

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 11-1306

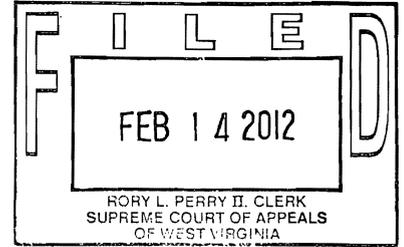
STATE OF WEST VIRGINIA,

*Plaintiff Below,
Respondent,*

v.

JOHN J. MOFFIT,

*Respondent Below,
Petitioner.*



SUMMARY RESPONSE OF THE STATE OF WEST VIRGINIA

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The Petitioner argues: (1) that the state criminal statutes, *W. Va. Code*, 61-4-3 [1923] (counterfeiting) and *W. Va. Code*, 61-4-6 [1923] (possession of counterfeit with intent to utter), do not apply to counterfeit United States paper currency/Federal Reserve notes; and (2) that *for this sole reason*, the Petitioner's convictions for counterfeiting and possession of a counterfeit bill should be reversed. (Appellant's Br. at 1). The Petitioner cites to no West Virginia or other decisional authority for these propositions; and in fact courts in a number of states, applying similar or essentially identical statutes, have rejected these same arguments. This Court should do the same and affirm the Petitioner's convictions.

W. Va. Code, 61-4-3 [1923] states:

If any person forge any coin, current by law or usage in this State, or *any note or bill of a banking institution*, or fraudulently make any base coin, or a note or bill purporting to be the note or bill of a banking institution, when such banking institution does not exist; or utter or attempt to employ as true, or sell, exchange or deliver, or offer to sell, exchange or deliver, or receive on sale, exchange, or delivery,

with intent to utter or employ or to have the same uttered or employed as true, any such false, forged, or base coin, note or bill, knowing it to be so, he shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years. [emphasis added].

W. Va. Code, 61-4-6 [1923] states:

If any person have in his possession forged *bank notes*, or pieces of forged or base coin, such as are mentioned in the third section of this article, knowing the same to be forged or base, with intent to utter or employ the same as true, or to sell, exchange, or deliver them, so as to enable any other person to utter or employ them as true, he shall, if the number of such notes or pieces of coin in his possession, at the same time, be ten or more, be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than five years, and if the number thereof be less than ten, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than one year and be fined not exceeding five hundred dollars. (emphasis added).

Read together, these statutes prohibit, *inter alia*, the forgery or possession with the intent to utter of a counterfeit *note or bill of a bank or banking institution*. The Petitioner’s argument, which looks to a variety of historical sources but argues entirely by analogy and without any direct supporting authority, is simply that a United States twenty dollar bill is not a “note or a bill of a bank or banking institution.” (Pet. at 1.)

However, a telling impediment to the Petitioner’s argument is that no court has ever so held. Moreover, and most importantly: -- when confronted by the same argument, a number of courts have carefully considered and soundly rejected it, holding that United States paper currency is indeed a “note or bill of a banking institution,” and therefore subject to state counterfeiting laws.

Thus, in *State v. Davis*, 358 So.2d 887 (Fla. 1978), the court held that a Federal Reserve note qualified as a “bank bill or promissory note . . . issued by an incorporated banking company . . .” for purposes of Florida’s counterfeiting statute. (*Id.* at 888, emphasis added.) The *Davis* court specifically noted that the Florida counterfeiting statutes had been enacted at a time when “much of

the [paper] currency then in use consisted of bank notes or bills issued by authorized banks, but that today the bulk of our currency consists of Federal Reserve notes.” (*Id.*)

In another case, *Commonwealth v. Saville*, 233 N.E.2d 9 (Mass. 1968), the court held that ten-dollar Federal Reserve notes qualified as being “notes . . . issued by an incorporated banking company” for purposes of anti-counterfeiting laws. (*Id.* at 13, emphasis added.)¹ *Accord*, *Commonwealth v. Murphy*, 877 N.E.2d 604, 608 n.7 (Mass. 2007). *See also* *People v. Hall*, 215 N.W.2d 166, 177 (1974) (“bank bills and notes” means “our Nation’s currency” under state

¹The *Saville* opinion states:

Saville contends that. . . [sections] 9 and 13 do not apply to counterfeit Federal Reserve notes, because such notes are not issued by ‘an incorporated banking company’ . . . [or] ‘any bank or banking company’.

....

Federal Reserve notes are ‘obligations of the United States,’ see 12 U.S.C. ss 411—414 (1964; see 1966 amendment of s 413 by 80 Stat. 161), which may be issued to each of the twelve Federal Reserve banks (see 12 U.S.C. s 222, App. A (1964), and 26 Fed.Reg. 12638) against statutory collateral deposited by such banks (ss 412—414), ‘at the discretion of the Board of Governors of the Federal Reserve System’ (s 411; see also s 248(d) as amended by 80 Stat. 161).

....

In any event, having in mind the obvious statutory purpose behind s 8 (to punish the proscribed possession of counterfeits of notes used as currency put out to the public by banks), it is consistent with that purpose and with ordinary usage to view ‘issued’ as including the action of the several Federal Reserve banks in putting into public circulation Federal Reserve notes obtained by them for that purpose under the Federal statutes cited above. . . . Federal Reserve banks are incorporated under 12 U.S.C. s 341 (1964). We thus hold that Federal Reserve notes are ‘issued by an incorporated banking company’ . . . as well as by a ‘bank[.]’

Com. v. Saville, 233 N.E.2d 9, 12-13 (Mass. 1968)

counterfeiting statutes.) *See also People v. Ray*, 50 Cal. Rptr.2d 612, 613-14 (Ct. App. 1996) (Federal Reserve notes are “bank notes or bills” under state counterfeiting statutes). *See also State v. Scarano*, 175 A.2d 360 (Conn. 1961) (United States currency is a “promissory note or bill” issued by a “national banking association” for purposes of state counterfeiting statutes).

In addition to the language quoted *supra*, the above-cited cases contain substantial further discussion of why modern United States paper currency falls squarely under state anti-counterfeiting laws that cover “notes or bills of a banking institution” -- like *W. Va. Code*, 61-4-3 [1923] (counterfeiting) and *W. Va. Code*, 61-4-6 [1923] (possession of counterfeit with intent to utter). This Response will not belabor the point by repeating those discussions, as this Court can read them directly and assess their persuasiveness.

Nothing in the Appellant’s brief appears to address any of these cases, or to provide any persuasive authority for the Appellant’s somewhat remarkable proposition that counterfeiters in West Virginia get a “free pass” (under state law) for making and using bogus U.S. currency.

For the foregoing reasons, the Appellant’s convictions for counterfeiting and possession of counterfeit with the intent to utter should be upheld.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,

by counsel

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL



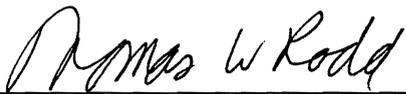
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CERTIFICATE OF SERVICE

I, THOMAS W. RODD, Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the “*SUMMARY RESPONSE OF THE STATE OF WEST VIRGINIA*”, upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 14th day of February, 2012, addressed as follows:

To: Richard H. Lorensen, Esq.
One Players Club Drive
Suite 301
Charleston, West Virginia 25801



THOMAS W. RODD