

1959

## State of Utah v. Mary Vatsis : Brief of Respondent

Utah Supreme Court

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Walter L. Budge; Homer F. Wilkinson; Attorneys for Respondent;

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### Recommended Citation

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In the  
**Supreme Court of the State of Utah**  
**FILED**  
DV 4 - 1959

STATE OF UTAH,

vs.

MARY VATSIS,

*Respondent,*

*Appellant.*

Supreme Court, Utah

Case No.  
8989

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**BRIEF OF RESPONDENT**

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WALTER L. BUDGE,  
Attorney General,

HOMER F. WILKINSON,  
Assistant Attorney General,

*Attorneys for Respondent.*

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In the  
Supreme Court of the State of Utah

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STATE OF UTAH,

vs.

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BRIEF OF RESPONDENT

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STATEMENT OF FACTS

The V & H Motor Company was an automobile dealership doing business in Price, Utah. The appellant, Mrs. Mary Vatsis, was office manager for the V & H Motor Company and handled its books and records (T. 163). She considered herself to be a part of the company for she refers to the records as "my books" (T. 159). Mrs. Vatsis testified that she sold cars for V & H Motor Company (T. 154) and her entire testimony was to the effect that she made the contracts and handled the financial affairs for the V & H Motor Company.

The dealership had an operating arrangement with Commercial Credit Corporation, whose district office was in Provo, Utah, for the purchasing of conditional sales contracts for the financing of automobiles sold. It is customary in financing automobiles that the contract is sold to the finance company before the title is furnished to the finance company because it takes some time for the title to be returned from the State Tax Commission. The fact is that at the time they sell the contract they forward to the Tax Commission the title for change of registration, showing the new owner and lienholder. During the period involved in this case the V & H Motor Company through Mary Vatsis (T. 154) presented and sold to the Commercial Credit Corporation a contract dated March 9, 1957, purportedly bearing the signature of one Ann Troulis covering a blue colored 1956 Buick automobile, Serial No. 6-C2018583. The appellant knew that it was a false and fraudulent contract for she drew it up and signed the name of Ann Troulis and submitted it to Commercial Credit Corporation when in fact the car had not been sold to Ann Troulis. The Credit Company, in relying on the representations of the appellant, bought the contract and under check dated March 12, 1957, paid V & H Motor Company \$2,175.00, which was received and deposited by Mary Vatsis to the account of the dealership (T. 148). This same car was later sold, on April 26, 1957, to Chris Bolotos, who paid cash for the car (T. 164) and title to the car was transferred to Mr. Bolotos. After selling the car to Mr. Bolotos, Mary Vatsis knowingly and on behalf of the V & H Motor Company, made three payments on the said car to Commercial Credit, (T. 158), thereby continuing the fraudulent transaction.

## STATEMENT OF POINTS

## POINT I.

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT OF THE JURY.

## POINT II.

THE COURT DID NOT ERR IN GIVING INSTRUCTION NUMBER 3.

## ARGUMENT

## POINT I.

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE VERDICT OF THE JURY.

Point I and Point II of appellant's brief are based upon the same premise, that a forgery had to be shown in order to prove the appellant guilty of any crime.

We wish to call the Court's attention to the fact that this case did not go to trial on information (R. 15) but in fact went to trial on amended information (R. 57). This amended information was filed and allowed by the Court prior to trial and reads as follows:

"Comes now Jackson B. Howard, District Attorney for the Fourth Judicial District of the State of Utah and accuses Mary Vatsis and John Vatsis, they having been duly bound over to answer this charge by a committing magistrate, and charges that the said Mary Vatsis and John Vatsis, on or about the 12th day of March, 1957, at Utah County, State

of Utah, did commit the crime of a felony, to-wit: Obtaining money under false pretenses, committed as follows, to-wit: That they, the said Mary Vatsis and John Vatsis, at the time and place aforesaid, did wilfully, intentionally and feloniously obtain a check in the amount of \$6,700.00, which check was paid from the funds of the Commercial Credit Corporation, a corporation, by the Walker Bank and Trust Company. This check was obtained by the defendants by representing and selling to the said Commercial Credit Corporation for the sum of \$2,175.00, which sum was paid out of the aforementioned check, a fraudulent Conditional Sales Contract dated March 9, 1957, and purported to be entered into by and between Ann Troulis and V & H Motor Company, which Conditional Sales Contract was fraudulent and forged; the said Mary Vatsis and John Vatsis well knowing that the said Conditional Sales Contract was fraudulent, forged and of no value."

The interesting point about this information is that the gist of the information is that the appellant did obtain money under false pretenses by "\* \* \* representing and selling to the said Commercial Credit Corporation for the sum of \$2,175.00, which sum was paid out of the aforementioned check, *a fraudulent contract* dated March 9, 1957." (Emphasis added.) The gravamen of the offense is that it was a fraudulent sales contract. The fact that the information further down says "that the said Conditional Sales Contract was fraudulent, forged and of no value" is mere surplusage. This is not binding upon the State nor does it restrict the proof. The answer to this argument also answers counsel's contention in Point II in respect to this particular point. We quote to the Court the following statutes as authority for this position:



“Any allegation unnecessary under the existing law or under the provisions of this chapter, may, if contained in an information, indictment or bill of particulars, be disregarded, as surplusage.”  
(77-21-42, U. C. A. 1953.)

The case in point on this is *Ballaine v. District Court of the First Judicial District for Box Elder County*, 107 Utah 247, 153 P. 2d 265, which cites the above statute and holds surplusage in information charged in a crime of obtaining money and property under false pretenses does not vitiate the essential elements in defense being set forth in the pleading. The law is well settled on this question of surplusage for the courts have repeatedly held as long as the essential elements are present, the remainder is regarded as surplusage. Especially is this true under Section 77-21-47, U. C. A. 1953, which sets forth the short form of pleadings.

In the case of *State v. Schow*, 125 P. 2d 955, in citing Section 77-21-42, the court stated:

“The repugnant allegations shall not invalidate an information and that unnecessary allegations may be treated as surplusage.”

*State v. Robbins*, 127 P. 2d 1042; *State v. Burke*, 129 P. 2d 560.

We respectfully state to the court the essential elements of the complaint have been set forth in the pleading. We cite to the Court the statute concerning obtaining money under false pretenses:

“Every person who knowingly and designedly, by false or fraudulent representations or pretenses,

obtains from any other person any chose in action, money, goods, wares, chattels, effects or other valuable thing, with intent to cheat or defraud any person of the same, if the value of the property so obtained does not exceed \$50.00, is punishable as in cases of petit larceny, and when the property so obtained is of the value of more than \$50.00, the person so offending is punishable as in cases of grand larceny."

(76-20-8, U. C. A. 1953.)

The gist of the statute is that moneys must be obtained by false and fraudulent representations or pretenses. That is what the State charged the appellant with and that is what the jury found her guilty of. The word "forgery" is nothing more than surplusage, and is not necessary to be proved if the contract itself was false and fraudulent and the jury had sufficient evidence to find such fact to be true.

Regardless of whether the information required the State to prove that the contract was forged, there is sufficient evidence for the jury to conclude that it was. In arguing this point the State does not concede a forgery was, in fact, an element of obtaining money under false pretenses, it being the State's position that the pretense was that this is a valid contract, when in fact it was false and fraudulent. It was fraudulent for a number of reasons besides the question of signature, however, the testimony of Ann Troulis was sufficient for the jury to conclude forgery.

Ann Troulis was a very evasive, equivocal witness. She had admittedly testified in two different ways concerning the contract. Her testimony at the preliminary hearing,

part of which was admitted into evidence, was that she had positively not authorized the signature, nor had she purchased the car (Tr. 60). Her testimony in respect to authorization was completely unbelievable and the only conclusion that the jury could come to was the contract was, in fact, forged. Rather than set out the entire transcript of testimony in this brief, we cite to the Court the Troulis testimony from Tr. 54 to Tr. 70.

The Troulis testimony itself is sufficient to show forgery, however, when connected with the testimony of Mr. Allen and Mr. Frandsen as to what Mary Vatsis had said to them, it would appear to make it conclusive. Mr. Allen testified that Mary Vatsis told him that she had sold cars to Lee Allred and Spiros Aganis and then signed their names to separate contracts and sold the contracts to Commercial Credit and received money from the Finance Company in payment for the contracts when actually the cars had been sold for cash. These two contracts indicated her intent to defraud and corroborating of forgery (Tr. 180-181). Mr. Allen (Tr. 182) also testified that there were other contracts of the same nature that she had admitted to him were forged and fraudulent. This testimony is corroborated by the testimony of Mr. Frandsen (Tr. 118). Mr. Frandsen testified (Tr. 118 to 120) that Mary Vatsis placed the Ann Troulis contract in a category with other contracts, which she stated she had attached the signatures to, sold to Commercial Credit and received money for. These were contracts where there weren't customers, or the cars were not in the possession of customers, or cars hadn't been registered, or there had not been any documents submitted

to the State for registration. Mr. Frandsen then testified that she proceeded to tell him (Tr. 120) how these contracts, which included the Troulis contract, were sold to Commercial Credit and how she operated the V & H Motor Company (Tr. 120, Line 2 through Line 20) :

“She said she would take these contracts into the office in Provo and submit the contracts to the employees at that office and they would write a check to her and she would also write them a check to pay off other contracts, and one week she would write a check for \$5,000.00, the next week, why she would have to write a check for \$6,000.00 to take care of contracts submitted the week before, until it got so that all they were doing was exchanging checks, the V & H Motor Company and the branch office of Commercial Credit in Provo. She also said that it was through this transaction that she was losing money, that the contracts that were submitted the week before would be forgotten about and there would be more important business come up, and it got so that she was up on a balloon and she asked to get off of this balloon and nobody seemed to be able to help her clear this matter up.”

From this evidence the jury had ample reason to conclude that the Troulis contract was a forgery.

The appellant has made great to-do about a variance contained in the information and the Bill of Particulars. In order to understand the answer to the bill of particulars it is necessary to set forth both the questions and the answers, which the appellant has failed to do. We refer the Court to the questions (R. 16) and the answers (R. 20).

The appellant has argued to the Court that the information is limited by the bill of particulars.

We refer the Court to the case of *State v. Dabb*, 84 S. 2d 601, wherein the Court stated:

“Irrespective of what may be contained or set forth in the bill of particulars relied on by the defendant to support his contention presented by these bills, we are not concerned therewith. The prosecution was conducted exclusively on what was contained within the four corners of the bill of information, and we cannot look beyond its four corners to determine its validity. There can be no prosecution on a bill of particulars. Nor can the contents of a bill of particulars, whatsoever is set forth therein, alter, change, amend or affect the bill of information. A bill of particulars can neither create a defect in a bill of information nor remedy a defective one. \* \* \*

See also *State v. Varnado*, 23 S. 2d 106, 126; *State v. McQueen*, 87 S. 2d 727; *Hevener v. Commonwealth*, 54 S. E. 2d 893; 27 Am. Jur., Indictments and Informations, Sec. 112.

We state that the Bill of Particulars does not do any more than answer the questions submitted by the appellant and was never intended to be more than that. Question 3 in the Bill of Particulars has been fully and completely answered and does not, in effect, say that the appellant did not submit to the Commercial Credit Corporation the fraudulent contract. Nor can it be implied from the language that she did not. We cite to the Court 77-21-43:

“(2) No variance between those allegations of an information, indictment or bill of particulars,

which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for the acquittal of the defendant. The court may at any time cause the information, indictment or bill of particulars to be amended in respect to any such variance, to conform to the evidence."

"(3) If the court is of the opinion that the defendant has been prejudiced in his defense upon the merits by any such defect, imperfection or omission or by any such variance the court may because of such defect, imperfection, omission or variance, unless the defendant objects, postpone the trial, to be had before the same or another jury on such terms as the court considers proper. In determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case and the entire course of the prosecution."

"(4) No appeal, or motion made after verdict, based on any such defect, imperfection, omission, or variance shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in his defense upon the merits."

We call the Court's attention to the fact that the defendant raised no objection to the limitation, if there was such a limitation, in the Bill of Particulars. If it is her contention that forgery had to be shown, she has not to this date ever moved the Court for a postponement based or premised on the defendant not being informed as to what she was charged with.

In the case of *Hevener v. Commonwealth*, supra, the appellant on appeal contended that there was a variance in

the indictment and the bill of particulars as to whether the charge was first or second degree murder. The court stated:

"The accused would have us say that the first degree murder charge in the indictment was nullified by reason of the bill of particulars. He was not to be tried upon the bill of particulars, but only upon the indictment. The two instruments were to be read together.

"\* \* \*

"He also sat by and heard evidence going to the jury which tended to support a charge of murder in the first degree without objecting. If he thought at that time that the charge of murder in the first degree had been eliminated and that he would be tried for no higher offense than second degree murder, he should have objected to that evidence. If he had done so and there had been merit in his objection, it is quite likely the court would have permitted an enlarging amendment to the bill of particulars if it were insufficient, making it conform to the evidence. \* \* \*"

If the appellant was dissatisfied with the Bill of Particulars and if the Bill of Particulars and information did not set forth a crime, then the appellant had a remedy by filing a motion to quash the information as set forth in Section 77-21-10. When a crime is charged and the appellant fully apprised of the facts does not avail herself of the remedies supplied by law, she cannot, at this late date, be heard to complain. *State v. Russell*, 145 P. 2d 1003.

If the appellant's contention were correct, it would be necessary for the State of Utah in every case to plead evidentiary facts and those facts not pleaded could not be

proved. This would be an unreasonable burden to place upon the State.

## POINT II.

### THE COURT DID NOT ERR IN GIVING INSTRUCTION NUMBER 3.

The appellant takes objection to Instruction No. 3 and particularly to the use of the words "fictitious" and "bona fide." Its brief proceeds to limit the word "fictitious" by a criminal definition for fictitious check. Fictitious has an ordinary connotation which is intended in this case. The Court was not instructing the jury in respect to a fictitious check but was using the word "fictitious" in a normal, grammatical sense. "Fictitious" is defined in Webster's Dictionary as follows:

"Feigned; imaginary; not genuine, like fiction."

It must be presumed that the jury was of normal intelligence. This is not an unusual or strange word, but is a common word used by laymen and people of ordinary intelligence. It properly describes the contract because it was, in fact, not genuine. What could be a better adjective than "fictitious?"

"Bona fide" is in the nature of the same type of word. This is a word that has a common connotation, understood by the ordinary man on the street as meaning genuine. There is no reason to suppose that the jury did not understand what "bona fide" meant. The term was even used by the appellant's attorney in the examination of a witness (Tr. 33). The very language of the paragraph in the in-



struction is sufficient to show the meaning of "bona fide" but even if the word were left out the meaning would be clear. "Bona fide" is not essential for the clarity of the paragraph, consequently, this argument is not sound.

The Court, in giving Instruction No. 3, realized that forgery was not an element of the crime of obtaining money by false pretense. The instruction was that if the jury found that Mary Vatsis presented a fictitious contract that did not represent a bona fide sale of an automobile, and Mary Vatsis knew it, then the jury should find her guilty. The State, as set forth in the record and as outlined in the foregoing part of this brief, certainly brought forth evidence proving this instruction.

The appellant, on pages 11 and 14 of her brief, relies a great deal on the contention that if it were not a forgery then the Commercial Credit Corporation was not injured because it would be a binding contract against Ann Troulis. The appellant is avoiding the fact that Commercial Credit bought the contract relying on the representation of Mary Vatsis that it was a valid contract and that the signature attached thereto was the signature of Ann Troulis, when, in fact, it was not her signature and no evidence was brought forward to dispute this point. The fact of the matter is that Commercial Credit was not interested in buying a lawsuit to prove if Ann Troulis signed the contract or if she gave Mary Vatsis the right to sign her name, but was interested in buying a contract signed by Ann Troulis for the financing of an automobile. Even in trying to deny that she didn't give the appellant the right to sign her name, Mrs. Troulis never, at anytime, said that she bought the car

or gave the appellant the right to sign her name. We are sure the court can see the lawsuit that this would involve and the difficulty of proving the contract.

As the record shows, Ann Troulis changed her testimony from that given at the preliminary hearing but she changed it from definitely not giving the appellant the right to sign her name to "I don't remember". She indicated that she did not buy the car and would not accept the responsibility of the contract. She even stated that the reason she testified at the preliminary hearing that she did not give the appellant the right to sign her name was because she was afraid they would force her to buy a car that she could not afford. On page 62 of the transcript, she testified:

"Q. Did you ever buy any other car from her?

"A. No. I mean, I was planning on buying one."

This affirms the fact that she did not buy a car and was not intending to be bound by the contract signed by the appellant. Commercial Credit did not receive what they bargained for, so even if Ann Troulis decided to accept the contract at a later date, it would still not take the appellant off the hook, for in the case of *State v. Casperson* (Appeal of Snyder), 71 Utah 68, 262 Pac. 294, the court said:

"That a pretense false in fact and an actual fraud resulting in prejudice are essential elements of the crime in question, and must be proved to establish guilt, are general principles of law which we recognize and approve. The actual fraud and prejudice required, however, is determined according to the situation of the victim immediately after he parts

with his property. If he gets what was pretended and what he bargained for, there is no fraud or prejudice. But if he then stands without the right or thing it was pretended he would then have, he has been defrauded and prejudiced by reason of the false pretense, and the offense is complete, notwithstanding thereafter he may regain his property, or the person obtaining it or another compensates him, or he thereafter obtains full redress in some manner not contemplated when he parted with his property."

This was affirmed in the case of *State v. Fisher*, 8 P. 2d, p. 589. This would indicate that if it were a fictitious contract that did not represent a bona fide sale of the automobile and Mary Vatsis was aware of it, then it would amount to obtaining money by false pretense even if at a later date Commercial Credit recouped its loss.

### CONCLUSION

We respectfully submit that there was sufficient evidence to sustain the verdict of the jury and that the Court's instruction was not erroneous.

Respectfully submitted,

WALTER L. BUDGE,  
Attorney General,

HOMER F. WILKINSON,  
Assistant Attorney General,

*Attorneys for Respondent.*