

2011

# Kelly Robbennolt v. State of Utah: Brief of Appellant

Utah Court of Appeals

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Case No. 20110436-CA

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IN THE  
UTAH COURT OF APPEALS

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Kelly Robbennolt,  
Defendant/Appellant,

vs.

State of Utah,  
Plaintiff/Appellee.

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Brief of Appellant

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Appeal from conviction for forgery in the Fourth District Court of Utah,  
Utah County, the Honorable Darold J. McDade presiding.

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**IN THE UTAH COURT OF APPEALS**

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KELLY ROBBENNOLT,

Appellant/Defendant,

v.

STATE OF UTAH,

Appellee/Plaintiff.

**APPELLATE BRIEF**

Case No.: 20110436-CA

The Appellant/Defendant, through counsel, hereby, submits this appellate brief.

The list of all the parties is the same as the caption; therefore, no list of all the parties is submitted.

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## **JURISDICTIONAL STATEMENT**

Appellant/Defendant appeals from a conviction for forgery, a third degree felony, in violation of Utah Code Ann. § 76-6-501(1)-(4). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009).

## **STATEMENT OF ISSUES AND STANDARDS OF REVIEW**

1. Should this Court reverse the trial court's conclusion of law that the Appellant/Defendant was guilty of all the elements of forgery when one element was missing by the court's own declaration—that his purpose in committing the forgery was to do the right thing, which purpose is contrary to forgery's element to defraud.

*Standard of Review.* This Court will review this issue under the correctness standard for legal error committed by the trial court in its use of fixed principles and rules of law, determining whether the trial court incorrectly selected, interpreted or applied the law. See State v. Pena, 869 P.2d 932, 936 (Utah 1994). It gives no deference to the trial court's conclusions of law.

2. Should this Court reverse the trial court's finding that the Appellant/Defendant lacked authority to use Mr. Scott Abbott's name when he had given prior, written authorization to use his name in the way the Appellant/Defendant used it?

*Standard of Review.* This Court will review this issue under the clearly erroneous standard to determine whether the marshaled evidence fails to support the findings while viewed in a light most favorable to the trial court's findings. See State v. Pena, 869 P.2d 932, 935-36 (Utah 1994) (clearly erroneous standard of review); Ong Int'l (U.S.A.), Inc.

v. 11th Ave. Corp., 850 P.2d 447, 457 (Utah 1993) (marshaling requirement); Johnson v. Higley, 977 P.2d 1209, 1217 (Utah Ct. App. 1999).

3. Should this Court reverse the trial court's finding that the Appellant/Defendant lacked authority to correct deed of trust errors when Mr. Scott Abbott provided him with the pre-signed and notarized deeds of trust for this very purpose and did not finally revoke in writing the authority to use them until a year after the alleged forgery of the partial deed of trust?

*Standard of Review.* This Court will review this issue under the clearly erroneous standard to determine whether the marshaled evidence fails to support the findings while viewed in a light most favorable to the trial court's findings. See State v. Pena, 869 P.2d 932, 935-36 (Utah 1994) (clearly erroneous standard of review); Ong Int'l (U.S.A.), Inc. v. 11th Ave. Corp., 850 P.2d 447, 457 (Utah 1993) (marshaling requirement); Johnson v. Higley, 977 P.2d 1209, 1217 (Utah Ct. App. 1999).

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES**

According to the forgery law, found in Utah Code Ann. § 76-6-501(1)-(4):

(1) As used in this section, "writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as: (a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification; (b) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or (c) a check, 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.

(2) 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 or utters the 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: (i) purports to be the act of another, whether the person is existent or nonexistent; (ii) purports to be an act on behalf of another party with the authority of that other party; or (iii) 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 an original did not exist.

(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.

(4) Forgery is a third degree felony.

### **STATEMENT OF CASE**

The State charged Appellant/Defendant by information with forgery, a third degree felony. R001. At a bench trial, the judge found him guilty. R069.

### **STATEMENT OF FACTS**

1. On February 23, 2011, the district court held a bench trial in this criminal forgery matter and found the Defendant guilty. R065-071.
2. When finding guilt, the trial court stated, "I think he was trying to do the right thing," (R110:223, lines 18-19) but found conclusively that what he did was "in accordance with what the elements are of the charge." R110:223, line 20-21.
3. In its minutes, the Court stated, "The court finds that Mr. Robbennolt had no authority to use Mr. Abbott's signature when he did and therefore, finds the defendant guilty of count 1." R069-071. Emphasis added.

4. Testimony at the preliminary hearing and at trial from Mr. Abbott revealed that he did not give the Appellant/Defendant explicit, verbal authority to use his signature on the partial deed of trust delivered to Mr. Mangum. R109:13, lines 21-22, R109:16, lines 10-11, R110.
5. Evidence admitted at trial showed written authority from Mr. Abbott for the Appellant/Defendant to act in his behalf for the company in managing the day-to-day company projects. R111: “Keystone Restructuring Agreement-A,” Ex. 1, p. 5, §5.1.
6. This management also included “balanced risk management.” R111: KRAA, Ex. 1, p. 5, §5.1.
7. The management included the highest duty: “to lead, operate, and manage Keystone to the best interest of Keystone.” R111: KRAA, Ex. 1, p. 5, §5.1.
8. Managing the operations of Keystone involved executing and delivering “all documents” that “may be reasonably necessary to effectuate the provisions of this Agreement-A.” R111: “Stocks Purchase Agreement-B” (SPAB), Ex. 2, pp.5-6, §2 (“Agreement-A to Perform Necessary Acts”).
9. One of the day-to-day company projects that the Appellant/Defendant was managing involved the master deed of trust on the Townsend, Montana property. R111: KRAA, Ex. 2, pp.3-4, §2 (“Existing Keystone Projects”).
10. The Townsend, Montana property master deed of trust was a Keystone asset, not an Abbott-owned asset, although it was titled in Mr. Abbott’s name. R111: KRAA, Ex. 1, pp.3-4, §2 (“Existing Keystone Projects”).

11. Mr. Mangum, the victim of the alleged forgery, entered into an investment contract which mandated that his investment “shall” be secured by a partial deed of trust. R111: “JR Partnership Agreement,” Ex.3, p.4, §5(“Security”).
12. The partial deed of trust was to the master deed of trust on the Townsend, Montana property. R109:4, lines 12-13, R111: Ex. A, p.1.
13. The Appellant/Defendant and Mr. Mangum understood that Mr. Mangum was owed a partial deed of trust. R109:4-5, R109:6, line 4.
14. As security for Mr. Mangum’s investment, the partial deed of trust was not delivered to him. R109:4, lines 18-19.
15. When Mr. Mangum told the Appellant/Defendant of the error, the Appellant/Defendant sought to correct the deficiency by delivering a partial deed of trust to Mr. Mangum on the Keystone asset—the master deed of trust on the Townsend, Montana property. R109:5, lines 3-21.
16. Mr. Mangum believed that he immediately recognized the partial deed of trust as a forgery because the date on the deed preceded his request and it had Mr. Abbott’s name on it. R109:5, lines 15-25,
17. Mr. Mangum spoke to Mr. Abbott about whether he signed the particular, partial deed of trust he had been given. R109:6, lines 17-25, R109:7, lines 1-3.
18. Mr. Abbott denied signing the notarized, partial deed of trust that the Appellant/Defendant had delivered to Mr. Mangum. R109:6, lines 17-25, R109:7, lines 1-3, R109:22-23.

19. The notarized, partial deed of trust, however, came from the blank, pre-signed, and already notarized deeds of trust that Mr. Abbott had given in 2007 to the Appellant/Defendant to use at the outset of managing Keystone to correct deed of trust errors. R109:16, lines 19-24, R109:18, lines 3-4, R109:20, lines 7-8, 20-21.
20. Although the two had significant disagreements about the management of Keystone and other personal problems before 2009 (R109:13, lines 3-6), Mr. Abbott never withdrew the authority in writing he had given to the Appellant/Defendant to use the notarized deeds of trust until 2010. R111: “Due Diligence & Evidence Agreement,” Ex. 15, p.2, #6, R110.
21. The alleged forgery using the pre-signed and notarized deed previously given to him occurred in 2009. R109:5, lines 9-12, R109:21, lines 16-18.
22. The trial court judge found that the Appellant/Defendant was trying to do the right thing by delivering the partial deed of trust to Mr. Mangum. R067-069: “SENTENCE, JUDGMENT, COMMITMENT”; R110:223, lines 18-19 “TRANSCRIPT for hearing 2-23-2011.”

### **SUMMARY OF ARGUMENT**

As a matter of law, the forgery conviction must be reversed for legal error because the element of intent to defraud was not found. The trial court, in fact, found the opposite. It found the Appellant/Defendant was trying to do the right thing, which is completely counter to the intent to trick, deceive, or defraud anyone.

From an evidentiary perspective, the trial court was clearly erroneous in its finding of no authority to sign. Substantial reasons existed to doubt the lack of authority. Although Mr. Scott Abbott verbally claimed at trial that he did not give specific authorization for the Appellant/Defendant to use his signature for the partial deed of trust and that the two had major disagreements about Keystone before 2009, the written evidence shows he contractually gave the Appellant/Defendant that authority by 2008, if not in 2007. The authority to use Mr. Scott Abbott's name in behalf of their joint-business lasted until it was contractually signed away in its entirety in 2010, covering the 2009 time period in which the alleged forgery occurred.

The written evidence also shows that by giving the Appellant/Defendant pre-signed deeds of trust in 2007, Mr. Scott Abbott empowered the Appellant/Defendant to correct any deed of trust errors. Correcting such errors was consistent with the contractual authority Mr. Abbott gave him to do, which authority to use the pre-signed deeds of trust lasted until 2010 when it was contractually disaffirmed in writing and signed by Mr. Abbott.

From 2007 to 2010, therefore, the Appellant/Defendant had (1) written authorization during the time of the alleged forgery to use Mr. Abbott's signature for the day-to-day operations of their joint company and he had (2) the intention to do what was right in using Mr. Abbott's name. On the basis of written authority and the basis of proper intent, the conviction for forgery must be set aside.

## **ARGUMENT**

### **I.**

#### **THERE CAN BE NO CONVICTION FOR FORGERY BECAUSE THE DISTRICT COURT DID NOT FIND ONE OF THE ESSENTIAL ELEMENTS: INTENT TO DEFRAUD**

According to Utah's statute on forgery, a "person is guilty of forgery if" he does so "with purpose to defraud anyone." U.C.A. § 76-6-501(1)-(4). The Utah Supreme Court stated specifically that "[s]igning another's name may be no crime, but doing so with intent to defraud makes the act forgery. In these and numerous other crimes a particular purpose, motive of intent[,] is a necessary element within the meaning of the statute." State v. Turner, 282 P. 2d 1045 (Utah 1955) (citations and quotations omitted); see also State v. Winward, 909 P. 2d 909, 912 (Utah Ct. App. 1995) ("To commit forgery, one must possess the specific intent to defraud 'anyone' [or have knowledge that he is facilitating a fraud] Utah Code Ann. § 76-6-501 (1995). See *State v. Turner*, 3 Utah 2d 285, 288, 282 P.2d 1045, 1047 (1955) (Crockett, J., concurring)."). The intent, which is a necessary element of forgery, must be nothing short of the intent to defraud.

The State's Exhibit A is a "Partial Assignment of Deed of Trust," purportedly from Mr. Scott Abbott to Mr. William Brent Mangum. R111: State's Ex. A, p.1. The subject property is in a master deed of trust on property located in "Townsend,...Montana." Id. The Appellant/Defendant was found guilty of forging this document. R069-071: "SENTENCE, JUDGMENT, COMMITMENT"; R110: "TRANSCRIPT for hearing 2-23-2011."

In contradiction to its conclusionary statement that “he was trying to defraud in accordance with what the elements are of the charge” (R069-071:“SENTENCE, JUDGMENT, COMMITMENT”; R110:223, lines 20-21, the district court failed to find any facts of fraud in its judgment for forgery. For example, it did not find any facts from which an inference of fraud could be made—no facts that the Appellant/Defendant would benefit from the transaction at the cost of someone else, no facts showing any reason the Appellant/Defendant may have had to defraud the alleged victim, Mr. Mangum, and, outside of their litigious relationship, the court found no facts showing how this transaction would be fraudulent or detrimental in any way to Mr. Abbott. The trial court simply found “no authority to sign.” Id. In fact, it stated, “And, again, it seems to me that Mr. Robbennolt was trying to do what he could to make things right....I think he was trying to do the right thing.” R110:223, lines 12-14, 18-19. Emphasis added. The trial court found that the Appellant/Defendant’s intention was the opposite of one to defraud; it found that his intent or purpose was to do the right thing. This kind of intent or purpose could not be more contrary to the intent to defraud.

After an analysis of the facts, the trial court came to a summation. The sequence of concepts in the summation is significant. First, it spoke about (1) the lack of authority and then second, it spoke of (2) the intent involved, which are the two major elements of forgery. It explained as follows in the sequence of concepts or elements: “Why didn’t the Defendnat Mr. Robbennolt sign his own name? Because he couldn’t. He needed Mr. Abbott’s signature. [1] That authority was not given. [2] And again it seems to me that

Mr. Robbennolt was trying to do what he could to make things right....I think he was trying to do the right thing.” R110:223, lines 12-14, 18-19. Numbers added. The concepts expressed in sequence here show that the Appellant/Defendant had no authority to sign, but that he was trying to do the right thing in what he did.

A reading of the entire judgment reveals that having “no authority to sign” (R110:222, lines 9-10) was the only element the court actually analyzed in its determination as to whether the Appellant/Defendant committed forgery. See R110:223, lines 1-8; R110:223, lines 9-12; R110:223, lines 19-20.

In marshaling the evidence, the Appellant/Defendant notes that the trial court began to analyze the facts for fraud. It stated, “The question is did he do that to defraud? Was his purpose to defraud? And so I’ve set forth some things here that I want to mention.” R110:221, lines 13-15. Then, instead of directing its findings to the facts that show the Defendant’s intent, it focused on the witnesses: “Credibility of the witnesses is always at issue in these types of cases....It’s clear to me that all parties were credible in, in what they were trying to relate to the Court.” R110:221, lines 16-17, 21-23. Witnesses, however, cannot speculate as to the intent of a defendant’s mind; therefore, this focus on the credibility of witnesses does nothing to explore the question of whether the Defendant had in his mind to defraud anyone.

Next, the court went on to discuss what it believed was the underlying subject: “money, money, money is what we’re dealing with here. That’s the ultimate cause of what’s going on.” As stated, this acknowledgment about money does nothing to



enlighten us on the Appellant/Defendant's intentions. If evidence had suggested that the Appellant/Defendant would have gained money through this alleged forgery, then that could have helped, but the facts never established how the Appellant/Defendant would have profited or that he did profit from the alleged forgery here. There was no evidence. The initial investment money for the partial deed of trust did not pass through his hands. R109:7-8, lines 21-25, 1-2. The court's general reference to money, without any specific application, is simply a complaint that if there had been no money to purchase anything, then this problem would never have happened.

The court next stated, "Trust, trust, trust." This general reference to trust, however, was not applied to any specific person or set of facts. Other than the accusation of forgery, there were no facts or evidence suggesting the Appellant/Defendant had broken any specific trust. Immediately following this mention of trust, though, the court held, "the Court does find that Mr. Robbennolt had no authority to sign on Mr. Abbott's behalf." Simply having no authority to use another's signature is insufficient for forgery because:

[T]he law does not conclusively presume that because a person signed the name of another a forgery has occurred. The act of signing another's name without permission does not constitute forgery unless it was done with the intent to defraud [or with knowledge that he is facilitating a fraud]. Accordingly, to sustain a conviction for forgery, there must be a sufficient connection between the act of forgery and the intent to defraud. In establishing the nexus between the intent and the act, the law can presume the intention so far as realized in the act, but not an intention beyond what was so realized. Moreover, even if a defendant possesses both an intent to defraud and commits the act of signing another's name without authority, a forgery conviction cannot be sustained unless the act was done in furtherance of the intention [or with knowledge that he is facilitating a

fraud]. Stated another way, a defendant who has signed another's name without permission, while possessing an intent to defraud that is completely unrelated to the unauthorized endorsement, has not committed forgery.

State v. Winward, 909 P. 2d 909, 912-13 (Utah Ct. App. 1995). Citations and quotations omitted. Emphasis added.

In its analysis of the facts, the Court did not cite to any facts that would establish that the Defendant was intending to defraud; it only cited facts showing that he did not have permission to use another's name and that this was tantamount to fraud, meeting all the elements of the crime charged. R069-071: "SENTENCE, JUDGMENT, COMMITMENT"; R110:223, lines 19-21, "TRANSCRIPT for hearing 2-23-2011." This, though, is legal error.

As the law above states, the act of signing Mr. Abbott's name, by itself, does not constitute forgery, yet that is exactly what the Court found in both its unofficial minutes and official judgment: "The court finds that Mr. Robbennolt had no authority to use Mr. Abbott's signature when he did and therefore, finds the defendant guilty of count 1." R069-071; see also R110:223, lines 12-14, 18-19. ("I think he was trying to do the right thing. But it doesn't detract from the fact that no authority to sign and he was trying to defraud in accordance with what the elements are of the charge. Therefore, based upon that, the court does judge Mr. Robbennolt guilty of the crime of Forgery, a Third Degree Felony."). Even assuming the Appellant/Defendant had no authority to sign, this finding of "trying to do the right thing" (Id.) is clearly inconsistent with a finding of guilt and the intent to defraud. Accordingly, as a matter of law, the conviction for forgery and the finding of guilt must be reversed and set aside.

**II.**  
**DURING THE TIME OF THE ALLEGED FORGERY, MR. SCOTT ABBOTT  
HAD GIVEN WRITTEN AUTHORIZATION FOR THE  
APPELLANT/DEFENDANT TO USE HIS NAME FOR THE PURPOSE FOR  
WHICH HE USED IT**

As stated above, the trial court found an intent to do right, not one to defraud. The trial court also found that the Appellant/Defendant had no authority to sign. This finding, however, is contradicted by substantial evidence presented at trial.

As a part of marshaling the evidence, the Appellant/Defendant notes that the trial court mentioned a number of facts why the Appellant/Defendant did not have authority to sign for Mr. Abbott on the property in question. It began with “the fact that Mr. Abbott’s signature was needed because the property was in his name.” R110:222, lines 11-13. The court continued about Mr. Abbott, “He had to sign.” Id. at line 13. Then, discussing the Appellant/Defendant, the trial court explained that even though he was part of Keystone, “because of his history or background...[a]t least in this transaction, he wasn’t a signer. It was all in Mr. Abbott’s name.” Id. at lines 14-16. Rhetorically, the trial court then asked the next logical question, “Was there any contact made with Mr. Abbott regarding the transaction by Mr. Robbennolt? Not that I could see. He did this on his own” (R110:223, lines 1-3) without “at least ask[ing]...something” (Id. at lines 6-7) of Mr. Abbott about whether he could use his signature in this transaction.

Even though the trial court found that the Appellant/Defendant did not have the authority to sign Mr. Scott Abbott’s name, the written documentation conclusively shows that his authority to use Mr. Abbott’s name lasted from at least 2008 to 2010, during the 2009 alleged forgery.

In 2008, the Appellant/Defendant and Mr. Scott Abbott acknowledged in writing that they were both “cofounders” and “equal...owners” of “Keystone,” a Delaware corporation formed back in “2006.” See R111: “Keystone Restructure Agreement-A” (KRAA), Ex. 1, p.1. The two parties made reference to the “Townsend, Montana” property that was an “existing Company project[] with contracts, options, or title ownership.” R111: KRAA, Ex. 1, pp.3-4, §2 (“Existing Keystone Projects”). Giving the Appellant/Defendant broad authority to act in Keystone’s and its investors’ best interests while managing risk, Mr. Abbott executed the document that states “Robbennolt will continue to lead, operate, and manage Keystone to the best interest of Keystone,...and its investors...with balanced risk management.” R111: KRAA, Ex. 1, p. 5, §5.1. Emphasis added. The Appellant/Defendant’s role was active and significant: to lead, to operate, to manage, and to do so in the best interest of Keystone, and to balance risks.

By written contract, Mr. Abbott willfully took on a passive role in dealing with Keystone and the Townsend, Montana property because the “Keystone Restructure Agreement-A” gave him no duties to lead, or operate, or manage any of Keystone’s business, properties, or projects. See R111: KRAA, Ex. 1. No other subsequent document changed his lack of responsibilities to operate Keystone, either. The Appellant/Defendant was the only one who had the contractual right and obligation to handle business related to the property at issue—the Townsend, Montana property. R111: KRAA, Ex. 1, p. 5, §5.1 And he did just that by issuing a partial deed of trust to Mr. Mangum in the master deed of trust that Keystone had on the Townsend, Montana property.

The alleged forgery in regards to the Townsend, Montana property occurred on or about January 9, 2009 (R001: “Information”), during the period when the Appellant/Defendant had written authority to operate Keystone in Mr. Abbott’s behalf, who had the passive role. See R111: KRAA, Ex. 1, p.1 (signed in 2008, acknowledging co-ownership of Keystone along with Appellant/Defendant managing Keystone) and R111: “Due Diligence & Evidence Agreement,” Ex. 15, p.2, #6 (signed in 2010, acknowledging that Appellant/Defendant no longer could use the pre-signed and notarized deeds of trust given by Mr. Abbott to Appellant/Defendant in 2007).

The Appellant/Defendant used Mr. Abbott’s name in the partial deed of trust consistent with the contractual authority he had been given for the following reasons:

First, he was to “manage” the day-to-day operations of Keystone, of which Mr. Abbott’s name was part. See R111: KRAA, Ex. 1, p.1 and p. 5, §5.1. Thus, the Appellant/Defendant was to act in Mr. Abbott’s behalf on a daily basis through Keystone. He used his name regularly in this way. The two acted under each other’s names as a part of their business—it was their accepted business practice. See R111: KRAA, Ex. 1, p.1, “Recitals” (“Abbott has been keeping and/or holding Robbenolt’s Stocks and/or 400 shares under his name.” Emphasis added.); R109:30, lines9-12 (“normal course”).

Second, the Appellant/Defendant was to act in Keystone’s “best interest.” R111: KRAA, Ex. 1, p. 5, §5.1. It was in Keystone’s best interest to correct a partial deed of trust error, which deed was rightfully owed on its Townsend, Montana property. Consistent with his obligations to act in Keystone’s best interests, the Appellant/Defendant delivered a partial deed of trust to correct the error Mr. Mangum

suffered when the partial deed of trust on that property was not delivered to him as contractually required. See R111: “JR Partnership Agreement,” Ex.3, p.4, §5(“Security”) (“This investment shall be secured by a deed of trust against a property....A separate and different Promissory Note and Deed of Trust shall be issued for this investment.”). Emphasis added. Performing the correcting of a partial deed of trust was explicitly permitted by Mr. Abbott. R027: “PRELIMINARY HEARING,” R111, R109:16, lines 19-24, R109:18, lines 3-4.

Third, the Appellant/Defendant not only acted in the best interests of Keystone, but also acted to manage “risk,” as was his duty. See R111: KRAA, Ex. 1, p.1 and p. 5, §5.1. It was a risk to Keystone’s assets, particularly the Townsend, Montana asset that was titled in Mr. Abbott’s name (R111: KRAA, Ex. 1, pp.3-4, §2 [“Existing Keystone Projects”]) if a security for monetary interest that Mr. Mangum had already paid was not provided to him. The risk was a lawsuit against the asset holder: Keystone. By supplying Mr. Mangum with the partial deed of trust on the Keystone asset that was due him, the Appellant/Defendant sought to minimize “risk” (Id.) and perform the contractual obligations owed to Mr. Mangum.

Fourth, because the Townsend, Montana asset was a company asset (R111: KRAA, Ex. 1, pp.3-4, §2 [“Existing Keystone Projects”]), not a Mr. Abbott asset, and because the Appellant/Defendant was the only one to manage the company assets according to the authority Mr. Abbott gave him in the “Keystone Restructure Agreement-A,” the Appellant/Defendant did nothing illegal or improper in delivering the partial deed of trust on that asset. The partial deed of trust had to have Mr. Abbott’s name on it

because it was titled in his name, not Keystone's or Mr. Robbennolt's, as the trial court noted. R110:222, lines 11-13 ("Mr. Abbott's signature was needed because the property was in his name."). Thus, Mr. Abbott had already given the Appellant/Defendant authority to use that Townsend, Montana asset with his name titled on it. There was no written prohibition from doing so. There was no requirement for any further discussion with Mr. Abbott on how the Appellant/Defendant would use it. The Appellant/Defendant was to use it in whatever way he thought was in the best interest of the company. This authority was not taken away in writing until 2010 in the final "Due Diligence & Evidence Agreement." See R111: Ex. 15, p.1.

The State may cite to the "Conflict of Interest" provision for required consultations in the "Keystone Restructuring Agreement-A," but it is inapplicable because no anticipated conflict of interest had arisen at that time. The only conflict anticipated was one where the Appellant/Defendant may want "to enter into a real estate development relationship with a MCI Development or Keystone Contact." R111: KRAA, Ex. 1, p. 5, §5.2. If so, then the requirement to "consult with Abbott and seek his approval" (Id.) would apply. Because it did not apply, the Appellant/Defendant did not have to seek any further approval from Mr. Abbott to use his name on the company asset for Mr. Mangum's partial deed of trust transaction. That transaction was not a "MCI Development or Keystone Contact" transaction; thus, no approval was necessary.

If Mr. Abbott thought his approval for the Keystone day-to-day activities was necessary, then he would have reserved it in the contract like he did for the Conflict of

Interest provision. But, he did not. In fact, he executed the opposite for the Appellant/Defendant:

In the counterpart to the first “Keystone Restructuring Agreement-A,” Mr. Abbott gave the Appellant/Defendant the following right and mandate: the Appellant/Defendant “shall execute and deliver all documents...that may be reasonably necessary to effectuate the provisions of this Agreement-A.” R111:“Stocks Purchase Agreement-B” (SPAB), Ex. 2, pp.5-6, §11 (“Agreement-A to Perform Necessary Acts”). Emphasis added. This is precisely what the Appellant/Defendant did when he delivered the partial deed of trust document to Mr. Mangum.

The Appellant/Defendant saw that it was “reasonably necessary to effectuate” the operations of Keystone, as outlined in the Keystone Restructuring Agreement-A. He then acted accordingly. Mr. Abbott did not revoke in writing his written, explicit, broad, and sweeping authority to deliver necessary documents at any time before the Appellant/Defendant delivered the necessary partial deed of trust to Mr. Mangum. At most, the two had had significant business disagreements prior to the deed delivery, but not enough to revoke in writing any of the authority given. R109:13, lines 3-6. The Appellant/Defendant did nothing to overstep his written authority in acting on behalf of Mr. Abbott through Keystone. Accordingly, the factual finding of the trial court that he did is clearly erroneous and must be reversed.

### III.

**CONSISTENT WITH THE WRITTEN AUTHORITY, MR. SCOTT ABBOTT  
EMPOWERED THE APPELLANT/DEFENDANT TO CORRECT DEED OF  
TRUST ERRORS WITH THE PRE-SIGNED AND NOTARIZED DEEDS OF  
TRUST HE GAVE HIM**



According to Mr. Scott Abbott at the preliminary hearing (R027: “PRELIMINARY HEARING”; R109: “TRANSCRIPT for Hearing of 04-26-2010”), he gave the Appellant/Defendant the authority to correct deed of trust errors. R109:16, lines 19-24, R109:18, lines 3-4, R109:20, lines 7-8, 20-21, R109:21, lines 10-13. Then, consistent with that authority, Mr. Abbott gave the Appellant/Defendant the ability to do exactly that by the seven or so pre-signed and notarized deeds of trust, as referenced in Exhibit 15, “Due Diligence & Evidence Agreement” (DDEA) of February 10, 2010. See R111 (“Envelope of Exhibits”). In that document, it states that the Appellant/Defendant affirms that “all known notarized documents signed by Abbott and given to Robbennolt in the fall of 2007 have been destroyed.” R111: DDEA, Ex. 15, p.1, #3. Attesting to the truth of the statements within, Mr. Abbott executed the DDEA document on February 11, 2010 at 3:01 p.m. See R111: DDEA, Ex. 15, p.2, #6.

With the ability to correct deed of trust errors, the Appellant/Defendant delivered a partial deed of trust on Mr. Abbott’s and the Appellant/Defendant’s business-owned master deed of trust for property in Townsend, Montana to Mr. Brent Mangum because he had not been given a partial deed of trust as required under his contract. R109:4-5, R111: “JR Partnership Agreement,” Ex.3, p.4, §5(“Security”) (“This investment shall be secured by a deed of trust against a property....A separate and different Promissory Note and Deed of Trust shall be issued for this investment.” Emphasis added). Mr. Mangum’s contract was with Mr. Hassan Kassir, who, at the time, represented American Star Lending, and who, before 2010, had gained rights to “ownership/control” of the “master

deed of trust in Townsend, Montana.” See R111: “Relinquishment Agreement,” Ex. 13, p.1, “Recitals.” It was from this master deed of trust that Mr. Mangum was to receive his partial deed of trust. Mr. Kassir was to deliver it. He failed to do so. R109:4-5.

Because Mr. Kassir failed to deliver the partial deed of trust, he later committed to do the following: “Relinquish control and rights to Kassir’s ownership/control of the...master deed of trust in Townsend, Montana to Douglas Scott Abbott.” See R111: “Relinquishment Agreement,” Ex. 13, p.1, “Recitals.” In this way, Mr. Abbott regained control on how the interests in the master deed of trust would be divided, which were owned initially by Mr. Kassir before this final agreement. With this ability to control the interests, “Douglas Scott Abbott has agreed to give Mangum rights to a fractional portion of the [Townsend, Montana] deed of trust.” See R111: “Relinquishment Agreement,” Ex. 13, p.1, “Recitals.” Thus, Mr. Abbott effected the same resolution that the Appellant/Defendant had attempted to do months earlier—making it possible for Mr. Mangum to secure his interests in the master deed of trust to the Townsend, Montana property. Apparently now satisfied, Mr. Mangum agreed to “irrevocably and unconditionally release Kassir, and any of his...representatives (except Kelly Robbennolt)...from any and all actions.” R111: “Settlement and Release Agreement,” Ex. 14, p.2, §5. The multiple transactions occurring here show that what the Appellant/Defendant did was no different in any material way than what Mr. Abbott later did for Mr. Mangum. The two both used legal instruments to give Mr. Mangum rights to the Townsend, Montana property. The parallel acts demonstrate that the Appellant/Defendant did nothing fraudulent with the partial deed of trust because what it

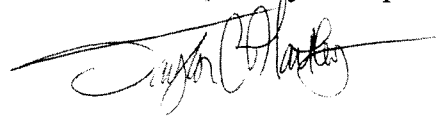
would have accomplished was the very same thing that Mr. Abbott accomplished later. And he did so using the legal instruments Mr. Abbott had provided him at the outset to correct the very problem he sought to solve by delivering the deed: correcting deed of trust errors.

## **CONCLUSION**

The trial court made a legal error when finding the Appellant/Defendant guilty of forgery because instead of finding the element of intent to defraud, it found the intent of “trying to do the right thing.” The trial court was clearly erroneous in its factual finding that the Appellant/Defendant lacked the authority to use Mr. Abbott’s name in the pre-signed, notarized deeds of trust because written, contractual authority had already been given him to do so. This authority is clearly shown in a number of documents signed before the incident. The explicit, written authority was not finally revoked in writing until a year after the Appellant/Defendant delivered the alleged forgery. Delivering the partial deed of trust to Mr. Mangum with Mr. Abbott’s signature on it was fully consistent with the Appellant/Defendant’s contractual duties, obligations, and rights—he did so as a part of his obligations to “manage” the day-to-day projects of Keystone, of which the Townsend, Montana property rights were a part; he did so out of his duty to act in the “best interest” of Keystone in managing the Townsend, Montana property rights; he did so to avoid the risk of lawsuits, which “risk management” was part of his contractual job description; and he did so consistent with the pre-signed, notarized deeds of trust that Mr. Abbott had given him to correct deed of trust errors, which Mr. Mangum’s partial deed of trust deficiency was certainly an error to correct. As a result,

there was no forgery, legally or factually, and the trial court's judgment of forgery must, therefore, be reversed.

DATED this <sup>12<sup>th</sup></sup> ~~6<sup>th</sup>~~ day of September 2011.

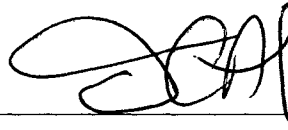


Taylor C. Hartley  
Attorney at Law

**MAILING CERTIFICATE**

I certify that I mailed or delivered a true and correct copy of the foregoing document to the following this <sup>12<sup>th</sup></sup> day of September 2011.

Criminal Appeals Division  
P.O. Box 140854  
Salt Lake City, UT 84114-0854



## **ADDENDUM**

FILED IN  
**ORIGINAL**

IN THE FOURTH DISTRICT COURT - PROVO

UTAH COUNTY, STATE OF UTAH

2011 JUN 15 P 1:38

STATE OF UTAH,

Plaintiff,

vs.

KELLY JAMES ROBBENNOLT,

Defendant.

Case No. 091401782 FS

Transcript of:

BENCH TRIAL

BEFORE THE HONORABLE DAROLD MC DADE

125 NORTH 100 WEST

PROVO, UTAH 84601

FEBRUARY 23, 2011

FILED  
UTAH APPELLATE COURTS  
JUL 22 2011

TRANSCRIBED BY: BILLIE WAY, CCT  
Certified Court Transcriber  
(801) 706-9635

20110430-CA

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1 to Mr. Mangum, had no legal authority, according to  
2 Counsel, to transfer anything out of Keystone.  
3 Their argument is that he transferred  
4 everything into Keystone. So why didn't -- if that  
5 document was transferring an interest to Mr. Mangum,  
6 why does it have Scott Abbott's name on there? That's  
7 a fraud right there. He has no authority to pass  
8 anything because, according to Counsel, he's already  
9 given all of his interest to Keystone. And so that  
10 document that was given to Mr. Mangum should have said  
11 either that it was signed by Mr. Robbennolt as himself  
12 or as representing Keystone Venture Group. They were  
13 the only people then that had any authority to  
14 transfer any of that to Mr. Mangum.

15 Now, Counsel talked about: Where's the  
16 fraud?

17 Okay, here's the fraud. The fraud is,  
18 first of all, that that document purported to be the  
19 act of Scott Abbott and it was not. He testified  
20 clearly to you, he'd never authorized his signature to  
21 be on that document. He would not have done that.  
22 The document was prepared after the bad blood was  
23 between them. Even by the dates that they have, it  
24 was transferred when there wasn't -- there wasn't any  
25 business dealings between Mr. Abbott and, again, he

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1 had no authority to make any transfer at that time.  
2 And that's -- that's exactly the way the  
3 Defendant set this up, because then if Mr. Mangum came  
4 back and sued somebody, he could say: "You can't sue  
5 Keystone. This is signed by Mr. Abbott." And so his  
6 only recourse would have been against Mr. Abbott, who  
7 had no interest and no ability to sign any documents  
8 or transfer them.

9 Now, Mr. Mangum gave the Defendant  
10 approximately \$175,000. He was to get -- there were a  
11 couple of things he was to get in return. He was  
12 supposed to get payments, monthly payments, and also  
13 an interest in that property. He did not get those  
14 things.

15 The document that was given to him gave  
16 him absolutely nothing because it had Scott Abbott's  
17 name on it, because it was never recorded and because  
18 there wasn't -- there was no equity in the property to  
19 be given to him. And so the document was completely  
20 fraudulent.

21 It was supposed to be giving him a secured  
22 interest, which it did not do. It did not give him  
23 anything.

24 Judge, I think clearly the Defendant  
25 structured this so that he could try to keep

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1 Mr. Mangum off his back; he could try to, you know,  
2 put things down the road. Basically, what he does is  
3 smoke and mirrors. And that's what he has done today.  
4 Same thing, he has document after document that he's  
5 used to try to deceive these people, and, you know,  
6 gave Mr. Mangum this, and then continued to try to  
7 negotiate with him so he could figure out some way to  
8 appease him without actually giving the money back,  
9 and by transferring things to him in which there was  
10 no interest. That's exactly what he's done today:  
11 Just given you document after document that is just  
12 smoke and mirrors, Judge, and we would ask the Court  
13 to find him guilty of the forgery.

14 THE COURT: All right. Thank you. Amber,  
15 let's make sure that the exhibits get back to me.

16 Let me first say, thank you, Counsel.  
17 Respect is a big part of what we do here in the court  
18 system. I see that being shown today. Not only for  
19 each other but to the Court as well as to the  
20 witnesses who testified and all others that were  
21 involved and you should be commended for that.

22 My plan is to review these documents,  
23 these exhibits that have been presented, go over my  
24 notes and come back with a verdict today. I don't  
25 think that it will take me, hopefully, as long as a

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1 jury would. But I think that I have taken enough  
2 notes and I know what I need to look at and what I  
3 want to look at, in my mind. So, if you wouldn't mind  
4 waiting around. And if I think it's going to take  
5 longer, I'll have Amber just get your cellphone  
6 numbers and then I'll get back with you before too  
7 long. But I'd like to take care of this today. And  
8 that way we can move forward with this.

9 So, we'll be in recess.

10 (Recess.)

11 THE COURT: Thank you, please be seated.

12 Okay. We are back on the record in the  
13 matter of State of Utah versus Kelly James Robbennolt,  
14 Case 091401782

15 All parties are present, including the  
16 Defendant, Mr. Robbennolt.

17 This is a criminal action involving the  
18 charge the Forgery, a Third Degree Felony being  
19 alleged against Mr. Robbennolt.

20 After having heard the evidence and  
21 testimony of three witnesses, Mr. Abbott, Mr. Mangum,  
22 as well as Mr. Nixon, that's all the witness testimony  
23 that I received along with the exhibits that I have  
24 had a chance to overlook. And there were some other  
25 additional information provided by Mr. Hartley

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1 regarding kind of the setup or the reasoning  
2 background for what happened here.  
3 And the proof in criminal cases is beyond  
4 a reasonable doubt.  
5 The State has that burden and in this case  
6 for the charge of Forgery, it's pretty clear as to the  
7 first few elements: It's no question that  
8 Mr. Robbennolt, on or about January 9th, 2009, Utah  
9 County, did submit a document to Mr. Mangum,  
10 purporting to transfer an interest in some property in  
11 Montana. That was signed by Mr. Abbott. That's been  
12 acknowledged. There's no dispute as to that.  
13 The question is: Did he do that to  
14 defraud? Was his purpose to defraud? And so I've set  
15 forth some things here that I want to mention.  
16 Credibility of the witnesses is always at  
17 issue in these types of cases. No question that's  
18 what it usually comes down to. And we had three  
19 witnesses today, and in my mind in watching and  
20 listening, in trying to establish what their thinking  
21 might have been, it's clear to me that all parties  
22 were credible in what they were trying to relate to  
23 the Court.  
24 And so I would commend them for that. Not  
25 always do we get witnesses up that tell the truth, but

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1 I think that was the case today. All witnesses were  
2 relating their remembrance of the facts in a way that  
3 was truthful.  
4 Money, money, money is what we're dealing  
5 with here. That's the ultimate cause of what's going  
6 on. And then I put down here: Trust, trust, trust.  
7 That's what I was getting from the testimony and what  
8 was being relayed.  
9 No question the Court does find that  
10 Mr. Robbennolt had no authority to sign on  
11 Mr. Abbott's behalf. This is relayed by the fact that  
12 Mr. Abbott's signature was needed because the property  
13 was in his name. He had to sign even though  
14 Mr. Robbennolt was part of Keystone because of his  
15 history or background. At least in this transaction,  
16 he wasn't a signer. It was all in Mr. Abbott's name.  
17 I felt that conspicuously absent from the  
18 documents I received was something from Mr. Kasir in  
19 the agreement that he entered into with Keystone with  
20 regard to his interest.  
21 I didn't have that. I would have like to  
22 have maybe seen that to see if, in fact, Mr. Abbott  
23 had signed off on that agreement and where that is, I  
24 don't know. But I thought maybe that could have been  
25 important here.

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1 Was there any contact made with Mr. Abbott  
2 regarding the transaction by Mr. Robbennolt? Not that  
3 I could see. He did this on his own. Normally in  
4 business relationships, I would think, especially when  
5 that interest is gone, that authority would still be  
6 out of respect and trust, at least asked of, mentioned  
7 to, something. But I don't see that that was the case  
8 here as well.  
9 And I put down here as well: Why didn't  
10 the Defendant, Mr. Robbennolt, sign his own name?  
11 Because he couldn't. He needed Mr. Abbott's  
12 signature; that authority wasn't given. And, again,  
13 it seems to me that Mr. Robbennolt was trying to do  
14 what he could to make things right. I think you get  
15 yourself involved in these kind of things and you do  
16 things to try and make it right and then you hope that  
17 later you can fix the situation. This is a lot of  
18 money involved. And I think he was trying to do the  
19 right thing, but it doesn't detract from fact that no  
20 authority to sign and he was trying to defraud in  
21 accordance with what the elements are of the charge.  
22 Therefore, based upon that, the Court does  
23 judge Mr. Robbennolt guilty of the crime of Forgery, a  
24 Third Degree Felony. And therefore, at this point, we  
25 just need to set a time for sentencing.

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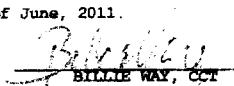

1 - Mr. Hartley, shall we refer the matter to  
2 AP&P; is that the State's request as well?  
3 MS. RAGAN: It is, Your Honor.  
4 THE COURT: All right. Mr. Robbennolt,  
5 you'll need to report to Adult Probation and Parole no  
6 later than 4:00 o'clock tomorrow, provide them  
7 information they need to complete a presentence  
8 report.  
9 Sentencing in this matter will be set for  
10 -- it looks like April the 11th at 9:30 in the  
11 morning.  
12 Where it is a bench trial, Ms. Ragan, I'm  
13 not sure that you need to prepare findings in order.  
14 We can just use our minute entry, but that will be  
15 your choice.  
16 - MS. RAGAN: I did take some notes,  
17 Your Honor, so...  
18 THE COURT: Again, I appreciate Counsel  
19 and their efforts today. I would like to keep these  
20 exhibits at least until such time as sentencing.  
21 Did you want these back, Mr. Hartley?  
22 These weren't actually --  
23 MR. HARTLEY: Yes. Thank you, Your Honor.  
24 THE COURT: And is that date going to be  
25 good for you on the 11th?

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1 MR. HARTLEY: Yes, it is, Your Honor.  
2 THE COURT: Okay. All right. That will  
3 take care of it. We'll be in recess. Thank you.  
4 (Trial Adjourned at 3:49 p.m.)  
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1 TRANSCRIBER'S CERTIFICATE  
2  
3  
4 State of UTAH )  
5 County of SALT LAKE )  
6  
7 I, BILLIE WAY, Certified Court Transcriber,  
8 for the State of Utah, do hereby certify:  
9 THAT the foregoing matter was reduced to  
10 writing by me from electronic media.  
11 THAT the foregoing pages contain a true and  
12 correct transcription of said electronic media to the  
13 best of my ability.  
14 IN WITNESS WHEREOF, I have subscribed my  
15 name this 2nd day of June, 2011.  
16   
17 BILLIE WAY, CCT  
18 working under my CSR  
19 license:   
20  
21 CARLTON WAY, CSR/RR/CCT  
22 Utah License No. 108284-7801  
23 Expires: 05/31/2012  
24  
25

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