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NEW YORK COURT OF APPEALS CASE COMPILATIONS: PEOPLE V. THOMPSON

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*PEOPLE V. THOMPSON*¹
(decided November 14, 2002)

I. SYNOPSIS

In a unanimous decision, the New York Court of Appeals affirmed the Appellate Division, First Department,² and upheld the conviction of defendant Jerome Thompson by the Supreme Court, New York County, after he was found guilty in a jury trial. The court of appeals reasoned that the credit card stolen by Thompson was, indeed, a “credit card” within the meaning of both the New York Penal Law § 155.00³ and the General Business Law § 511, even though it was technically a “dummy” credit card issued solely for use in undercover sting operations.⁴ Because the card fell within the definition of these statutes, the court upheld the elevation of the conviction to grand larceny in the fourth degree and criminal possession of stolen property in the fourth degree.⁵

II. BACKGROUND

Jerome Thompson, along with a co-defendant, was arrested in December 1999 for stealing a decoy pocketbook from a police officer in Macy’s Department Store in Herald Square in New York City.⁶ An undercover female officer sat at the cosmetics counter with a pocketbook hung over her chair.⁷ The defendant removed the pocketbook from the chair and attempted to walk away and leave the store.⁸ Thompson was, at that time, arrested by other undercover police officers.⁹

The pocketbook contained a “dummy” credit card, which was to the New York City Police Department by American Express, spe-

1. 99 N.Y.2d 38 (2002).

2. *People v. Thompson*, 731 N.Y.S.2d 711 (App. Div. 2001).

3. N.Y. PENAL LAW § 155.00(7) (2002).

4. N.Y. GEN. BUS. LAW § 511(1) (2002).

5. *Thompson*, 99 N.Y.2d at 40.

6. *Id.*

7. Summary of N.Y. Court of Appeals case No. 148 (on file with the Public Information Office).

8. *Id.*

9. *Id.*

cifically for use in undercover sting operations.¹⁰ Although a false name was imprinted on the credit card, the card was active and had a valid credit line of \$100.¹¹

Thompson was found guilty by a jury in the Supreme Court, New York County and was convicted of grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, and petit larceny.¹² Thompson appealed his conviction, and the Appellate Division, First Department heard the case.¹³

Thompson first claimed that because the credit card was a "decoy," it was not a "credit card" under New York Penal Law § 155.00(7),¹⁴ which incorporates the definition of the General Business Law § 511.¹⁵ Thompson also asserted that, since the card holder was a fictitious person, the card was not "issued . . . to another person" under the language of the General Business Law.¹⁶ Lastly, the defendant contended that the terms of the statute were not met because the police department and American Express neither expected nor intended a credit relationship between them.¹⁷

The appellate division rejected Thompson's claims and upheld the conviction. The court threw out Thompson's first claim and reasoned that, since the card was valid and had a \$100 credit line, anyone who claimed to be the owner could successfully use the card to make purchases.¹⁸ In other words, although it was not intended for "regular" use but was instead intended for use in sting operations, it was still a valid credit card, capable of being used for the purchase of goods or services. The court therefore reasoned that it was indeed a valid credit card under the language of the statutes.

The appellate division next addressed the defendant's second claim that the card was not "issued." The court cited the proper definition of "issue" as set forth in Merriam-Webster's Collegiate

10. *Thompson*, 99 N.Y.2d at 40.

11. *Id.*

12. *Thompson*, 731 N.Y.S.2d at 712.

13. *Id.*

14. N.Y. PENAL LAW § 155.00(7) (2002).

15. N.Y. GEN. BUS. LAW § 511(1) (2002).

16. *Thompson*, 731 N.Y.S.2d at 712-713.

17. *Id.* at 713.

18. *Id.* at 712.

Dictionary: "to put forth and distribute."¹⁹ The court held that this definition was satisfied because the card was, indeed, put forth and distributed by American Express. Therefore, the court held that the card was undoubtedly "issued" to the New York City Police Department.²⁰

Lastly, the court analyzed the defendant's final claim that there was no credit relationship between issuer and holder. The court rejected this contention and highlighted the fact that criminal liability with respect to credit cards can arise even with regard to non-activated, cancelled or expired cards. Thus, the court reasoned that the statute did not require such a relationship²¹ and cited *People v. Radoncic*²² and *People v. Winfield*²³ for authority. Under this reasoning, the court held that the lack of a relationship between the New York City Police Department and American Express was irrelevant and rejected Thompson's claim. Thompson again appealed.

III. DISCUSSION

The court of appeals defined the main issue as whether the card constituted a "credit card" within the meaning of New York Penal Law § 155.00(7)²⁴ and General Business Law § 511,²⁵ such that its theft elevated Thompson's crime to grand larceny in the fourth degree and criminal possession of stolen property in the fourth degree.²⁶ Ultimately, the court answered this question affirmatively. From the outset, the court set forth the standard by which Thompson's subjective mental state should be measured.²⁷ For this, the court relied on *People v. Mitchell*²⁸ and stated that the people need not show that Thompson knew the property was a

19. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 622 (10th ed., 1995).

20. *Thompson*, 731 N.Y.S.2d at 713.

21. *Id.*

22. 687 N.Y.S.2d 141 (App. Div. 1999).

23. 535 N.Y.S.2d 619 (App. Div. 1988).

24. N.Y. PENAL LAW § 155.00(7) (2002).

25. N.Y. GEN. BUS. LAW § 511 (2002).

26. *Thompson*, 99 N.Y.2d at 40.

27. *Id.*

28. 77 N.Y.2d 624, 629 (1991).

credit card. Rather, the court held that the state must prove only that the property "in fact consisted of a credit card."²⁹

The court then examined the language of the applicable statutes.³⁰ New York Penal Law § 155.00(7) states that a "credit card" is any instrument or article defined as such in § 511 of the General Business Law.³¹ General Business Law § 511 defines a "credit card" as "any credit card, credit plate, charge plate, courtesy card. . . issued by a *person* to another *person* which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder"³² (emphasis added). Section 511 defines "person" as an individual, corporation, partnership or association, two or more persons having a joint or common interest or any other commercial or legal entity.³³

Additionally, the court relied on the trial testimony of an American Express representative who claimed that, although the card held a fictitious name, someone pretending to be that person would have been able to purchase goods or services with the card. Furthermore, if this happened, American Express would have been liable to the vendor for that amount.³⁴

Using this testimony coupled with the language of the statutory provisions, the court found that the statutory requirements were satisfied.³⁵ The court stated, "[t]he card here was issued by a person (American Express) to another person (the New York City Police Department) and was capable of being used. . .to purchase. . .property or services on the credit of the issuer."³⁶ As the statutory provisions were satisfied, the court held that the decoy card was a valid credit card.

Moreover, to avoid any further confusion, the court, by way of analogy, cited UCC 3-405[1][b]³⁷ and *Getty Petroleum Corp. v. American Express Travel Related Service Co.*³⁸ to support the proposition that

29. *Thompson*, 99 N.Y.2d at 40.

30. *Id.*

31. N.Y. PENAL LAW § 155.00 (2002).

32. N.Y. GEN. BUS. LAW § 511(1) (2002).

33. *Id.* at § 511(2) (2002).

34. *Thompson*, 99 N.Y.2d at 41.

35. *Id.*

36. *Id.*

37. U.C.C. § 3-405 (2002).

38. 90 N.Y.2d 322, 327 (1997).

the mere naming of a fictitious payee in a negotiable instrument does not, in and of itself, render the instrument invalid.³⁹

The court then addressed and rejected Thompson's main claim on this appeal, that the term "issue" should be given a meaning other than the definition used by the appellate division.⁴⁰ The defendant argued that the court of appeals should give the term "issue" its technical meaning, as defined in Black's Law Dictionary as "to send out or distribute officially"⁴¹ rather than the ordinary dictionary meaning, "to put forth or distribute"⁴² as adopted by the appellate division. The defendant further contended that the word "officially" implied the necessity of a creation of an actual credit relationship between issuer and holder. Such a relationship, he claimed, was not present in the instant case.⁴³

The court rejected Thompson's claim and cited McKinney's Consolidated Laws of New York⁴⁴ to demonstrate that the legislative history of the statute neither suggests nor indicates that the legislature relied upon a particular "technical or special meaning" of the term issue, instead of its everyday meaning.

The court also stressed that even if it were to allow the definition suggested by the defendant to control, the use of the adverb "officially" to "modify the act of putting forth or distributing" does not imply a relationship created between holder and issuer.⁴⁵ The court continued that since American Express generated an account number and instituted a credit line that made it possible to obtain goods, the card was "officially" created and distributed by American Express.⁴⁶ The court thus concluded that, adopting either definition, the card was satisfactorily "issued" to the New York City Police Department by American Express.⁴⁷

Lastly, the court focused on the legislative history of General Business Law § 511(1).⁴⁸ When originally created, § 511 stated, in

39. *Thompson*, 99 N.Y.2d at 42.

40. *Id.* at 41.

41. BLACK'S LAW DICTIONARY 836 (7th ed. 1999).

42. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 622 (10th ed., 1995).

43. *Thompson*, 99 N.Y.2d at 41.

44. *Id.* (citing McKinney's Cons. Laws of N.Y., Book 1 Statutes § 233).

45. *Thompson*, 99 N.Y.2d at 41.

46. *Id.*

47. *Id.* at 41-42.

48. *Id.* at 42.

relevant part, "'credit card' means and includes any credit card. . .or other. . .card or device issued by a person to another person which authorizes the holder to obtain credit."⁴⁹

In 1970, however, the legislature changed the phrase "authorizes the holder" to "may be used," thereby broadening the scope of the statute.⁵⁰ Therefore, since the 1970 amendment, the statute undoubtedly covers instances in which the card holder is not explicitly authorized to use the card, as long as the card could have possibly been used as a credit card.⁵¹ Thus, the court refused to accept the defendant's proposed interpretation because doing so would effectively render the amendment a nullity, as it would return to the pre-amendment version of the statute.⁵²

After considering all of Thompson's contentions, the New York Court of Appeals affirmed the decision of the appellate division, which upheld the conviction of the defendant, Jerome Thompson.

This decision greatly impacts the ambit of the New York Penal Law. Essentially, theft of any credit card, as long as it is active, regardless of the reasons for which it was issued, and irrespective of the defendant's subjective intent, will elevate the conviction to grand larceny.

Furthermore, this decision clearly illustrates the weight the court places on the legislative history of the statute. In doing so, the court demonstrates the importance of not offending the lawmakers' intent.

IV. CONCLUSION

The New York Court of Appeals upheld the conviction of the defendant, Jerome Thompson, by the New York Supreme Court, New York County, for the crime of grand larceny in the fourth degree and criminal possession of stolen property in the fourth degree. In doing so, the New York Court of Appeals supported the reasoning of the Appellate Division, First Department, that the credit card Thompson stole was, indeed, a "credit card" within the

49. *Thompson*, 99 N.Y.2d at 42.

50. *Id.*

51. *Id.*

52. *Id.*

meaning of both the New York Penal Law § 155.00 and General Business Law § 511.

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