

1987

## Utah v. Lewis : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David L. Wilkinson; attorney general; attorney for respondent.

Robert Froerer; Public Defender Association; attorney for appellant.

---

### Recommended Citation

Brief of Appellant, *Utah v. Joseph M. Lewis*, No. 870089 (Utah Court of Appeals, 1987).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/359](https://digitalcommons.law.byu.edu/byu_ca1/359)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**BRIEF**

TAH  
DOCUMENT  
F U

IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH, 870089  
DOCKET NO.

Plaintiff/Respondent

vs.

JOSEPH M. LEWIS

Defendant/Appellant

Case No. 870089 - CA

Priority #2

**BRIEF OF APPELLANT**

An appeal from a jury conviction of Appellant, in  
the Second Judicial District Court, County of Weber,  
State of Utah, The Honorable Ronald O. Hyde presiding.

**RECEIVED**  
JUL 1 1987  
870089-CA  
COURT OF APPEALS

David L. Wilkinson  
ATTORNEY GENERAL'S OFFICE  
Attorney for Respondent  
236 State Capitol  
Salt Lake City, Utah 84114

Robert Froerer  
PUBLIC DEFENDER ASSOCIATION  
Attorney for Appellant  
205 26th St. Suite #13  
Ogden, Utah 84401

IN THE COURT OF APPEALS OF THE STATE OF UTAH

---

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	Case No. 870089 - CA
	:	
vs.	:	
	:	Priority #2
JOSEPH M. LEWIS	:	
	:	
Defendant/Appellant	:	

---

BRIEF OF APPELLANT

---

An appeal from a jury conviction of Appellant, in  
the Second Judicial District Court, County of Weber,  
State of Utah, The Honorable Ronald O. Hyde presiding.

---

David L. Wilkinson  
ATTORNEY GENERAL'S OFFICE  
Attorney for Respondent  
236 State Capitol  
Salt Lake City, Utah 84114

Robert Froerer  
PUBLIC DEFENDER ASSOCIATION  
Attorney for Appellant  
205 26th St. Suite #13  
Ogden, Utah 84401

TABLE OF CONTENTS

STATEMENT OF THE ISSUES PRESENTED ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	2
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	3

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT  
TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT  
OF A SECOND DEGREE FORGERY.

CONCLUSION.....	4
-----------------	---

TABLE OF AUTHORITIES  
CASES CITED

<u>State v. Newbold</u> , 581 P.2d 991 (Utah 1972).....	3
<u>State v. Carlson</u> , 635 P.2d 72 (Utah 1981).....	4
<u>State v. Martinez</u> , 709 P.2d 355 (Utah 1985).....	4

STATUTORY AUTHORITY

Utah Code Annotated, Section 76-6-501.....	1
--	---

IN THE COURT OF APPEALS OF THE STATE OF UTAH

---

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	Case No. 870089 - CA
	:	
vs.	:	
	:	Priority #2
JOSEPH M. LEWIS	:	
	:	
Defendant/Appellant	:	

---

BRIEF OF APPELLANT

---

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The evidence is insufficient to sustain a conviction against the Defendant of Forgery, a Second Degree Felony.

STATEMENT OF THE CASE

This is a criminal action in which the Defendant was charged pursuant to §76-6-501 of the Utah Code Annotated, 1953 (as amended), with Forgery. The matter was taken to trial before the Honorable Judge Ronald O. Hyde, sitting with a jury, on the 12th day of January, 1987. The Jury convicted Defendant of Second Degree Forgery, and Defendant was sentenced on the 30th day of January, 1987 to serve a term in the Utah State Prison of not less than one nor more than fifteen years. The Defendant appealed that conviction to this Court on the 18th day of February, 1987.

## STATEMENT OF THE FACTS

On Monday, the 8th day of December, 1986 at approximately 8:00 p.m., at 2466 Washington Boulevard in Ogden, Utah, the Defendant entered a business establishment named Cash-A-Check, in order to cash a check in the amount of \$237.22, payable to Joseph M. Lewis, the Defendant (Tr. pgs. 7-10).

The Defendant was told by Mr. Keith Baer, the employee of Cash-A-Check on duty at the time, that the check could not be cashed until the bank could be contacted upon which the check was drawn. Due to the time, such contact could not be made until the following day (Tr. at 9). The Defendant then took the check and returned the next day, December the 9th 1986, to cash the check. The Defendant was told to fill out an information card, verifying that he has never cashed a check at the establishment before as standard procedure. Mr. Baer called the bank while defendant was filling out the form. The bank advised Mr. Baer that there were sufficient funds in the account to cover the check. Then Mr. Baer called Stacey Enterprises the payor of the check to verify that the check was actually written by their office. Mr. Baer was told that Stacey enterprises had been Burglarized earlier, and that the checkbook from which the check in question was written, was apparently stolen. Subsequently Mr. Baer called the police who came and booked Defendant for Forgery.

The Defendant maintains that he was hired to do some clean-up work for a man who hired him to work a day and a half. Defendant states that he does not know the name of the man who

hired him, but gave a description of the man (Tr. at 40, 41).

The Jury found the Defendant guilty of a Second Degree Forgery. From that conviction, the Defendant Appeals.

### SUMMARY OF THE ARGUMENT

The Defendant Contends that the State failed to prove, beyond a reasonable doubt that the Defendant committed a Forgery.

### ARGUMENT

THE EVIDENCE, AS PRESENTED AT TRIAL, IS INSUFFICIENT TO PROVE THE DEFENDANT GUILTY BEYOND REASONABLE DOUBT OF A SECOND DEGREE FORGERY.

Section 76-10-501 Utah Code Annotated, 1953 (as amended) places a burden of proof upon the State to prove beyond a reasonable Doubt that a defendant is guilty, and in the absence of such proof, the defendant must be acquitted.

Counsel is mindful of the Court's rather strict standards of review when, in fact, the Court is asked to review the records to determine the sufficiency of a verdict. This view is expressed in State v. Newbold, 581 P.2d 991 (Utah 1972) where the Utah Supreme Court held,

To set aside a jury verdict, evidence must appear so inconclusive and unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that the Defendant committed the crime. Id. at 972; see also, State v. Carlson, 635 P.2d 72 (Utah 1981); State v. Martinez, 709 P.2d 355 (Utah 1985).

In applying this standard of review to the present case, it is clear that the evidence was not conclusive or satisfactory to the extent necessary to sustain a verdict of guilty. There was no evidence given at the trial that would establish that the Defendant was the one who broke into Stacey Enterprises and stole the check that he attempted to cash. (Tr. at 6). It is feasible that someone else could have taken the checks and written the Defendant a check for the work Defendant did.

The Defendant's actions were inconsistent with a person trying to pass a check he knew to be forged given the facts of the case. If the Defendant knew the check was forged, then why would he have returned the next day to cash the check, knowing that Mr. Baer of Cash-A-Check would call the bank, and was likely to call Stacey Enterprises? (Tr. at 17).

There was no evidence offered at trial that Defendant signed Mr. Dixon's name to the check, and it is unlikely that Defendant knew that Mr. Dixon was authorized to sign the checks.

#### CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the Defendant respectfully requests this Court to reverse his conviction.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of June, 1987.



Robert Froerer



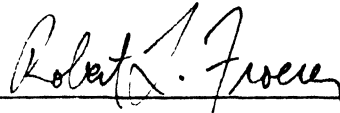
ADDENDUM

There are no rulings of the lower court, rules or other documents that need to be available for one reading the brief. The pertinent statutes are Section 58-37-8 (1) (a) (ii), UCA 1953, as amended, and Section 58-37-8 (1) (ii), UCA 1953, as amended.

DATED this 29 day of June, 1987.

Respectfully submitted,

ROBERT L. FROERER

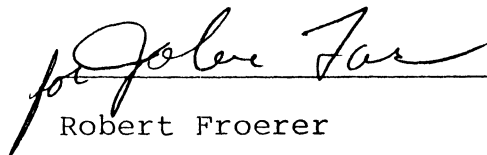
A handwritten signature in cursive script, reading "Robert L. Froerer", is written over a horizontal line.

ROBERT L. FROERER  
Public Defender Association  
205 26th St., Suite 13  
Ogden, Utah 84401

CERTIFICATE OF MAILING

I hereby certify that I mailed 4 copies of the foregoing Brief of Appellant to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah 84114.

Done this 29<sup>th</sup> day of February 1987.

  
Robert Froerer

Attorney for Appellant