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JAN 16 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

TIMOTHY A. HICKEY
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 861588

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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 Petitioner, 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 812.14(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 charge allegedly occurred on June 7, 1990, and the remaining count of each charge 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 pled guilty to the two forgery charges and the two uttering charges. (R 19, 47-51) Mr. Salzman also pled 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 the motion to dismiss dispositive as to both counts of dealing in stolen property. (R 50) The state attorney 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 on November 2, 1990. (R 24-25)

In an opinion filed January 3, 1992, the Second District Court of Appeal affirmed Mr. Salzman's two convictions for dealing in stolen property. The Second District cited Dixon v. State, 541 So.2d 637 (Fla. 1st DCA 1989), to hold a defendant who forges and personally cashes a stolen check may be convicted of dealing in stolen property. However, the Second District expressly recognized its holding conflicts with the Fifth District Court of Appeal's holding in State v. Camp, 579 So.2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. Oct. 15, 1991), which is currently pending review in this Court.

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 entered a branch office of C & S Bank and presented one of these 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 branch office of C & S Bank and presented check 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

In the Second District Court of Appeal, Mr. Salzman argued forging and cashing a stolen check does not constitute dealing in stolen property as defined in section 812.019(1), Florida Statutes (1989), because he personally used the stolen checks for their inherent and ultimate purpose rather than transferring them to a third party. The Second District rejected Mr. Salzman's argument by citing Dixon v. State, 541 So.2d 637 (Fla. 1st DCA 1989), which holds cashing stolen checks does constitute dealing in stolen property. However, the Second District expressly stated its holding conflicts with the Fifth District Court of Appeal's holding in State v. Camp, 579 So.2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. Oct. 15, 1991), which is currently pending review in this Court. Because the instant issue is currently pending before this Court in Camp, and the holdings of the First and Second Districts conflict with that of the Fifth District, this Court should grant discretionary conflict review of the instant case.

ARGUMENT

ISSUE I

WHETHER THIS COURT SHOULD GRANT DISCRETIONARY CONFLICT JURISDICTION TO REVIEW THE INSTANT CASE WHERE THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY RECOGNIZES CONFLICT BETWEEN THE FIRST, SECOND, AND FIFTH DISTRICT COURTS OF APPEAL, AND THE INSTANT ISSUE IS CURRENTLY PENDING REVIEW IN THIS COURT IN CAMP V. STATE, 579 SO.2D 763 (FLA. 5TH DCA 1991), JURISDICTION ACCEPTED, NO. 78,085 (FLA. OCT. 15, 1991)?

Mr. Salzman respectfully requests this Honorable court to grant discretionary jurisdiction of the instant case, Salzman v. State, No. 91-00034 (Fla. 2d DCA January 3, 1992), in which the Second District Court of Appeal held forging and personally cashing a stolen check constitutes dealing in stolen property as defined in section 812.019(1), Florida Statutes (1989). Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(a)(v) authorize this Court to review a decision of a District Court of Appeal which expressly and directly conflicts with a decision of another District Court on the same question of law.

In the instant case, the Second District Court of Appeal expressly stated its holding, and the First District's holding in Dixon v. State, 541 So.2d 637 (Fla. 1st DCA 1989), both conflict with that of the Fifth District Court of appeal in Camp v. State, 579 So.2d 763 (Fla. 5th DCA 1991), jurisdiction accepted, No. 78,085 (Fla. Oct. 15, 1991), which holds forging and personally

cashing a stolen check does not constitute dealing in stolen property. Therefore, this Court should grant discretionary jurisdiction to resolve the current conflict between the First, Second, and Fifth District Courts of Appeal on the issue currently pending before this Court in Camp.

CONCLUSION

Based upon the foregoing authority and argument, Mr. Salzman respectfully requests this Honorable Court to grant discretionary conflict jurisdiction, pursuant to Florida Rule of Appellate Procedure 9.120.

APPENDIX

PAGE NO.

1. Salzman v. State, No. 91-0034 (Fla. 2d DCA
January 3, 1992)

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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

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Appellate Division
Public Defenders Office

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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.

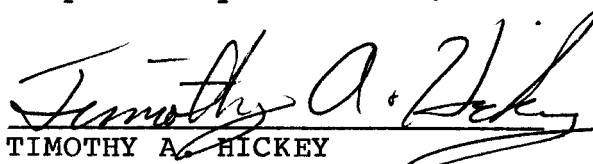
We affirm the appellant's convictions and sentences.

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 15th day of January, 1992.

Respectfully submitted,



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