

FILED

SID J. WHITE

MAY 5 1995

CLERK, SUPREME COURT  
By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. 85,202

DAVID ALLEN SNYDER,

Respondent.

ON DISCRETIONARY REVIEW FROM THE DISTRICT  
COURT OF APPEAL FOR THE SECOND DISTRICT  
STATE OF FLORIDA

REPLY BRIEF OF PETITIONER ON THE MERITS

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SUMMARY OF THE ARGUMENT

Petitioner's initial brief clearly indicates the State's position and Respondent has failed to counter this argument. Respondent's subissue is also without merit. The record indicates that Respondent knew he was a convicted felon when he purchased the weapon and misrepresented that fact on the required federal documentation. Further, lack of knowledge is not a defense in these circumstances. Civil immunity does not apply in this case.

ARGUMENT

ISSUE

WHETHER A PERSON CAN BE CHARGED AS A FELON IN  
POSSESSION OF A FIREARM WHILE THE PREDICATE  
FELONY IS ON APPEAL AND WHEN THE STATE OF  
FLORIDA APPROVES THE SALE OF THE FIREARM.

Petitioner's initial brief succinctly states Petitioner's position and Respondent has done nothing to counter this argument. Respondent further raises a subissue regarding the State of Florida's mistaken approval of the sale of the weapon to Respondent. Respondent argues that his reliance on the State's approval should not allow criminal liability to attach on him based on his reliance. He further argues that he did not know he was a convicted felon when he purchased the gun. These arguments are without merit.

Respondent knew he had been convicted of a felony on March 6, 1991, which was approximately one year before he purchased the firearm and he misrepresented that fact on the required documents for firearm purchase. The record indicates that the firearms transaction document required by federal law asks questions regarding a potential purchaser's criminal record. Respondent filled out this document. (R. 23, 31). Respondent answered: "No, I'm not under indictment" and "no, I have never been convicted." (R. 31). The sales clerk testified that if Respondent would have answered yes to any of these questions

relating to his criminal record, she would not have sold him a firearm nor bothered to call Tallahassee for approval. (R. 31-32).

Further, a "lack of knowledge" defense does not apply to a convicted felon who asserts that he was under the impression that he could carry a firearm until he has been notified of the disposition of his predicate conviction or to a defendant who claims he was not aware that he was a convicted felon. Respondent's knowledge of his status as a convicted felon is not an essential element which must be proved in order to sustain a conviction for the violation of Section 790.23, Fla. Stat. (1991). Burkett v. State, 518 So. 2d 1363, 1368 (Fla. 1st DCA 1988). Several other jurisdictions have also found that a defendant's knowledge of his status as a convicted felon is not an element of possession of a firearm by a convicted felon. See Burkett, 518 So. 2d 1368, fn. 12.


Respondent's argument regarding civil immunity is also without merit for several reasons. Firstly, civil immunity does not apply in this case. See Section 790.065, Fla. Stat. (1991). Secondly, this immunity was intended for the seller of firearms, not the purchasers. See Section 790.065(11), Fla. Stat. (1991). Thirdly, Respondent never followed the statutory regime during the firearms sale since he misrepresented himself on the documentation. See Section 790.065(12)(a), Fla. Stat. (1991).

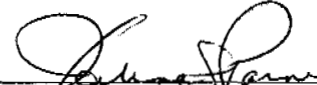
CONCLUSION

Based upon the foregoing reasons, arguments and citation of authority the Petitioner respectfully requests that this Honorable Court affirm the judgment and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Gary R. Gossett, Jr., Esquire, 1755 U.S. 27 South, Sebring, Florida 33870, this 1st day of May, 1995.

  
\_\_\_\_\_  
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