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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.

Case No.
7173

Brief of Respondent

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Brief of Respondent

STATEMENT OF FACTS

The respondent agrees that the appellant's Statement of Facts is correct so far as related but that it is incomplete and feels that the facts as stated below should be called to the attention of this court.

The defendants in this case were charged with the crime of larceny of an automobile. They were tried in

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the District Court in and for Salt Lake County, state of Utah and convicted by a jury. There is no question but that the car involved had been stolen. The defendants make no contention to the contrary and the respondents feel that the evidence is too complete relative to this issue to consume time and space proving the matter. As to the question of possession and whether or not the car was within the possession and control of the defendants we desire to call attention to the following facts.

The defendants were arrested and taken into custody on a Sunday. The officers became suspicious of the defendants' actions when the defendants were observed tinkering with the automobiles on a used car lot known as the Brown Motor Company located at 833 South Main Street, Salt Lake City, Utah. Certain cars were on display at this address for public observance but being a Sunday it was not open for business and the owner was not present. Upon investigation the officers found that defendant Dyett was tinkering with the front license plate of a Ford automobile located in the front of the auto lot. The nuts and screws holding the plate had been removed and were laying on the ground. The rear plate of the Ford automobile had been completely removed and was not to be found near the Ford automobile. Dyett stated that he was inspecting the plates and that one of the reasons he was on the premises was that he had formerly worked for Mr. Brown, owner of the lot. This was later testified to by Mr. Brown as being incorrect.

Defendant Llyod was found at the rear of this automobile lot some short distance from defendant Dyett,

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crouching in front of the stolen Dodge coupe. The other license plate belonging to the Ford automobile was found with the securing bolts laying on the ground just in front of the stolen 1947 Dodge Coupe which as admitted by the defendants in their brief was on the car lot at the time the defendants were observed by the officers. Mr. Lloyd gave a wrong name at the time of being questioned and later gave his correct name. There were no license plates on the stolen Dodge car. Defendant Lloyd gave no reason for being on the lot or near the stolen automobile. In fact neither defendant made any explanation as to their reasons for being on the automobile lot nor their activities in relation to the stolen Dodge car and defendant Dyett refused to make any statement without talking to his attorney. Later testimony by the owner of the lot, Mr. Brown, identified the license plates which were found in front of the stolen Dodge and which were partly removed from the Ford, as the license plates that belonged to the Ford automobile. Mr. Brown testified that Dyett had at no time been in his employ and that neither defendant had any authority from him to remove the license plates. (See Transcript pages 101-121).

ARGUMENT

WAS THE STOLEN DODGE AUTOMOBILE SUFFICIENTLY WITHIN THE POSSESSION OF THE DEFENDANTS SO THAT AN EXPLANATION COULD BE DEMANDED FROM THEM AS TO WHERE THEY HAD OBTAINED SAID POSSESSION.

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Larceny is defined in the Laws of Utah in Section 103-36-1 Utah Code Annotated 1943 as follows:

> "Larceny is the felonious stealing, taking, carrying, leading or driving away the personal property of another. Possession of property recently stolen, when the person in possession fails to make a satisfactory explanation, shall be deemed prima facie evidence of guilt."
> Respectfuly submitted,

As indicated, the respondents feel that there can be no question but that larceny had been committed. The Dodge car had been stolen from the North Temple Garage and taken without authority by someone. There were no witnesses to testify that the defendants in this case had taken the automobile. In other words no one was found to testify that they had seen these defendants take the car but the respondents still contend that the stolen car was found in their possession. Therefore, the only evidence necessary would be to prove that the stolen car was in their possession and that said defendants failed to make a satisfactory explanation. The respondents contend that because of this possession and the defendant's failure to explain said possession, a prima facie case of larceny has been proved. It is well established in the laws of the state of Utah by the section above quoted and also by decisions out of our Supreme Court that the elements of larceny in this type of case are (1) proof that the car in question was stolen; (2) that the defendants were in possession, and (3) that said defendants failed to make a satisfactory explanation. (See State

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vs. Converse, 40 Utah 72; and State vs. Bowen, 45 Utah 130, 132.)

As indicated above the respondents feel that elements one and three above quoted have been established, and the defendants make no contention to the contrary so that only the issue is whether or not the stolen automobile was actually in the possession of these defendants as contemplated by law. Possession, as defined by various courts including our own Utah court, is classified as any form of dominion, any form of control which is conscious, personal, associated with some assertion of ownership and control—whether shown by substantial or direct evidence—any type of control or dominion which is unexplained and associated with conflicting statements as to possession. (See People vs. Gillis,, 6 Utah 84; State vs. Butterfield, 70 Utah 529, 544; People vs. Chadwick 7 Utah 134; State vs. Kinsley, 77 Utah 348; State vs. Russo, (Me.) 143 Atl. 99,100; State vs. Albertson (Iowa) 220, N.W. 39, 40.)

The respondents desire to point out that so far as possession is concerned, the following facts are very prominent in this case. These defendants were located on the premises where the stolen automobile was located and gave absolutely no satisfactory explanation as to why they were on said premises. It is apparent that they had removed one license plate and were in the process of removing the other license plate belonging to the Ford automobile. Also, which fact is without explanation, that one of these plates belonging to the Ford auto-

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mobile was found near the stolen automobile and that one of said defendants was undoubtedly caught in the act of putting that plate on the stolen car at the time the officer arrived. Respondents contend that the defendants by these efforts were in every respect connected with the presence of a stolen car and that by the actions indicated they were conscious of its presence, were exercising dominion over it, made conflicting statements, and by the actions further asserted rights over said stolen car. It is granted that to some extent the evidence is circumstantial but this is immaterial and is still considered admissable evidence.

The respondents submit that these facts are sufficient to support this verdict and respondents again emphasize that no attempt was made to explain why the defendants had the stolen car as indicated. We further submit that even though a defendant is not required to take the stand in his own defense and even though it is not to be used against him, this law particularly demands an explanation and respondents feel that a failure to take the stand in this case is particularly evidence of a refusal or failure to meet the requirements of the law and a failure to make satisfactory explanation.

The law is well settled in this state that the question of possession is a jury question. It is well settled that any jury verdict reasonably supported by evidence should not be disturbed; that in cases where reasonable minds may differ a jury verdict shall stand. (See State vs. Gurr, 40 Utah 162. People vs. Swasey, 6 Utah 93; State

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vs. Bowen, supra; State vs. Peterson; (Utah case) 174 Pac. (2) 843, 845.)

The defendants have called attention to State vs. Morris, 70 Utah 570, as being a case in support of their contentions. The respondents desire to point out that this case emphasizes the rules herein emphasized by the respondent's brief. The court pointed out that the Morris case merely contained evidence of mere possession without proof of knowledge of the presence of the stolen sheep or any evidence whatsoever that the deefndant in that case had exercised any dominion or asserted any claims of a personal nature over these stolen animals. We do not feel that the case is in any sense in point.

CONCLUSION

Respondent urges that the defendants had a fair trial in every respect; that the evidence indicating possession is sufficient; that the jury had an opportunity to weigh the evidence and observe the witnesses and that the jury verdict should not be disturbed. Respondent urges that the judgment of the trial court should be affirmed.

Respectfully submitted,

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