial held January 12, 1987, in the Second Judicial District, in and for Weber County, State of Utah, the Honorable Ronald O. Hyde, Judge, presiding. Defendant was sentenced by Judge Hyde on January 30, 1987, to a term of not less than one year nor more than fifteen years at the Utah State Prison.

STATEMENT OF FACTS

On Monday, December 8, 1986 at approximately 8:00 p.m. defendant entered a business called "Cash-a-Check" in Ogden, Utah and requested that a check be cashed (Tr. 8). The check was made out to defendant in the amount of \$237.22 and was drawn on the account of Stacey Enterprises; defendant indicated that it was a payroll check (R. 2, 11). Keith Baer, the manager of Cash-a-Check, informed defendant that the check could not be cashed until the following morning when the bank could be contacted for verification (Tr. 8).

Defendant returned the next morning and completed an information card verifying that he had not previously cashed a check with the Cash-a-Check company (Tr. 9). Mr. Baer became suspicious when the check defendant presented did not appear to be a payroll check (Tr. 11). He again told defendant the check would have to be verified with the bank and returned to his office to verify the check (Tr. 10). Based upon his suspicions he contacted Stacey Enterprises where the receptionist stated that the company did not use those type of checks for payroll and that they had been burglarized at 5:00 a.m. that morning (Tr. 13). She requested additional time to research the problem (Tr. 13). Upon later contact with Stacey Enterprises Mr. Baer learned that checks had been stolen from the office and that the check in question was not valid (Tr. 14). Mr. Baer then contacted the police (Tr. 14) and Scott Dixon, the president of Stacey Enterprises, and requested their presence at Cash-a-Check.

Officer Stallings went to Cash-a-Check and requested that defendant accompany him to the station (Tr. 40). At the station, defendant told the officer that on December 7, 1987 an unidentified man approached him on the street and requested that defendant perform some work for him (Tr. 40). Defendant claimed that he worked for approximately 3 hours and received the check in question for his labor (Tr. 41).

Scott Dixon also went to Cash-a-Check and stated to Officer Stallings that the defendant had done some work in September through SOS temporary services for Stacey Enterprises, however, was not employed by the business at the present time (Tr. 20-22). The social security number defendant gave SOS temporary services differed from the number he entered on the information card at Cash-a-Check (Tr. 45-46). Mr. Dixon further stated that the check in question, #1131, was among the checks which had been stolen, and had not been signed by him (Tr. 30). Finally, he stated that a copy of a check he had signed which was on his desk the night prior to the burglary, had also been stolen (Tr. 32-33).

SUMMARY OF ARGUMENT

In determining whether the evidence is sufficient to support the verdict, this Court should review the evidence and all inferences which may be drawn from it in the light most favorable to the jury verdict. The evidence presented by the State and failure of defendant to provide an explanation of his actions allowed the jury to infer that defendant committed the crime of forgery.

ARGUMENT

POINT I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT DEFENDANT'S CONVICTION.

Defendant asserts that the evidence presented at trial was insufficient for the jury to convict him. Specifically, he argues: 1) there was no evidence connecting him with the theft of checks at Stacey Enterprises; and 2) his actions were inconsistent with those of a person knowingly trying to pass a forged check.

This Court has adopted the following standard of review when considering a challenge to the sufficiency of the evidence:

The standard for determining sufficiency of the evidence is that the evidence be "so inconclusive or so inherently improbable that reasonable minds could not reasonably believe defendant had committed a crime." State v. Romero, 554 P.2d 216, 219 (Utah 1976). In determining whether evidence is sufficient, the Court will review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the jury verdict. State v. Kerekes, 622 P.2d 1161, 1168 (Utah 1980). Unless there is a clear showing of lack of evidence, the jury verdict will be upheld. State v. Logan, 563 P.2d 811, 814 (Utah 1977).

State v. Gabaldon, 735 P.2d 410 (Utah App. 1987). As noted in State v. Booker, 709 P.2d 342 (Utah 1985):

In reviewing the conviction, we do not substitute our judgment for that of the jury. "It is the exclusive function of the jury to weigh the evidence and to determine the credibility of the witnesses" State v. Lamm, Utah, 606 P.2d 229, 231 (1980); accord State v. Linden, Utah, 657 P.2d 1364, 1366 (1983). So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made, our inquiry stops.

Id. at 345 (citation omitted). And, even if the Court views the evidence as less than wholly conclusive, or if contradictory evidence or conflicting inferences exist, the verdict should be upheld. State v. Howell, 649 P.2d 91, 97 (Utah 1982). In short, "on conflicting evidence the Court is obliged to accept the version of the facts which supports the verdict." State v. Isaacson, 704 P.2d 555, 556 (Utah 1985) (citing State v. Howell, 649 P.2d at 93).¹

Defendant's insufficiency argument is little more than a request for this Court to engage in a de novo review of the weight of the evidence and the credibility of the witnesses, and then to substitute its judgment for that of the jury. As is evident from the authority cited above, this Court and the Utah Supreme Court have stated that they will not review a criminal case in that fashion.

The present case is similar to State v. Williams, 712 P.2d 220 (Utah 1985). There, defendant presented a check to a muffler shop to pay for repairs. The check was payable to defendant and was drawn on the business account of the William Angell Construction Company. The Court stated:

Examining the evidence in support of this verdict, Mr. Angell testified that the check, along with two other checks, had been taken from the office located in his home. He further testified that he did not know

¹ The State is aware of the Utah Supreme Court's recent decision in State v. Walker, Utah, No. 20921, slip op. at 3 (August 25, 1987). There, the Court adopted a new standard of review in sufficiency of evidence cases where defendant has had a bench trial. Because the trial in the instant case was a jury trial, Walker is inapplicable.

defendant, had never employed him, did not owe him money, and that he had not written the check nor authorized anyone to do so. Defendant presented no evidence to controvert the logical inferences which could be drawn by the jury, i.e., that without any explanation as to where he got the check or from whom, the defendant knew the check was forged. The evidence against defendant was not so inherently improbable that it would necessitate a reasonable doubt in the minds of reasonable persons as to his guilt.

Id. at 223.

In the instant case, defendant's argument that no evidence was presented linking him with the theft of the checks is immaterial. Because defendant was charged with forgery, not theft, the State was under no burden to prove that he took the checks. Even assuming defendant did not commit a theft, sufficient evidence existed to convict him of forgery.

The jury made a logical inference from the following evidence that defendant forged the check in question: 1) the check had been stolen from Stacey Enterprises (Tr. 30); 2) Mr. Dixon had not signed the stolen check, nor authorized anyone else to do so (Tr. 30); 3) a copy of a check signed by Mr. Dixon has also been stolen (Tr. 32), inferring that the check was taken to assist in a forgery; 4) although defendant was not employed by Stacey Enterprises (Tr. 20-21), he listed this as his place of employment on the information card he completed at Cash-a-Check (Tr. 18); 5) defendant listed an incorrect social security number on the information card at Cash-a-Check (Tr. 45-46); 6) as in Williams, defendant presented no evidence to controvert the logical inferences which could be drawn by the jury: that defendant had forged the check. Based upon the above facts

presented at trial, sufficient evidence existed to convict defendant of forgery.

Defendant's final claim that his actions were inconsistent with those of a person knowingly trying to pass a forged check is a question for the jury. The jury had the duty to review all of the evidence and determine whether it supported a conviction of forgery. Sufficient facts existed to find that defendant was attempting to pass a forged check and the jury was under no obligation to find that defendant could not have committed the crime of forgery because his actions were illogical.

CONCLUSION

Based upon the foregoing, the State respectfully requests this Court to affirm defendant's conviction.

DATED this 23 day of September, 1987.

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CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Robert Froerer, Public Defender Association, 205 26th Street, Suite #13, Ogden, Utah 84401, this 23 day of September, 1987.

Kimberly K. Hornak