

**CH. 23 FORGERY ..... 1**

## CH. 23 FORGERY

### §23

#### Illinois Supreme Court

**People v. Brown**, 2013 IL 114196 (No. 114196, 12/19/13) Under 720 ILCS 5/17-3(a), the offense of forgery occurs where, with the intent to defraud, the defendant:

- (1) makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another, at another time, with different provisions, or by authority of one who did not give such authority (720 ILCS 5/17-3(a)(1)),
- (2) issues or delivers any document which is apparently capable of defrauding another with knowledge that it has been made or altered to make it apparently capable of defrauding (720 ILCS 5/17-3(a)(2)), or
- (3) possesses any document which is apparently capable of defrauding with intent to issue or deliver it and knowing it to have been made or altered to make it apparently capable of defrauding (720 ILCS 5/17-3(a)(3)).

The gist of forgery is intent to defraud. Whether a forged document is apparently capable of defrauding depends on whether a reasonable person might be deceived into accepting it as genuine.

Here, defendant challenged her conviction under §17-3 (a)(1) for making or altering a document capable of defrauding another. Defendant, a police officer, presented a counterfeit check to her credit union after endorsing her own name. Defendant testified that the check came from her sister, who stated that she had settled a lawsuit and was distributing the proceeds to family members because she was dying.

The court concluded that under §17-3(a)(1), the point at which a check is “made or altered” depends on whether the check is genuine or counterfeit. If a check is counterfeit, forgery by “making or altering” under subsection (a)(1) is complete when the check is first created with the intent to defraud. A counterfeit check is capable of defrauding without the need for any endorsement.

By contrast, where a genuine check is endorsed in a way which makes it capable of defrauding, forgery by “making” or “altering” occurs at the point of endorsement. In other words, a false endorsement can render an otherwise valid check capable of defrauding and thereby constitute forgery under subsection (a)(1).

Because the check which defendant presented was counterfeit and therefore capable of defrauding when it was created, defendant did not make or alter the document within the meaning of §17-3(a)(1) when she endorsed it with her own name. Thus, defendant did not commit forgery under §17-3(a)(1) by endorsing the counterfeit check with her correct name.

The court rejected the State’s argument that the circumstantial evidence showed that defendant had actually made the counterfeit check and was therefore guilty of forgery under §17-3(a)(1) without regard to her endorsement. “Proof of forgery by making ‘must be connected to the person charged or there is a failure of proof.’”

Because defendant did not make or alter the counterfeit check by endorsing it with her own name, and there was a complete failure of proof on the essential element that defendant created the counterfeit check, the conviction under §17-3(a)(1) must be reversed. Defendant’s conviction for attempted theft, which she did not challenge in the Supreme

Court, was affirmed.

**People v. DeFilippo**, 235 Ill.2d 377, 919 N.E.2d 921 (2009) The elements of forgery, as charged here, include: (1) a document apparently capable of defrauding another; (2) the making or altering of such document by one person in such a matter that it purports to be made by another; (3) knowledge by the defendant that the document has been thus made; (4) knowing delivery of the document; and (5) intent to defraud. Thus, “a document which ‘purports to have been made by another’ is properly an element of forgery where there is no allegation that the document otherwise purported to be made ‘at another time, or with different provisions, or by authority of one who did not give such authority.’”

A letter that was clearly made in defendant’s own name and under his authority, but which contained false information, was not a document made in a matter that purported to have been made by another person. Thus, defendant could not be convicted of forgery for writing a letter which sought to increase his eligibility for a pension and which allegedly contained inaccurate information concerning the date on which he had been deputized.

**People v. Hockaday**, 93 Ill.2d 279, 443 N.E.2d 566 (1982) The information was sufficient to advise defendant of the nature of the charges where it followed the statute defining forgery by delivery. The charge did not fail to allege that the document was forged and that defendant knew it was forged, as defendant contended. See also, **People v. Moyer**, 1 Ill.App.3d 245, 273 N.E.2d 210 (4th Dist. 1971) (indictment which contained narrative description of the instrument allegedly forged was sufficient). But see, **People v. Moats**, 8 Ill.App.3d 944, 291 N.E.2d 285 (3d Dist. 1972) (forgery information which omitted the amount and payee of the instrument was fatally defective, because the instrument could not be a "check" or a "document capable of defrauding another"); **People v. Dawdy**, 87 Ill.App.2d 424, 230 N.E.2d 883 (4th Dist. 1967) (forgery indictment that failed to set out the alleged forged instrument, in exact copy, was fatally defective); **In re Carson**, 10 Ill.App.3d 387, 294 N.E.2d 75 (3d Dist. 1973) (delinquency petition charging merely that defendant attempted to pass a "bad check," without explaining why the check was "bad," was defective); **People v. Teichler**, 19 Ill.App.3d 292, 311 N.E.2d 422 (2d Dist. 1974) (forgery complaint was fatally defective where it failed to state that the checks were drawn on a bank or to set forth the name of the drawee bank).

**People v. Henderson**, 71 Ill.2d 53, 373 N.E.2d 1338 (1978) The crime of forgery does not require that anyone actually be defrauded. The gist of the offense is the intent to defraud involved in the making of a forged instrument or knowingly uttering the same. See also, **People v. Baylor**, 25 Ill.App.3d 1070, 324 N.E.2d 255 (2d Dist. 1975) (an essential element of forgery is that defendant knew the check was forged when he cashed it).

**People ex rel. Miller v. Pate**, 42 Ill.2d 283, 246 N.E.2d 225 (1969) General discussion of pleading requirements for forgery.

**People v. Watson**, 36 Ill.2d 228, 221 N.E.2d 645 (1966) Error to prevent defendant charged with forgery from offering evidence that a similar check was forged and cashed after defendant was in custody.

## Illinois Appellate Court

**People v. Davis**, 2026 IL App (3d) 250122 Defendant was convicted of forgery based on her presentation of a fabricated child custody order to a police officer. On appeal, she argued that the forgery statute required the State to prove that she caused financial loss to another or brought financial gain to herself and that the State failed to do so, thus necessitating reversal of her conviction. The appellate court agreed.

Prior to 2011, the forgery statute provided that a person committed forgery when, with intent to defraud, the person knowingly made or altered any document apparently capable of defrauding another or issued or delivered such document knowing it to have been thus made or altered. “Intent to defraud” was defined as intending to cause another to assume, create, transfer, alter, or terminate any right, obligation or power with reference to any person or property. Courts construed the pre-2011 version of the statute as allowing conviction for falsified documents that did not cause a direct financial injury or property loss.

In 2011, the forgery statute and definition of “intent to defraud” were amended. The statute provides that a person commits forgery when with the intent to defraud the person knowingly makes a false document or alters any document to make it false and that document is apparently capable of defrauding another, or the person issues or delivers such document knowing it to have been thus made or altered. Relevant here, the definition of “intent to defraud” was amended to mean when a person acts “knowingly, and with the specific intent to deceive or cheat, *for the purpose of causing financial loss to another or bringing some financial gain to oneself...*”. Thus, the plain language of the definition of “intent to defraud” establishes that forgery requires that the person act with the intent to bring about a financial gain or loss. While the definition goes on to provide that “this includes an intent to cause another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property,” that additional language does not negate the financial gain or loss provision but rather provides a non-exclusive list of possible variations of how the purpose of causing financial gain or loss might be established.

Here, the State conceded that it presented no evidence that defendant acted for the purpose of her own financial gain or the financial loss of another. Accordingly, defendant’s conviction was reversed outright.

**People v. Turner**, 179 Ill.App.3d 510, 534 N.E.2d 179 (2d Dist. 1989) Defendant's forgery conviction reversed because the jury was not instructed on the essential element that the check was a "document apparently capable of defrauding another." The judge's failure to give the instruction *sua sponte* was plain and reversible error.

**People v. Henson**, 136 Ill.App.3d 183, 482 N.E.2d 1044 (4th Dist. 1985) The forgery statute does not violate equal protection by punishing forgery of amounts less than \$300 (as in this case) as a Class 3 felony, while theft of less than \$300 is a Class A misdemeanor.

**People v. Lindquist**, 97 Ill.App.3d 894, 424 N.E.2d 66 (3d Dist. 1981) Defendant, the executor of an estate, did not commit forgery by improperly drawing a check on the estate funds for his own purposes.

**People v. Baylor**, 25 Ill.App.3d 1070, 324 N.E.2d 255 (2d Dist. 1975) Trial judge did not err in refusing to instruct on deceptive practices, which is not a lesser-included offense of forgery.

**People v. Roberts**, 27 Ill.App.3d 489, 326 N.E.2d 116 (3d Dist. 1975) Defendant could properly be charged with forgery though his conduct also constituted the lesser crime of

deceptive practices.

**People v. Moyer**, 1 Ill.App.3d 245, 273 N.E.2d 210 (4th Dist. 1971) Application for charge account and charge slips were documents "apparently capable of defrauding." See also, **People v. Roberts**, 27 Ill.App.3d 489, 326 N.E.2d 116 (3d Dist. 1975) (credit card sales slip was a document apparently capable of defrauding another).

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