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IN THE COURT OF APPEAL

CAYMAN ISLANDS APPEAL NO. 8/72

BEFORE: The Hon. Mr. Justice Smith, Presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Graham-Perkins

R. v. Chester Armstead

D. A. Scharschmidt for the Crown
The applicant appeared in person

21st, 22nd, 23rd, March, 1973

Smith, J.A.,

This is an appeal from the Grand Court of the Cayman Islands. The applicant is a citizen of the United States of America, and on the 8th of November, 1972, he was convicted in the Grand Court on the first two counts of an indictment containing four counts. The charges in the indictment related to a cheque drawn by the Philadelphia Quartz Company on the National Bank of Philadelphia for the sum of $U.S. 238,700.00. The applicant was charged in the first count for forgery of this cheque, in the second count for uttering the forged cheque, in the third count for being in possession of goods, namely, the cheque, obtained outside the Islands under such circumstances that if the act had been committed in the Islands the person committing it would

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have been guilty of a felony. The fourth count charged him with attempting to obtain pecuniary advantage by deception. He was acquitted on the third and fourth counts.

There was evidence given by an official of the Philadelphia Quartz Company and an official of the Girard Bank of Philadelphia that the amount stated in the cheque was payable by the Quartz Company to the Girard Bank on the 28th of June, 1972. The cheque was made payable to the Girard Bank and was expected in that bank on the 22nd of June, 1972. It did not arrive, and after a communication between the bank and the Quartz Company, payment of that cheque was stopped and a replacement cheque issued. The case for the prosecution was that the cheque turned up in Grand Cayman on the 19th of June, 1972, when it is alleged the applicant produced it to the manager of the branch of the First National City Bank of New York in Grand Cayman. The manager, Mr. Robert Eichfelt, swore that the applicant accompanied by a solicitor, a Mr. Bruce Campbell, attended at the bank on the morning of the 19th of June; that the applicant was introduced to him as George Barnes, and that the applicant produced to him the cheque in question and requested that it be negotiated. When the cheque was produced it was seen to bear as payee, "George Barnes". After some discussion between the manager of the bank and the applicant, the manager retained the cheque. He declined to pay or advance any money on it at the time, but said it had to be cleared with the bank in Philadelphia. The applicant left the bank and in the course of the following few days was in constant communication with

Mr. Eichfelt .....

Mr. Eichfelt regarding the cheque.

Before the cheque was sent off to the bank in Philadelphia it was discovered that it appeared that the cheque had been altered in so far as the name of the payee was concerned, and Mr. Eichfelt gave evidence that he sent the cheque with a covering letter no doubt inviting attention to what appeared to have been an alteration in the cheque. On the 28th of June, 1972, Mr. Eichfelt handed a photostat copy of the cheque to Detective Assistant Inspector Rudolph Evans. On the morning of the 29th of June, Detective Evans went to the Beach Club at about 7.30 o'clock where he saw the applicant. He identified himself to him and told him that he, the Detective, had received information from Mr. Eichfelt that he, the applicant, George Barnes, had attempted to cash a cheque, the cheque in question, which it was believed was a forged cheque. Detective Evans swore that the applicant told him that his, the applicant's name was George Barnes. The room which the applicant occupied at the Beach Club was searched, nothing was found. The applicant told the Detective that he occupied a room at the Royal Palms Hotel. He was taken there, his room was searched and documents were found among his possessions which showed the name Chester Armstead. Upon the Detective asking the applicant to explain the possession of these documents, the applicant told him that his name was, in fact, Chester Armstead and it was because he had a friend whose name is George Barnes why he had registered at the Beach Club under the name of George Barnes. He said that this friend was coming to the Cayman Islands on that same day, so he had checked in for him to save him the trouble of registering when he

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came. The applicant was taken into custody, the original cheque was subsequently returned from Philadelphia and these charges were preferred against the applicant.

The applicant has applied for leave to appeal against his convictions on counts one and two, and has argued before us a number of grounds of appeal. He was given every latitude to air the complaints which he had against the trial and against the circumstances in which he was taken into custody and charged. He commented on the evidence of the witnesses, particularly the evidence of Detective Foster who preferred the charges against him and the bank manager, Mr. Eichfelt, and pointed out what he regarded as inconsistencies in the evidence of these witnesses as well as the significance of other bits of evidence which he regarded ought to have been evidence in his favour, particularly the evidence of the time when he rented a motor car in the Cayman Islands, which time was about the time when the manager of the bank said that he, the applicant, had handed him the cheque at the bank. We pointed out to the applicant that in order for these apparent inconsistencies to operate to his advantage on appeal, it would have to be shown that they were such that when taken together no reasonable jury could properly accept the evidence of the witnesses concerned. It was not shown that the inconsistencies were of this kind and his complaints in this regard, therefore, have no merit.

The applicant's defence at the trial was that he knew nothing about the cheque, he denied that he ever went to the bank as alleged, he denied that he ever told the police that his name was George Barnes.

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What he said he told the police was that he registered the name 'George Barnes' not as applying to himself but to a friend who he expected would be arriving in the Cayman Islands on a visit. It is perhaps necessary to point out in this connection that there was the receptionist, Bertha Ebanks, of the Beach Club who gave evidence that the applicant in fact registered at the hotel under the name of George Barnes.

There is no merit in the several grounds of appeal put by the applicant before us, but his first ground of appeal is to the effect that there was not sufficient evidence in proof of the charge of forgery on count one. This was not argued by him, but the Court asked Mr. Scharschmidt, who appears for the Crown in this application, whether in fact there was any evidence upon which the applicant could be convicted on the charge of forgery. The particulars of the first count charging forgery are as follows:-

> Chester Armstead on the 19th day of June, 1972, at George Town in the Island of Grand Cayman with intent to defraud forged a document purporting to be a cheque drawn by the Philadelphia Quartz Company on the National Bank of Philadelphia in favour of George Barnes.

The attention of Mr. Scharschmidt was drawn to the section of the Forgery Law, Cap. 58 under which this charge was laid. Section 4(2) (a) makes it a felony for 'any valuable security or assignment thereof or endorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof' to be forged if committed with intent to defraud. Mr. Scharschmidt was invited to consider whether the forgery of the endorsement on a valuable security is the same thing as forging

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the valuable security itself. This question was raised because it appears quite clear from the summing-up that the allegation of the prosecution was that the applicant was guilty of forgery because he had endorsed the cheque with the name, George Barnes, in the presence of the bank manager, Mr. Eichfelt, and that this was all that the prosecution relied on in proof of the charge of forgery.

Mr. Scharschmidt submitted that the endorsement was part of the valuable security and that, therefore, the forging of the endorsement would be a forging of the cheque as charged in the first count. He referred to the case of R. v. Autey, 7 Cox C.C. 329. That was a case in which it was held that the forgery of the endorsement on a warrant for the payment of money amounted to a forging of the warrant itself. On the face of it this would be an authority in support of Mr. Scharschmidt's contention, but it is made clear from the judgment delivered by Crompton J. that the decision in that case was based on the fact that it was held that in the special circumstances of that case the endorsement was in fact, or could be held to be, a part of the warrant itself. It was also made quite clear during the exchanges arguendo that in the normal case of a bill of exchange the endorsement is not part of the bill of exchange.

During the argument before us it was suggested that the forgery of the endorsement could amount to proof by inference of forging of the cheque itself. That is to say, that the jury could find that it was the applicant who altered the name of the payee of the cheque by inference from the

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fact that he wrote the name, 'George Barnes', on the back of the cheque. The case of R. v. James 4 Cox C.C. 90 was referred to in support of this contention. The majority of the Court is of the view that on the evidence before the jury it could not reasonably be inferred, having regard to the time between when the cheque was last seen, that is to say, on the 15th of June, 1972, and the time when it was next seen, which is on the 19th of June, 1972, that it was the applicant who himself had forged the cheque. In the view of the majority of the Court, if it was claimed that by endorsing the cheque in the name of George Barnes this amounted to a forgery, then the charge which should have been laid under section 4 (2)(a) of the Forgery Law was a charge of forging the endorsement on the cheque rather than forging the cheque itself.

In the view of the majority of the Court there was no evidence before the Court in proof of the charge in the first count as laid. Even if the contention that by inference there was proof of the forgery of the cheque was sound, the position in fact would be that the jury were not invited to consider the first count on that basis. The count was left to them purely on the ground that to sign a ficitious name in endorsing the cheque amounted to forgery of the cheque. For these reasons the application in relation to the conviction on the first count is treated as the appeal. The appeal is allowed, the conviction on the first count is quashed and the sentence set aside.

The applicant had contended further that the verdicts convicting him on the first two counts were inconsistent with the verdicts acquitting him

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on counts three and four; but it was pointed out to him that this contention has no merit because the jury could properly find him not guilty on the third and fourth counts as laid and yet convict him on the first two counts. The application for leave to appeal in regard to the conviction on the second count is refused.

There is also an application for leave to appeal against sentence, but the applicant said nothing which could properly affect the sentence that was passed on him. He was sentenced to five years imprisonment at hard labour. The maximum penalty for this offence is fourteen years imprisonment at hard labour. This was a case of a foreigner entering the Cayman Islands and attempting to perpetrate a colossal fraud in those Islands and the Court could justifiably regard this as a very serious offence indeed. We can see no reason for interfering with the sentence that was passed. In normal circumstances the sentence would commence to run from today, but it is observed that in the Grand Court the Order of the Court was that the imprisonment was to commence on the 29th of June, 1972, which was the date on which the applicant was taken into custody. In deference to this Order we make an Order in the same terms, that is to say, that the sentence is to take effect from the 29th of June, 1972.