

1951

# State of Utah v. Douglas Charles Peterson : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Clinton D. Vernon; Francis C. Lund; Attorneys for Plaintiff and Respondent;

---

## Recommended Citation

Brief of Respondent, *State v. Peterson*, No. 7757 (Utah Supreme Court, 1951).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/1624](https://digitalcommons.law.byu.edu/uofu_sc1/1624)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

# In the Supreme Court of the State of Utah

---

STATE OF UTAH,

*Plaintiff and Respondent,*

vs.

DOUGLAS CHARLES PETERSON,

*Defendant and Appellant.*

Case No. 7757

---

## BRIEF OF RESPONDENT

---

CLINTON D. VERNON,

*Attorney General*

FRANCIS C. LUND,

*Assistant Attorney General*

*Attorneys for Plaintiff and Respondent*

Clerk, Supreme Court, Utah

**FILED**

DEC 17 1951

## I N D E X

	Page
STATEMENT OF FACTS .....	3, 4, 5
STATEMENT OF POINTS .....	5, 6
ARGUMENT .....	6
Point I. The Trial Court did not commit error by refusing to admit Defendant's proposed Exhibit I.....	6
Point II. The Trial Court did not err in not instructing the jury at the close of the evidence to return a verdict of acquittal for Defendant.....	7
Point III. The Trial Court did not err in failing to instruct the jury as to the scope of examination of prior con- victions; the verdict was not contrary to law and the evidence .....	10
Conclusion .....	12

## CASES CITED

Clingan v. State (1919) 15 Okla. Cr. 483, 178 P 486 .....	6, 7
Dodd v. State (1925) 29 Okla. Cr. 311, 233 P 503 .....	6
Price v. State (1908) 1 Okla. Cr. 358, 98 P 447 .....	6
State v. Burch (1941) 100 Utah 414, 115 P 2d 911.....	8
State v. Cobo (1936) 90 Utah 89, 60 P 2d 952 .....	11
State v. Gordon (1904) 28 Utah 15, 76 P 882 .....	8

	Page
State v. Gurr (1911) 40 Utah 162, 120 P 209 .....	12
State v. Hitesman (1921) 58 Utah 262, 198 769.....	11
State v. Karas (1913) 43 Utah 506, 136 P 788 .....	8
State v. Lewellyn (1928) 71 Utah 331, 266 P 261 .....	8
State v. Wells, (1909) 35 Utah 400, 100 P 681 .....	8
State v. Williams (1917) 49 Utah 336, 164 P 253 .....	12

### AUTHORITIES CITED

97 Am. St. Rep. 776, Section 5 .....	8
22 Corpus Juris 454, Section 543 .....	6
39 LRA (N.S.) 320 .....	12

### STATUTES CITED

103-36-1 Utah Code Annotated 1943 .....	9
---	---

# In the Supreme Court of the State of Utah

---

STATE OF UTAH,

*Plaintiff and Respondent,*

vs.

DOUGLAS CHARLES PETERSON,

*Defendant and Appellant.*

Case No. 7757

---

## BRIEF OF RESPONDENT

---

### STATEMENT OF FACTS

On March 25, 1951, during the nighttime, the Torch Tavern, 477 South Main Street, Salt Lake City, Utah, was broken into and articles exceeding \$50.00 value were feloniously taken therefrom.

Charles L. Means, the owner, closed the tavern at 1:00 a.m., March 25. M. W. Olsen of the City Police Department

informed Mr. Means later the same morning of the burglary and they returned to the tavern where Mr. Means listed articles missing, subsequently identified at the trial as Exhibits A, B, C, D and E (Tr. 43-52).

Early March 25th witnesses Daniel Dunn and Edward Peterson were on Fifth South Street approximately 75 feet east of the Torch Tavern; both saw a car come out of the alley parallel with the east side of the Torch Tavern at an accelerated speed; turn west from the alley on Fifth South; and continue west at a high rate of speed. Both noticed this car because of the high rate of speed and open trunk of the car which held a dark, square object. Mr. Peterson saw two persons in the car and noted the license number 484. Both witnesses investigated the alley and found the broken window and open door of the Torch Tavern. Mr. Peterson testified that a phone call was placed to the police between 3:30 and 4:00 a.m.; Mr. Dunn testified that the phone call was placed to the police at approximately 5 minutes to 4:00 a.m.; the police arrived 8 to 10 minutes later (Tr. 71-103).

Special Officer Jack Merrick, approximately 10 minutes before 4:00 o'clock on the morning of March 25th, 1951, saw a car proceeding at a fast speed north on Fifth West near Second South; he noted two persons in the car with the trunk forced up with a large object; he followed the car into an alley between North Temple and South Temple on Fifth West; two men jumped out of the car and ran and Officer Merrick chased the driver. He fired two shots and the driver surrendered and identified himself as Chick or Chuck Peterson. Officer Merrick took Chuck Peterson to the Salt Lake

Planing Mills to phone the Salt Lake City Police Dispatcher, at which time defendant escaped. The phone call was placed at approximately 4:00 a.m.

Officer Merrick, at the trial, positively identified the defendant as one of the persons he followed in the car, chased and apprehended (Tr. 103-121).

The numbers of the license plate of the car containing the stolen articles were 484. The car was owned by the defendant. The articles were identified at the trial as exhibits A, B, C, D and E (Tr. 106, 107, 123-130).

Defendant later turned himself in to the Salt Lake Police department and submitted a confession of a third person to exculpate himself (Tr. 154).

Defendant was convicted of Grand Larceny in the Third Judicial District Court in Salt Lake County, State of Utah, and from that verdict appeals.

## STATEMENT OF POINTS

I. THE TRIAL COURT DID NOT COMMIT ERROR BY REFUSING TO ADMIT DEFENDANT'S PROPOSED EXHIBIT NO. 1.

II. THE TRIAL COURT DID NOT ERR IN NOT INSTRUCTING THE JURY AT THE CLOSE OF THE EVIDENCE TO RETURN A VERDICT OF ACQUITTAL FOR DEFENDANT.

III. THE TRIAL COURT DID NOT ERR IN FAILING TO INSTRUCT THE JURY AS TO THE SCOPE OF EX-

AMINATION OF PRIOR CONVICTIONS; THE VERDICT WAS NOT CONTRARY TO LAW AND THE EVIDENCE.

## ARGUMENT

THE TRIAL COURT DID NOT COMMIT ERROR BY REFUSING TO ADMIT DEFENDANT'S PROPOSED EXHIBIT NO. 1.

Defendant's proposed Exhibit I was an alleged confession by Charles Olmsted, offered by defendant to exculpate himself. Respondent submits that the objections by the State to the admission of the alleged confession as being self-serving and heresay were well taken and properly sustained by the Court. Appellant contends that the alleged confession was part of the *res gestae* and thus admissible.

In the case of *Dodd v. State* (1925) 20 Okla. Cr. 311, 233 Pac. 503, *res gestae* is defined as follows:

What constitutes *res gestae* is often a complex and difficult question. The term is not capable of a definition which will fit all cases, and of necessity must be left in some measure to the sound discretion of the trial court. In general terms, it means the circumstances, facts and declarations which shed light upon and explain the principal fact, and which are voluntary and spontaneous in their nature, and so nearly contemporaneous as to preclude the idea of deliberation or fabrication. *Price v. State*, 1 Okla. Cr. 358, 98 Pac. 447; 34 Cyc. 1642; 22 C. J. 454, Sec. 543.

In the case of *Clingan v. State* (1919) 15 Okla. Cr. 483, 178 Pac. 486, the court said:



Spontaneous declarations springing out of and contemporaneous with the principal fact sought to be proven, and which are made at a time so near to it as to preclude the idea of deliberation and fabrication whether they be the declarations of the deceased or of the defendant, are generally considered admissible as part of the *res gestae*.

Defendant's testimony was that approximately one hour and forty-five minute elapsed between his escape and the time he and Olmsted met, when the alleged confession was written (Tr. 152, 153).

The authorities require that declarations be spontaneous, contemporaneous, and made at a time which would preclude deliberation and fabrication to be admissible as part of the *res gestae*. The lapse of time and the circumstances under which the alleged confession was written preclude any spontaniety, and show ample opportunity for deliberation, collusion, creation and faslification of an alibi. Neither can an argument be made that the alleged confession was contemporaneous with the crime, and for that reason admissible.

Respondent submits that the alleged confession was properly excluded.

## POINT II

THE TRIAL COURT DID NOT ERR IN NOT INSTRUCTING THE JURY AT THE CLOSE OF THE EVIDENCE TO RETURN A VERDICT OF ACQUITAL FOR DEFENDANT.

Appellant cites the Utah cases *State v. Burch*, 100 Utah 414, 115 P 2d 911, and *State v. Wells*, 35 Utah 400, 100 P 681, (appellant's brief pages 13 and 14) for the proposition that where circumstantial evidence is used to prove the guilt of defendant and the evidence is such that reasonable men cannot differ upon the fact that it includes a reasonable hypothesis of innocence of the defendant, the question is one of law for the Court, and not a question for the jury.

Respondent concedes that such was the holding in the cases cited, but submits that the principle is not applicable to the case at bar. Appellant fails to point out that the cases cited had peculiar fact situations and dealt with only circumstantial evidence. In the *Burch* case this Court stated:

"The present case is out of the ordinary in that there is not one ultimate fact necessary for a conviction that is substantiated by direct evidence.

\* \* \* \*

In a criminal case a motion for directed verdict raises the question of whether or not, as a matter of law, there is substantial evidence of accused's guilt. *State v. Lewellyn*, 71 Utah 331, 266 P 261. See also *State v. Gordon*, 28 Utah 15, 76 P 882; *State v. Karas*, 43 Utah 506, 136 P 788. Where the alleged offense and the accused's alleged connection therewith rest wholly upon circumstantial evidence, which evidence, as a matter of law, is reasonably consistent with the innocence of the accused then this Court must hold that there is not substantial evidence to support the guilt of the accused. 97 Am. St. Rep. 776, Sec. 5 commencing 8th line.

The conclusion that a verdict of acquittal should be directed by the Court in the case at bar is unsound because it is founded

upon the faulty premise that the verdict was based solely upon circumstantial evidence and not upon any direct evidence. The trial record reveals that the State presented direct evidence in addition to circumstanital evidence which was sufficient to convict the defendant of grand larceny.

103-36-1, Utah Code Annotated 1943 defines larceny 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.”

The evidence of record clearly connects defendant with the crime charged. The time of the burglary was established by testimony of Daniel Dunn, Edward Peterson, and Clarence Means as between 3:30 and 4:00 A.M. Daniel Dunn testified he saw a car leave the alley by the tavern with a large object in the trunk, and Edward Peterson testified he saw the same car, license number 484, with an object in the trunk and two men in the car, and the time established was just before 4:00 A.M. (Tr. 93, 94, 73, 74, 43, 44). Pursuit of the same car with the object in the trunk by Officer Merrick was approximately 3:50 A.M. Officer Merrick testified to following defendant in the car into an alley where defendant jumped from the car and ran to avoid arrest. Officer Merrick gave chase, fired two shots and defendant surrendered (Tr. 103-121). The articles stolen from the tavern were found in defendant's car, the license of which bears the number 484. The object in the trunk was identified as the television set taken

from the tavern and, with the other articles, identified at the trial as exhibits A, B, C, D and E (Tr. 43-52, 106, 107, 122-130). Defendant subsequently escaped (Tr. 117). Positive identification of defendant was made at the time of his arrest and at the trial (Tr. 105, 119, 120, 121).

Respondent submits that the flight of the defendant, chase by the Officer, apprehension and definite identification of the defendant while in possession of recently-stolen goods, and subsequent escape by defendant, was sufficient to go to the jury and to sustain the verdict.

### POINT III

THE TRIAL COURT DID NOT ERR IN FAILING TO INSTRUCT THE JURY AS TO THE SCOPE OF EXAMINATION OF PRIOR CONVICTIONS; THE VERDICT WAS NOT CONTRARY TO LAW AND THE EVIDENCE.

On cross-examination defendant was asked and answered, stating particular felonies he had been convicted of previously, and appellant cites as error the trial court's failure to instruct the jury circumscribing their consideration of evidence as to prior convictions.

This Court should note that the defense raised no objection at the time the question as to prior convictions was propounded; also defense did not request, either orally or in writing, an instruction which would clarify the consideration to be given in the cross examination as to prior convictions. Nor was any objection made to the instructions submitted to

the jury by the court. Respondent submits that if error was committed by omission of such an instruction, it was not such as to be prejudicial to the defendant.

Appellant cites *State v. Cobo* (1936), 90 Utah 89, 60 P 2nd 952, as authority to relieve appellant of the technical formalities required in a criminal case to properly present and raise issues for argument before this Court. That case involved a homicide charge. Because of the seriousness of the charge, this Court there relaxed the formalities of objections and exceptions necessary to properly present arguments before this Court. We submit that in the case at bar appellant's argument is not well taken.

Appellant also urges that the verdict of the jury was contrary to law and the evidence. There are numerous cases which cite the rule that questions of fact are the sole prerogative of the jury. In the case of *State v. Hitesman* (1921), 58 Utah 62, 198 P. 769, a prosecution for larceny, this court stated:

"While the law is to the effect that a jury may not arbitrarily ignore or disregard credible evidence, but must consider all evidence, they, nevertheless, need not blindly accept every explanation or statement that the one who is accused of the larceny may make in his own exculpation. The jury, in considering all the facts and circumstances in evidence, may refuse to give credence to defendant's statements or explanations, or to those of his witnesses, if such statements or explanations, in view of all the facts and circumstances, seem unreasonable or not well founded in fact. Where, as here, property recently stolen is found in the possession of the accused, it is for the jury to say whether his explanations and statements respecting that posses-

sion are satisfactory or otherwise. See *State v. Gurr*, 40 Utah 162, 120 Pac. 209, 39 L.R.A. (N.S.) 320, where the question is considered and the authorities supporting the foregoing statement of the law are collated."

To the same effect see *State v. Williams*, (1917) 49 Utah 336, 164 Pac. 253.

Respondent contends that the evidence was sufficient to go to the jury and that the verdict of the jury should not be disturbed on appeal.

## CONCLUSION

In conclusion it is submitted that the evidence in this case fully supports the verdict and should be sustained.

Respectfully submitted,

CLINTON D. VERNON,  
*Attorney General*

FRANCIS C. LUND,  
*Assistant Attorney General*  
*Attorneys for Plaintiff and Respondent*