

1950

State of Utah v. Robert C. Lawrence : Brief of Respondent

Utah Supreme Court

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In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff and Respondent,

vs.

ROBERT C. LAWRENCE,

Defendant and Appellant.

Case No. 7574

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

This is an appeal from the verdict and judgment of conviction of grand larceny for theft of an automobile. The only testimony in the record to support value of the property stolen was that of the owner of the vehicle, Mr. Stanley LeRoy Allen, Jr., to the effect that the automobile was a model 1947 Ford two-door sedan in excellent condition.

At the closing of the case and before instructions to the jury, counsel for the defendant moved for a directed verdict on the grounds that there was no evidence as to the value of

the automobile taken (R. 106). This motion was denied and in instruction No. 8 the court stated in part:

" * * * In this case you will take the value of this property as being in excess of \$50.00 and therefore the defendant, if he is guilty at all, is guilty of grand larceny (R. 108).

Under the issues raised by defendant on appeal, these are the only material facts:

STATEMENT OF POINTS

POINT I.

IN VIEW OF THE FACT THAT REASONABLE MINDS CANNOT DIFFER ON THE QUESTION WHETHER A MODEL 1947 FORD TWO-DOOR SEDAN IN EXCELLENT CONDITION EXCEEDS \$50.00 IN VALUE, THERE IS NO ERROR IN INSTRUCTION NO. 8.

POINT II.

DEFENDANT, BY TAKING THIS APPEAL, HAS WAIVED THE PLEA OF FORMER JEOPARDY IN THE EVENT OF REVERSAL.

ARGUMENT

POINT I.

INSTRUCTION NO. 8 WAS NOT ERROR BECAUSE REASONABLE MINDS COULD NOT DIFFER ON THE PROPOSITION THAT A MODEL 1947 FORD TWO-DOOR

SEDAN IN EXCELLENT CONDITION EXCEEDS \$50.00 IN VALUE.

We concede that, where there is no evidence at all upon which value of property stolen may be based, a conviction of grand larceny under Section 103-36-4 (1), Utah Code Annotated, 1943, cannot stand. However, the record of this case shows that the property taken was a model 1947 Ford two-door sedan in excellent condition. Defendant on this appeal does not put in issue the question whether he actually stole this property. He does not attack the conviction on the grounds that he did not commit an act of larceny. His position is merely that, because the prosecuting attorney did not place testimony in the record of the monetary value of the automobile stolen, this court should reverse and remand for dismissal or directions to enter a verdict of guilty of petit larceny. He apparently concedes that a model 1947 Ford two-door sedan in excellent condition has *some* value.

We respectfully submit that as a matter of general knowledge a model 1947 Ford two-door sedan in excellent condition is worth far in excess of \$50.00 and that the minds of reasonable men could not differ on this point. It would be absurd indeed to urge that the stealing of such a vehicle should be punished as petit larceny. In view of this, we respectfully submit that the court did not commit prejudicial error in giving instruction No. 8.

We have been unable to find authority in point on this issue. However, cases cited by defendant involve property, the value of which is highly debatable, or property, the value of which may be so close to the minimum amount for grand

larceny and about which reasonable men might differ, such as to warrant reversal, or cases where there is *no* evidence on which value may be inferred. We believe the facts of this case are easily distinguishable from those of authorities cited.

POINT II.

DEFENDANT, BY TAKING THIS APPEAL, HAS WAIVED THE PLEA OF FORMER JEOPARDY IN THE EVENT OF REVERSAL.

Defendant in his argument under Point three constructs an ingenious proposition to the effect that the defendant has been once in jeopardy by reason of the trial of this case, that the alleged error in failing to prove value of the property stolen justifies reversal, and in view of the fact that he has been once in jeopardy this court must either reverse and remand with directions to dismiss or reverse and remand with directions to enter a judgment of guilty of petit larceny.

We believe this is a misapprehension of the law, and defendant, by appealing from the verdict and judgment has waived a plea of jeopardy. Defendant does not contend that the record shows no crime was committed; he does not assert that he could *not* be guilty of larceny in one degree or another. The record amply supports the finding that he stole the automobile. If the failure of the prosecuting attorney to put in testimony as to the monetary value of the automobile be reversible error, then we maintain that defendant is at most entitled to a new trial.

In the case of *People vs. Travers*, 19 Pac. 268, 77 Cal.

176, defendant had been charged with an attempt to commit burglary, without specification of the degree. A verdict of "guilty as charged" was returned, and judgment entered, from which he appealed. The case was reversed and remanded for new trial. Defendant then filed a supplementary plea of once in jeopardy. The California Supreme Court held that such a plea did not lie, stating in part:

"If, however, the court had no jurisdiction of the cause, or if the indictment or information was so defective that no valid judgment could be rendered upon it; or if, by any overruling necessity, the jury are discharged without a verdict, or the jury are discharged with the consent of the defendant, either express or implied; or if, after verdict against the accused, it has been set aside on his motion for a new trial, or on writ of error, or in arrest of judgment,—in all these, and a few other cases which might be enumerated, the accused may again be put upon trial, and the proceedings had will constitute no protection. * * * When the defendant appealed from the judgment, and procured a reversal, one of the effects of which was the ordering of a new trial, the judgment and verdict in such a case must be assumed to be set aside at the instance of the defendant, upon the theory that he who procures the reversal or affirmance of a judgment impliedly assents to all the consequences legitimately following such reversal or affirmance."

The rule is stated thus in 22 Corpus Juris Secundum 275, p. 411, "Criminal Law":

" * * * An accused person waives his right to plead former jeopardy by applying for a new trial. When, therefore, a new trial is granted in the appellate court, and he is reindicted, or is tried on the original indictment, accused cannot plead, as a bar to the prosecution,

the conviction which was reversed on the appeal, even though he had not asked for a new trial."

See also *People vs. Stratton*, 28 P2d. 695, 136 Cal App 201, and *People vs. Eppinger*, 41 Pac. 1037, 109 Cal 294.

In view of the fact that there is no question but that defendant committed larceny of one degree or another, in event this Court finds error in the trial court's instruction No. 8, then we submit that the case should be remanded for a new trial.

CONCLUSION

The record amply supports the finding that the defendant stole the automobile in question. Nowhere in his appeal does defendant deny this or urge that the record does not support a finding of larceny. Merely to state that theft of a model 1947 Ford two-door sedan in excellent condition could be petit larceny appears ludicrous. We respectfully submit that the trial court did not commit prejudicial error in taking judicial notice that such an automobile is worth more than \$50.00.

Further, we respectfully submit that, if the trial court thus committed prejudicial error, then defendant is at most entitled to a new trial, and if such trial be ordered, he cannot plead jeopardy.

Respectfully submitted,

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