

1977

State of Utah v. Don C. Coffey : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

STATE OF UTAH, :

Plaintiff-Respondent, : Case No.
14710

-vs- :

DON C. COFFEY, :

Defendant-Appellant. :

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a conviction of issuing a bad check in violation of Utah Code Ann. § 76-6-505 (Supp. 1975).

DISPOSITION IN THE LOWER COURT

Appellant was tried before a jury which returned a verdict of guilty. The Honorable Allen B. Sorenson entered judgment on that verdict, and sentenced appellant to an indeterminate term of not less than one nor more than fifteen years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent seeks an Order of this Court affirming the judgment rendered below.

STATEMENT OF FACTS

On July 29, 1975, appellant negotiated with W. Morris Ercanbrack for the sale of a load of cherries. A deal was closed, and appellant paid for the cherries by a check in the amount of \$3,560.00 drawn on the Dixie State Bank. Both Mr. Ercanbrack and his son Randall testified that appellant represented the check as good at the time it was written (Tr.12,15). The check was not post-dated. Appellant did not have at the time the check was written sufficient funds to cover the check (Tr.6). Mr. Ercanbrack has never received payment in full on the check (Tr.10).

ARGUMENT

POINT I

THE TRIAL COURT DID NOT COMMIT ERROR IN DENYING APPELLANT'S MOTION TO DISMISS BECAUSE THE EVIDENCE WAS SUFFICIENT TO ESTABLISH ALL ELEMENTS OF THE OFFENSE BEYOND A REASONABLE DOUBT.

Utah Code Ann. § 76-6-505 (Supp. 1975) provides that:

"Any person who issues or passes a check for . . . the purpose of obtaining from any person . . . any money, property or other thing of value. . . knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check."

It is undisputed that the evidence establishes the issuing of a check for the purpose of obtaining property, and the non-payment of the check by the drawee. The nub of the case is the sufficiency of the evidence to establish the culpable mental state of the appellant. It is clear from the above-quoted statute what culpable mental state must be established; knowledge that the check will not be paid by the drawee. Utah Code Ann. § 76-2-103(2) (Supp. 1975) provides that:

"A person acts knowingly. . . with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result."

If the evidence establishes that appellant was aware that it was reasonably certain that his check would not be paid by the drawee, the State will have met its burden to establish all the elements of the offense.

In Points I and II of appellant's brief, it is suggested that the State must prove both an "intent to defraud" and a knowledge that the check would not be paid.

If the intent to defraud is interpreted to mean something different from, or in addition to the knowledge that the check would not be paid, it is not an element of the offense and the State has no obligation to prove it. However, if a person obtains an item of value from a person by means of a check that he knows will not be paid, he manifests an intent to deprive another of right, i.e. to procure something by deception or artifice or to appropriate wrongfully. In other words, he would manifest an intent to defraud. People v. Griffith, 120 C.A.2d 873, 262 P.2d 355 (1953). Under the facts of this case, therefore, proof of a knowledge that the check would not be paid is also proof of an intent to defraud.

Appellant contends that the evidence is such that no reasonable juror could find beyond a reasonable doubt that appellant possessed the requisite knowledge, and in support of his argument has invoked a maxim of statutory construction, inclusio unius est exclusio. The maxim, however, has no application to the case.

Appellant is correct in his interpretation of the present bad check statute. It provides for no presumption of knowledge from the issuing of an insufficient funds check. However, the fact that such a presumption

is not included in the statute does not exclude the jury from inferring intent from appellant's acts. The Utah Criminal Code provides for very few evidentiary presumptions, and yet nearly every offense is defined to include a culpable mental state as an element. Direct evidence on the mental state of a criminal defendant is rarely available, and consequently the jury must nearly always infer the defendant's intent from his acts. The legislature's failure to include presumptions in the code cannot be interpreted as an attempt to prevent the jury from inferring intent. Such a construction would largely frustrate the purposes of the Criminal Code.

On appeal, this court will view the evidence, and the inferences to be fairly drawn therefrom, in the light most favorable to the jury's verdict. State v. Schad, 24 U.2d 255, 470 P.2d 246 (1970). The undisputed facts of this case are that appellant issued a check for a substantial amount of money, and represented that the check was good at the time it was issued. In fact, appellant did not have sufficient funds or credit with the bank on that date, and Mr. Ercanbrack was unable to collect on the check despite a one month effort to do so (Tr.10). At the time of trial, nearly one year after the event, Mr. Ercanbrack had still not

On these facts, a reasonable jury would not necessarily entertain a reasonable doubt of appellant's knowledge that the check would bounce. On the contrary, the inference that he knew seems inescapable. A number of statutes provide that a presumption of intent to defraud arises from the issuing of an insufficient funds check. Utah Code Ann. § 7-15-2, 1953, as amended (Utah statute governing civil remedies for bad checks); Utah Code Ann. § 76-20-11, 1953, as amended (Repealed Utah Criminal Code); Model Penal Code §224.5 (1962); and California Penal Code § 476a(c) (1970). The legislatures could not provide for such presumptions unless the presumption had some basis in fact. If the legislatures can provide that the issuance of an insufficient funds check gives rise to a presumption of knowledge of insufficiency of funds, a fortiori a jury can infer from the passing of a particular bad check that an issuer had knowledge of the insufficiency of funds.

Respondent submits that the evidence in this case establishes appellant's guilt beyond a reasonable doubt, and in the interest of justice, asks that the judgment be affirmed.

POINT II

THE TRIAL COURT'S INSTRUCTIONS FULLY, FAIRLY AND CORRECTLY INSTRUCTED THE JURY ON THE ELEMENTS OF THE CRIME, AND WERE NEITHER CONFUSING NOR CONTRADICTORY.

The premise of appellant's Point III on appeal is that intent to defraud is different and distinguishable from knowledge that a check will not be paid by the drawee. As noted in Point I, supra, under the facts of this case, proof of knowledge that the check would not pass is equivalent to proof of intent to defraud. Instruction No. 6 is clearly a proper instruction on the elements of the crime because it is cast in terms of the statute. Instruction No. 5 is not distinguishable from No. 6 except that it uses the term "intent to defraud". No jury would find appellant guilty beyond a reasonable doubt of having an intent to defraud if they felt that appellant thought that his check would pass. Such knowledge would be clearly inconsistent with a fraudulent intent. The instructions, considered as a whole, fully and fairly explain the elements of the offense of issuing a bad check.

Because Instructions Nos. 5 and 6 are reconcilable and harmonious, they cannot be considered contradictory or confusing. As this court stated in State v. Hendricks, 123 Utah 267, 258 P.2d 452 (1953), instructions are to

be considered as a whole and reconciled whenever possible. It is only when instructions are hopelessly in conflict that it can be said that a jury was misled or confused.

CONCLUSION

Respondent submits that the guilty verdict was rendered by a properly instructed jury in accordance with evidence. Respondent asks that in the interests of justice the judgment be affirmed.

Respectfully submitted,

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