

1979

# State of Utah v. Sanders Hancock : Brief of Appellant

Utah Supreme Court

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Robert B. Hansen; Craig L. Barlow; Attorneys for Respondent;  
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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,  
Plaintiff-Respondent,

vs.

SANDERS HANCOCK,  
Defendant-Appellant.

CASE NO. \_\_\_\_\_

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BRIEF OF APPELLANT

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Appeal from the Judgment of the  
District Court of Utah County  
HONORABLE J. ROBERT BULLOCK, JUDGE

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ROBERT B. HANSEN  
236 State Capitol  
Salt Lake City, UT

ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,  
Plaintiff-Respondent,

vs.

SANDERS HANCOCK,  
Defendant-Appellant.

CASE NO. 15921

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APPELLANT'S BRIEF

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a criminal conviction of theft, a violation of Utah Code Annotated, Section 76-6-404 and Section 76-6-412. The case was heard in the Fourth Judicial District Court, the Honorable J. Robert Bullock, presiding.

The Information alleged that the defendant exercised unauthorized control over cash belonging to Bill Brown Realty, in an amount in excess of \$1,000.00 with a purpose to deprive the owner thereof.

DISPOSITION IN THE LOWER COURT

The defendant was found guilty of the offense and sentenced to not less than one nor more than fifteen (15) years

Utah State Prison.

### RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction, or failing that, a new trial.

### STATEMENT OF THE FACTS

The State called ten (10) witnesses to establish that rent or deposit monies had been given to the defendant on various dates and in various amounts for rent and/or deposit for apartment units at Moon River Apartments, Provo, Utah. A bookkeeper for the alleged victim, Bill Brown Realty, was called to testify regarding the procedure used in getting the rent or deposit money from the tenants to the apartment complex's manager, the defendant, and finally to the owner, Bill Brown Realty. Ms. Brinkerhoff, the bookkeeper, also testified that she had no knowledge that the ten (10) witnesses, the tenants, had paid rent for various dates. Bill Brown of Bill Brown Realty was also called to state such procedures, to testify as to defendant's authorization to handle such monies, and that he was the rightful owner of such apartment complex.

The ten (10) witnesses mentioned above were called in the following order and testified to the below-mentioned facts.

1. Ira J. Ghaemi. Mr. Ghaemi gave the defendant a check on the fourth (4th) day of April, 1978 in the amount of eighty (\$80.00) dollars for a deposit on one of the apartments. (T.10).

2. Hamid-Jefa-Jafari. Mr. Jafari paid rent of one-hundred forty-nine dollars and fifty cents, (\$149.50) by check on April 8, 1978 for rent on an apartment unit. He testified that he gave the aforementioned money to the defendant. (T-15).

3. Steven Van Ausdal. Mr. Van Ausdal stated he had given the defendant eighty (\$80.00) dollars in cash on March 9, 1978 for a deposit on an apartment, and that he paid one-hundred and sixty-five dollars (\$165.00) in cash for rent on March 22, 1978.

4. Mohammad Sabbaghi. Mr. Sabbaghi states he had given eighty (\$80.00) dollars to the defendant on April 6, 1978, and another one hundred ninety dollars (\$190.00) for rent. Both were testified to as being paid for by check. (T.23).

5. Sally Jean Casper. Ms. Casper states she had given the defendant eighty (\$80.00) dollars, cash, on March 25, 1978 for a deposit, and another one hundred (\$100.00) dollars for rent on April 1, 1978. (T.28).

6. Elisha Crandall. Ms. Crandall stated that she had

given an eighty (\$80.00) dollar check for a deposit, to the defendant on March 21, 1978.

7. Harriet N. Tibbs. Ms. Tibbs testified to giving Sixty Nine dollars and thirty-eight cents (\$69.38), cash, to the defendant for rent.

8. Lisa Snelders. Ms. Snelders stated that on March 19, 1978 she gave One hundred fifty six dollars and sixty-one cents (\$156.61) to the defendant for rent and deposit.

9. Sherry Cloward. Ms. Cloward testified on March 8, 1978 that she gave the defendant One hundred and fifty-five dollars (\$155.00) for rent.

10. Glen Smith. Mr. Smith states that he had paid Eighty (\$80.00) dollars as a deposit on the 25th day of March, 1978 and another One hundred ninety-five (\$195.00) dollars on March 31, 1978 for rent.

## ARGUMENT

### POINT I

THE TRIAL COURT FAILED TO INSTRUCT UPON AN ESSENTIAL ELEMENT OF THE OFFENSE.

Where property is stolen from the same owner, at different times or places, or as a result of a series of acts spearated in time, place, and circumstances, each taking is

a separate and distinct offense, Hearn v. State, 55 So. 2d 559 (1951), unless such series of acts evolves from a single, continuing criminal impulse or intent. State v. Gibson, (Utah 1910) 108 pac. 349.

In the present situation, approximately ten (10) thefts were committed through the taking of rents and/or deposit money. Mr. Ghaemi gave the defendant a check on April 4, 1978 for \$80.00. Mr. Jafari gave the defendant a check on April 8, 1978 for \$149.50. Mr. Van Ausdal gave the defendant \$80.00 cash on March 9, 1978 and \$165.00 cash on March 22, 1978. Mr. Sabbaghi gave the defendant two checks, one for \$80.00 and the other for \$190.00 on April 6, 1978. Ms. Casper gave the defendant \$80.00 cash on March 25, 1978. Ms. Tibbs gave the defendant \$69.38 cash on April 4, 1978. Ms. Snelders gave the defendant \$156.61 on March 19, 1978. Ms. Cloward gave the defendant \$155.00 on March 18, 1978 and Glen Smith gave the defendant \$80.00 on March 25, 1978 and another \$195.00 on March 31, 1978.

In State v. Gibson, this Court found the embezzlement of money collected from various persons on various dates to be one continuous offense. The defendant had been employed by a publishing company to solicit advertising contracts. He had collected various sums from different people, the largest sum being \$48.60. With such sums individually not exceeding \$50.00, the

It is the duty of the Court to instruct the jury upon the law. State v. St. Clair, 3 Utah 2d 230, 282 P. 2d 323 (1955). The trial court's duty to instruct on general, fundamental principals of the law is so fundamental that a jury can not arrive at a proper disposition of the case without such instruction. State v. Cobo(Utah 1936) 60 P.2d 952.

Consequently, where the trial court failed to instruct on such a crucial element of the offense, the defendant is improperly convicted. The jury should have been presented with the relevant and applicable law, in this instance, the single larceny doctrine.

#### CONCLUSION

The defendant was prejudiced by the Court's failure to instruct on the essential element of the accused offense--- whether the defendant is guilty of theft of property in excess of \$1,000.00, or of a lesser offense.

Dated this 25th day of October, 1978.

Respectfully submitted,



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