1968

State of Utah v. Cathryn Pfannenstiel : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff and Respondent,	)	
-vs-	]	Case No.
CATHRYN PFANNENSTIEL, Defendant and Appellant.	)	11313

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL DISTRICT COURT FOR WEBER COUNTY, HONORABLE CHARLES G. COWLEY, PRESIDING

WM. H. BOWMAN
WEBER COUNTY BAR LEGAL SERVICES, 203 24th St.
Ogden, Utah, 84401
Attorney for Defendant and Appellant.

Phil L. Hansen
Attorney General
State Capitol
Salt Lake City, Utah
Attorney for Plaintiff and Respondent.

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

Authorities Cited: Cases

TABLE OF CONTENTS (continued)

Page

Statutes

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	)	
	)	
Plaintiff & Respondent,	)	
	)	
-vs-	)	Case No. 11313
	)	
CATHRYN E. PFANNENSTIEL,	)	
	)	
Defendant & Appellant.	)	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF CASE

Appeal from the denial of a motion to quash the information, and the appellant's subsequent conviction.

DISPOSITION IN LOWER COURT

The appellant was charged with issuing a check against insufficient funds in violation of Section 76-20-11, Utah Code Annotated, (1953) as amended. The defendant moved that the information alleged no crime under the above cited statute. The motion was denied and this appeal was taken from said denial and defendant's subsequent conviction.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the denial of her motion to quash and her subsequent conviction.

STATEMENT OF FACTS

The defendant, Cathryn E. Pfannenstiel, on the 14th day of July, 1967, drew a check on the Sunset Branch of the Clearfield State Bank payable to Ogden Tire Center in payment for parts and services for her car in the amount of $11.49. (T-5). Said check was written for the exact amount of the bill and the defendant received no money in return. (R-15).

The check was presented to the drawee bank for payment on July 19, 1967, and again on August 1st, 1967. (T-10). On both occasions there were insufficient funds in the defendant's account to cover the check and the check was dishonored.

On December 8, 1967, the defendant was charged by information with the issuing of a check against insufficient funds in violation of Section 76-20-11, Utah Code Annotated, (1953) as amended. (R-2). The defendant, by her attorney, filed a motion to quash the information, (R-5) on the grounds that said information did not set forth a crime under the above cited section. Said motion was denied, (R-11) and the defendant was convicted.

From the denial of the motion to quash and defendant's subsequent conviction this appeal was taken.

SUMMARY OF ARGUMENTS

POINT I

THE COMPLAINT AND EVIDENCE INTRODUCED IN SUPPORT THEREOF BY THE STATE DOES NOT SET FORTH A CRIME UNDER SECTION 76-20-11, UTAH CODE ANNOTATED (1953) AS AMENDED.

The courts have consistently held that before one may be punished under a criminal statute their acts must be clearly within the scope of the statute.

The acts of the defendant in the case at bar are not included within the scope of Section 76-20-11, Utah Code Annotated (1953) as amended.

The Utah legislature by specifically making illegal the issuance of bogus checks for the "payment of money" and for "payment of wages" have by implication excluded all other acts not enumerated.

Under the Uniform Commercial Code a check is not money.

It is inconsistent to interpret the terms "for the payment of money" as meaning "in substitution for money" and at the same time to enunciate specific instances in which the

issuance of a bogus check would be a crime, as the first interpretation would include all instances in which bogus checks were knowingly offered as payment.

The defendant in the case at bar received no money in exchange for the check she wrote, nor was the check issued for the payment of wages. As a result that act of the defendant was not within Section 76-20-11, Utah Code Annotated (1953) as amended and her conviction must be set aside.

ARGUMENT

POINT 1

THE INFORMATION AND EVIDENCE INTRODUCED IN SUPPORT THEREOF BY THE STATE DOES NOT SET FORTH A CRIME UNDER SECTION 76-20-11 OF THE UTAH CODE ANNOTATED AS AMENDED (1953).

Section 76-20-11 as amended in 1965 reads essentially as follows:

> "... Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check, or draft or order upon any bank or depository or person, or firm, or corporation, for the payment of money or wages for labor performed, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with said bank or depository, or person, or firm, or corporation, for the payment of such checks, drafts, or order, in full upon its presentation, . . ., is punishable by imprisonment in the county jail for not more than one year, or in the State prison for not more than five years." (Emphasis supplied).

A. A particular act must be clearly within the scope of the statute in order for a conviction thereunder to stand.

The Supreme Court of the United States has held that:

> "...Before one may be punished it must appear that his case is plainly within the statute; there are no constructive offenses. United States v. Lacher, 134 U.S. 624, 628, 33 L ed. 1080, 1083, 10 S. Ct 625; United States v. Chase, 135 U.S. 255, 261, 34 L ed 117, 10 S. Ct 756.

Again in United States v. Williams, 341 U. S. 70, 95 L ed. 758, 71 S. Ct. 581, The Supreme Court stated:

> "The criminal statutes should be given the meaning their language most obviously invites; their scope should not be extended to conduct not clearly within their terms."

The Oklahoma Supreme Court succinctly stated the general policy which whould be applied in the application of statutory law in American First Title and Trust Co. v. First Federal Savings and Loan, 415 P2d, 930,939,

(1966), when it stated in reference to a statute regulating deficiency judgments:

> ". . . nothing may be read into a statute which is not within the manifest intention of the legislature as gathered from the act itself and that a statute should not be construed any more broadly or given any greater effect than its terms require."

Along the same lines the Utah Supreme Court has stated:

> "The interpretation of a statute must be based on the language used, and courts have no power to rewrite a statute to make it conform to intention not expressed." Mountain States Tel. and Tel. Co. V. Public Service Commission. 155 P2d, 184 (1945).

The defendant asserts that the act for which she was convicted is not covered by Section 76-20-11, of the Utah Code Annotated as amended, and that her conviction must be set aside.

B. The act for which the defendant was convicted does not constitute a crime under Section 76-20-11, Utah Code Annotated (1953) as amended.

Bad check statutes are typically of two different types.

The most common type is that which condemns the giving of bogus checks for specific items. An example of this type of bad check statute is found in Wyoming and Oklahoma.

The Wyoming statute reads essentially as follows:

> "Whoever, with intent to defraud by obtaining money, merchandize, property, credit, or other things of value . . . or who, in the payment of any obligation, shall make, draw, utter or deliver any check . . . knowing at the time of such making . . . that . . . (he) has not sufficient funds . . . shall be guilty of a felony. . ." Section 6-39 W.S. (1957). (Emphasis supplied).

The Oklahoma bad check statute is similar to that of Wyoming. 21 O.S. 1951, Section 1541.

The second type of bad check statute is more general and is evidenced by the statute now in force in Arizona.

The Arizona statute reads essentially as follows:

> "A person who for himself or for another, willfully, with intent to defraud, makes, draws, utters or delivers to another person or persons a check or checks or draft or drafts on a bank or depository for payment of money, knowing at the time of such making, drawing, uttering or delivering, that he or his principal does not have sufficient funds in, or credit with, such bank or depository to meet the check or checks or draft or drafts in full upon presentation, shall be guilty as follows. . . ." A.R.S. Section 13-316 (1965) (Emphasis added).

As a general rule bad check statutes which list the various situations in which the issuance of a bogus check would be a crime, limit the application of such statutes to the instances enumerated. Bailey v. State of Wyoming, 408 P2d, 244 (1965); Snider v. State of Oklahoma, 338 P2d 892, (1959); State of West Virginia v. H. B. Stout, 95 S.E. 2d 639.

In the Stout case, supra, the statute in question condemned any person who made, issued or delivered to another person, for value, any check or draft on any bank and obtains from

such other any credit, money, goods, or other property of value, having no funds or insufficient funds to cover it.

The court in applying the statute held that when the defendant gave a bogus check in payment for bulldozer work done by one J. G. Singleton, that such act did not constitute a crime under their statute. The court said that the payment by check was conditioned and when such payment aborted no harm was done to Singleton because he still had a right of action and that no value flowed to the defendant because he remained liable on the debt.

Statutes of the second type are more general in that they condemn the writing of bogus checks "for the payment of money". They are construed broadly and require only that the defendant write a check on insufficient funds with intent to defraud. State v.

Devinney, 403 P2d 921 (1965), State v. Weis 375 P2d 735, (1962).

Originally the Utah bad check statute was almost identical to that of Arizona, using the same "for payment of money" terminology. In 1965 this statute was amended and the words "or for wages for work performed" were added. By so amending the statute the legislature deprived it of its general nature and converted it into a statute which specifically prohibits the issuing of checks on insufficient funds for two purposes only, for the payment of money and for wages.

It is a general principal of interpretation that the mention of one thing in a statute implies the exclusion of another; expressio unius est. exclusio alterius. Walla Walla v. Walla Walla Water Co. 172 U. S. 1, 43 L ed 341, 19 S.Ct. 77.

The Utah Supreme Court first enunciated this doctrine in Utah in 1899 when it stated:

> "Where a statute enumerates the persons and things to be affected by its provisions, there is an implied exclusion of others, and the natural inference follows that it is not intended to be general." University of Utah v. Richards, 20 Utah 457, 59 P 96 (1899).

The State Legislature by specifically designating two sets of circumstances under which a bad check charge would lie has, by implication excluded all others.

Section 76-20-11 as amended in 1965, clearly provides that checks issued for two items, and two items only can be the basis for a criminal conviction thereunder.

The statute specifically provides that the check drawn on insufficient funds must be given for "payment of money" or "for wages for labor performed".

If the Legislature had wished to go further,

as most state legislatures have, they would have included other things of value or credit or an account, or for goods or property.

In the case at bar the defendant's check was given in payment for parts and services to her car. (T-5) The defendant received no money, the check being written for the exact amount of the bill.(R-15).

Under the circumstances of this case by no interpretation could the check of defendant be considered as having been given "for the payment of money" or "wages" as required by the statute.

It must be pointed out at this point that a check is not money. The Utah Commercial Code as set forth in 70A-1-201, (24) Utah Code Annotated (1953) as amended defines money as follows:

> "Money means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency".

For the above reasons the defendant's check was not given for the "payment of money" or for "wages" and therefore was not within the purview of the statute here in question and her conviction must be reversed.

C. The terms "for payment of money" as used in Section 76-20-11 as amended in 1965, cannot be interpreted to mean "as a substitute for money".

The Utah Supreme Court in reference to statutory interpretation stated that:

> "The meaning of doubtful words or phrases must be determined in light of and must take their character from associated words or phrases." Heathman v. Giles, 374 P2d 839, (1962).

In light of the aforementioned principals it is inconsistent that the legislature could interpret the terms "for the payment of money" as meaning "in substitution of money" and at the same time think it necessary to provide another prohibited category of activity. As a matter of logic the first interpretation would extend to a check issued on insufficient funds

for the payment of wages because the check would be issued as a substitute for money.

CONCLUSION

For the reasons set forth in this brief the acts of the defendant did not constitute a crime under 76-20-11, Utah Code Annotated (1953) as amended, and the defendant's conviction must be set aside.

Respectfully submitted,

WM. H. BOWMAN
Attorney for Defendant
and Appellant
Weber County Bar Legal
Services, 203 24th
Street, Ogden, Utah