

1979

State of Utah v. Frankie Quinn Sommers : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

:
STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- :

Case No.
16016

FRANKIE QUINN SOMMERS, :

Defendant-Appellant. :

:

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT, IN AND FOR UTAH
COUNTY, STATE OF UTAH, THE HONORABLE
GEORGE E. BALLIF, JUDGE, PRESIDING

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FILED

MAR 26 1979

IN THE SUPREME COURT OF THE
STATE OF UTAH

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STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- :

Case No.
16016

FRANKIE QUINN SOMMERS, :

Defendant-Appellant. :

:-----
BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with the crime of forgery,
a third degree felony, in violation of Utah Code Ann. §
76-6-501 (1953), as amended.

DISPOSITION IN THE LOWER COURT

Appellant was tried by a jury and convicted as
charged in the Fourth Judicial District Court, the Honorable
George E. Ballif, Judge, presiding.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the lower court's
decision.

STATEMENT OF FACTS

On April 10, 1978, the appellant, "with intent to defraud, knowingly and intentionally uttered a forged instrument, to-wit: a bank check with the face value of less than \$100.00, purporting to bear the signature of Melvin R. Sommers, Sr.," (R.37). Appellant knew at that time that the check was forged (R.37). Appellant committed a third degree felony proscribed by Section 76-6-501.

On April 27, 1978, the appellant was arraigned and given a copy of the complaint which set out the crime as being the offense described in Section 76-6-501. The complaint was read and a date was set for the preliminary hearing.

The preliminary hearing took place on May 8, 1978. At that time the complaint was amended in these two ways: the words "with intent to defraud another" were inserted, and the word "make" was substituted for the word "utter." The appellant's attorney objected to the amendments, but the objections were overruled (R.38).

The information was filed on May 11, 1978. The information included the correct section number for the offense (Section 76-6-501) and the amendments made at the preliminary hearing.

A motion to quash the information was made and the request was denied.

On June 27, 1978, the jury returned a verdict of guilty (R.14), and appellant filed a notice of appeal on August 24, 1978 (R.8).

ARGUMENT

POINT I

THE APPELLANT WAS AWARE OF THE CHARGE AGAINST HIM AND WAS ABLE TO PREPARE FOR HIS DEFENSE.

Appellant contends that the amendments to the complaint substantially changed the complaint and were prejudicial to him since his attorney was prepared for and directed his question to the issue of "making" a forged document (R.34).

Applying the case of Harris v. Smith, 541 P.2d 343 (Utah 1975), appellant's argument is without merit. In that case, the appellant was charged and convicted of forgery but claimed that the complaint filed against him was defective in that it did not clearly inform him of the crime charged. This Court stated that there was no merit to the claim since the objection was directed to the complaint and not to the information. In addition, this Court held that an information is valid and sufficient if it charges the offense by using the name given to it by

statute, or by the common law or if it refers to a section of the statute creating the offense charged.

Although the information here did not specifically charge the offense by using the name given to it by statute or common law ("forgery"), the information did refer to the section of the Utah Code Annotated which created the offense, Section 76-6-501. This description, Section 76-6-501, was contained in the complaint and in the information. The appellant, therefore, was informed of the crime charged against him.

This Court, in an earlier case, State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943), found that where the complaint did not state which section of the code the defendant was charged under, and where the language of the complaint did not fit the requirements of the statute under which she was actually convicted, the defendant was convicted of a crime for which she was never charged. In the appellant's case, the complaint and the information stated the proper code section, 76-6-501. The complaint cited Section 76-6-501 before any amendment was made and, under Jensen, supra, appellant was, at that time, aware of the crime charged.

In addition, the form used in the complaint and the information to describe the offense was consistent with Utah Code Ann. § 77-21-47 (1953), as amended, which states: "The following forms may be used. . . Forgery-- A.B. forged a certain instrument purporting to be a promissory note (or describe the note or give its tenor or substance)."

In the present case, the complaint and information state that the appellant is charged with forging an instrument purporting to bear the signature of Melvin R. Sommers, Sr. (R.37,40). This form fits the requirements of Section 77-21-47.

Furthermore, Utah Code Ann. § 77-21-8 (1953), as amended, states in relevant part:

(1) The information or indictment may charge, and is valid and sufficient if it charges the offense for which the defendant is being prosecuted in one or more of the following ways: . . . (1) (a) by using the name given to the offense by the common law or by statute . . . (2) The information or indictment may refer to a section or subsection of any statute creating the offense charged therein, and in determining the validity or sufficiency of such information or indictment regard shall be had to such reference.

State v. Redmond, 19 Utah 2d 272, 430 P.2d 901 (1967), and State v. Matthews, 13 Utah 2d 391, 375 P.2d 392 (1962), are two cases which the appellant cites in his brief.

Both are distinguishable on their facts and do not apply in the instant case. The Redmond case involved an amended information; the instant case is concerned with an amended complaint. In Matthews, supra, this Court held that the ruling of a trial court permitting amendment to an information after the trial had commenced shall not be reviewable unless the defendant can show a reason why the trial should not proceed. Appellant claims that reasons were advanced for quashing the information and, therefore, Matthews does not bar judicial review. However, the Matthews situation is not relevant here since it involved an information which was amended after trial commenced. In the present case, it was the complaint, not the information, which was amended. The information was legally sufficient and the appellant received a fair preliminary hearing on the crime charged.

CONCLUSION

The amendments to the original complaint did not substantially change the complaint since the proper code section was referred to in all cases. The appellant, therefore, was clearly informed before the preliminary hearing of the charge made against him and was able to prepare for defense. Harris v. Smith, supra.

Respondent urges this Court to affirm the lower court's decision.

Respectfully submitted,

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