

ADA ELLIOTT ON FORGERY

Defendant wanted to pay for gas at a truck stop with a forged check but the cashier refused to cash it. Defendant took the check and left. She was later caught and convicted of forgery (issue or transfer).

Several questions were raised on appeal:

- *does an offender have to gain something for there to be a forgery? (no)
- *does a victim have to lose something for there to be a forgery? (no)
- *does a victim have to accept a check for there to be a forgery? (no)
- *does the forged check have to be available at trial? (no)

The Supreme Court supported law enforcement and said no to all of the above. Once a check is passed, even though not accepted, its forgery. State v. Ruffins (1990).

Police officers often come in contact with forgers at a bank or check cashing business. One person will pass a check but another person may also be present.

What is the status of the second person?

Mere presence is not enough

The fact that defendant accompanied the forger of checks at the time she cashed them is not sufficient to show aiding and abetting. Mere presence is not enough. State v. Hermosillo (1973).

But helping the forger can be aiding and abetting

Defendant did not pass the check but was convicted of forgery anyway. There was evidence that he aided and abetted the unidentified woman who actually passed the check. The evidence showed that he vouched for and endorsed the check forged by his unidentified companion. His conviction was affirmed. State v. Martinez (1973).

Remember, two kinds of forgery exist under NMSA 1978, Section 30-16-10:

- a. Make or alter - a third degree felony
- b. Issue or transfer - a third degree felony

A subject who alters and then passes a forged check can be charged with both sections for a possible sentence of six years.

