

2006

State of Utah v. Douglas S. Adams : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Appellee, :

20060747-CA⁸⁴
: Case No. 011911172

DOUGLAS S. ADAMS :

Priority No.

Defendant/Appellant :

BRIEF OF APPELLANT

AN APPEAL FROM THE JUDGEMENT AND CONVICTION FOR THIRTEEN COUNTS OF FORGERY, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. 76-6-501, (1997), IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH, THE HONORABLE LESLIE A. LEWIS PRESIDING

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**FILED
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :

Plaintiff/Appellee, :

: **Case No. 011911172**

DOUGLAS S. ADAMS : **Priority No.**

Defendant/Appellant :

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on the Utah Court of Appeals by Utah Code Ann. 78-2a-3(2)(e) (1996).

ISSUES PRESENTED FOR REVIEW

- I. Was there sufficient evidence to support the trial judge’s verdict where there was no evidence that Mr. Adams intentionally or knowingly defrauded anyone? When reviewing a bench trial for sufficiency of evidence, we must sustain the trial court’s judgement unless it is against the clear weight of the evidence, or if

the Appellate court otherwise reaches a definite and firm conviction that a mistake has been made. *Spanish Fork City v. Bryan*, 1999 UT App. 61, p.5, 975 P.2d 501

- II.** Was the verdict of the trial court against the clear weight of the evidence in this case? When reviewing a bench trial for sufficiency of evidence, we must sustain the trial Court's judgement unless it is against the clear weight of the evidence, or if the Appellate court otherwise reaches a definite and firm conviction that a mistake has has been made *Spanish Fork City v. Bryan*, 1999 UT App. 61, paragraph 5, 975 P.2d 501 (Utah App. 1999), Rule 52, Utah Rules of Civil Procedure.
- III.** Did the trial court err in failing to make findings of fact supporting conviction. The standard of review is the determination whether the trial court made factual findings on all material issues. Failure to make factual findings on material issues is considered reversible error and requires remand. *Kinkilla v. Baugh*, 660 P.2d 233 (Utah 1983); *Carlton v. Carlton*, 756 P.2d 86 (Ct. App. 1988)

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following Statutes and Rules are cited in Appellant's Brief.

Utah Code Ann. 76-6-501

Utah Code Ann. 78-2a-3

Utah Code Ann. 78-2a-3(2)(e)

Utah Rules of Civil Procedure, Rule 52

Utah Rules of Civil Procedure, Rule 81(e)

STATEMENT OF THE CASE

This is a criminal action where the appellant, Mr. Adams, was originally charged with one count of Unlawful Dealing with Property by a Fiduciary and thirteen counts of Forgery. At trial held below before the Hon. Leslie A Lewis, Mr. Adams was acquitted on one count of Unlawful Dealing with Property by a Fiduciary, and was convicted on thirteen counts of Forgery.

STATEMENT OF FACTS

At the beginning of the trial, the prosecutor, Mr. Sheffield, and defense counsel, Stanley S. Adams, stipulated that the Appellant, Douglas Adams (hereinafter referred to as Mr. Adams), signed the name of Peter Savas and Susie Burton to the thirteen checks which are the subject of this case and also deposited the checks or cashed them. (Tr., p.11) Mr. Adams also stipulated to his identity, to proper jurisdiction of the court, and that the

events which are the subject of this litigation occurred between the dates of October, 1997 and December, 2000. The parties further stipulated that between the dates of October, 1997, and December, 2000, that Mr. Adams was the president/manager of the East Park Owner's Association. The parties stipulated that the East Park Owner's Association are a group of land owners in the area of Jordanelle interested in land. Lastly, both counsel stipulated that Mr. Adams was a fiduciary for the purposes of Count I of the Information. (Tr., p.7-12)

Mr. Adams, the Appellant in this case, first became involved in the East Park Owners's Association (hereinafter E.P.O.A.) in 1990 and 1991 because Mr. Adams family interests purchased a piece of land which was part of the original East Park Subdivision. (Tr., p.83) In 1991 and 1992, Mr. Adams contacted some of the developers and other people with interests in the area and the first meeting of the E.P.O.A. was organized. (Tr., p. 83) Although Mr. Adams did not personally own property in the area, he had family and friends who did. (Tr., p.84) In the first meeting of E.P.O.A., Mr. Adams became a trustee and was subsequently elected president. Each year following, Mr. Adams was re-elected president. (Tr., p. 85) At a later meeting of the board of trustees of E.P.O.A., a full quorum of the trustees voted that Mr. Adams, who had already rendered services to E.P.O.A.,

would be paid one thousand dollars per month for his duties as president of the company. (Tr., p.86) It was further agreed that Mr. Adams would be compensated retroactively through April, 1996, and then starting on October 1, 1996, Mr. Adams would continue to be paid one thousand dollars per month for his services. (Tr., p. 86) As per the corporate articles of the company, Mr. Adams was also to be reimbursed for out-of pocket expenses incurred in connection with his duties for the company. (Tr., p. 86)

Mr. Adams and an individual named Ari Bogarte were involved in preparing the check compensating Mr. Adams for his expenses from 1992 to 1996. (Tr., P. 86) The accounting, gathering receipts and general financial matters were handled by Mr. Bogarte at that time. Around that time, Mr. Bogarte quit his position with E.P.O.A and moved back to the Netherlands. At the time Mr. Adams left the company in September, 2000, Ari Bogarte had never given back the books, records, and accountings of E.P.O.A. (Tr., p. 86, 87) Prior to that time, neither Mr. Bogarte, nor any other trustee of the company had questioned any expense that Mr. Adams submitted and was reimbursed for by E.P.O.A. check. (Tr., p. 87,88) Based on the thirteen checks which are the subject of this appeal, Mr. Adams was charged with one Count of Unlawful Dealing with Property by a Fiduciary and thirteen Counts of Forgery. At his bench trial, the trial judge found Mr. Adams not

guilty of Unlawful Dealing With Property By A Fiduciary and convicted him of thirteen counts of Forgery. (Tr., p.122,123)

Prior to beginning his case, the prosecutor, Mr. Sheffield appeared ready to rest on the stipulation that Mr. Adams signed the names of Peter Savas and Susie Burton to the thirteen checks in question. (Tr., p.12) The trial judge appeared to agree that the stipulation satisfied all of the elements of the crime of forgery but encouraged Mr. Sheffield to put on some testimony of his witnesses anyway, for clarity of the record. (Tr., p.12,13)

Mr. Sheffield first examined Mr. Savas who testified that he had not signed his name to any of the thirteen checks in question. (Tr., p.27) Mr. Savas testified that compensation was owed to the Mr. Adams for his duties as an officer of E.P.O.A., and that some compensation was retroactive. (Tr., p.27,28) Mr. Savas further testified that Ari Bogarte had never released E.P.O.A. books and financial records. (Tr., p.29, 30) Mr. Savas testified that he would have asked for receipts for the thirteen checks at issue. (Tr., p.30) However, he admitted that he never did ask for receipts. (Tr., p.48-50) Mr. Savas testified that Mr. Adams released the company books at a meeting that was called because there was some concern over Mr. Adams management of the company and the company's non-profit status. (Tr., p.31-33) At the meeting Mr. Adams was released as president and was subsequently released

as trustee. Mr. Savas testified that he did review the records and found no receipts but that many of the checks contained notations as to the expense. (Tr., p.33,34).

Mr. Savas testified that his concerns regarding the thirteen checks in question were prompted by the fact that the thirteen checks contained signatures that were no his. (Tr., p.35,36) The checks which Mr. Adams wrote in the course of his day to day business required the signatures of Mr. Adams as well as those of Peter Savas and Susie Burton. Mr. Savas further testified that he would have objected to Mr. Adams signing his name on any check that was for legitimate company expenses and that he never gave Mr. Adams permission to sign his signature. (Tr., p.35,36) Mr. Savas admitted that he was aware, that Mr. Adams had signed Mr. Savas's name to a number of other checks for company expenses, without apparent objection, and that the other checks were not alleged to be forgeries in this case. (Tr., p.52,53) Mr. Savas admitted that Mr. Adams was entitled to management fees of one thousand dollars per month. (Tr., p. 49) Mr. Savas admitted that even at the date of trial, no audit, or other examination of company transactions had ever been done. (Tr., p. 50,51) Mr. Savas further admitted that at the time of trial, neither Mr. Savas, nor another officer of the company, nor anyone had conducted an audit or investigation to determine if

the thirteen checks in question were for legitimate wages and reimbursement for expenses owed to Mr. Adams. (Tr., p.61,67) Mr. Savas admitted that a check Mr. Adams had signed Mr. Savas's name to and made payable to J.S.S.D. for water expenses was a legitimate expense and that E.P.O.A. incurred no loss or debt because of Mr. Adams action in signing his name Mr. Savas's name to the check.(Tr. p. 52,53) Mr. Savas testified that at the time the thirteen checks in question were signed, he was company treasurer, and that he was further aware that Mr. Adams did all of the day to day transactions of the company. (Tr., p. 57) Mr. Savas testified that given his admission that Mr. Adams was entitled to management fees and reimbursements, he did not know who was signing these checks that required his signature, believing that another individual named Whit Lund was a signer on the account, and that he did not in fact know whose signatures were required on the account. (Tr., p.56, 57)

Ms. Burton testified that she was a full-time flight attendant for Delta airlines.(Tr., p.71) Ms. Burton testified that she had never reviewed the books and records of E.P.O.A. (Tr., p.71) Ms. Burton testified that she was presently the president of E.P.O.A. (Tr. p.72) and that all the checks which are the subject of this case were written to Bar None. (Tr., p.74) She further testified that in all thirteen checks, Mr. Adams signed both her and Mr.

Savas's name. (Tr., p.74) Ms. Burton testified that as current president of E.P.O.A., and she was entitled to receive one thousand dollars per month as wages, and that she was further entitled to expenses incurred on behalf of the company. (Tr., p.72,73) Ms. Burton further testified that she was aware of a number of other checks that Mr. Adams signed he name to and agreed that they were for legitimate company expenses. None of these other checks is the subject of this litigation. (Tr., p. 75) Ms. Burton testified that no attempt had ever been made by any person or organization to determine, if, in fact, the checks written by Mr. Adams were for money that was due to him. (Tr., p.76)

Mr. Adams testified for the defense and provided a rational and entirely legitimate explanation for each of the thirteen checks to which he signed the names of Peter Savas and Susie Burton. (Tr., p.83-120) The prosecutor, Mr. Sheffield elected not to cross-examine Mr. Adams, leaving Mr. Adams testimony entirely uncontroverted. (Tr., p.120)

SUMMARY OF THE ARGUMENT

Mr. Adams argues that the State's case fails because there was no evidence presented of a purpose to defraud anyone, or of any knowledge that Mr. Adams was facilitating the perpetration of a fraud as required by the Forgery

statute. The State's case further fails on review because the trial judge's own findings that Mr. Adams possessed no criminal intent or mens rea in signing the names of Peter Savas and Susie Burton to the checks in question indicates that the verdict is against the clear weight of the evidence in this case. Additionally, the single factual finding in this case that Mr. Adams possessed no criminal intent is not a sufficient finding of fact to support a guilty verdict in this case.

ARGUMENT

I. THE STATE DID NOT PRESENT SUFFICIENT EVIDENCE TO CONVICT MR. ADAMS OF THE CRIME OF FORGERY

Mr. Adams seeks reversal of his forgery convictions based on the State's failure to present sufficient evidence to convict him of the crime of forgery.

The standard of review for a sufficiency of the evidence challenge in a bench trial is as follows:

When reviewing a bench trial for sufficiency of evidence, we must sustain the trial Court's judgement unless it is against the clear weight of the evidence, or if the Appellate court otherwise reaches a definite and firm conviction that a mistake has been made. *Spanish Fork City v. Bryan*, 1999 UT 61, p.5, 975 P.2d 501. However, 'before we can uphold a conviction it must be supported by a quantum Of the evidence concerning each element of the crime as charged from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt. *Id.* We review the trial court's legal conclusions for correctness. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

In order to make a sufficiency challenge on appeal an appellant must:

...marshal all the evidence in support of the trial court's findings and then demonstrate that even viewing it in the light most favorable to the court below, the evidence is insufficient to support the findings. State v. Moosman, 974 P.2d 474, 475-76 (Utah 1990). State v. Larsen 999 P.2d 1252 (Utah App. 2000).

The elements of forgery are set forth in UCA 76-6-501 which states in pertinent part as follows:

- (1) A person is guilty of forgery if, **with purpose to defraud anyone, or knowledge that he is facilitating a fraud to be perpetrated by anyone**, he:
 - (a) alters any writing of another without his authority or utters any such altered writing; or knowledge that he is facilitating a fraud to be perpetrated by anyone, he:
 - (b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing of the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person in existent or nonexistent, or 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 no such original existed. (Emphasis added)

This Court has on several occasions had opportunity to closely examine the Forgery statute, UCA 76-6-501 and has stated that the elements of the crime of forgery as clearly set forth by the statute are that the defendant (1) with the purpose to defraud anyone, or knowing that he is perpetrating a fraud; (2) alters any writing of another, or utters any such altered writing without authority, or; (3) utters any writing so that the writing purports to be the act

of another; (4) that the defendant's actions were knowing and intentional, and that they; (5) occurred on or about a specific date in Salt Lake County, State of Utah. See *State v. Winward*, 909 P.2d 909, 914 (Utah App. 1995) (Emphasis added). *State v. Kihlstrom*, 988 P.2d 949, 951 (Utah App. 1999), cert. denied 4 P.3d 1289 (Utah 2000), UCA 76-6-501.

Utah courts have repeatedly articulated an objective guideline on how criminal intent should be inferred:

Knowledge or intent is a state of mind generally to be inferred from the person's conduct viewed in light of all the surrounding circumstances. See *Harline v. Baker*, 912 P.2d 433, 442 (Utah 1996); *State v. James*, 819 P.2d 781, 789, 792 (Utah 1991) (holding jury could infer intent from overall circumstances of murder); *State v. Eagle*, 611 P.2d 1211, 1213 (Utah 1980) (allowing jury instruction stating: "A person's state of mind is not always susceptible of proof by direct and positive evidence, and, if not, may ordinarily be inferred acts, conduct, statements, or circumstances.") Because of the difficulty of proving knowledge and intent in a prosecution for forgery, the quantum of evidence the State must produce before an inference of knowledge or intent will arise should not be unrealistically burdensome. But there should be some facts or circumstances from which an inference can logically be drawn before the defendant can be required to mount a defense and prove his lack of knowledge or intent. *State v. Kihlstrom*, 988 P.2d, 949, 951 (Utah App. 1999).

A demonstration by the state of an intent to defraud is critical to supporting a conviction because more than the fact that the defendant uttered a document which sustained a forged signature is necessary for conviction.

In *State v. Winward*, 909 P.2d 909, 912 (Utah App. 1999) this Court stated:

However, the 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. *Turner*, 282

P.2d at 1047. Accordingly, to sustain a conviction for forgery, there must be a sufficient connection between the act of forgery and the intent to defraud. (Citations omitted).

As Mr. Adams has stipulated that he did write the names of Peter Savas and Susie Burton on the thirteen checks in question and also that he deposited or cashed them, the inquiry in this case is limited to consideration of whether the State put on any evidence from which the trier of fact could reasonably find that Mr. Adams signed the checks in question with the purpose to defraud the alleged victims in this case, or, indeed anyone. Utah courts have repeatedly articulated an objective guideline as to how criminal intent is to be inferred:

In compliance with the requirement that in a bench trial an appellant marshal the evidence relied upon to support the trial courts factual findings, Mr. Adams sets forth the following evidence presented at trial:

As stipulated, Mr. Adams signed the names of Peter Savas and Susie Burton to each of the thirteen checks in question. (Tr., p. 6) All of the thirteen checks at issue were written to Bar None. (Tr., p. 41)

Mr. Savas was aware that on numerous prior occasions, Mr. Adams signed Mr. Savas's name to other checks for company expenses and apparently had no objection. None of those checks are the subject of this prosecution. (Tr., p.52,53) Ms. Burton was also aware that Mr. Adams had signed her name to various checks for company expenses, none of which are at issue in this case. (Tr., p. 75)

Mr. Savas testified that he would have asked for receipts for the checks in question but admitted that he never did. (Tr. p. 48-50)

Although Mr. Savas questioned some of the checks that were written by Mr. Adams as a management fee for E.P.O.A., he admitted that by agreement, Mr. Adams was entitled to one thousand dollars per month as compensation for his duties. (Tr., p.27-29,49) Mr. Savas further admitted that even though even though Mr. Adams signed his name on a check to J.S.S.D., apparently for water expenses, the check was a legitimate company expenditure. (Tr., p. 52,53) Mr. Savas testified that as of the date of trial in this case, no audit or other financial examination of the transactions of the company had ever been conducted by anyone. (Tr., p.50,61)

Ms. Burton also testified that she was aware Mr. Adams had signed her name to a number of checks which were for unquestioned, legitimate expenses which are not the subject of this litigation. (Tr., p.75) She further testified that no audit or other examination of company financial transactions had ever been conducted by anyone, and that no information existed to show that the company had incurred a loss due to Mr. Adams management actions. (Tr., p.75-78)

Mr. Savas testified that prior to Mr. Adams assuming his management duties, the company books and records had previously been kept by Ari Bogarte. Mr. Bogarte had all the information regarding all the bank accounts of the company, prior to Mr. Adams assuming management of the company and had never released the books. (Tr., p.30,37)

In the defense's case-in-chief, Mr. Adams was presented by defense counsel with copies of each of the thirteen checks in issue and provided a rational explanation for the legitimate company expenses paid in each check. (Tr., p. 83-120) The state elected not to cross-examine Mr. Adams leaving Mr. Adams testimony entirely uncontroverted. (Tr., p.120)

Because this appeal was based on a bench trial, the Court must consider both whether there was evidence presented as to each element , and whether the evidence presented convinces the court that that an error has

been made. In *Spanish Fork City v. Bryan*, 1999 UT App. 61, paragraph 5, 975 P.2d 501, the court stated :

However, before we can uphold a conviction it must be supported by a Quantum of evidence concerning each element of the crime as charged From which the fact finder may base its conclusions of guilt beyond a Reasonable doubt.

Further, *Bryan* also indicates that the court must consider whether the trial court's verdict is against the weight of the evidence. *Spanish Fork City v. Bryan*, 1999 UT App. 61, paragraph 5, 975 P.2d 501. In the instant case, the trial court found Mr. Adams guilty without sufficient proof of the elements of the crime of forgery, and has done so against the clear weight of the evidence. Mr. Adams conviction cannot survive a sufficiency challenge where there is no evidence of any intent to defraud anyone. *State v. Winward*, 909 P.2d 909, 912 (Utah App. 1995).

II. THE VERDICT OF THE TRIAL COURT IS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE

In challenging a conviction based on a bench trial, Mr. Adams also has the right to demonstrate that the decision of the trial court is against the weight of the evidence *Spanish Fork City v. Bryan*, 1999 UT App. 61, paragraph 5, 975 P.2d 501.

At the trial in this matter, Mr. Adams put on the bulk of the evidence, none of which was controverted. The uncontroverted evidence which was presented at trial is more than sufficient to demonstrate that the decision of the trial judge was against the clear weight of the evidence.

After some initial questioning by the Court regarding the stipulation, Mr. Sheffield, counsel for the State, and the trial judge had the following exchange revealing that both of them erroneously believed, in light of the stipulation, that all elements of forgery were conceded in the stipulation and that some cursory testimony by Mr. Savas and Ms. Burton would be useful, if only for the purpose of adding clarity to the record. Apparently, both Mr. Sheffield and the judge felt it unnecessary to put on evidence of any specific intent by Mr. Adams to defraud the alleged victims in this case, or even evidence of a general knowledge by Mr. Adams that he was involved in

perpetrating a fraud, who was damaged by the fraud, and what damages, if any, were sustained by Mr. Savas, Ms. Burton, or any other person.

MR. SHEFFIELD: Okay. And with those stipulations and the evidence that's right there, I think that meets the burden of proof of the State. I have two witnesses here, Susie Burton and Peter Savas, and the reason--

THE COURT: Well, I'd be more comfortable and I—if you've got the Stipulation, you probably are covered; but I think I'd be more comfortable Adducing some testimony, at least a little bit, as long as they're here.

MR. SHEFFIELD: Okay, well and the reason that I—I'm happy to Do that Your Honor, they—they'll testify that that's not their signature and that everything we've stipulated to was, in fact run through them so that they're aware

THE COURT: Uh hub.

MR. SHEFFIELD: The reason that I brought them is I am kind of sure of the evidence that Stan Adams is going to present and I wanted to be able to reflect, if necessary, some of those comments.

THE COURT: Well, and you have that right nonetheless , but it you would Just like to put them on initially in your case in chief, you don't have Because of the stipulation, but I just think it makes for a clearer record.

(Tr., p.12,13)

This dialogue by Mr. Sheffield and the trial judge is both explanatory and troublesome. The comments suggest a clear lack of understanding by the trial judge and the State that Forgery, a third degree

felony, requires proof of criminal intent. As such, it explains why the State presented no evidence that in even one of the thirteen forgery charges, there was clear evidence that Mr. Adams acted with an intent to defraud EPOA, never attempting to prove any specific loss or value of any such loss, but rather focusing almost entirely on testimony by the alleged victims that their names were signed to thirteen checks made payable to Mr. Adams company, Bar None.

The most logical inference to be drawn from the evidence presented in this case is that Mr. Adams possessed no specific or general intent to defraud the alleged victims in this case, or indeed, anyone. Mr. Adams actions in signing the names of Peter Savas and Susie Burton and cashing or depositing the thirteen checks in question were undertaken in the course of his duties as president of E.P.O.A. and no criminal intent can be seen in the evidence presented by the State. Even when reviewing the evidence in this case in the light most favorable to the State, it appears clear that what developed in this case is a situation where, in the course of his duties as manager of E.P.O.A., Mr. Adams was responsible for running the day to day operations of the company which included payment of multiple and various company expenses, including his own wages, and was further to be compensated for expenses that he paid himself. This system, however proper its intentions

may have been, required Mr. Adams signature as well as those of Peter Savas and Susie Burton on all E.P.O.A. checks. Mr. Savas's testimony reveals that he was largely unaware of Mr. Adams duties in managing the company admitting that he didn't even know what other signatures were required on the checks other than his own and Susie Burton and thought that the signature of another individual named Whit Lund was also required.

Ms. Burton was a full time flight attendant and realtor who was very often away, and unavailable when Mr. Adams needed to pay expenses necessary to running the company. Although Mr. Savas testified that he would have requested receipts for the thirteen checks in question, he admitted that he never did so. Additionally, both Mr. Savas and Ms. Burton testified that neither they nor anyone else ever conducted an audit or examined the company books to determine if, in fact, their suspicions that the checks written by Mr. Adams to Bar None, were in any way illegitimate, caused any loss to the company, or were otherwise wrongful actions in any way by Mr. Adams.

Moreover, while both Mr. Savas and Ms. Burton testified that they objected to Mr. Adams signing their names to the thirteen checks in question, they both admitted that they were aware of various other times

when Mr. Adams had signed their names to other checks for unquestioned company expenses and apparently did not object to Mr. Adams doing so.

The well-intentioned but ultimately unworkable system requiring the signatures of three people, explains why Mr. Adam's wrote the names of Mr. Savas and Ms. Burton on the thirteen checks at issue, as well as many others that the alleged victims did not object to, and are not the subject of this litigation.

In summary, the evidence demonstrates that Mr. Adams signed the thirteen checks in the course of his day to day management of E.P.O.A. and cashed or deposited them because the checks were payment for his managerial duties at E.P.O.A or as reimbursement for legitimate expenses incurred. The State elected not to cross-examine Mr. Adams who presented rational and detailed testimony that that all of the checks at issue in this case were for legitimate company expenses such as wages and reimbursement that Mr. Adams was legitimately entitled to. No purposeful or knowing intent to defraud the alleged victims in this case, or indeed, anyone, had been proved by the State.

III. THE TRIAL COURT FAILED TO MAKE SUFFICIENT FINDINGS OF FACT TO SUPPORT A GUILTY VERDICT

Rule 52 of the Utah Rules of Civil Procedure requires that "in all actions tried upon the facts without a jury or with an advisory jury, the court shall

find the facts specially and state separately its conclusions of law thereon, and judgement shall be entered pursuant to rule 58 A..” Rule 52 is made applicable to criminal cases pursuant to URCP Rule 81(e). In the instant case, the only findings of fact made by the trial court were: (1) that there was no mens rea or criminal intent on the part of Mr. Adams; and (2) the trial court’s judgement finding Mr. Adams guilty of forgery. (Tr., p.122)

The failure to make formal findings of fact and conclusions of law presents less of a problem for an appellant if the judge has made sufficient findings orally from the bench. When considering a case on appeal, a reviewing court is not limited to review of the document titled “Findings.” Findings may be made in oral statements from the bench. *Erwin v. Erwin*, 773 P.2d 847, 849 (Utah App. 1989). In the instant case, the judge made only one clear finding of fact, other than finding Mr. Adams guilty. Rather than supporting the trial courts verdict that Mr. Adams was guilty of forgery, the judges finding of fact requires a judgement of acquittal because based on all of the evidence presented at trial, the trial court found no evidence of criminal intent. The trial judge stated:

With reference to the amended information in Count I which charges the more serious defense, a second-degree felony, of unlawful dealing with property by a fiduciary, I find the defendant not guilty. I find that the state has not met its burden of proof in terms of the criminal burden of proof since this is charged, as a, as I said, a second-degree felony. Specifically, I find that no mens rea has been established and consequently the defendant is not guilty as to Count I. As to the remaining thirteen counts, I find the defendant guilty.

(Tr., P.122)

Although the Forgery statute contained in Utah Code Ann. 76-6-501 contains specific language stating that a person is guilty of forgery if he or she acts “with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone”, Count I of the Information charging Mr. Adams with Unlawful Dealing of Property by a Fiduciary, requires only the more general intent that a person dealt with property that had been entrusted to him as a fiduciary “in a manner which he knew was a violation of his duty and which involved substantial risk of loss or detriment to the owner...” *See* Utah Code Ann. 76-6-513(2)(i). It is a practical impossibility that Mr. Adams acted with the “intent to defraud” the alleged victims but did not knowingly violate his fiduciary duties as charged in Count I of the Information in this case.

Mr. Adams reincorporates the arguments set forth above that the State failed to present evidence of intent to defraud the alleged victims in this case or any other persons and accordingly argues that the district judge’s verdict is against the clear weight of the evidence and that the trial courts judgement of conviction on the thirteen counts of Forgery should be reversed.

What is very problematic in the instant case is that there are no findings of the trial court indicating who it was that Mr. Adams was

attempting to defraud, or demonstrating that Mr. Adams knew he was perpetrating a fraud or any kind. More troublesome in this case is that one is left to speculate as to how, based on all the evidence presented, the trial judge found that Mr. Adams had no criminal intent or mens rea when he wrote the names of Peter Savas and Susie Burton on the thirteen check which are the subject of this prosecution, and then convicted him of thirteen counts of forgery. As discussed at length above, the forgery statute requires that a defendant possess proof of an intent to defraud, or knowledge that he was participating in a fraud. *See State v. Winward*, 909 P.2d 909, 914 (Utah App. 1995); *State v. Andreason*, 718 P.2d 400, 402 (Utah 1986)

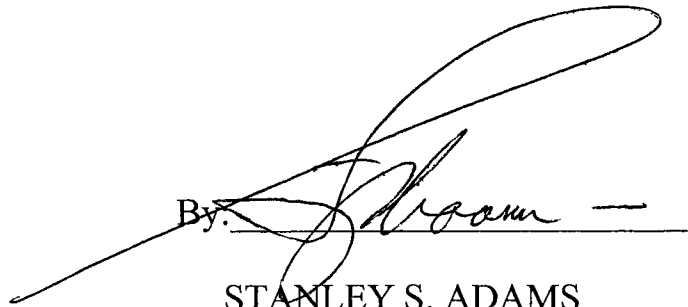
If, as Mr. Adams contends there are no findings on these issues because there was no evidence presented, no reversal and remand for additional findings is needed because the State has failed to meet its burden of proof. If, however, this Court finds that the evidence is sufficient, Mr. Adams requests that this matter be remanded to allow the trial court to make findings of fact and conclusions of law.

CONCLUSION

Based on the foregoing, Appellant, Mr. Adams respectfully requests this Court to reverse his conviction and enter an acquittal if the State presented insufficient evidence to meet its burden of proof. The same relief

is requested if the weight of the evidence is against the verdict. Finally, Mr. Adams requests reversal and or remand if this Court finds that the findings of fact are inadequate.

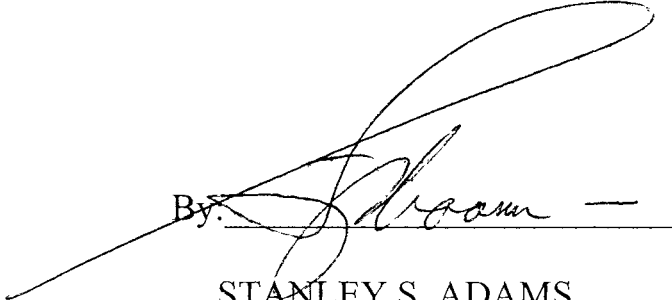
RESPECTFULLY SUBMITTED this 22 day of March, 2007.

By:  _____


STANLEY S. ADAMS
Attorney for Defendant/Appellant

is requested if the weight of the evidence is against the verdict. Finally, Mr. Adams requests reversal and or remand if this Court finds that the findings of fact are inadequate.

RESPECTFULLY SUBMITTED this 23 day of March, 2007.

By:  —

STANLEY S. ADAMS
Attorney for Defendant/Appellant

No addendum is necessary —
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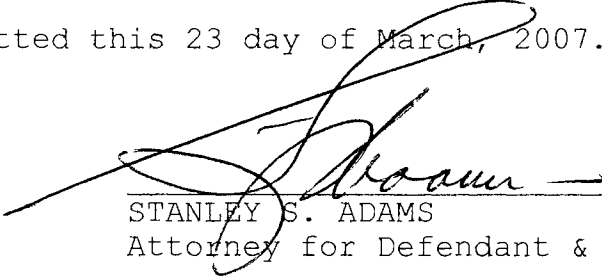
MAR 23 2007

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff & Appellee, : **CERTIFICATE OF HAND DELIVERY**
 :
 vs. :
 :
 DOUGLAS SHEPHERD ADAMS, : **Case No. 20060741-CA**
 :
 Defendant & Appellant :
 :

1. COMES NOW Stanley S. Adams and hereby certifies that he personally delivered, by hand, two copies of the Appellant's brief in this cause of action to the Utah Attorney Generals Office, Criminal Appeals Division, 160 East 300 South 6th Floor, Salt Lake City, Utah 84114
RESPECTFULLY submitted this 23 day of March, 2007.



STANLEY S. ADAMS
Attorney for Defendant & Appellant