

The State of South Carolina



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March 17, 1986

C Gordon McBride, Esquire
Darlington County Attorney
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Dear Mr. McBride:

In a letter to this Office you indicated some magistrates are taking the position that if a person did not witness the execution of a check there cannot be a violation of the fraudulent check act and have been dismissing warrants issued under Section 34-11-60 of the 1976 Code of Laws, as amended, for lack of prosecution. You referenced facts in a recent case where a party under a rental agreement for a refrigerator made payment of the installment due by a check mailed to the rental company. The maker of the check acknowledged the check, her signature and that it was for the payment as outlined. There was no other question with regard to compliance with the statute as to the check having been returned for insufficient funds, proper notice and so forth. You have specifically requested an opinion as to the legality of the magistrate dismissing charges on the basis that the signature on the check by the maker was not observed by the payee.

Section 34-11-60 (b) states:

(i) In any prosecution or action under the provisions of this section, a check, draft, or other written order for which the information required in item (1) of this subsection is available at the time of issuance shall constitute prima facie evidence of the identity of the party issuing the check,

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draft or other written order and that such person was a party authorized to draw upon the named account.

(1) To establish this prima facie evidence, the full name, residence address and home telephone number of the person presenting the check, draft or other written order shall be obtained by the party receiving such instrument. Such information may be provided by having such information recorded on the check or instrument itself, or the number of a check-cashing identification card issued by the receiving party may be recorded on the check. Such check-cashing identification card shall be issued only after the full name, residence address and home telephone number of the person presenting the check, draft or other written order has been placed on file by the receiving party.

(2) In addition to the information required in item (1) of this subsection, the party receiving a check shall witness the signature or endorsement of the party presenting such check and as evidence of such the receiving party shall initial the check. Validation by a bank teller machine shall constitute compliance with this item.

As stated, to establish prima facie evidence of the identity of the person issuing a check and that such person was authorized to draw on the account, among other requirements, the party receiving a check is to witness the signature of the individual presenting the check. By initialing the check, the party receiving it provides evidence of his having witnessed such signature.

"Prima facie evidence" has been defined as "... evidence sufficient to establish a given fact and, which, if not rebutted or contradicted, will remain sufficient." People v. Anadale, Colorado, 674 P.2d 372 at 373 (1968). However, while prima facie evidence of the identity of the individual presenting the check and his authority to draw on the account may be established in part by witnessing the signature of the individual, the failure to witness the signature would not necessarily warrant a fraudulent check case being dismissed. Instead, the State is put to the additional burden of providing evidence that the defendant in a particular case signed the check and presented it in payment of some debt. Such is consistent with the holding of

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the State Supreme Court in State v. Burris, 281 S.C. 47, 314 S.E.2d 316 (1984). In Burris, the Court referenced Section 16-13-120 of the 1976 Code of Laws, as amended, which provided a basis for establishing prima facie evidence of shoplifting by the concealment of unpurchased goods.^{1/} The Court noted, however, that such provision

... relates only to the matter of proof. It is abundantly clear that one may be convicted of shoplifting without regard to this section, and proof of guilt may be by direct evidence or circumstantial evidence or a combination of the two. 281 S.C. at 49.

In State v. Toomer, 277 S.C. 217, 284 S.E.2d 783 (1981), the Court dealt with a case involving a violation of Section 50-17-1615 of the 1976 Code of Laws which states that the captain of any boat shrimping in violation of certain provisions shall be deemed guilty of a misdemeanor. The Court referenced that pursuant to Section 50-17-410 of the 1976 Code of Laws whenever a license for a shrimp boat is obtained, a sworn statement must be filed with the Division of Marine Resources providing the name and address of the master or captain of the boat. The statute further provides that if the boat is later found to be violating any fisheries laws of this State, in any criminal proceeding it shall be presumed that such registered master or captain was in fact on the boat. The statute further provides that such presumption shall be prima facie evidence of the presence of the master or captain upon the boat and that he was operating it at the time the violation was charged.

While such prima facie evidence is provided by statute, the Court stated in Toomer:

... Section 50-17-410 does not conclusively presume the 'registered captain' to be the captain in fact, i.e. the person actually directing the boat's command. Its purpose, we think, is to aid prosecution by the State in those situations where it cannot actually

^{1/} Such statute was declared unconstitutional in Burris in keeping with the ruling of the U. S. Supreme Court in Sandstrom v. Montana, 442 U.S. 510 (1979) which dealt with a jury instruction on the issue of intent which shifted the burden of proof to a defendant. However, the explanation of the Court as to the effect of prima facie evidence remains useful.

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identify the person commanding the boat when the violation occurs, Where actual identification of the captain is made, the presumption under Section 50-17-450 is not needed. 277 S.C. at 220.

Similarly, in the situation referenced by you, the means provided by Section 34-11-60 to establish prima facie evidence of the identity of the individual presenting the check were not needed. You indicated that such individual willingly acknowledged the check, her signature, and that it was for the payment for the refrigerator. Referencing such, while Section 34-11-60 does provide for a means to establish prima facie evidence of the identity of the person issuing the check and that such person was authorized to draw on an account, such is not necessary where such evidence can be otherwise established.

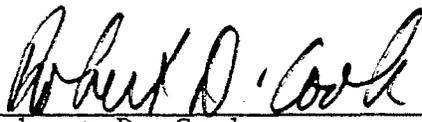
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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