UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20428
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACK SHERMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-93-303-1)

June 21, 1995

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

Appellant Jack Sherman (Sherman) was convicted after a trial to the court on two counts of possessing stolen securities worth more than $5,000, i.e., checks or warrants (checks) issued by the Auditor's Office for Los Angeles County, California, in violation of 18 U.S.C. § 2315. He was sentenced to two concurrent terms of 12 months imprisonment. On appeal, he contends only that

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the evidence was insufficient to prove that he knew the checks were stolen. We disagree and affirm the conviction.

The Government's evidence shows that Sherman obtained possession of the stolen checks under very suspicious circumstances. He received the checks, with a face value of almost $150,000, from Ellis Deyon at Deyon's apartment. Sherman had seen Deyon only twice in the six years they allegedly had known each other; they never had consummated a business deal together; and Deyon lived in a modest apartment in Baytown. There, Deyon gave Sherman the three checks which Los Angeles County had issued to named payees other than those two men. Although Sherman testified that he did not have an arrangement with Deyon to receive a percentage of the proceeds for cashing the checks his associate Garrett testified that Sherman said that he would receive a "cut." Derks, a car dealer, testified that Sherman said that each of them would receive 10 percent of the proceeds if Derks was able to deposit the checks.

The day after he received the stolen checks, Sherman attempted to deposit the Credit Managers check ($8,164.74) into his personal bank account. It contained an altered endorsement (whited out). After the teller informed Sherman that the check could be deposited only into a business account, which he did not have, Sherman failed to contact the named maker or payee of the check to determine whether he could cash it legitimately. Instead, he contacted his friend and business associate, Fred Derks, in an attempt to get Derks to deposit the checks into Derks's business

bank account. Derks and Jack Whitley testified that Sherman offered them 10 percent of the proceeds for cashing the checks and told them that he could get them all the checks they wanted.

At the time of his arrest, Sherman gave Agent Picard a false exculpatory statement that he had not deposited the checks into his personal bank account because he did not want to pay 50 percent taxes on the proceeds. The Government's evidence showed, however, that he had been unable to deposit the Credit Managers check. The district court was entitled to consider Sherman's said false statement as evidence of his consciousness of guilt. See Livingston, 816 F.2d at 194; United States v. Riso, 405 F.2d 134, 138 (7th Cir. 1968), cert. denied, 394 U.S. 959 (1969).

The teller at Sherman's bank testified that he told her that his cousin had signed the Credit Managers check over to him, when he tried to deposit it into his own account. Although Sherman denied having made this statement, it may be assumed that the district court found the teller's testimony credible. See United States v. Rosas-Fuentes, 970 F.2d 1379, 1381 (5th Cir. 1992). The checks also show that Sherman's name was written on them as an endorser, with the notation "VP," although he denied having written this. There was ample trial evidence to support the district court's conclusion that, beyond a reasonable doubt, Sherman was guilty as charged. See Rosas-Fuentes, 970 F.2d at 1381.

For these reasons, the judgment of the district court is **AFFIRMED**.