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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 77

RICKY A. LYNCH,

Appellant.

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Judicial Institute  
84 North Broadway  
White Plains, New York 10603  
April 28, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: People v. Lynch,  
2 number 77.

3 Counsel, would you like any rebuttal time?

4 MR. SMITH: Yes, Your Honor. Three  
5 minutes, please.

6 CHIEF JUDGE LIPPMAN: Three minutes. Sure,  
7 go ahead.

8 MR. SMITH: Okay. Mr. Chief Judge and may  
9 it please the court my name is Edward Smith. I'm  
10 with the Legal Aid Society of Suffolk County, and I  
11 represent the appellant in today's case.

12 CHIEF JUDGE LIPPMAN: Counsel, aren't these  
13 very different - - - why aren't these very different  
14 issues? The issue of the form that was filled out at  
15 the motor vehicle bureau in - - - as distinct from  
16 the license or whatever he was showing when he was  
17 pulled over in Westchester?

18 MR. SMITH: Mr. Chief Judge, I think that  
19 there are - - - there are several reasons - - -

20 CHIEF JUDGE LIPPMAN: What's - - - yeah.

21 MR. SMITH: - - - why. And I think that a  
22 - - - a straightforward - - -

23 CHIEF JUDGE LIPPMAN: Why aren't they  
24 different proofs, different - - - why isn't - - - why  
25 aren't they dis - - -

1 JUDGE READ: They were five months - - -

2 CHIEF JUDGE LIPPMAN: Why aren't they  
3 distinct?

4 JUDGE READ: They were five months apart,  
5 too, right? Or something like that.

6 MR. SMITH: They were five months apart but  
7 - - - but a temporal interregnum in between the two  
8 actions does not necessarily mean that they are not a  
9 continuing offense.

10 CHIEF JUDGE LIPPMAN: Yeah. But aren't  
11 they two different documents here?

12 MR. SMITH: There's no doubt that there are  
13 doc - - - two different documents at issue.

14 CHIEF JUDGE LIPPMAN: Doesn't that matter,  
15 or does it matter?

16 MR. SMITH: I don't believe that it  
17 matters.

18 CHIEF JUDGE LIPPMAN: Why not? Why not?

19 MR. SMITH: And I think - - - I think this  
20 court's ruling in, for example, in Johnson v.  
21 Morgenthau might provide some - - - might shed some  
22 light on that. And there, the court found that  
23 possession of a weapon across multiple jurisdictions  
24 could be a continuing offense despite the fact that  
25 it occurs in multiple jurisdictions.

1 CHIEF JUDGE LIPPMAN: But here there's a  
2 different - - - again, different piece of paper or  
3 card - - -

4 MR. SMITH: Different piece - - -

5 CHIEF JUDGE LIPPMAN: - - - in the two  
6 cases.

7 MR. SMITH: Different piece of paper or  
8 card. But - - - but I - - - I suppose that - - -

9 CHIEF JUDGE LIPPMAN: I mean it's not the  
10 same weapon in a different place. It's a different  
11 thing that he's presenting that makes for, again, the  
12 two different charges.

13 MR. SMITH: Fair enough. And I - - - and I  
14 think that a legally significant distinction between,  
15 say, the weapon and the forged documents in this  
16 case, would be that the second forged document, that  
17 is the ID card - - -

18 CHIEF JUDGE LIPPMAN: It's just a - - - a  
19 reflection of the first? Is that what you're saying?

20 MR. SMITH: Not - - - well, it could be  
21 looked at as a reflection of the first, but it's  
22 certainly inextricably intertwined with the first.  
23 That is had he not filled out the first form, he  
24 could not have obtained the second form.

25 CHIEF JUDGE LIPPMAN: But there were two

1 different proofs here, right?

2 MR. SMITH: Two - - - I - - - I'm sorry.

3 CHIEF JUDGE LIPPMAN: In other words, the  
4 son turned him in on the first issue, and on the  
5 second issue the cop is looking at the - - - the  
6 false, whatever it is, license or ID.

7 MR. SMITH: That - - - that's correct.

8 Although - - - although there's - - -

9 CHIEF JUDGE LIPPMAN: So does that matter?

10 MR. SMITH: Well, this is - - - well,  
11 that's correct. Although the - - - the second - - -

12 CHIEF JUDGE LIPPMAN: Distinct proof, I  
13 guess, yeah.

14 MR. SMITH: The - - - the - - - the second  
15 - - - the second event that you mentioned occurred  
16 first.

17 CHIEF JUDGE LIPPMAN: Yeah.

18 MR. SMITH: The - - - the officer who  
19 pulled him over in Westchester County - - -

20 CHIEF JUDGE LIPPMAN: Right.

21 MR. SMITH: - - - occurred first.

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. SMITH: But the - - - but the - - - but  
24 the fact - - - but the - - - but the test for whether  
25 or not there's one continuing offense or whether

1           there is one criminal transaction is not whether  
2           there's two separate angles of proof to be taken.  
3           The issue - - - the issue, if you really boil it  
4           down, is whether there's one offense or whether  
5           there's one criminal transaction. That's what  
6           section - - -

7                         JUDGE RIVERA: Well, the - - - the second  
8           forged document you're talking about can be used for  
9           many purposes, right? It's got multiple purposes.

10                        MR. SMITH: That's correct.

11                        JUDGE RIVERA: So even though he's got to  
12           file what you're saying the MV-44, I think - - -

13                        MR. SMITH: That's right.

14                        JUDGE RIVERA: - - - to get that ID, he can  
15           us that ID for any purpose, so doesn't that break  
16           this - - - what it sounds to me like you're connect -  
17           - - connecting between the MV-4 - - - 44 and the - -  
18           - the ID?

19                        MR. SMITH: That's possible, Judge Rivera.  
20           But I don't think that that - - - there - - - there's  
21           no evidence in the record in this case that he used  
22           it for any other purpose other than to drive a  
23           vehicle and have it pose as - - - as a license.  
24           Certainly, if the district attorney could raise some  
25           kind of, you know, evid - - - could present some kind

1 of evidence then - - -

2 JUDGE RIVERA: But does the - - - do the  
3 People need to do that?

4 MR. SMITH: I think so in order - - - in  
5 order to - - - to dissipate any kind of jeopardy  
6 question. They - - - they must show that there's not  
7 some single purpose or objective such that there's  
8 one criminal venture in - - - in play.

9 JUDGE READ: What's the rule - - - what's  
10 the rule you're asking for?

11 MR. SMITH: The - - - I think that the rule  
12 that we're asking for is that in - - - in - - - when  
13 it - - - when it comes to cases like this that  
14 involve successive forgeries or - - - or forgeries  
15 that - - - that hinge upon one another - - -

16 JUDGE READ: Well, is the - - - the rule is  
17 limited to forgeries that you're asking for?

18 MR. SMITH: I - - - I think so. And I - -  
19 - and I - - - and - - - and here's why. I think  
20 that, for example, as - - - as Judge Lippman brought  
21 up before, it's - - - it's different when you have  
22 one weapon and say carry it across several  
23 jurisdictions. Say then when you fill out a forged  
24 document in one jurisdiction, that necessarily gives  
25 rise to another forged document that you could only

1 obtain by filling out the first and carry it into  
2 another jurisdiction.

3 JUDGE STEIN: So - - -

4 JUDGE READ: Okay. So your rule's limited  
5 to forgeries. And then, again, what is your rule  
6 then? I interrupted you and didn't let you continue.  
7 So - - -

8 MR. SMITH: That - - - that's okay, Judge  
9 Read. The - - - the - - - the rule - - - the rule  
10 that we're asking for is eith - - - either, one, that  
11 those constitute one continuing offense under  
12 40.20(1). Or, in the alternative, that provided that  
13 there is one sin - - - that - - - that there is no  
14 showing that the purpose of filling out the first to  
15 obtain the second is - - - is - - - is dissipated,  
16 provided that that's not shown by the People, that  
17 that constitutes one single criminal - - - criminal  
18 transaction.

19 JUDGE ABDUS-SALAAM: Counsel - - -

20 JUDGE STEIN: So would this rule apply if -  
21 - - if he not only used the license that he obtained  
22 by a forged motor vehicle form to drive a car, but he  
23 then also used it to open a bank account and then he  
24 - - - he wrote bad checks and, you know, did - - -  
25 used it for multiple purposes. Would that - - - that

1           affect your rule, or would that fall within your  
2           rule?

3                       MR. SMITH: I don't - - - I think that  
4           would - - - that would fall within my rule. But I  
5           think in that case my def - - - my - - - my client  
6           would be in much hotter water. I think - - - I think  
7           my client would lose in that case. Those - - - those  
8           would clearly constitute separate offenses because  
9           the purpose had changed.

10                      JUDGE STEIN: It's the - - - the use of the  
11           - - - of - - - of what happened you're saying is what  
12           makes a difference?

13                      MR. SMITH: That's correct. And - - - and  
14           I think that's consistent with, for example, this  
15           court's ruling in People v. Okafore, which - - -  
16           which is, actually, one year following Johnson v.  
17           Morgenthau, where the court said that intent was a  
18           relevant fact. That that - - - that int - - - that  
19           intent was relevant to determine whether they are one  
20           offense - - -

21                      CHIEF JUDGE LIPPMAN: But back - - - but  
22           back to what Judge Stein is saying. So you're saying  
23           the rule is that as for forged instrument second,  
24           that's the rule. You could do other things and you  
25           would not be able to get a - - - the - - - the checks

1 that you're, you know, bouncing or whatever the hell  
2 you're doing. That - - - that - - - that all is a  
3 consequence of the forgery. That could represent  
4 different transactions, even though they all eminent  
5 - - - emanate from the first one.

6 MR. SMITH: That - - -

7 CHIEF JUDGE LIPPMAN: In - - - in this case  
8 you're saying it doesn't.

9 MR. SMITH: That's correct.

10 CHIEF JUDGE LIPPMAN: It's not a different  
11 - - - it's one - - - one continuum.

12 MR. SMITH: That - - -

13 JUDGE ABDUS-SALAAM: Counsel, would it have  
14 made any difference if the first forged document was  
15 a nondriver ID card as opposed to a - - - a driver's  
16 license? Would it have made any difference if you  
17 had a - - - a nondriver ID card and then you do  
18 something with that? Would that have made a  
19 difference instead of - - - instead of being stopped  
20 by the police and pres - - - presenting a forged ID,  
21 driver's ID?

22 MR. SMITH: I'm trying to understand the  
23 question. So - - - so - - - so say you - - - you - -  
24 - you start with the nondriver ID card and then from  
25 there use that forged ID card - - -

1 JUDGE ABDUS-SALAAM: To get some - - -

2 MR. SMITH: - - - to then - - - to then  
3 commit some other forgery in the second degree.

4 JUDGE ABDUS-SALAAM: To get anoth - - -  
5 yeah, to commit another forgery or to get a - - - a -  
6 - - a license later on.

7 MR. SMITH: I - - - I - - -

8 JUDGE ABDUS-SALAAM: But there's a - - -  
9 you're saying that there's - - - the temporal issue  
10 is not really an issue. If it took a couple years,  
11 for example, to get the license, the forged license,  
12 from the nondriver ID, you say that's - - - that's  
13 still the same transaction?

14 MR. SMITH: I think that it would be the  
15 same transaction provided that the defendant's  
16 purpose in obtaining the nondriver ID in the purp - -  
17 - in the first place was to later obtain a driver's  
18 license. And if that showing could be made, then - -  
19 - then certainly, yeah, I think it would - - -

20 JUDGE FAHEY: So - - - so to follow up  
21 you're saying that what really matters is the intent.  
22 I went and got this - - - this object, this license,  
23 because I intended to drive and I intended to write  
24 bad checks and I intended to do those things in my  
25 initial act, then they aren't discrete acts.

1 MR. SMITH: That's - - - that's - - -

2 JUDGE FAHEY: That's the core of your  
3 argument.

4 MR. SMITH: That - - - that - - - I think  
5 that - - -

6 JUDGE FAHEY: That the intent carries the  
7 day.

8 MR. SMITH: That's the crux of what we're  
9 saying, and that's the crux of - - -

10 JUDGE FAHEY: Okay.

11 MR. SMITH: - - - the whole - - -

12 JUDGE FAHEY: I don't know if I agree with  
13 you but just so I understand it. That's a good place  
14 for me to start, anyway.

15 CHIEF JUDGE LIPPMAN: Okay.

16 JUDGE RIVERA: So can I - - -

17 CHIEF JUDGE LIPPMAN: I'm sorry, Judge  
18 Rivera.

19 JUDGE RIVERA: I'm still having difficulty  
20 with this argument given the nature of the IDs that  
21 we're talking about. I mean I understand your point  
22 that if you're getting a - - - a licensure through  
23 this ID, even if it has these other purposes, the - -  
24 - the intent is to get it for this main purpose. But  
25 I - - - with this particular ID, lots of people get



1 record that ind - - - that indicates that such a  
2 multitude of purposes was in play here.

3 CHIEF JUDGE LIPPMAN: Okay, counsel.  
4 Thanks. You'll have your rebuttal.

5 MR. SMITH: Thank you.

6 CHIEF JUDGE LIPPMAN: Let's hear from your  
7 adversary.

8 MS. LAMM: If it please the court, Ronnie  
9 Jane Lamm of counsel to Thomas J. Spota, District  
10 Attorney of Suffolk County.

11 CHIEF JUDGE LIPPMAN: Counsel, how do you  
12 like the test that your adversary laid out that it's  
13 the intent that really carries the day?

14 MS. LAMM: I believe that there is already  
15 a test for this problem, and that's in CPL  
16 40.20(2)(b) that even if it - - - we would consider  
17 it to be one transaction, there are exceptions to the  
18 transaction as laid out by the legislature. And in  
19 this case the exceptions, if we would consider this  
20 to be one transaction - - -

21 CHIEF JUDGE LIPPMAN: Assume it is. Go  
22 ahead.

23 MS. LAMM: - - - assuming that it is, there  
24 are exceptions laid out. And the fact that it's  
25 distinct and - - - and - - - and different and the

1 elements are - - - are different on - - - in each  
2 case. It - - -

3 CHIEF JUDGE LIPPMAN: What's different?  
4 Tell us that.

5 MS. LAMM: In order to prove in Westchester  
6 - - -

7 CHIEF JUDGE LIPPMAN: The - - - the proof  
8 that I mentioned before?

9 MS. LAMM: The - - - the - - - the proof  
10 that he showed it to - - - a ID card to a police  
11 officer during a lawful traffic stop is entirely  
12 different than the proof needed that he forged an - -  
13 - that he actually - - -

14 CHIEF JUDGE LIPPMAN: Yeah.

15 MS. LAMM: - - - was in possession of a  
16 forged document, that he forged the document at the  
17 motor vehicle bureau five months prior to that.

18 CHIEF JUDGE LIPPMAN: So the son - - - the  
19 son is the proof on the one in the motor vehicle.

20 MS. LAMM: The son is the - - -

21 CHIEF JUDGE LIPPMAN: And the - - - and on  
22 the other one it's - - - it's the officer - - -

23 MS. LAMM: Corr - - -

24 CHIEF JUDGE LIPPMAN: - - - is the proof,  
25 and that - - - that makes all the difference here?

1 MS. LAMM: There - - - the difference is  
2 not only that. The difference is on a birthdate of  
3 thirty years' difference, which is - - - is very  
4 easily recognizable to - - - to a layman. So the  
5 motor vehicle bureau has - - - has pictures of - - -  
6 of the defendant. They took a picture of him. He  
7 signed for it there. And the people who were at the  
8 motor vehicle could testify to that. So the proof is  
9 entirely different - - - besides the son. The son,  
10 of course, is our greatest proof.

11 CHIEF JUDGE LIPPMAN: Right. But the son  
12 was the - - -

13 MS. LAMM: The greatest proof.

14 CHIEF JUDGE LIPPMAN: - - - the  
15 precipitating issue here.

16 MS. LAMM: Absolutely. So the elements are  
17 different, the facts are different. And if we rely  
18 on this court's decision in the 1985 case of People  
19 v. Prescott where a woman was accosted in a garage, a  
20 parking garage, her pocketbook was taken, they never  
21 found the defendants at the time, the culprits at the  
22 time. But they had gone to an A&S store and used one  
23 of the credit cards from this woman's wallet. They  
24 called the - - - A&S called the police because they -  
25 - - they saw that it was a stolen credit card. The

1 defendant was charged and convicted of possession of  
2 a forg - - - of a stolen credit card.

3 At a later date, the defendants were  
4 indicted for the original crime. And this court had  
5 decided that it was two sets of elements, two sets of  
6 facts, and neither one of the facts or elements were  
7 germane to either one of the cases. They were - - -  
8 they were different. In - - - so that in that case,  
9 relying on - - - on Prescott we believe that the  
10 People absolutely - - -

11 JUDGE STEIN: So - - - so - - - so you're  
12 saying you could prove either case in this - - - in -  
13 - - in what happened here without the other?

14 MS. LAMM: Correct. Correct. And - - -  
15 and that - - -

16 JUDGE READ: Your - - - your advers - - -  
17 your advertory - - - your adversary is suggesting  
18 that maybe forgery's different. Maybe this forgery  
19 is different. You - - - you disagree with that, I  
20 take it?

21 MS. LAMM: I - - - absolutely.

22 JUDGE READ: What's - - - what's wrong with  
23 treating it differently, though, if the int - - - if  
24 the intent was to get the license?

25 MS. LAMM: The - - - the intent was to get

1 an ID card, if not a license. The - - - this ID card  
2 could have been used for innumerable different - - -

3 JUDGE READ: But - - - but his point is  
4 there's not really proof of that here.

5 MS. LAMM: No. There is no proof of it  
6 here, and - - - and he's correct in that. But to  
7 limit a rule to - - - in such a narrow focus such as  
8 forgery - - -

9 CHIEF JUDGE LIPPMAN: Well, it's an unusual  
10 kind of charge - - -

11 MS. LAMM: It's - - - it's - - -

12 CHIEF JUDGE LIPPMAN: - - - you know,  
13 forgery. It is - - - it is - - - it is a little  
14 different than - - - than other case in terms of  
15 determining intent, what you're trying to do. I mean  
16 it - - - it - - - it's not totally unreasonable to  
17 say let's look at this as a different subset, is it?  
18 Or is it?

19 MS. LAMM: I would believe that it is,  
20 because I believe that the law is very clear in - - -  
21 in what - - - what we need to do if we go back to CPL  
22 40.20, and there's no need to - - - to come up with a  
23 new rule.

24 CHIEF JUDGE LIPPMAN: So you think the  
25 statute is - - - is - - -

1 MS. LAMM: It is adequate.

2 CHIEF JUDGE LIPPMAN: - - - crystal clear  
3 and that's it?

4 JUDGE PIGOTT: If - - - if the - - -

5 MS. LAMM: Yes.

6 JUDGE PIGOTT: - - - if the defendant was  
7 getting on an airplane and he needed ID and he - - -  
8 and he showed the ID and he got on the airplane and  
9 flew wherever's he going, has he committed another  
10 crime besides the forgery?

11 MS. LAMM: Absolutely. He's committed a  
12 crime of false identification and - - - and criminal  
13 possession, again, of - - - of - - - so we're talking  
14 about a number of different crimes.

15 JUDGE PIGOTT: So - - - so if there's - - -  
16 there's nothing he can do. Ever - - - everything he  
17 does where he flashes this thing is another crime?

18 MS. LAMM: The People would think so.

19 CHIEF JUDGE LIPPMAN: Okay, counselor.  
20 Thanks.

21 MS. LAMM: Thank you very much.

22 CHIEF JUDGE LIPPMAN: Counsel, rebuttal?

23 MR. SMITH: Thank you once again, Mr. Chief  
24 Judge. Just a number of things. Not - - - notice  
25 the shift in the People's argument. They shift to an

1 argument that essentially would lay down a same-  
2 evidence test. That the methods of proof, or at  
3 least as they begin, the methods of proof of both the  
4 offenses differ, and, therefore, they constitute two  
5 separate offenses or two separate criminal  
6 transactions. I think it was brought up a little bit  
7 before.

8 CHIEF JUDGE LIPPMAN: Yeah.

9 MR. SMITH: But the test is not whether or  
10 not the offenses arise out of the same evidence. The  
11 test is whether or not the elements are the same.  
12 And criminal possession of a forged instrument is the  
13 same - - - it has the same elements in Westchester  
14 County as it does in Suffolk County.

15 CHIEF JUDGE LIPPMAN: Is your argument that  
16 one is the fruit of the other, and therefore it's the  
17 same?

18 MR. SMITH: I - - -

19 JUDGE READ: Or consequence, maybe.

20 MR. SMITH: I - - - I think - - - I think  
21 that it's a natural consequence. That - - - that - -  
22 - that - - - that - - - and - - - and - - - and  
23 there's a reason that the legislature - - -

24 JUDGE RIVERA: The point of the MV-44  
25 forgery is this card. The end game is this?

1 MR. SMITH: The end - - - exactly.

2 JUDGE RIVERA: To get this second document?

3 MR. SMITH: I think - - - I think that  
4 that's exactly right.

5 CHIEF JUDGE LIPPMAN: So there could be a  
6 bunch of documents that are the end game, right? Is  
7 it only this particular document or are there other  
8 documents?

9 MR. SMITH: As far as filing an MV-44 form?

10 CHIEF JUDGE LIPPMAN: Yeah.

11 MR. SMITH: As far as I know. I mean I  
12 don't know off the top of my head. But as far as I  
13 know, an MV-44 form is only used to obtain a  
14 nondriver ID.

15 CHIEF JUDGE LIPPMAN: So that's - - -  
16 that's its purpose, period, and therefore, it's one  
17 and the same for all?

18 JUDGE STEIN: Why - - - why would it be  
19 different if - - - if he had acquired a - - - an - -  
20 - an illegal weapon and three years later used that  
21 weapon to assault or - - - or murder someone? Why -  
22 - - why - - - why wouldn't that follow the same  
23 reasoning as your forgery reasoning?

24 MR. SMITH: Because - - - because - - -  
25 because the use of the - - - the use of the weapon to

1           commit some other crime would be a separate offense  
2           completely. But - - - but - - - but the fact - - -

3                   CHIEF JUDGE LIPPMAN: It's not the natural  
4           consequence?

5                   MR. SMITH: It's not the natural  
6           consequence. Maybe the - - -

7                   JUDGE PIGOTT: Well, then let's take that  
8           to - - - let's take that to the charges that were  
9           filed on November 12th. He - - - he had a 509  
10          unlicensed operation, AUO, and then a false  
11          impersonation. Are you suggesting that both of those  
12          can't stand, each of them can't stand, or what?

13                   MR. SMITH: I'm not sugg - - - well, all of  
14          those charges has - - - have stood. He pled - - - he  
15          pled guilty to all those charges.

16                   JUDGE PIGOTT: I understand. But - - - but  
17          you're saying that this is all a part of a - - - a  
18          one charge. So could he be charged with unlicensed  
19          operation?

20                   MR. SMITH: I think so, yes.

21                   JUDGE PIGOTT: Could he be charged with  
22          false impersonation?

23                   MR. SMITH: Yes. Because that's - - -  
24          that's a totally separate act that he committed,  
25          falsely presenting himself to the police officer

1 independent of whether or not he possessed the  
2 nondriver ID card in Westchester. The same can't be  
3 said for - - - for the charges that were filed in  
4 Suffolk County.

5 JUDGE ABDUS-SALAAM: Well, but - - - but if  
6 - - - if the charge, the first crime, is that he  
7 presented a false application, that's completed when  
8 he submits the application whether he gets the ID or  
9 not, correct?

10 MR. SMITH: That's right.

11 JUDGE ABDUS-SALAAM: So he's already  
12 committed a crime by submitting a false application.  
13 And then because he gets an ID and then uses it  
14 that's another crime. He didn't have to get the ID  
15 in order to complete the first crime. All he had to  
16 do was submit the false application.

17 MR. SMITH: That's - - - that's a - - - I  
18 mean that - - - that's - - - that's certainly - - - I  
19 - - - I can't say that that's an unreasonable  
20 characterization of what happened here, but it  
21 totally ignores the question of intent that this  
22 court has placed some emphasis on in prior - - - in  
23 prior case law. If - - - if I may just conclude by -  
24 - -

25 CHIEF JUDGE LIPPMAN: Very quickly,

1 counsel, final word. Go ahead.

2 MR. SMITH: - - - with - - - with a final  
3 word - - - with a final word about - - - about  
4 Prescott, which - - -

5 CHIEF JUDGE LIPPMAN: Sure.

6 MR. SMITH: - - - which my friend on the  
7 other side placed some emphasis on.

8 CHIEF JUDGE LIPPMAN: Yep. Go ahead.

9 MR. SMITH: Prescott involved two separate  
10 offenses. Robbery is clearly a distinct offense from  
11 criminal possession of stolen property in - - - in  
12 that it involves a forceful taking of property.  
13 Possessing the property is - - - is - - - is simply  
14 completely different.

15 CHIEF JUDGE LIPPMAN: Okay, counsel.

16 MR. SMITH: Different animal.

17 CHIEF JUDGE LIPPMAN: Thank you.

18 Thank you both. Appreciate it.

19 (Court is adjourned)

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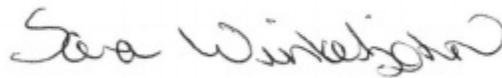
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Ricky A. Lynch, No. 77 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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