LEGAL UPDATE

UTTERING FALSE CHECK

Uttering a false check in violation of MGL c 267 § 5 requires the Commonwealth to prove four elements beyond a reasonable doubt:

1. The defendant offered as genuine
2. An instrument (check)
3. The defendant knew the instrument was forged
4. The defendant did so with an intent to defraud.

The Appeals Court recently decided two cases that considered what facts would be sufficient to prove the charge of uttering a false check.

Commonwealth v. Scordino, 102 Mass.App.Ct. 586 (2023).

RELEVANT FACTS
On May 11, 2017, the defendant, a Citizen's Bank account holder, entered a Citizen's Bank located in a Stop and Shop store and presented a check to be cashed. The defendant presented the check, which was drawn on a Citizen's Bank account belonging to Phyllis Adams, along with her own driver's license. She successfully cashed the check in the amount of $950.00.

Over the next month Adams noticed several checks that she had not written were cashed against her account. No one else was authorized to sign checks from the account and she testified that she did not sign the check that the defendant had presented to the bank. Adams did not know the defendant and had no reason to pay her any money.

The cashed check did not appear altered in any way and the signature arguably looked like Adams' signature. There was no evidence that the defendant signed the check. The Commonwealth did not present any evidence linking the defendant to Adams, her home, or to any other unauthorized use of Adam's checks. There was no evidence to explain how the defendant got the check.

After trial the defendant was found guilty of uttering a false check. The defendant appealed.

DISCUSSION
In this case, the court addressed the following question:

> "Is evidence that a defendant in an otherwise unremarkable bank transaction who cashed a check from a person who did not know the defendant and did not owe the defendant money, alone, sufficient to support of finding beyond a reasonable doubt that the defendant knew the instrument was forged and acted with an intent to defraud."

The court found that more is required. There is nothing criminal in someone accepting payment from one person with a check drawn on the account of another. For example, it is not uncommon for an attorney's fees to be paid by a third party.

The defendant's conduct at the bank was not suspicious or otherwise evidence of a consciousness of guilt. She made no attempts to change her appearance of otherwise hide her identify. She cashed the check at a bank where she held an account and she did not make any incriminating statements. These facts were not enough to prove that the defendant knew the instrument was forged or that she had an intent to defraud.

The conviction was reversed.

Commonwealth v. Oliver, 102 Mass.App.Ct. 609 (2023).

RELEVANT FACTS
On January 19, 2019, the defendant entered a Salem Five Cents Savings Bank and presented a check to the teller. The check was made out to the defendant in the amount of $3,600.00. The defendant signed the back of the check and provided her identification to the teller who then provided her with the funds.

The check was drawn on the joint account of Dr. Thomas Mahoney and his wife, Eileen Mahoney. The check appeared to have been signed by the wife; however, the signature differed from her signature on many checks. The signature on the check was clear and legible and misspelled her name.

Over the next two weeks, the Mahoneys overdrew their account with legitimate transactions. Mrs. Mahoney went to the bank to discuss the issue. She was shown the check as well as a

photograph of the defendant cashing the check. At trial Mrs. Mahoney testified that she never signed that check and did not know the defendant.

At trial the defendant admitted to cashing the check. She testified that she received the check from Yolanda Morris for work she had performed caring for Morris' wheelchair-bound son. The defendant testified she did not notice the check was not drawn on Morris' account.

The defendant was convicted of uttering a false check. She appealed arguing that the Commonwealth failed to prove that the defendant knew the instrument was forged and that she intended to defraud anyone.

DISCUSSION

In this case the defendant cashed a check drawn on an account of someone she did not know and who did not owe her money. The check was forged which was apparent from the face of the check. The signature was legible, with each letter easily discernable. The misspelling of the name in the signature was obvious because it was different from the spelling of the name that appeared at the top of the check.

> "This is not a case where the misspelling is debatable because the signature is sloppy or otherwise unreadable."

While the defendant testified that she did not look at the check before she cashed it, the jury was not required to believe her. The court found it reasonable to infer that a person will look at a check before cashing it, especially when it is for a large sum of money.

From these facts the court found that it was reasonable for the jury to infer that the defendant knew the signature was forged.

There was also evidence presented at trial that a check can be deposited at an ATM or via mobile deposit. When a check is deposited in either of these ways, the funds are not immediately available. To receive cash for a check, an individual is required to go to the bank in person and present their identification. The court found it was reasonable to infer that by going to the drawee bank and receiving immediate possession of a large sum of cash that the defendant knew the check was forged.

The conviction was affirmed.

NOTE: In this case, the defendant was also charged with larceny by check which required proof that the defendant knew there were insufficient funds to pay the check. This charge was not before the Appeals Court because the jury acquitted the defendant of the charge. The court stated in a footnote that this was a "plainly inapplicable charge" and chastised the prosecutor stating that "this is an example of a failure to consider whether the complaint as sought by the police officer properly reflects the crimes supported by the facts alleged, a review that ought to be undertaken by a prosecutor at arraignment."