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# The State of Utah v. Thomas Franklin Anderson : Brief of Respondent

Utah Supreme Court

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BRADHAM YOUNG UNIVERSITY  
REUBEN CLARK LAW SCHOOL

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :

Plaintiff-Respondent, :

-vs- : Case No.

THOMAS FRANKLIN ANDERSON, : 14020

Defendant-Appellant. :

-----

BRIEF OF RESPONDENT

APPEAL FROM A JURY VERDICT OF GUILTY IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE GORDON R. HALL, JUDGE, PRESIDING.

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**FILED**

SEP 13 1975

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff-Respondent, :  
-vs- : Case No.  
THOMAS FRANKLIN ANDERSON, : 14020  
Defendant-Appellant. :

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OF UTAH, THE HONORABLE GORDON R. HALL, JUDGE, PRESIDING.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff-Respondent, :  
-vs- : Case No.  
THOMAS FRANKLIN ANDERSON, : 14020  
Defendant-Appellant. :

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BRIEF OF RESPONDENT

---

STATEMENT OF THE NATURE OF THE CASE

Appellant appeals from a conviction of the crime of forgery.

DISPOSITION IN THE LOWER COURT

The appellant was tried before a jury by the Honorable Gordon R. Hall on the 4th day of February, 1975, and was found guilty of the crime of forgery. Appellant was sentenced to serve one to fifteen years in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the conviction.

#### STATEMENT OF THE FACTS

During the month of October, 1973, one Lottie Andreason failed to receive a check for \$173 which customarily arrived each month from San Francisco (T.55). It was later discovered that the missing check had been cashed, that someone had forged Mrs. Andreason's name on the back (T.55), and that appellant's signature was also on the back of the check (T.68). Mrs. Andreason had not given anyone the authority to sign her name on the check (T.55).

Appellant admitted that on the 9th day of October, 1973, he went into the Utah State Employee's Credit Union, where he is a member, and cashed a check for \$173, putting \$75 into his account and keeping \$98 (T.93). He further admitted that the check had Lottie Andreason's name and address on it (T.101).

Appellant lived two doors down from Mrs. Andreason in an apartment complex and their mailboxes were very close together and were opened by a common door (T.58,59,61). Also, appellant's name, Anderson, is very similar to Andreason.

In explaining how he came to cash Mrs. Andreason's check, appellant alleges that he met a girl (T.91) whom he slept with several times (T.100). Appellant did not know the girl's name (T.92). Appellant further alleged that the girl asked him to cash a check for her, and that he did so at his credit union (T.93). Appellant alleges that he has not seen the girl since (T.94).

Shortly after cashing the check, which had Mrs. Andreason's name and address clearly on it (T.101), appellant went to Canada in order to hide out (T.97).

#### ARGUMENT

#### POINT I

THE VERDICT WAS SUPPORTED BY THE EVIDENCE.

The information in the present case charged appellant as follows:

"That on or about the 9th day of October, 1973, in Salt Lake County, State of Utah, the said Thomas Franklin Anderson did, with a purpose to defraud another, utter and alter a writing of another without his authority. . . ."

Appellant contends that the evidence presented by the prosecution was insufficient to support a conviction for the crime of forgery. Respondent submits that an examination of the evidence shows every element of the crime of forgery to be conclusively established.

Before re-examining the evidence, it is important to point out that a jury verdict must stand unless it appears that the evidence was so inconclusive or unsatisfactory that reasonable minds must have entered reasonable doubts that the crime was committed. State v. Sullivan, 6 Utah 2d 110, 307 P.2d 212 (1957); State v. Danks, 19 Utah 2d 162, 350 P.2d 146 (1960). In other words, the strong presumption is that a jury verdict is correct. Appellant, to prevail, has the burden to prove that the jury verdict was unreasonable, and this he has failed to do (see Point II). Also, when evidence is viewed on appeal, it is viewed in a light most favorable to the verdict. State v. Ward, 10 Utah 2d 34, 341 P.2d 865 (1959); State v. Berchtold, 11 Utah 2d 208, 357 P.2d 183 (1960). As this Court has stated:



"We reverse a jury verdict only where we conclude from a consideration of all the evidence and the inferences therefrom viewed in the light most favorable to such verdict that the findings are unreasonable." State v. Berchtold, 11 Utah 2d at 214.

In order to obtain a conviction, it was necessary for the state to prove that appellant (1) uttered and altered a writing of another without his authority, and that (2) he had an intent to defraud. It is undisputed by appellant that he cashed the check (T.93). It is also undisputed that the check belonged to another person, Lottie Andreason (T.54-56), and that she did not authorize appellant to cash it (T.55). Therefore, the only remaining question is whether there was sufficient evidence for a jury to reasonably believe that appellant had the requisite intent to defraud. Respondent contends that there is more than sufficient evidence demonstrating fraudulent intent.

In reviewing the evidence it must be remembered that since intent is a matter of mental state, it is usually shown or inferred from the circumstances in which the instrument is passed, State v. Green, 89 Utah 437, 57 P.2d 750 (1936); State v.

Peterson, 22 Utah 2d 377, 453 P.2d 696 (1969).

First is the evidence of appellant's cashing the forged check without a reasonable explanation of his acquisition and possession of the instrument. In the absence of a satisfactory explanation by appellant of his acquisition and possession of the check, the testimony showing the forged nature of the check and its possession and passing by appellant is sufficient to warrant an inference of appellant's knowledge of the falsity of the check and his intent to defraud. State v. Booton, 85 Idaho 51, 56, 375 P.2d 536, 539 (1962); State v. Young, 203 Kan. 296, 302, 454 P.2d 724, 730 (1969); Pollock v. People, 166 Colo. 340, 342, 433 P.2d 738 (1968); State v. Dewey, 41 Utah 538, 550, 127 Pac. 275, 279 (1912).

Appellant's only explanation for his actions was that he met a girl (T.91), slept with her several nights (T.100), without even knowing her name (T.92), cashed a check for her, which just happened to belong to his neighbor (T.93), and has not seen her since (T.94). Respondent submits that the jury could easily find that the above was not a reasonable explanation for appellant's actions.

Second is the evidence that appellant fled and hid in Canada shortly after the passing of the forged instrument (T.95). The actions of the appellant in going to Canada were those of a man who knew he had broken the law. Since he went to Canada so shortly after the check was cashed, it is entirely reasonable that a jury would infer that appellant's acts were those of a man with a guilty conscience. Flight certainly is a factor that a jury is entitled to weigh to determine culpability.

Third is the evidence that appellant's mailbox was so close to Mrs. Andreason's, and that their names are so similar. The apartment manager testified that mailmen often place mail in the wrong boxes. It is very reasonable for a jury to ponder the possibility that a mailman made a mistake and gave Andreason's mail to Anderson, putting it in box 226 instead of 228. It is also reasonable for a jury to consider the possibility that appellant tried to cash the check which accidentally fell into his hands.

Because of all of the above circumstances, respondent contends that the elements of the crime were substantially

proved and that if the evidence is viewed in the light most favorable to the jury verdict, the conviction should be affirmed.

## POINT II

### THE JURY VERDICT IS COMPLETELY REASONABLE.

As appellant pointed out in his brief:

" . . . if the State's evidence is such that reasonable minds could believe beyond a reasonable doubt that the defendant was guilty, the verdict must be sustained." State v. Mills, 122 Utah 306, 249 P.2d 211, 212 (1952).

Appellant, however, alleges that the jury verdict in the instant case was unreasonable and that the verdict should be overturned. The only argument appellant offers in support of this assertion is that it is unreasonable to believe that the appellant would be stupid enough to cash a stolen check at a credit union where he was well known and deposit some of the money in his account.

Respondent contends that the jury verdict was entirely reasonable and that reasonable minds would so conclude. Respondent knows of no law or precedent which holds that a jury must consider the defendant to be an intelligent or reasonable man or to assume that the defendant always acts reasonably. Furthermore, it is entirely reasonable for a jury to find that a

defendant has failed to act reasonably during the commission of a forgery. It is undisputed that few, if any, criminal acts are reasonable.

The jury, in a criminal case, has the responsibility of determining the facts of the case and of judging the credibility of the witnesses. The jury can observe the facial expressions, mannerisms, and tone of voice of witnesses and thus are in the best position to determine who is telling the truth. In the instant case, appellant testified that some girl had him cash a check for her and that she then disappeared. He testified that he spent several nights with her but did not know her name. This Court has pointed out many times:

"A finder of fact is not necessarily bound to accept as conclusive a testimony of a witness. His credibility may be impeached by self-interest or improbability so that it would be entirely within the realm of reason to discount or to entirely discredit it." Nichol v. Wall, 122 Utah 589, 253 P.2d 355, 356 (1953).

See also Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323, 324 (1969) wherein the Court said that self-interest may justify non-acceptance of testimony.

The testimony of appellant at trial was not only improbable but was also entirely self-serving and completely uncorroborated by any outside evidence. The jury had the right to take such facts into consideration while coming to a decision.

#### CONCLUSION

Respondent submits that reasonable minds could believe beyond a reasonable doubt that the defendant was guilty and that the jury verdict in the instant case was reasonable and should not be overturned. Respondent seeks affirmance of the verdict of guilty.

Respectfully submitted,

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