

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Plaintiff-Appellee**

v.

FRANCISCO K. MOREI, Defendant-Appellant

Criminal Appeal No. 93

Appellate Division of the High Court

November 7, 1983

Appeal of conviction for forgery. The Appellate Division of the High Court, per curiam, held that complaint was adequate to inform defendant of the charges, evidence at trial was sufficient to uphold conviction, and defense that endorsement of check was made in an agency capacity was without merit, and therefore conviction was affirmed.

1. Criminal Law—Complaint—Sufficiency

For a criminal complaint to stand as sufficient, all that is required is that it adequately inform the defendant of the charge or charges against

¹ The Government's failure to meet its burden on the first element requires reversal; therefore, we do not discuss the other issue raised by Sugiyama.

which he has to defend, and that it be specific enough to support a claim of double jeopardy for future prosecution for the same conduct.

2. Criminal Law—Complaint—Sufficiency

Whether a criminal complaint is sufficient is to be determined by practical rather than technical considerations.

3. Criminal Law—Complaint—Sufficiency

Criminal complaint charging forgery was clearly sufficient, where it charged an intent to defraud each of five named payees. (11 TTC § 701)

4. Appeal and Error—Evidence—Sufficiency

Standard of review in a criminal case in the Trust Territory to a challenge of the sufficiency of the evidence is whether there is substantial credible evidence on the record as a whole to support the verdict, even though there is evidence to the contrary.

5. Criminal Law—Evidence—Circumstantial Evidence

Circumstantial evidence may be sufficient to establish guilt beyond a reasonable doubt.

6. Appeal and Error—Evidence—Sufficiency

On review of a challenge to the sufficiency of the evidence in a criminal case, the evidence and the inferences to be drawn therefrom are viewed in a light most favorable to the government.

7. Forgery—Particular Cases

Ample evidence existed to support defendant's conviction for forgery. (11 TTC § 701)

8. Forgery—Agency Defense

To support an allegation that an endorsement of a check was made in an agency capacity, albeit without authority, as a defense to the crime of forgery, the agency capacity must be evidenced on the face of the checks or there must be testimony of an agency relationship or of oral representations that defendant was acting in such a capacity.

9. Forgery—Agency Defense

Defense to the crime of forgery that endorsement of check was made in an agency capacity was without merit, where defendant first raised such an issue on appeal, presented no testimony at trial as to the existence of an agency representation, and since defendant's initials appearing on the checks were insufficient evidence of an agency relationship.

Before BURNETT, *Chief Justice*, and LAURETA, *Associate Justice (Temporary)**

* Judge, District Court of the Northern Mariana Islands, designated Temporary Judge by the Secretary of the Interior.

PER CURIAM

Appellant was convicted in the Trial Division of this Court of five counts of forgery pursuant to 11 Trust Territory Code (TTC) § 701; he appeals this conviction. For the reasons stated herein we affirm.

I. STATEMENT OF THE FACTS/CASE

Sometime in December of 1978, a package of war claim checks arrived at the Koror branch of the Bank of Hawaii addressed to the bank and to appellant, who was then a judge sitting in Palau. The package was taken to the courthouse in Palau and delivered to appellant's chambers. Appellant accepted delivery, evidenced by a receipt bearing his signature.

Thereafter, in early May, 1979, six United States Treasury checks and three Trust Territory Government checks were received at the Los Angeles Terminal Annex of California Federal Savings, along with an application to open an account in the name of South Seas Industrial Corporation, Limited, of which appellant was an officer and shareholder. On each of the five Treasury checks, an endorsement appeared in handwriting as follows:

“[Name of Payee]
South Seas Industrial
Corp. Ltd.
F.K.M.”

The bank had a policy against opening corporate bank accounts on checks made out to individual payees; therefore, no account was opened. The matter was referred to the bank security division which forwarded the material to the United States Secret Service which conducted the investigation.

On August 9, 1979, the Trust Territory Attorney General filed an information charging appellant on eighteen

counts including forgery, embezzlement, cheating and attempted cheating.

Trial was had on April 24, 25 and 29, 1980, in the Trial Division of this Court. The Judge, sitting without a jury, found appellant guilty on Counts I through V (Forgery) and not guilty on the remaining charges. Appellant now brings this appeal.

II. ISSUES

Appellant raises the following issues:

1. Whether Counts I through V failed to state an offense by failing to name the party defrauded.
2. Whether the Government presented sufficient evidence to support a conviction of forgery.
3. Whether the evidence proves only a misrepresentation of agency and cannot support a conviction of forgery.

III. ANALYSIS

We find appellant's first argument meritless. Each count states that "on or about the 30th day of April, 1979 . . . [appellant] unlawfully and falsely forged the signature of [Payee] . . . as an endorsement upon a document of apparent legal weight and authority, to wit, [a Treasury check] without the knowledge, permission, consent or authority of said Payee and with intent thereby to defraud, in violation of 11 TTC § 701."

[1-3] For the complaint to stand, all that is required is that it adequately inform the defendant of the charge or charges against which he has to defend, and that it be specific enough to support a claim of double jeopardy for future prosecution for the same conduct. See, *e.g.*, *United States v. Mann*, 517 F.2d 259, 266 (5th Cir. 1975), *cert. denied* in 423 U.S. 1087; *United States v. Salazar*, 485 F.2d 1272, 1277 (2nd Cir. 1973), *cert. denied* in 415 U.S. 985. Whether the complaint is sufficient is to be determined

by practical rather than technical considerations. See, e.g., *United States v. Crim*, 527 F.2d 289, 293 (10th Cir. 1975), *cert. denied* in 425 U.S. 905. Clearly, appellant was charged with the intent to defraud each of the five named payees in Counts I through V of the complaint. The contention that he was not so informed is frivolous.

[4-7] Appellant's challenge to the sufficiency of the evidence is equally without merit. The standard of review in the Trust Territory to such a challenge is whether there is substantial credible evidence on the record as a whole to support the verdict, even though there is evidence to the contrary. *Ona v. Trust Territory*, 7 T.T.R. 206, 221 (App. Div. 1974) and cases cited therein. Further, circumstantial evidence is sufficient to establish guilt beyond a reasonable doubt. *Ngiracheluolu v. Trust Territory*, 6 T.T.R. 86, 88 (Tr. Div. 1972). Finally, in reviewing a challenge to the sufficiency of the evidence, the evidence, and the inferences to be drawn therefrom, are viewed in a light most favorable to the government. See, e.g., *United States v. Crim*, *supra*. Under these standards, we find ample evidence exists to support the conviction.

Appellant additionally argues that the evidence presented shows only a misrepresentation of agency and cannot support a conviction of forgery, under 11 TTC § 701.¹

Appellant correctly identifies the *Selvidge/Gilbert* analysis of agency representations and their effect on the common law crime of forgery. The Supreme Court in *Gilbert v. United States*, 370 U.S. 650, 82 S. Ct. 1399, 8 L. Ed. 2d 750 (1962), adopted the analysis of the Tenth Circuit as set forth in *Selvidge v. United States*, 290 F.2d 894 (10th Cir. 1961). In *Selvidge*, defendant (Selvidge) was employed as a bookkeeper. As part of her duties, she was

¹ § 701 reads in pertinent part:

§ 701. Forgery defined. Every person who shall unlawfully and falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent thereby to defraud, shall be guilty of forgery.

directed to endorse the name of her employer on incoming checks for deposit to the employer's account; she was given a rubber stamp for this purpose. Selvidge endorsed her employer's name and added her signature as follows: "By Thelma L. Selvidge." Contrary to her instructions, the endorsements were for deposit to her own account. The court addressed the agency theory:

If Selvidge had merely endorsed the name of her principal and cashed the checks contrary to her instructions, the crime of forgery would have been complete. It is a rule of general application that an agent may commit forgery by making or signing an instrument in disobedience of his instructions or by exceeding his authority. But when she added her genuine signature purporting to endorse the checks as the agent of her named principal, although she had no authority to do so, she was not guilty of forgery. The endorsements were precisely what they purported to be; the wrongful act being a false pretense or false representation of authority.

Id. at 895.

In *Gilbert*, defendant (Gilbert) was an accountant and claimed to have the authority of his clients to endorse and deposit their tax-return checks in a trust account. Gilbert endorsed the payee's names in his own handwriting and added his name as follows: "R. Milo Gilbert, Trustee." Gilbert was convicted of forging two checks so endorsed and the Ninth Circuit affirmed. The Supreme Court held, citing *Selvidge*, that if Gilbert endorsed the checks in his agency capacity, the forgery conviction could not stand. The court vacated and remanded for a retrial, to allow the Government the chance to prove that Gilbert did not sign in a representative capacity.²

² It should be noted that the convictions in *Selvidge* and *Gilbert* were based on 18 U.S.C. § 495, a forgery statute. Courts have relied, for interpretation of § 495, on the elements of forgery as established at common law. *Gilbert*, supra, 370 U.S. 654, 655, 82 S. Ct. 1399, 1402, 8 L. Ed. 2d 750, 754. Likewise, 11 TTC § 701 is a codification of common law forgery. See *Gilbert*, supra, 370 U.S. 654, 655-59, 82 S. Ct. 1399, 1402-04, 8 L. Ed. 2d 750, 754-57. Therefore, opinions interpreting § 495 and other statutes finding their origin in common law forgery, are appropriately used for guidance in the construction of § 701.

[8] The issue then, in the analysis of *Gilbert* type cases, is whether the defendant signed in a representative capacity. Subsequent opinions interpreting *Gilbert* have required that, to support an allegation that an endorsement was made in an agency capacity, albeit without authority, such capacity must be evidenced on the face of the check. Alternatively, at a minimum, there must be testimony of an agency relationship or of oral representations that defendant was acting in such a capacity. *United States v. Gilbreath*, 452 F.2d 992 (5th Cir. 1971); *United States v. Hill*, 579 F.2d 480 (8th Cir. 1978).

[9] Appellant first raises the *Gilbert* issue on appeal. He presented no testimony at trial as to the existence of an agency representation. Furthermore, his initials, appearing in the endorsements as they do, are insufficient evidence of an agency relationship. See *Gilbreath*, *supra* (similar endorsement found insufficient to establish agency).

IV. CONCLUSION

For the reasons stated hereinabove, the conviction is affirmed.