

Missouri Court of Appeals  
Western District

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Appellant,

v.

ROBERT RYAN SMOTHERS,

Respondent.

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**DOCKET NUMBER WD70361**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** November 17, 2009

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**Appeal from**

The Circuit Court of Randolph County, Missouri  
The Honorable Gary G. Sprick, Judge

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**APPELLATE JUDGES**

Division Three: Newton, C.J., and Pfeiffer and Mitchell, JJ.

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**ATTORNEYS**

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Attorney for Appellant,

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Attorney for Respondent.

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# MISSOURI APPELLATE COURT OPINION SUMMARY

## MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	WD70361
Appellant,	)	
v.	)	OPINION FILED:
	)	November 17, 2009
ROBERT RYAN SMOTHERS,	)	
	)	
Respondent.	)	

Before Division Three Judges: Thomas H. Newton, C.J., Mark Pfeiffer and Karen King Mitchell, JJ.

Respondent, Robert Smothers (Smothers), was charged with one count of forgery and one count of possession of a forging instrumentality. Smothers was subject to a lawful drug test in conjunction with his bond in an unrelated matter. Upon being questioned by the police officer who administered the test, Smothers admitted to giving the police officer a false urine sample and to using a Whizzinator (a device designed to fraudulently defeat drug tests) and dehydrated urine to do so. The State charged Smothers with forgery, and Smothers moved to dismiss the charges. The circuit court found that the evidence contained in the State's information and probable cause statement did not meet the statutory requirements of forgery as a matter of law. Accordingly, the circuit court granted Smothers's motion to dismiss. The State appeals.

### REVERSED AND REMANDED.

#### Division Three holds:

The circuit court erred in holding that the State's felony information and probable cause statement failed as a matter of law because the State failed to allege that Smothers had the purpose to defraud. The State's information and probable cause statement alleged facts that, if proved, would show that Smothers had the purpose to deprive the government and/or the public of the administration of justice. Such a purpose, if proved, would be sufficient to satisfy the "purpose to defraud" element of section 570.090.<sup>1</sup>

The circuit court erred in holding further that the State's felony information should be dismissed because Smothers did not make or alter anything himself. Under subsection 4 of the forgery statute, the State could meet its burden by proving that Smothers, with the purpose to defraud and with the knowledge that the inauthentic item had been made or altered so that it purported to have a genuineness or ownership that it did not possess, *used* an inauthentic item as genuine, *possessed* an inauthentic item with the purpose to use it as genuine, or *transferred* an

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<sup>1</sup> All statutory references are to RSMo 2000, updated through the 2009 Cumulative Supplement.

inauthentic item with the knowledge or belief that it would be used as genuine. § 570.090.1(4). Here, the felony information stated that Smothers, with the purpose to defraud, used and/or transferred as genuine a urine sample, knowing that it had been made or altered so that it purported to have a genuineness or ownership that it did not possess. While it is unclear how the false urine sample was made or altered, the facts permit an inference that Smothers knew the urine sample had been made or altered so that it purported to have a genuineness, ownership, or authorship that it did not possess. Thus, if proved, the State's allegations would meet the elements of subsection 4 of the forgery statute.

Smothers also argues that a urine sample is not a proper subject matter upon which to base a forgery charge. Subsection 4 of the forgery statute covers "any writing *or other thing* including receipts and universal product codes." § 570.090.1(4) (emphasis added). We hold that, assuming the statute's other elements are also met, the forgery statute is broad enough to cover any inauthentic item, including a false urine sample.

Finally, Smothers argues that this court lacks jurisdiction to hear this appeal. We hold that the judgment appealed from was a final judgment and that remand will not place Smothers in double jeopardy. Accordingly jurisdiction properly lies in this court.

For the reasons stated above, we reverse the circuit court's grant of Smother's motion to dismiss and remand for proceedings consistent with the opinion.

**Opinion by: Karen King Mitchell, Judge**

November 17, 2009

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