IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY 1996 SESSION

FILED
OCTOBER 17, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	**C.C.A. No. 02-C01-9603-CC-00080**
	)	
Appellee,	)	**MADISON COUNTY**
	)	
VS.	)	**Hon. John F. Murchison, Judge**
	)	
GARY RUSSELL,	)	**No. 93-419 BELOW**
	)	
Appellant.	)	**(Violation of bad check law)**

FOR THE APPELLANT:

DANIEL TAYLOR
Assistant Public Defender
227 West Baltimore Street
Jackson, TN 38301

FOR THE APPELLEE:

CHARLES W. BURSON
Attorney General and Reporter

WILLIAM DAVID BRIDGERS
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0493

JAMES G. (JERRY) WOODALL
District Attorney General

DONALD H. ALLEN
Assistant District Attorney General
Post Office Box 2825
Jackson, TN 38302

OPINION FILED:_____

REVERSED

CORNELIA A. CLARK,
Special Judge

OPINION

Defendant was indicted for violation of the worthless check law under T.C.A. §39-14-121. He was convicted by a jury on June 8, 1995, and sentenced by the court on June 11, 1995, to four years as a Range I standard offender. On appeal, he argues that the trial court erred in denying his motion for a judgment of acquittal. We agree, and reverse and dismiss this case.

The salient facts are undisputed. In September 1992 defendant agreed to purchase Harrison Forbes' 1985 BMW 635csi automobile for $6,000.00. On September 22, 1992, defendant took possession of the car in Jackson, Tennessee, and wrote Mr. Forbes a check for $6,000.00. The check was dated November 22, 1992. Without looking at the check, Mr. Forbes signed over title of the car to defendant. When Mr. Forbes attempted to have the check deposited into his account, it was dishonored for lack of sufficient funds. There was no money in the account at that time.

T.C.A. §39-14-121 provides in pertinent part as follows:

> (a) A person commits an offense who, with fraudulent intent or knowingly:
>
> (1) Issues or passes a check or similar sight order for the payment of money for the purpose of obtaining money, services, labor, credit or any article of value, knowing at the time there are not sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order, as well as all other checks or orders outstanding at the time of issuance;
>
> . . . .
>
> (3) This subsection shall not apply to a post-dated check or to a check or similar sight order where the payee or holder knows or has good and sufficient reason to believe the drawer did not have sufficient funds on deposit to his credit with the drawee to ensure payment.

Defendant contends that the trial court erred in denying his motion for judgment of acquittal because the check he passed was post-dated, and passing a post-dated check is not a violation of the worthless check statute. The state concedes this is correct.

The statute under which the defendant was convicted does not criminalize the passing of a post-dated check which is dishonored by the drawee bank for insufficient funds. State v. Stooksberry, 872 S.W.2d 906, 907 (Tenn. 1994). A "post-dated check" is not a check or sight draft; it is payable on the date which the instrument bears. Id. T.C.A. §47-3-109(1)(b)(1992). A post-dated check may be used to commit offenses involving theft, deception, and fraud. However, the passing of a post-dated check does not subject the maker to conviction under the worthless check law. Id.

The conviction is reversed and the case is dismissed.

_____
CORNELIA A. CLARK
SPECIAL JUDGE

CONCUR:

_____
JOHN H. PEAY, JR.
JUDGE

_____
DAVID H. WELLES
JUDGE

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JULY 1996 SESSION

STATE OF TENNESSEE,	)	**C.C.A. No. 02-C01-9603-CC-00080**
	)	
Appellee,	)	**No. 93-419 BELOW**
	)	
VS.	)	**MADISON COUNTY**
	)	
GARY RUSSELL,	)	**Violation of worthless check law**
	)	
Appellant.	)	**REVERSED**

J U D G M E N T

Came the appellant, Gary Russell, by counsel, and also came the Attorney General on behalf of the State, and this case was heard on the record on appeal from the Circuit Court of Madison County; and upon consideration thereof, this Court is of the opinion that there is reversible error as to appellant's conviction for violation of the worthless check law.

In accordance with the Opinion filed herein, it is therefore, ordered and adjudged by this Court that the defendant's conviction for violation of the worthless check law is reversed and dismissed.

Costs of the appeal will be paid into this Court by the State, for which let execution issue.

Per Curiam
Clark, Peay, Welles