



LEGAL UPDATE

UTTERING FALSE CHECK

To prove uttering a false check, the Commonwealth must prove four elements beyond a reasonable doubt:

- (1) the check was offered as genuine;
- (2) it was an instrument;
- (3) the defendant knew the instrument to be forged;
- (4) the defendant offered the instrument with the intent to defraud.

Last year a legal update issued after the Appeals Court rendered two decisions which focused on the third element. The cases were appealed to the Supreme Judicial Court which rendered its decisions on September 24, 2024.

Commonwealth v. Oliver

RELEVANT FACTS

On January 19, 2019, the defendant cashed a check made out to her in the amount of \$3,600. At the time she presented the check, the defendant also presented her driver's license to the bank teller. The first name of the account holder at the top of the check read "Eileen" while the signature had an extra "L" reading "Eilleen."

The following month the owner of the account was notified that the account had been depleted. After learning that several other checks had been drawn on the account without her knowledge or consent, the account owner contacted the police.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

The defendant was charged with larceny by check and uttering. At trial the account owner testified that she did not know the defendant. She also testified that a caregiver had stolen a check and had altered others. The jury found the defendant guilty of the uttering charge. The defendant appealed.

DISCUSSION

The Commonwealth argued that there were four facts that, when taken together, established beyond a reasonable doubt that the defendant knew the check was forged. The court considered each of those facts individually.

1. Account holder's unfamiliarity with the defendant

The court noted that personal checks can easily be used by one person to pay another and, for this reason, it is "not necessarily unusual for the recipient of a check and an account holder to be unfamiliar with one another." In a footnote, the court contrasted personal checks from business checks, stating in part, "By contrast, business checks are typically only issued to individuals with a connection to the business." FN 5.

2. Recently stolen check

The court agreed that an inference of guilty knowledge may be inferred from the fact that someone is in possession of a recently stolen check. The issue then becomes, what is "recent?" The evidence in this case was that the check was cashed on January 19, 2019 and had been stolen sometime in 2019. That left almost three weeks during which the check could have been stolen. Prior cases that have interpreted "recently" to allow an inference of guilty knowledge have required a much shorter period of time.

"An inference of guilty knowledge may be made where a defendant is in possession of property within one day, four days, or less than a week of its having been stolen."

The court also observed in footnote 7 that there was no evidence connecting the defendant to the theft of the check.

3. Misspelled signature

The court found the additional "L" in the signature was of minimal value as it was "not particularly obvious." In fact, neither the bank teller who cashed the check or the bank's record-keeper noticed the inconsistency between the signature and the name of the account holder.

4. Check cashed for large amount of money

The Commonwealth argued that the jury can infer guilty knowledge from the fact that the defendant cashed a check in such a large sum rather than depositing it. The court found that such evidence could contribute to an inference of knowledge, however, the weight of the evidence would depend on other facts and circumstances of the case. Whether a sum is "large" would depend on the circumstances. The significance of cashing of a check as opposed to depositing it is also dependent on the circumstances. For example, it would not be suspicious

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

for an individual who does not have a bank account to cash a check, as they would not have the option of depositing the check.

There was also no evidence of other unusual circumstances here. The defendant willingly presented her identification to cash the check which was made out to her and she did not otherwise appear nervous. While any of the facts relied upon by the Commonwealth could indicate knowledge to some degree, a jury's verdict must be based on elements that are proven beyond a reasonable doubt. Based upon the facts presented in this case, the Commonwealth did not meet its burden.

"The fact that the defendant cashed rather than deposited a check for \$3,600, although perhaps unusual, together with the above-referenced evidence does not permit a rational trier of fact to find beyond a reasonable doubt that the defendant knew that the check was forged."

The conviction was reversed.

Commonwealth v. Scordino.

RELEVANT FACTS

The defendant went to her bank, presented her driver's license, and cashed a check that was made out to her in the amount of \$950. The check was drawn from an account belonging to the Adams Family Living Trust and appeared to be signed by a trustee, Phyllis Adams. The account holder reported missing checks from her checkbook to the police after noticing several checks that had been drawn on the account without her authorization. The account holder did not know the defendant and had no reason to pay her for anything.

The defendant was charged with larceny by check and uttering a false check. The judge allowed a directed verdict with respect to the larceny charge. The defendant appealed the uttering conviction.

DISCUSSION

The fact that the account holder did not authorize the check and that she had no reason to pay the defendant could contribute to an inference that the check was forged, but there must be some evidence to connect those facts to the defendant. The fact that the defendant did not know the account holder was also insufficient to establish that the defendant knew the check was forged or that she had intended to defraud the account holder.

The judgment was reversed.