

1948

State of Utah v. Robert William Dyett and Ernest F. Lloyd : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

THE STATE OF UTAH :
Plaintiff and Respondent :
vs. :
ROBERT WILLIAM DYETT and :
ERNEST F. LLOYD :
Defendants and Appellants :

BRIEF OF APPELLANTS,
ROBERT WILLIAM DYETT AND ERNEST F. LLOYD

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Ernest F. Lloyd.

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IN THE SUPREME COURT
of the State of Utah

THE STATE OF UTAH

Plaintiff and Respondent,

VS.

ROBERT WILLIAM DYETT
and ERNEST F. LLOYD

Defendants and Appellants)

)Case No. 71

BRIEF OF APPELLANTS,

Robert William Dyett and Ernest F. Lloyd.

STATEMENT OF FACTS

On Saturday, the 25th day of October, 1947, the North Temple Garage, situated at 25 East North Temple in Salt Lake City, Utah, received a consignment of four new automobiles to be stored for the Lyman Motor Company, a Corporation of Salt Lake City, Utah, to which the shipment had

been made. Shortly after one o'clock p.m. on the same day Louis S. Goodsell, an employee of the Lyman Motor Company whose duties were the servicing of new cars, checked the said shipment of automobiles being stored at the North Temple Garage. In so doing, he found that one of the said automobiles was a maroon colored Dodge Coupe, Serial Number 30961617, which is the automobile in question in this case. He checked the said Dodge Coupe with one Dave Park, who was employed as an attendant at the North Temple Garage. When Mr. Goodsell finished checking the said Dodge Coupe he parked it in the basement level of the North Temple Garage beside the ramp leading north from North Temple Street into the basement and under the ramp leading north from North Temple Street to the upper floor of the said garage. The said ramps are located near the front of the garage

facing south upon North Temple Street.

Mr. Goodsell then locked the Dodge Coupe, delivered its keys to Mr. Park, received a claim check from Mr. Park, which claim check Mr. Goodsell thereupon took home with him.

Mr. Park tagged the keys to the said Dodge Coupe and placed them in a desk drawer where keys to Lyman Motor Company automobiles were kept in an office situated in the rear of the North Temple Garage on the upper floor.

The said rear office was one used by the owners of the North Temple Garage, Orlan R. Williams and Kenneth E. Capps, who kept the office locked when it was not being used by them. Mr. Williams and Mr. Capps each have a key to the said office, which are all of the keys to the said office. Mr. Williams and Mr. Capps left the office locked at or before five o'clock

p.m. on Saturday, October 25, 1947, and the said office was not unlocked until eight o'clock a.m. on Monday, October 27, 1947. There was no evidence that the office had been broken into.

At nine o'clock in the morning of Sunday, October 26, 1947, Stephen J. Terry, Sales Manager of Lyman Motor Company, whose department has exclusive control of all new cars delivered from the factory, went to the North Temple Garage to check the said shipment of four automobiles and confirmed that the said Dodge Coupe was parked under the upgoing ramp at the North Temple Garage.

At about 3:30 in the afternoon of Sunday, October 26, 1947, Don G. Ferguson and Dallas J. Adams, Police Officers for Salt Lake City, while on duty, were driving South on Main Street and passed the used car lot of the Brown Motor Company,

situated on the east side of the street at 833 South Main Street, owned by Ray W. Brown. The said used car lot had a frontage of about fifty feet and a depth to the east of approximately one hundred feet. There were a large metal garage at the back end of the lot extending across the width of the lot, a small office to the rear of the lot on the south side of the lot, and cars kept for display purposes, in rows along the front of the said lot. The lot was not enclosed by fences or chains in any way and opened into the east sidewalk of Main Street. Mr. Brown desired to have persons come upon the lot to look at the cars being displayed there and welcomed such persons on Sundays as well as any other day. There were twelve or fifteen cars

As the said Police Officers were driving past the said used car lot, they observed the defendant Robert William Dyett

stooping over the front bumper and the defendant Ernest F. Lloyd raising up from a crouched position at the rear of a 1937 Ford automobile being displayed upon the said lot. The officers proceeded south on Main Street for approximately one hundred feet and then returned to the said lot. At the time of their arrival the defendant Dyett was observed tampering with the front license plate on the 1937 Ford automobile. The front license plate was loose when examined by Officer Ferguson. There was no evidence as to who loosened the wing nuts on the front license plate of the said 1937 Ford automobile.

Officer Adams proceeded to the rear of the said used car lot where he found the defendant Lloyd near the front of a 1947 maroon colored Dodge Coupe, the automobile in question in this case, which

was parked, with its keys in it, approximately three to four feet in front of the said metal garage facing generally east. Officer Adams found the rear license plate of the 1937 Ford lying on the ground with the securing bolts on top of it about six inches from the front bumper of the said Dodge Coupe. There was no evidence as to how the license plate got there.

No gloves or tools were found in the possession of the defendants. There is no evidence that the defendants' fingerprints were found upon the said Dodge Coupe. The keys were found in the said Dodge Coupe when first discovered on the said used car lot. Not all cars stored at the North Temple Garage were checked in and out.

STATEMENT OF ERRORS

The appellants rely upon the following error for reversal of the judgment of the court below: Upon completion of the

State's case, the appellants made a motion to dismiss the action upon the grounds that there was no evidence in the record that the defendants stole the said 1947 maroon colored Dodge Coupe and that the evidence failed to show possession of recently stolen property in the appellants necessary to bring the case within the provisions of Section 103-36-1 U.C.A., 1943, providing in part as follows: "Possession of property recently stolen, when the person in possession fails to make a satisfactory explanation, shall be deemed prima facie evidence of guilt."

ARGUMENT

I.

There is no evidence in the record that the appellants stole a 1947 Dodge Coupe as charged in the Information.

The said Dodge Coupe was being stored, locked, in the North Temple Garage. Its

keys were being stored in a desk in an office in a different part of the garage than the location of the car. The office was kept locked except when in use by the owners and was locked from 5:00 o'clock p.m. or before on Saturday, October 25, 1947, until 8:00 o'clock a.m. on Monday, October 27, 1947.

On pages 85 and 86 of the Record, Orlan R. Williams, part owner of the North Temple Garage, a witness called on behalf of the State, testified as follows:

"Q. What time did you leave the garage on Saturday, October 25th?

"A. Oh, I would say it was along 4:00 or 5:00 o'clock. We don't have any definite time on Saturdays that we leave. We leave when the work is completed.

"Q. Was your partner Mr. Cappe there?

"A. Yes.

"Q. Did he leave at the same time you did?

"A. As I recall he did.

"Q. Did you lock the office when you left?

"A. As I recall, it was locked, yes."

Also on page 85 Mr. Williams testified as follows:

"Q. When you were at the North Temple Garage on Sunday, the 26th of October, were you working in the office located in the rear of it?

"A. No, I didn't have any occasion to go into the office.

"Q. Did you check the office that day?

"A. No.

"The Court. You say this is Sunday?

"A. Sunday, Your Honor."

On page 87 of the record Mr. Williams testified as follows:

"Q. When was the next occasion that you returned to the office in the rear of the North Temple Garage on the second floor?

"A. Monday morning at 8:00 o'clock.

"Q. And had that office door been tampered with?

"A. Not to my knowledge.

"Q. Was it unlocked?

"A. No.

"Q. Who has keys to that office?

"A. There are two keys. I carry one and my partner carries the other, Mr. Capps."

At page 92 of the record, Kenneth E. Capps, a part owner of the North Temple Garage, connected with its activities for three years, called as a witness in behalf of the State, testified as follows:

"Q. At what time did you leave the garage on Saturday evening, the 25th of October?

"A. We usually leave about 3:00 o'clock on Saturdays.

"Q. And when did you next return to the garage?

"A. Monday morning at 6:00 o'clock."

At page 93 of the record Mr. Capps testified as follows:

"Q. Did you notice whether the door had been forced from Saturday afternoon to Monday morning?

"A. There was no indication of it."

The fact that neither of the defendants

had been employed or was known by the personnel of or had ever been seen about the premises of Lyman Motor Company or the North Temple Garage affirmatively appears in the evidence. At page 71 of the record Louis S. Goodsell, an employee of the Lyman Motor Company for over two years and a witness on behalf of the State testified as follows:

"Q. Do you know any of the defendants?

"A. No, sir, I don't.

"Q. Have you ever seen them before you came into court on the preliminary hearing?

"A. No, sir.

"Q. Did you ever see them around Lyman's working or otherwise?

"A. I don't recognize any of them."

At page 77 of the record, Stephen J. Terry, Sales Manager of Lyman Motor Company for six years and a witness on behalf of the State testified as follows:

"Q. You know either of the defendants in this case?

"A. No, sir."

At page 78 of the record Mr. Terry testified further, as follows:

"Q. Have these defendants been employed by Lyman Motor Company at any time?

"A. Not to my knowledge. No, sir."

At page 82 of the record, Orlean B. Williams, quoted above, testified as follows:

"Q. Do you know either one of the defendants?

"A. No.

"Q. Did they ever work for you?

"A. No."

At page 90 of the record, Francis F. Crompton, the employee of the North Temple Garage on duty Sunday, October 26, 1947, checking the cars that came in and left, called as a witness on behalf of the State, testified as follows:

"Q. Do you know either of these

defendants in this case?

"A. No.

"Q. Have you seen either of them before?

"A. Never."

At page 92 of the record, Kenneth E. Carros, quoted above, testified as follows:

"Q. Do you know the defendants, either of them?

"A. I have never seen them before."

At page 98 of the record David W. Park, attendant at the North Temple Garage, called as a witness on behalf of the State, testified as follows:

"Q. Do you know the defendants or either of them?

"A. No, sir, I don't.

"Q. Have you ever seen them before the Preliminary Hearing downstairs?

"A. No, sir."

The fact that the said Dodge Coupe was still parked in the North Temple

October 26th, 1947, is affirmatively established by the testimony of Stephen J. Terry at pages 74 and 75 of the record.

Aside from the question of whether or not the alleged larceny is established by a showing that the appellants had an unexplained possession of recently stolen property there is no evidence connecting the appellants with the taking or carrying away of the said Dodge Coupe. The circumstances of the case, the physical arrangement of the North Temple Garage, the relative position of the said Dodge Coupe in the garage, the location of the office wherein the keys to the said Dodge Coupe were locked and stored over the week-end, the fact that the said Dodge Coupe was removed from the North Temple Garage during the period from 9:00 o'clock A.M. and 3:30 o'clock P.M. on Sunday, October 26, 1947, while the garage was attended, the

fact that the keys to the said Dodge Coupe were in it when found on the Brown Motor Company lot while there was no indication that the locked office wherein the said keys were being stored had been broken into by unauthorized persons and the fact that the appellants had not worked for either the Lyman Motor Company or the North Temple Garage nor were known nor had been seen around either place of business at any time in order to become acquainted with the systems used and the locations of items which would be necessarily involved in the alleged stealing of the said Dodge Coupe, do not make a case based on even circumstantial evidence to present to the jury to determine whether or not the appellants stole the said Dodge Coupe. It is doubtful that there is evidence establishing that the said Dodge Coupe was stolen by anyone. The circumstances even strongly indicate a removal of the said Dodge Coupe

by a person in authorized possession of it. Whether or not the crime of larceny was even committed would certainly depend upon who the person was who removed the said Dodge Coupe from the North Temple Garage, the capacity in which he held possession of it, and his intent in removing it from the North Temple Garage. If the appellants did not have unexplained possession of recently stolen property, as discussed in Section II hereof, then there is no competent and material evidence in the record for the jury to consider in determining if the crime of larceny was committed and who committed it.

22 Am. Jur. Sec. 56 Page 959

"...one having not merely the custody of personal property belonging to another, but the legal possession thereof, cannot generally be held guilty of larceny at common law or under a statute declaratory thereof, although he may be guilty of some statutory offense such as embezzlement."

125 A.L.R. 368 and 17 RCL P. 7 Sec. 6

"In every larceny there must be a trespass in the original taking of the property, whereas embezzlement is the felonious appropriation of another's property by a person to whom its possession has been entrusted, or into whose hands its possession has lawfully come."

II.

There Is No Evidence In the Record That
The Appellants Had Possession Of
Recently Stolen Property Within The
Meaning of Section 103-36-1 U.C.A. 1943.

The term possession used in Section 103-36-1 U.C.A., 1943, has been limited by decisions in this state to mean personal and exclusive possession.

In *State vs. Morris* (1927), 70 U. 570, 262 P. 107. The defendant was employed as a camp mover by one Snyder. Certain stolen sheep were found in the herd being tended by the defendant and owned by Snyder. Horses and mules were used by the defendant in tending the herd

and horse and mule tracks were found at the point where the sheep were stolen.

The Court held as follows:

Citing 25 Cyc 139: "The possession of defendant must be personal and exclusive, for the reason that such possession alone indicates that the goods have come to the possessor by his own act or with his consent."

Citing 17 RCL P. 73: "The general rule that the possession of stolen property is evidence of guilt is limited by the rule that to warrant an inference of guilt it must further appear that the possession was personal, and that it involved a distinct and conscious assertion of possession by the accused. It would be pushing the rule too far to require one accused of crime an explanation of his possession of the stolen property, when possession could also, with equal right, be attributable to another."

The evidence is certain to the fact that the Brown Motor Company Used Car Lot, whereon the appellants and the said Dodge Coupe were found by Officers Ferguson and Adams, was open to the street and the public were invitees upon the

said used car lot.

On page 122 of the Record, Ray W. Brown, owner of the Brown Motor Company, called as a witness for the State, testified as follows:

"Q. Do you park your cars with signs on them facing the sidewalks?

"A. Well, I don't put signs on them, I just drive them up about a foot or a foot and a half from the sidewalk.

"Q. And you make no effort to keep the public off the property?

"A. No.

"Q. As a matter of fact, you are pleased to have people come on the property and look at your cars?

"A. They do it all the time, Un-Huh.

"Q. And you have no restrictions as to what day they may look at the cars?

"A. No, sir.

"Q. You are just as pleased to have them on the lot looking at the cars on Sunday as any other day?

"A. Yes, sir."

The appellants were invitees upon the Brown Motor Company Used Car Lot, whereon the said Dodge Coupe was parked, and certainly cannot be accused of having possession which was exclusive or personal in nature and consciously asserted by reason of their presence. They were no different from other persons that may have come upon the lot during all times material in this case. There is no evidence that the appellants exercised any conscious act of personal and exclusive possession of the said Dodge Coupe.

Mr. Brown, as owner of the said used car lot, had constructive possession of the said Dodge Coupe by reason of his ownership of the said lot, but by reason of the limitations upon the meaning of the term "possession" as used in Section 103-36-1 U.C.A., 1943, as defined in the decisions of the Utah Supreme Court, Mr.

Brown could not be held to have, by reason of his ownership of the used car lot, a conscious, personal, and exclusive possession requiring explanation or creating an inference of guilt.

In State Vs. Morris, supra, the court, at page 580 in 70 Utah, quoting 17 RCL at page 72 holds:

"...Hence the mere fact of finding stolen articles on the premises of a man of a family or in a place in which many others have free access without showing his actual conscious possession thereof discloses only a prima facie constructive possession and is not such a possession as will justify an inference of guilt by reason thereof..."

Certainly the appellants, without evidence of actual, conscious, personal, and exclusive possession, as invitees of Mr. Brown are in no position to be required to explain a possession which they did not have or be held by reason of an inference of guilt without foundation

in fact or law.

III

The Failure of the Lower Court to With-
hold the Case From the Jury and Sustain
the Motion to Dismiss Was Error.

As it appears in arguments I and II no evidence exists in the record that the defendants or either of them stole the said Dodge Coupe or had possession of it after it had been taken from the North Temple Garage. No reasonable inference can be drawn from the evidence to the contrary. Therefore, under the authority of State vs. Morris, supra, which holds that a directed verdict should have been granted, the trial court erred in the instant case by its denial of the motion to dismiss.

Respectfully submitted,

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