

1960

State of Utah v. Mary Vatsis : Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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Rawlings, Wallace, Roberts & Black; Counsel for Appellant;

Recommended Citation

Petition for Rehearing, *State v. Vatsis*, No. 8989 (Utah Supreme Court, 1960).

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Case No. 8989

IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

MAY 3 1980

Clerk, Supreme Court, Utah

STATE OF UTAH,

Respondent,

vs.

MARY VATSIS,

Appellant.

PETITION FOR REHEARING AND BRIEF
IN SUPPORT THEREOF

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vs.

MARY VATSIS,

Appellant.

} Case No. 8989

PETITION FOR REHEARING AND BRIEF
IN SUPPORT THEREOF

PETITION FOR REHEARING

COMES NOW the Appellant and respectfully petitions this honorable Court to vacate the Order of the Court herein affirming the judgment and to reverse said judgment or to grant a rehearing. This petition is based on the following grounds:

POINT I.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT
A VERDICT OF GUILTY.

POINT II.

THE ONLY CONTENTION MADE BY THE STATE WAS
THAT DEFENDANT SIGNED THE NAME OF ANN
TROULIS WITHOUT AUTHORITY AND THE STATE FAIL-
ING TO PROVE THIS DEFENDANT IS ENTITLED TO A
JUDGMENT IN HER FAVOR.

RAWLINGS, WALLACE,
ROBERTS & BLACK

Counsel for Appellant

530 Judge Building
Salt Lake City, Utah

I hereby certify that I am one of the attorneys for
the appellant, petitioner herein, and that in my opinion
there is good cause to believe the judgment objected
to is erroneous and that the case ought to be re-examined
as prayed for in said petition.

Dated this 23rd day of May, 1960.

BRIGHAM E. ROBERTS

BRIEF IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING

ARGUMENT

POINT I.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT
A VERDICT OF GUILTY.

There is no evidence to support a finding of two of the elements of obtaining money by false pretences. There is no evidence to support a finding that there was a false or fraudulent representation and there is no evidence to show that the Commercial Credit Corporation was defrauded.

The majority opinion states that the defendant obtained money from Commercial Credit by representing that the contract was signed by Ann Troulis. This, we submit, is an oversimplification. The only material representation made by delivering the contract to Commercial Credit Corporation was that the contract was the contract of Ann Troulis. Such contract could be executed either by Ann Troulis or by her agent. If executed either way then there was no false representation. It is agreed that the name Ann Troulis was signed by defendant. The material question is whether it was signed with authority.

To prove a false pretense it was incumbent upon the State to prove beyond a reasonable doubt that there was no authority given by Ann Troulis to defendant to sign. It must be admitted that there is no evidence in

the record that the contract was signed without authority. Ann Troulis testified that she may have given defendant such authority. Defendant testified such authority was given.

The majority opinion also states if authority was given to defendant it was an affirmative defense. We submit that such proposition is foreign to and inapplicable to the criminal law of the State of Utah. The burden is upon the State to prove all issues in a criminal case by proof beyond a reasonable doubt. There is no situation where the burden is upon the defendant to prove any issue in a criminal case. For instance, insanity or intoxication might be considered affirmative defenses but it is clear that on such issues the burden is upon the State to prove sanity beyond a reasonable doubt and also that defendant was not intoxicated to the extent of rendering him incapable of forming the required intent. See *State v. Green*, 78 Utah 580, 6 P. 2d 177; *State v. Stenback*, 78 Utah 350, 2 P. 2d 1050.

Hence we must conclude that if authority to sign constituted a defense in this case then it was incumbent upon the State to prove lack of authority and this it failed to do and defendant is entitled to judgment in her favor.

Also, in order to establish that Commercial Credit Corporation was defrauded (element four as set forth in the majority opinion) the State had the burden of establishing that the contract was not that of Ann Troulis. If it was her contract Commercial Credit Cor-

poration received what it bargained for. The record will not support a finding of lack of authority.

The majority opinion states:

“Certainly, it was not unreasonable for the jury, who had the benefit of observing her demeanor, to arrive at the conclusion that Miss Troulis told the truth at the preliminary hearing, rather than at the trial.”

The testimony of Ann Troulis at the preliminary hearing only came into the trial as impeachment testimony. Hence it was not substantive evidence upon which a finding could be based. Belief in this testimony would not support a finding in accordance therewith. Disbelief of Ann Troulis’ testimony would not constitute affirmative evidence of lack of authority. *State v. Chynoweth*, 41 Utah 354, 126 Pac. 302; *State v. Burns*, 51 Utah 73, 168 Pac. 955; *McCormick on Evidence*, 73, § 39; 3 *Wigmore on Evidence* (3 Ed.) § 1018; *Annotation* 133 *A.L.R.* 1454.

We submit that the burden was upon the State to prove lack of authority and it failed to introduce any evidence which would support such a finding.

POINT II.

THE ONLY CONTENTION MADE BY THE STATE WAS THAT DEFENDANT SIGNED THE NAME OF ANN TROULIS WITHOUT AUTHORITY AND THE STATE FAILING TO PROVE THIS DEFENDANT IS ENTITLED TO A JUDGMENT IN HER FAVOR.

The State in its Bill of Particulars in setting forth what acts defendant did with respect to the crime charged

stated as follows:

“Mary Vatsis signed the name ‘Ann Troulis’ to the contract without authority and with the intent to aid her husband and co-defendant obtain money by false pretenses.”

While the State did thereafter file an Amended Information the only change was the elimination of the allegation that defendant obtained \$2175.00 in lawful money of the United States and the allegation that defendant obtained a check in the amount of \$6,700.00 and that the \$2,175.00 paid for the contract was paid out of that check.

This Bill of Particulars was still part of the pleadings and it was incumbent upon the State to prove that defendant actually did the acts claimed by the State. As shown in Point I, this the State failed to do.

CONCLUSION

For the foregoing reasons we submit that this Court should either vacate its affirmance of the judgment and reverse the conviction or grant a rehearing.

Respectfully submitted,

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