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~~MAR 30~~ 1992

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

HARRY BATTLES,

Petitioner,

v.

CASE NO. 79,468

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

RESPONDENT'S BRIEF ON THE MERITS

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CERTIFIED QUESTION/ISSUE PRESENTED

IS A GOOD FAITH PURCHASER FOR VALUE OF  
STOLEN PROPERTY A "VICTIM," OR  
"AGGRIEVED PARTY," WITHIN THE MEANING OF  
§§ 775.089(1)(A) AND (C), FLORIDA  
STATUTES (1989) SO THAT A PERSON  
CONVICTED OF DEALING IN STOLEN PROPERTY  
PURSUANT TO § 812.019(1) MAY BE ORDERED  
TO PAY RESTITUTION TO THAT PURCHASER IN  
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PRELIMINARY STATEMENT

Petitioner, Harry Battles, appellant below and defendant in the trial court, will be referred to herein as "petitioner." Respondent, the State of Florida, appellee below, will be referred to herein as "the State." References to the record on appeal will be by the use of the symbol "R" followed by the appropriate page number(s). References to the transcript of proceedings will be by the use of the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's statement of the case and facts as being generally supported by the record, but amends it as follows:

At trial, Gary Murphy testified that he was waiting for a ride from his father in Quincy at 7:15 p.m. on August 17, 1990, when he saw petitioner and another man in a car. Petitioner, whom Murphy had known for a long time, called Murphy to the car and asked him for a couple of dollars. After Murphy said he did not have any money, petitioner asked him if he wanted to buy a gun. Murphy asked if the gun was stolen, but petitioner assured him that he had the papers for it. Murphy then asked petitioner how much he wanted for the gun. Petitioner stated that he wanted \$60.00, but when Murphy indicated he did not have that much, petitioner sold it to him for \$45.00 (T 48-50).

SUMMARY OF ARGUMENT

Petitioner's argument that the trial court erred in requiring him to pay restitution to Gary Murphy, the person to whom he sold the stolen gun, is without merit. Murphy bought the gun in good faith from petitioner for \$45.00, which was not returned to him after the gun was returned to its true owner. Thus, Murphy suffered a loss of \$45.00 as a direct result of petitioner's act of dealing in stolen property, and the trial court properly required petitioner to pay restitution in that amount to Murphy. This Court should answer the certified question in the affirmative.

ARGUMENT

CERTIFIED QUESTION/ISSUE PRESENTED

IS A GOOD FAITH PURCHASER FOR VALUE OF STOLEN PROPERTY A "VICTIM," OR "AGGRIEVED PARTY," WITHIN THE MEANING OF §§ 775.089(1)(A) AND (C), FLORIDA STATUTES (1989) SO THAT A PERSON CONVICTED OF DEALING IN STOLEN PROPERTY PURSUANT TO § 812.019(1) MAY BE ORDERED TO PAY RESTITUTION TO THAT PURCHASER IN THE AMOUNT PAID FOR THE STOLEN PROPERTY?

Petitioner contends that the trial court erred in requiring him to pay restitution to Gary Murphy, the person to whom he sold the stolen gun. More specifically, petitioner claims that Murphy, who purchased the gun in good faith after petitioner assured him he had papers for it, was not an "aggrieved party" or "victim" of his crime of dealing in stolen property.<sup>1</sup> Therefore, petitioner argues, the trial court was precluded from ordering petitioner to pay

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<sup>1</sup> Section 775.089(1)(a), Fla. Stat. (1989), provides that

[i]n addition to any punishment, the court shall order the defendant to make restitution to the victim for damage or loss caused directly or indirectly by the defendant's offense, unless it finds clear and compelling reasons not to order such restitution.

(Emphasis added). Additionally, Section 775.089(1)(c), Fla. Stat. (1989), provides that

[t]he term "victim" as used in this section and in any provision of law relating to restitution includes the aggrieved party, the aggrieved party's estate if the aggrieved party is deceased, and the aggrieved party's next of kin of the aggrieved party is deceased as a result of the offense.

restitution to Murphy for the amount Murphy had paid for the gun.

Petitioner's argument runs counter to this Court's decision in J.S.H. v. State, 472 So.2d 737 (Fla. 1985). There, the trial court ordered the defendant, who was adjudicated delinquent on a charge of second degree grand theft after stealing various items from a boat, to pay restitution to the victim for damage caused to the boat during the theft. After the district court affirmed the restitution order, the defendant argued before this Court that imposition of restitution for the damages to the boat was improper because those damages were not caused by the offense of grand theft. This Court flatly rejected the defendant's argument, holding that

[t]he damages were the result of the theft as they resulted directly from petitioner's actions which were necessary to perpetrate his crime. The hole in the boat's bottom resulted from a seat being removed from the boat, and all the wires were cut in order to facilitate the theft of engine parts. These actions were undertaken so that items could be stolen and were necessary for the theft to occur. Without these acts of destruction, some items simply could not have been stolen. It is not necessary that the offense charged describe the damage done in order to support a restitution order but only that the damage bear a significant relationship to the convicted offense.

Id. at 738 (emphasis added).



Although the specific question at issue in J.S.H. concerned the scope of the victim's compensable damage, the J.S.H. "significant relationship" test applies equally well to the determination of whether a person is an "aggrieved party" of a crime for restitution purposes.<sup>2</sup> See State v. Williams, 520 So.2d 276, 277 (Fla. 1988) ("[T]he significant relationship test enunciated in J.S.H. should work in conjunction with the causation required by [Section 775.089(1)(a)]."). Applying this standard to the instant case, it is apparent that Gary Murphy was indeed an "aggrieved party" within the meaning of the restitution statute. Petitioner was convicted of the offense of dealing in stolen property as a result of his actions in selling to Murphy, for \$45.00, a gun which he either had stolen or knew to be stolen. Because the gun was recovered and returned to the person from whom it was stolen, Murphy suffered a loss of his \$45.00 as a direct result of petitioner's offense. Furthermore, because petitioner was convicted of dealing in stolen property rather than the mere theft of the gun, petitioner's sale of the gun to Murphy was, under the circumstances of this case, an element which the State was required to prove in order to establish petitioner's guilt of the charged crime.<sup>3</sup> Thus, there was a significant

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<sup>2</sup> Clearly, if a victim's damage or loss bears a significant relationship to a convicted offense, then that victim is an "aggrieved party" and is entitled to restitution for the damage or loss pursuant to Section 775.089.

<sup>3</sup> The issue is not present here, but the State does not concede that an "aggrieved party," because of the broad

relationship between Murphy's loss and the crime proven.<sup>4</sup> Clearly, then, Murphy was a victim of petitioner's crime, and the trial court did not err in requiring petitioner to pay Murphy the \$45.00 he lost as a result of that crime. Moreover, as noted by the First District below, a decision by this Court to the contrary would allow petitioner to receive a windfall of \$45.00 by virtue of his criminal act.

While the amount at issue here is relatively small, convicted criminals could gain huge profits from their criminal acts if this Court accepts petitioner's argument.<sup>5</sup> For example, it is not difficult to envision a case in which a stolen car is sold, with forged papers, to a good faith purchaser who pays \$10,000 for it, then loses the car when it is seized and returned (unharmd) to the person from whom it was stolen. Under petitioner's argument, the good faith purchaser would not be an "aggrieved party," and thus would not be entitled to restitution in the amount he or she paid for the car; and, because the true owner would receive full compensation through the return of the car, the defendant

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legislative definition of that term, could not include a person such as Mr. Murphy even if the sole conviction was for the theft from Mr. Jordan.

<sup>4</sup> Indeed, just as the defendant in J.S.H. could not have stolen some of the items without damaging the victim's boat, petitioner in the instant case could not have committed the offense of dealing in stolen property without selling the gun to Murphy.

<sup>5</sup> The incongruity of an indigent appealing a \$45.00 restitution order to this Court is inescapable, but the ruling should be of greater importance in other cases.

could not be required to pay restitution to the owner. This would lead to the absurd result that the defendant convicted of dealing in stolen property for selling the car would receive an unjust profit of the \$10,000 the good faith purchaser paid for the car.<sup>6</sup> Clearly, under such circumstances the good faith purchaser for value is an "aggrieved party" within the meaning of the restitution statute, and petitioner's argument to the contrary must fail. This Court should answer the certified question in the affirmative.

To support his argument here, petitioner relies on the Fourth District's decisions in Ocasio v. State, 586 So.2d 1177 (Fla. 4th DCA 1991); Watson v. State, 579 So.2d 900 (Fla. 4th DCA 1991); and Eloshway v. State, 553 So.2d 1258 (Fla. 4th DCA 1989). In each of those cases, the trial court ordered the defendant to pay restitution to a third party, not a victim of the defendant's criminal offense, for peripheral damages suffered as an indirect result of the defendant's actions toward the true victim or victims of the offense. In the case at bar, by contrast, the trial court

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<sup>6</sup> Under petitioner's argument, the only way a defendant convicted of dealing in "recoverable" stolen property could be ordered to pay restitution would be to allow the good faith purchaser to keep the property, thereby saddling the true owner with an unnecessary loss of his or her property. Ironically, because the defendant would in most cases sell the stolen property for less than its actual value, the defendant would, under the scenario created by petitioner's argument, be required to pay more restitution to the true owner than he would be obligated to pay the good faith purchaser for the loss of the purchase price.

did not order petitioner to pay restitution to Murphy for damages he suffered as a result of petitioner's actions toward another person; rather, Gary Murphy was himself a victim of petitioner's offense of dealing in stolen property. Thus, Ocasio, Watson, and Eloshway are clearly distinguishable from the case at bar, and they should not be viewed as persuasive authority in the instant case.

Finally, petitioner's reliance on United States v. Shackelford, 777 F.2d 1141 (6th Cir. 1985) is misplaced. There, the defendant was convicted not of dealing in stolen property, but of buying and receiving stolen goods. Critically, Shackelford was not ordered to pay restitution to a good faith purchaser who bought the goods and then lost them when they were returned to the true owner.<sup>7</sup> Rather, the only question there was whether the trial court had properly ordered the defendants to pay restitution to the shipper from whom the goods were stolen, after the shipper suffered monetary damages as a result of the defendant's actions. Shackelford is therefore inapposite to the instant case.

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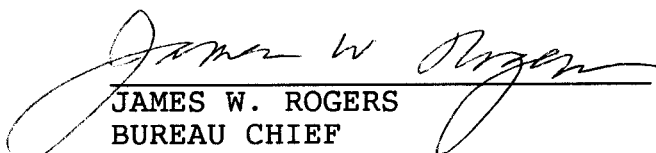
<sup>7</sup> In fact, it appears from the opinion that the only goods recovered were those which remained in Shackelford's stockroom at the time of the trial. Shackelford, 777 F.2d at 1143.

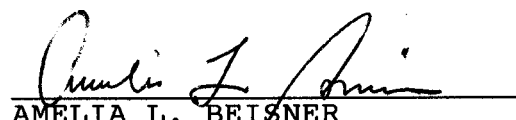
CONCLUSION

For the reasons set forth herein, the State respectfully requests that this Court answer the certified question in the affirmative.

Respectfully submitted,

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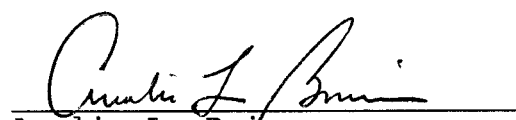
  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 30<sup>th</sup> day of March, 1992.

  
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