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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 78,085

JO ANN CAMP,

Respondent.
_____/

MERITS BRIEF OF PETITIONER

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STATEMENT OF CASE AND FACTS

The amended information charged the defendant with, *inter alia*, dealing in stolen property by "transferring or negotiating" checks at banks (R 91-116).[1] The material facts are set out in the decision of the Fifth District Court of Appeal:

> Jo Ann Camp, while employed as a bookkeeper by Brightwater Pools, Inc., improperly obtained or used company checks for her own use. She either forged her employer's signature or improperly used blank checks pre-signed by him. She was ultimately caught.

State v. Camp, 16 F.L.W. D1113 (Fla. 5th DCA April 25, 1991).

The defense filed a motion to dismiss the dealing in stolen property counts (R 150-151). A hearing was held, (R 118), and the trial court granted the motion (R 162-164).

The district court affirmed. *Camp, supra*. The state filed alternative motions for rehearing or for certification of direct and express conflict between the decision and *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989). The motions were denied. A notice invoking the jurisdiction of this court was filed in the district court.

This court accepted jurisdiction on October 15, 1991. This brief follows.

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[1] The parties are referred to as the state and the defendant. References to the record on appeal are indicated "(R and page number)".

SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal should be quashed. Passing stolen checks constitutes dealing in stolen property under §812.019, Fla. Stat. (1989). One who traffics in stolen property commits the offense of dealing in stolen property. "'Traffic' means . . . [t]o sell, transfer, distribute, dispense, or otherwise dispose of property." §812.012(7)(a), Fla. Stat. (1989). The act of cashing checks at a bank constitutes either "transfer" of the checks or other disposition of the property.

Assuming, *arguendo*, that strict construction of the penal provisions of the act is not constitutionally required, application of alternative rules of construction leads to the same result. The legislature intended to remedy the evil of redistribution of stolen property by punishing not only fences under section 812.019, Fla. Stat. (1989), but all who are involved in the criminal process. This includes those, such as Camp, who commit the initial theft and subsequently transfer the illicit goods to another. The remedial goals of the act are thus served by not only directly combatting fencing of stolen property but by punishing those who contribute to the continued existence of the fences by providing them with their illicit property.

ARGUMENT

PASSING STOLEN CHECKS CONSTITUTES DEALING IN STOLEN PROPERTY UNDER §812.019, FLA. STAT. (1989).

STRICT CONSTRUCTION OF PENAL STATUTE REQUIRED

"One of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter." *Perkins v. State*, 576 So.2d 1310, 1312 (Fla. 1991) (citations omitted). Section 812.019, Fla. Stat. (1989) is a penal statute:

> A statute is penal in nature if it imposes punishment for an offense committed against the state and its term includes all statutes which command or prohibit acts and establishes penalties for their violations to be recovered for the purpose of enforcing obedience to the law and punishing its violation.

Dotty v. State, 197 So.2d 315, 318 (Fla. 4th DCA 1967); *see also Fischer v. Metcalf*, 543 So.2d 785, 788 (Fla. 3d DCA 1989).

The section under which the defendant was charged provides in material part:

> **812.019 Dealing in stolen property.-**
> (1) Any person who traffics in, or endeavors to traffic in, property that he knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

§812.019, Fla. Stat. (1989).

Two elements must be established to constitute an offense. First, the person must have trafficked in stolen property. Secondly, she must have known that it was stolen. The district court decision reveals that the element of knowledge was accepted as established for purposes of review. "Jo Ann Camp, while employed as a bookkeeper by Brightwater Pools, Inc., improperly obtained or used company checks for her own use. She either

forged her employer's signature or improperly used blank checks pre-signed by him." *State v. Camp*, 16 F.L.W. D1113, 1113 (Fla. 5th DCA April 25, 1991).

The dispositive issue before this court then is whether or not Camp's actions of passing the stolen checks constituted the element of trafficking. The appropriate focus is upon the meaning of the statutory term "traffic". It has long been established that "[s]tatutes relating to the same subject matter must be read in para materia, and this rule is applicable with special force where the statutes in question were enacted by the same legislature as part of a single act." *Major v. State*, 180 So.2d 335, 337, n. 1 (Fla. 1965); *see also R.F.R. v. State*, 558 So.2d 1084 (Fla. 1st DCA 1990); *V.C.F. v. State*, 569 So.2d 1364 (Fla. 1st DCA 1990). Sections 812.012 and 812.019, Fla. Stat. were both enacted in chapter 77-342, §§3; 7, Laws of Fla. "The courts' obligation is to adopt an interpretation that harmonizes two related statutory provisions while giving effect to both." *Carawan v. State*, 515 So.2d 161, 168 (Fla. 1987), *overridden on other grounds, State v. Smith*, 547 So.2d 613 (Fla. 1989). The word "traffic" is defined within the legislative chapter as follows:

> **812.012 Definitions.-** As used in ss. 812.012-812.037:
>
> . . .
>
> (7) "Traffic" means:
>
> (a) To sell, *transfer*, distribute, dispense, or *otherwise dispose of* property.
>
> (b) To buy, receive, possess, obtain control of, or use property with the intent to sell, *transfer*, distribute, dispense, *or otherwise dispose of* such property.

§812.012(7), Fla. Stat. (1989) (emphases added).

"When a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." *Milazzo v. State*, 377 So.2d 1161, 1162 (Fla. 1979); *City of Tampa v. Thatcher Glass Corporation*, 445 So.2d 578 (Fla. 1984); Southeastern Fisheries v. Department of Natural Resources, 453 So.2d 1351 (Fla. 1984). "Transfer"[2] means "to cause to pass from one person or thing to another." *Webster's College Dictionary* (NY: Random House 1991).. "Dispose of" is defined similarly as "to transfer into new hands or to the control of someone else." *Id.*, 655. Hence, negotiating stolen checks at various banks falls within the meaning of either "tranfer[ring]" or of "otherwise dispos[ing] of [the stolen] property." §812.012(7), Fla. Stat. (1989). That is, by cashing the stolen checks at the banks, the defendant passed control over them to the banks.

The state is cognizant of section 812.037, which states the following legislative rule of construction:

> **812.037 Construction of ss. 812.012-812.037.-** Notwithstanding s. 775.021, ss. 812.012-812.037 shall not be construed strictly or liberally, but shall be construed in light of their purposes to achieve their remedial goals.

§812.037, Fla. Stat. (1989).

This legislative provision purporting to require a construction of penal statutes other than strictly cannot stand in light of the conflicting constitutional requirement of strict construction because "a constitution, in the American sense, is a written document totally superior to the operations of government."

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[2] The defendant was charged with dealing in stolen property in that she "trafficked" in the stolen property "by *transfer*ring or negotiating" the stolen checks." (R 126-148, emphasis added).

Bernie v. State, 524 So.2d 988, 994 (Fla. 1988) (Overton, J., concurring); *cf. In re Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987); *State v. McGriff*, 537 So.2d 107 (Fla. 1989); *Booker v. State*, 514 So.2d 1079 (Fla. 1987). As a result, when the constitution requires strict construction of penal statutes, the legislature cannot mandate otherwise.[3] Both this court and the United States Supreme Court have held that due process requires strict construction of criminal statutes:

> This principle ultimately rests on the due process requirement that criminal statutes must say with some precision exactly what is prohibited. Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute.
>
> . . .
>
> Elsewhere, we have said that
>
> > [s]tatutes criminal in character must be strictly construed. In its application to penal and criminal statutes, the due process requirement of definiteness is of especial importance.

Perkins, supra, 1312 (citations omitted).

> Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than clearly warranted by the text.

Crandon v. United States, ___ U.S. ___, 110 S.Ct. 997, 1002-1003, 108 L.Ed.2d 132 (1990).

Construction of the penal provisions within the act in the manner dictated by section 812.037 would not serve any legitimate

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[3] Constitutional considerations aside, as discussed in detail *infra*, the remedial goals of section 812.019 and the act generally are achieved by punishing all involved in the criminal process of redistributing stolen property. That is, the legislature did not intend to punish only fences but as well those who provide the fences with their illicit goods.

purpose. "[R]ules of statutory construction 'are useful only in case of doubt and should never be used to create doubt, only to remove it.'" *Carawan, supra*, 165 (citations omitted). The fair warning of proscribed conduct required by the due process clause would be undermined by requiring criminal defendants and the prosecutors who charge them to speculate as to the what remedial goals were to be served by the penal statutes. As a direct result, applying the legislative rule of construction contained in §812.037, Fla. Stat. (1989), to the penal sections within the act would serve to create doubt rather than remove it.[4] Strict construction of section 812.019, Fla. Stat. (1989), is therefore constitutionally required.

In short, the district court erred in affirming the dismissal of the dealing in stolen property counts because the actions of the defendant in transferring the stolen checks at the banks satisfied the elements of the crime. One who traffics in stolen property commits the offense of dealing in stolen property. "'Traffic' means . . . [t]o sell, transfer, distribute, dispense, or otherwise dispose of property." §812.012(7)(a), Fla. Stat. (1989). Camp's actions of cashing checks at a bank constituted either "transfer" of the checks or other disposition of the property.

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[4] Although not at issue in this proceeding, there does not appear to be any constitutional bar to construing the remedial sections in the act consistently with §812.037, Fla. Stat. (1989).

ALTERNATIVE RULES OF CONSTRUCTION LEAD TO SAME CONCLUSION

Unambiguous statute

"The courts never resort to rules of construction where the legislative intent is plain and unambiguous." *Carawan v. State*, 515 So.2d 161, 165 (Fla. 1987) (citations omitted), *overridden on other grounds, State v. Smith*, 547 So.2d 613 (Fla. 1989). As discussed under the preceding section, there simply is no ambiguity in the dealing in stolen property section. One who traffics in such property commits the offense. §812.019, Fla. Stat. (1989). One who transfers or otherwise disposes of the property traffics in it. §812.012(7)(a), Fla. Stat. (1989). Because Camp transferred the stolen checks to the banks, her conduct amounted to trafficking under the statute, and therefore the trial court erred in dismissing the counts and the district court erred in affirming the trial court's order.

Ambiguity in the abstract

Assuming, *arguendo*, that the statutory provisions at issue are ambiguous, passing stolen checks still constitutes dealing in stolen property. "Legislative intent is the polestar by which we must be guided in interpreting these statutory provisions." *In re Order on Prosecution of Criminal Appeals*, 561 So.2d 1130 (Fla. 1990), *citing Parker v. State*, 406 So.2d 1089 (Fla. 1981). "To determine legislative intent, [this court] must consider the act as a whole - 'the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on the subject.'" *State*

v. Webb, 398 So.2d 820, 824 (Fla. 1981) (citation and emphasis omitted).

Evil to be corrected

The evil to be corrected is the transferring of stolen property. Theft provisions address crimes involving the taking of another's property unlawfully; conduct that precedes the transfer of the property which constitutes dealing in stolen property. The theft section provides:

> **812.014 Theft.-**
> (1) A person is guilty of theft if he knowingly *obtains* or *uses*, or endeavors to *obtain* or to *use*, the property of another with intent to, either temporarily or permanently:
> (a) *Deprive* the other person of a right to the property or a benefit therefrom.
> (b) *Appropriate* the property to his own use or to the use of any person not entitled thereto.

§812.014, Fla. Stat. (1989) (emphases added).

Theft is also addressed under the next section, which includes the following material definitions:

> **812.015 Retail and farm theft . . .**
> (1) As used in this section:
> . . .
> (d) "Retail theft" means the *taking* possession of or carrying away of merchandise, money, or negotiable documents; altering or removing a label or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.
> . . .
> (g) "Farm theft" means the unlawful *taking* possession of any items that are grown or produced on land owned, rented, or leased by another person.

§812.015, Fla. Stat. (1989) (emphases added).[5]

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[5] Section 812.015(1)(d) uses the word "transferring" in a context different than §§812.012(7)(a) or 812.019(1). Transfer under the retail theft section relates to moving property from one container to another during the commission of the theft.

Each of the provisions above are limited to the criminal act committed in initially divesting the rightful owner of his or her property. "Obtain" means "to come into possession of; get, acquire or procure, as through effort or request." *Webster's College Dictionary* (NY: Random House 1991). "Use" in this context is defined as "to avail oneself of; apply to one's own purposes[.]" *Id.* To "deprive" is "to divest of something possessed or enjoyed; dispossess, strip." *Id.* To "appropriate" is "to take to or for oneself; take possession of." *Id.* A "taking" is "to get into one's hands or possession by voluntary action . . . [or] to get into one's possession or control by force or artifice[.]" *Id.* The dealing in stolen property section, on the other hand, relates to actions after the theft is completed, *i.e.*, the transferring of the previously stolen property:

> **812.019 Dealing in stolen property.-**
> (1) Any person who traffics in [*i.e.*, "sell[s], transfer[s], distribute[s], dispense[s], or otherwise dispose[s] of property', §812.012(7)(a)], or endeavors to traffic in, property that he knows or should know was stolen shall be guilty of a felony of the second degree . . .

§812.019, Fla. Stat. (1989).

A comparison of the above sections leads to the obvious conclusion that there are two separate evils addressed by the statutes. The initial taking of another's property is remedied

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Transfer under the dealing in stolen property section, on the other hand, takes place after the crime of theft is completed, *i.e.*, in disposing of the stolen property by transferring it to another individual or entity.

by the theft provisions. The subsequent transfer of the stolen property is remedied by section 812.019, Fla. Stat. (1989).

The decision below rested in large part upon "the 'personal use' analysis in *Grimes v. State*, 477 So.2d 649 (Fla. 1st DCA 1985), and the dissent in *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989)." *Camp*, D1114. The "personal use" doctrine has no application to §812.019, Fla. Stat. (1989), because the dealing in stolen property section includes the additional element of trafficking in the property. That is, the theft is completed upon the taking, while conviction under §812.019, Fla. Stat. (1989), requires the additional act of subsequently transferring the stolen property.

The "personal use" concept was flawed from its inception. The *Grimes* court, like the court below, improperly relied upon its interpretation of legislative intent to reach its conclusion:

> We concede that to trade stolen food stamps at a store for food is a form of transfer, distribution, dispensation, or disposition of the stamps. However, in our view, the legislature did not intend that type of activity to be included in the proscriptions of section 812.019. The trading of food stamps for food amounts to *personal* use of the stamps since, due to their intrinsic nature, as argued by the State, that is the only legitimate manner in which they can be used by their holder.

Id., 650 (emphasis in opinion).

The *Grimes* decision is even less sound than *Camp*. At least the Fifth District considered the legislative history, although as discussed *infra*, the court's selective interpretation led to erroneous conclusions. The *Grimes* court, on the other hand, merely speculated as to legislative intent without reference to the legislative history or any rule of construction. "A court

cannot speculate as to what was intended by the Legislature." *Bayou Barber College, Inc. v. Mincey*, 193 So.2d 610, 612 (Fla. 1967) (citation omitted). "Inference and implication cannot be substituted for clear expression." *Carille v. Game and Fresh Water Fish Commission*, 354 So.2d 362, 364 (Fla. 1978) (citation omitted). *See also Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 64 S.Ct. 1215 (1944), *held*: Court cannot "draw upon some unexpressed spirit outside the bounds of the normal meaning of words . . ." U.S. at 617, S.Ct. at 1221; *Badaracco v. Commissioner of Internal Revenue*, 464 U.S. 386, 104 S.Ct. 766, 78 L.Ed.2d 549 (1984), *held*: "Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement." U.S. at 398, S.Ct. at 764 (citation omitted). When a court perceives that a literal interpretation of a statute is at odds with legislative intent, it "must examine the matter further." *Radio Telephone Communication v. Southeastern Telephone Co.*, 170 So.2d 577, 580 (Fla. 1965). There is no indication in the *Grimes* decision that the court looked anywhere to ascertain the legislative intent. Rather, the panel merely imposed that which it subjectively deemed to be proper.

Had the *Grimes* court sought out the legislative history, it would have seen that nothing in the legislative history suggests that the mere fact that one who deals in stolen property ultimately puts that which he or she ultimately obtains in exchange for the stolen goods to personal use is precluded from prosecution under 812.019. Furthermore, the primary flaw in the court's analysis appears immediately after the passage quoted above:

> Evidence of theft only, with the intent *personally* to put the stolen item or items to normal use, constitutes only the crime of theft and not the crime of trafficking or dealing in stolen property within the meaning of chapter 812, Florida Statutes, even if the normal use is achieved by some form of transfer, distribution, dispensation, or disposition of the item.

Id., 650.

The applicability of the personal use doctrine to the theft statute is apparent, but not so to the dealing in stolen property section. An illustration may be helpful. If a person such as Grimes merely stole food to eat, that would be for his personal use and would constitute theft, *i.e.*, the taking and terminal use of another's property. However, in subsequently transferring the food stamps, which the court conceded had occurred, the additional element of subsequent transfer necessary to constitute dealing in stolen property under section 812.019 was satisfied. The First District focused upon this distinction in *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989), in which it receded from its earlier holding in *Grimes*:

> Other "personal use" cases cited by the *Grimes* decision are *Townsley v. State*, 443 So.2d 1072 (Fla. 1st DCA 1984) (auto stolen for personal use of thief), and *Lancaster v. State*, 369 So.2d 687 (Fla. 1st DCA 1978) (stolen engine put to use in thief's own van). The essence of the offense of dealing in stolen property, also referred to as "trafficking," is that the stolen property is being distributed or moved into the mainstream of commerce so as to have a detrimental effect beyond that of the original theft. A theft, followed by a personal, terminal use of the stolen property by the thief does not have the extra ingredient required for an offense under Section 812.019, Florida Statutes. The "personal use" cases are based on that principle.

Dixon, at 638.[6]

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[6] The state views *Dixon* as being truer to the legislative intent than either *Grimes* or *Camp*, however, it does not agree with the

Camp's cashing of the stolen checks at the banks constituted more than personal use as it went beyond the initial theft of the checks. When she transferred them to the banks her actions satisfied the additional element in section 812.019, Fla. Stat. (1989), of trafficking in the stolen property.

The Fifth District conjectured that "[t]his crime, dealing in stolen property . . . is intended to punish those who knowingly deal in property stolen by others. It is not intended to convert a third degree felony into a second degree felony merely because the thief sells the stolen property rather than consumes it." *Camp, supra*, D1114. The transfer of the stolen property is an additional evil beyond the initial theft that the legislature sought to remedy by enactment of the dealing in stolen property statute. Because of this additional element, *i.e.* additional evil, the legislature intended dealing in stolen property to be a second degree felony rather than a third degree felony in the event that an accused had merely stolen an equivalent value of property. Moreover:

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rationale of the *Dixon* court even though the charges against the instant defendant would not have been dismissed had that holding been applied. The district court below observed that "[c]learly Camp, by negotiating checks at various banks, did that [put[] stolen property into the stream of commerce] in the case at bar." *Camp*, D1113-1114. An accused does not have to place the stolen property into the stream of commerce to be guilty of dealing in stolen property. One who transfers stolen property is equally guilty under the statutes irrespective of what the thief or transferee do at that point. The crime of dealing in stolen property is complete upon the transfer. §812.019 requires only that the stolen property be trafficked in. Any transfer or other disposition constitutes trafficking. §812.012(7)(a). The additional requirement of placement into commerce is simply a creature of judicial creation.

> It is not unusual for a course of criminal conduct to violate laws that overlap yet vary in their penalties. Multiple sentences are even allowed for conduct arising from the same incident. Traditionally, the legislature has left to the prosecutor's discretion which violations to prosecute and hence which range of penalties to visit upon the offender.

State v. Cogswell, 521 So.2d 1081, 1082 (Fla. 1988) (citation omitted).

The district court also observed similarly that "Camp might well have been convicted of theft of the checks (surprisingly not charged)[.]" *Camp, supra*. That fact is likewise of no moment because "the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute. Art. II, §3, Fla. Const." *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986) (other citations omitted). Perhaps the district court sought to correct that which it perceived to be inequitable. Not only is such a consideration at most collateral to resolving an issue as a matter of law, but the state attorney in this case exercised restraint in charging the defendant. Camp could have appropriately been charged with committing a *first* degree felony under the second subsection of section 812.019:

> **812.019 Dealing in stolen property.-**
>
> . . .
>
> (2) Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property and traffics in such stolen property shall be guilty of a felony of the first degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

§812.019(2), Fla. Stat. (1989).

Unquestionably by stealing her employer's checks Camp initiated the thefts. She then trafficked in them by transferring them to

the banks. In any event, the fact that the prosecutor could have charged the defendant with either a first degree or a third degree felony is not dispositive. The decision to charge her with the second degree felony under section 812.019(1), Fla. Stat. (1989), was a proper exercise of discretion by the prosecutor.

Stated succinctly, the remedial goals of §§812.012 - 812.037, Fla. Stat. (1989), are achieved by punishing those who transfer stolen property as well as by punishing fences. The redistribution of stolen goods is remedied by punishing both fences and those who deal with them because fences could not exist without those who come to them with stolen goods.

Statutory language

Assuming, *arguendo*, that the dictates of §812.037 were not at odds with constitutional due process, strict construction nonetheless remains the appropriate means of determining the proscribed conduct. "It is axiomatic that where the legislature has defined a crime in specific terms, the courts are without authority to define it differently." *State v. Jackson*, 526 So.2d 58, 59 (Fla. 1988); *cf. Moskal v. United States*, ___ U.S. ___, 111 S.Ct. 461, 465, 112 L.Ed.2d 283 (1990). This court has also instructed:

> When the language of a penal statute is clear, plain and without ambiguity, effect must be given to it accordingly. Where the language used in a statute has a definite and precise meaning, the courts are without authority to restrict or extend the meaning.

Graham v. State, 472 So.2d 464, 465 (Fla. 1985) (citation omitted).

As already discussed, the words of the relevant sections are unambiguous. One "who traffics in" stolen property is dealing in that property. §812.019, Fla. Stat. (1989). "'Traffic' means . . . [t]o sell *transfer*, distribute, dispense, or *otherwise dispose of* property." §812.019, Fla. Stat. (1989). Hence, passing stolen checks constitutes dealing in stolen property.

When the act is considered as a whole, *Webb, supra*, the language of other sections reveals that the district court was mistaken in ruling that dealing in stolen property statute is limited to a "dealer in stolen property" as defined in section 812.012(1), Fla. Stat. (1989). *See Camp*, at D1114. The fact that section 812.019, Fla. Stat. (1989), is entitled "Dealing in stolen property" does not lead to a contrary conclusion. As already discussed, the statutory definitions require only a transfer of the stolen property. Additionally, the district court overlooked an important distinction. A "dealer" is "a trader or merchant[]" *Webster's College Dictionary* (NY: Random House 1991); *see* section 812.012(1), Fla. Stat. (1989). However, while "dealing", of course, applies to those who conduct a given business, the term is not limited to such business persons. "Deal" / "dealing" is defined in material part as "to trade or do business[.]" *Webster's College Dictionary* (NY: Random House 1991). A "trade" is comprised of "an exchange of items . . ." *Id*. Those who transfer stolen property to others, deal in the property even though not a "dealer in property" as defined under section 812.012(1), Fla. Stat. (1989). An analogy might be useful in making this point. One who buys a used car deals with the sales

person in negotiating a sales figure and by exchanging cash for the vehicle. However, the purchaser is not a used car dealer, the sales person or his or her employer is. Further, the statutory definition of "dealer in property" applies directly to sections 812.016 and 812.022(4), Fla. Stat. (1989), both of which expressly seek to remedy actions of a fence. Unlike these sections, §812.019 does not explicitly refer to a "dealer in property". As the legislature did not expressly limit prosecutions under §812.019, Fla. Stat. (1989), to fences or other dealers in property, the district court erred in inferring such an intent because "[c]ourts should not add additional words to a statute not placed there by the legislature, especially where uncertainty exists as to the intent of the legislature." *In re Order on Prosecution of Criminal Appeals, supra*. The dealing in stolen property section applies to both dealers in property and those who deal with them.

Legislative history

Even if had been appropriate to turn to the legislative history to ascertain legislative intent, the district court below misinterpreted the legislative history of chapter 812, Fla. Stat. (1989):

> The legislative history of section 812.019 contains the following language:
>
> > The attached proposed committee bill is an adaption [sic] of the Model Theft and Fencing Act, consistent with the organization of Florida law, as proposed by G. Robert Blakey and Michael Goldsmith, *Criminal Redistribution of Stolen Property: The Need for Law Reform*, 74 Mich.L.Rev. 1512 (1976). That article focuses on the

> receivers of stolen property as the central figures in theft activities, and that the law should be focused on the criminal system that redistributes stolen goods.

Camp, supra, D1114.

The primary shortcoming with this part of the decision is that it is based upon a very limited and selective interpretation of the legislative history. The decision quotes one passage from a committee note which discusses the article by Blakey and Goldsmith (A 1).[7] While "[l]egislative intent can be illuminated by consideration of the comments made by proponents of a bill or an amendment[]", *Ellis v. N.G.N. of Tampa, Inc.*, 561 So.2d 1209, 1213 (Fla. 2d DCA 1990), *citing Magaw v. State*, 537 So.2d 564, 566-567 (Fla. 1989), little can be resolved by reference to that one legislative comment. Unlike the situation in *Magaw*, "[i]n this case, the legislative history is [**not**] most persuasive. *Id.*, 566. The Blakey and Goldsmith article itself is not contained in the legislative history. It is therefore impossible to tell if the committee observation is in context. That is not to suggest that the committee would intentionally mislead the legislature, rather it is to emphasize only that the memorandum simply does not make clear whether the article dealt exclusively with fencing activity or addressed other criminal conduct as well. However,

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[7] The library for the Florida Department of State has provided the legislative history of the enacting legislation, ch. 77-342, Laws of Fla. It is contained in the appendix in its entirety. Those documents deemed immaterial to the instant issue have been placed at the end of the appendix under the heading "Miscellaneous". References to the documents are indicated by the appendix letter designation and page number if necessary. *E.g.*, "(A 1)" refers to the first document, first page.

the inclusion of the "Model Theft and Fencing Act" in the legislative history implies that other criminal acts that occur within the process of redistributing stolen goods were considered.

Additionally, the conclusion of the committee that the "article focuses on the receivers of stolen property as the central figures in theft activities, and that the law should be focused on the criminal system that redistributes stolen goods[]", (A 1), suggests that emphasis should be placed on those who redistribute stolen goods. "Focus" means "a central point, as of attraction, attention, or activity[.]" *Webster's College Dictionary* (NY: Random House 1991). Hence, although the article implies that emphasis should be placed upon punishing fences, it does not on its face state that such focus should be exclusive of all other criminal theft-related activities. As the act addresses other criminal conduct by individuals other than fences, *e.g.*, theft, it is apparent that the legislature intended to remedy the redistribution of stolen property by punishing all who are involved in the process from its inception to its conclusion.

A distinction later drawn in the same memorandum strongly suggests that the dealing in stolen property section was not intended by the legislature to apply only to fences. To the contrary, in distinguishing the proposed legislation from former law, *Webb, supra*, the implication is clear that the section was intended to apply both to fences and to those who deal with them:

> Section 812.22, at page 4, line 14 prohibits dealing in stolen property (as distinguished from *current law* which prohibits the *receiving* of stolen property in section 812.031, Florida Statutes).

(A 2, emphasis added).

The above distinction indicates that the legislature did not merely intend for the law to merely apply to fences, *i.e.*, those who receive the stolen goods. The comment reveals that the legislature intended to expand the law as it then existed to punish not only the receivers of stolen property but anyone whose criminal conduct is part of the criminal process of redistributing such property.

The rationale of the court that section 812.019, Fla. Stat. (1989), is merely "an anti-fencing statute", *Camp, supra*, stands on unsound footing for other reasons as well. The legislative history concerns not only that section but, rather, the entire chapter. Although sections 812.012-812.037 are known as the "Florida Anti-Fencing Act", §812.005, Fla. Stat. (1989), there is a very apparent reason why those sections are not merely limited to fences. Sections 812.014 and 812.015, Fla. Stat. (1989), are related to theft. The elements of neither involve the fencing of stolen goods. Moreover, as the passage quoted by the district court indicates, the "proposed committee bill is an adaption [sic] of the Model Theft *and* Fencing Act . . ." *Camp, supra* (emphasis added); *see also* (A 1; D). "And" is a copulative conjunction. *Rudd v. State ex rel. Christian*, 310 So.2d 295, 298 (Fla. 1975). "Copulative . . . (of a conjunction)" is defined as "serving to connect words, phrases, or clauses of equal rank, with a cumulative effect, as *and*." *Webster's College Dictionary* (NY:

Random House 1991). As a result, it is clear that despite the title of the act, the legislature did not intend to limit its application merely to fences, but to the thieves who commit the initial thefts who provide them with their illicit goods.

SUMMARY

In sum, when the relevant penal sections are construed strictly, as is constitutionally required, it is clear that the Fifth District Court of Appeal erred in holding that passing stolen checks to a bank does not amount to dealing in stolen property. Passing stolen checks constitutes dealing in stolen property under §812.019, Fla. Stat. (1989). One who traffics in stolen property commits the offense of dealing in stolen property. "'Traffic' means . . . [t]o sell, transfer, distribute, dispense, or otherwise dispose of property." §812.012(7)(a), Fla. Stat. (1989). The act of cashing checks at a bank constitutes either "transfer" of the checks or other disposition of the property. Assuming, *arguendo*, that strict construction of the penal provisions of the act is not constitutionally required, application of alternative rules of construction leads to the same result. The legislature intended to remedy the evil of redistribution of stolen property by punishing not only fences under section 812.019, Fla. Stat. (1989), but all who are involved in the criminal process. This includes those, such as Camp, who commit the initial theft and subsequently transfer the illicit goods to another. The remedial goals of the act are thus served by not only directly combatting fencing of stolen property but by punishing those who contribute

to the continued existence of the fences by providing them with their illicit property.

CONCLUSION

The decision of the Fifth District Court of Appeal should be quashed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to F. Wesley Blankner, Esq., 217 E. Ivanhoe Blvd., N., Orlando, FL 32804, by mail delivery on this 18th day of November, 1991.

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