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IN THE SUPREME COURT OF FLORIDA

STEVEN SALZMAN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 79,219

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

TIMOTHY A. HICKEY
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 861588

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR PETITIONER

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OTHER AUTHORITIES

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STATEMENT OF THE CASE

On August 10, 1990, the State Attorney for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, filed an eight count information charging Appellant, STEVEN SALZMAN, with two counts of forgery, contrary to section 831.01, Florida Statutes (1989), two counts of uttering a forged instrument, contrary to section 831.02, Florida Statutes (1989), two counts of petit theft, contrary to section 812.014(2)(d), Florida Statutes (1989), and two counts of dealing in stolen property, contrary to section 812.019(1), Florida Statutes (1989). (R 12-17) One count of each offense allegedly occurred on June 7, 1990, and the other count of each offense on June 8, 1990. (R 12-17)

The trial court denied Mr. Salzman's oral motion to dismiss the two counts of dealing in stolen property. (R 31, 36-37, 46-47) On October 30, 1990, Mr. Salzman plead guilty to the two forgery charges and the two uttering a forged instrument charges. (R 19, 47-51) Mr. Salzman also plead no contest to the two dealing in stolen property charges, specifically reserving his right to appeal the trial court's denial of his motion to dismiss. (R 47-51) The trial court found that the motion to dismiss to be dispositive as to both counts of dealing in stolen property. (R 50) The State nol prossed the two petit theft charges. (R 54)

On October 30, 1990, the trial court withheld adjudication and placed Mr. Salzman on three years probation. (R 22-23, 53) Mr. Salzman filed a timely notice of appeal to the Second District Court of Appeal on November 2, 1990. (R 24-25)

In a January 3, 1992, opinion, the Second District Court of Appeal affirmed Mr. Salzman's convictions for dealing in stolen property. (A2) Salzman v. State, 591 So.2d 1107 (Fla. 2d DCA 1992). The Second District Court expressly recognized it's holding conflicted with the Fifth District Court of Appeal's holding in Camp v. State, 579 So.2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. Oct. 15, 1991). (A2) Salzman, 591 So.2d at 1107. On January 13, 1992, Mr. Salzman filed a jurisdictional brief requesting this court to accept discretionary conflict jurisdiction. On April 21, 1992, this court accepted jurisdiction and ordered Mr. Salzman's brief on the merits to be served on or before May 18, 1992.

STATEMENT OF THE FACTS

On March 22, 1990, Ronald and Mary Briere reported to law enforcement and C & S Bank that several of their blank checks had been stolen. (R 51) On June 7, 1990, Mr. Salzman enter a C & S Bank branch office and presented one of the stolen checks, number 140, payable to himself in the amount of $75. (R 16, 51) Mr. Salzman identified himself using his own driver's license and the bank teller gave him $75. (R 51)

On June 8, 1990, Mr. Salzman entered another C & S Bank branch office and presented another of the stolen checks, number 142, payable to himself in the amount of $225. (R 15, 51) Mr. Salzman identified himself with his own driver's license and the bank teller gave him $225. (R 51)

SUMMARY OF THE ARGUMENT

I. Personally cashing stolen checks does not constitute dealing in stolen property pursuant to section 812.019(1), Florida Statutes (1989). State v. Camp, 17 F.L.W. S230 (Fla. April 9, 1992). Section 812.019 was intended to punish those who knowingly redistribute stolen property, rather than those who personally use stolen property. In addition, personal use may involve incidental transfer of the stolen property. Therefore, Mr. Salzman's actions in personally cashing stolen checks constitutes personal use, rather than the offense of dealing in stolen property.

ARGUMENT

ISSUE I

WHETHER CASHING A STOLEN CHECK CONSTITUTES DEALING IN STOLEN PROPERTY, PURSUANT TO SECTION 812.019(1), FLORIDA STATUTES (1989)?

Section 812.019(1), Florida Statutes (1989), describes dealing in stolen property as trafficking or endeavoring to traffic in stolen property. Section 812.012(7) further defines trafficking as, "[T]o sell, transfer, distribute, dispense, or otherwise dispose of property." However, the legislature never intended this anti-fencing statute to apply to the act of personally cashing a forged check. In the instant case, the trial court erred in denying Mr. Salzman's motion to dismiss his two counts of dealing in stolen property.

In the instant case, the Second District Court of Appeal held cashing stolen checks constituted dealing in stolen property, pursuant to section 812.019(1). Salzman v. State, 591 So.2d 1107, 1108 (Fla. 2d DCA 1992). The Second District Court expressly recognized it's holding conflicted with that of the Fifth District Court in Camp v. State, 579 So.2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. October 15, 1991). Then, in State v. Camp, 17 F.L.W. S230 (Fla. April 9, 1992), this court recently affirmed the Fifth District's holding that personally cashing stolen checks does not constitute dealing in stolen property.

In Camp, this court followed the well-established rule of statutory construction that ambiguous penal statutes must be strictly construed in favor of the defendant. Camp, 17 F.L.W. at S230. In addition, section 812.037 expressly requires that section 812.019 be construed in light of its purpose and to achieve its remedial goals. Id.

This court recognized that section 812.019 was enacted as part of an anti-fencing bill designed to punish those who knowingly redistribute stolen property. Camp, 17 F.L.W. at S230-231. The offense of dealing of stolen property was never intended to punish those who put stolen property to personal use. Id. at S231, citing, Grimes v. State, 477 So.2d 649 (Fla. 1st DCA 1985) (tendering stolen food stamps does not constitute dealing in stolen property). Because personal use may involve incidental transfer of the stolen property, cashing a stolen check constitutes person use rather than dealing in stolen property. Id.

In the instant case, Mr. Salzman personally used the stolen checks for their inherent purpose by cashing them himself, rather than transferring them to a fence or third party to cash. Therefore, under this court's recent holding in Camp, Mr. Salzman's two convictions for dealing in stolen property must be reversed.

CONCLUSION

In light of the foregoing authority and argument, Mr. Salzman respectfully requests this Honorable Court to reverse the decision of the Second District Court of Appeal and Mr. Salzman's two convictions for dealing in stolen property.

APPENDIX

PAGE NO.

1. Second District Court of Appeal opinion filed January 3, 1992 A1

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

STEVEN SALZMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 91-00034

Opinion filed January 3, 1992.

Appeal from the Circuit Court for Hillsborough County; Susan C. Bucklew, Judge.

James Marion Moorman, Public Defender, and Timothy A. Hickey, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee; Brenda S. Taylor, Assistant Attorney General, Tampa; and Consuelo Maingot and Michael J. Neimand, Assistant Attorneys General, Miami, for Appellee.

DANAHY, Acting Chief Judge.

In this appeal we are confronted by the following question which has been answered differently by two district

courts of appeal: Can a defendant who steals blank checks, forges the signature required, and presents them for payment, be convicted of dealing in stolen property, where he is also convicted of uttering a forged instrument based on the same checks? §§ 812.019 and 831.02, Fla. Stat. (1989). Dixon v. State, 541 So. 2d 637 (Fla. 1st DCA 1989), has answered the question in the affirmative. State v. Camp, 579 So. 2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. Oct. 15, 1991), has replied in the negative. We answer the question in the affirmative, thus aligning ourselves with the First District in Dixon, and adopt the analysis set forth in the majority opinion there. In so doing we are in conflict with Camp which is presently pending review in the Supreme Court of Florida.

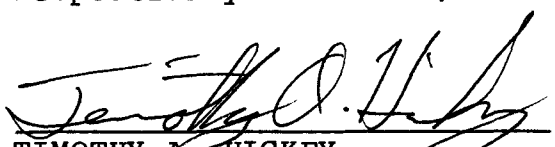
We affirm the appellant's convictions and sentences.

CAMPBELL and HALL, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Brenda S. Taylor, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 30 day of April, 1992.

Respectfully submitted,



JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
(813) 534-4200

TIMOTHY A. HICKEY
Assistant Public Defender
Florida Bar Number 861588
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

TAH/tll