

1954

The State of Utah v. Johnny DeHerrera et al : Brief of Respondent

Utah Supreme Court

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In the
Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff,

VS.

JOHNNY DeHERRERA, JOE VAL-
DEZ and RAYMOND O. MAR-
TINEZ,

Defendant.

Case No.
8150

BRIEF OF RESPONDENT

FILED

APR 27 1954

Clerk, Supreme Court, 1-

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In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff,

vs.

JOHNNY DeHERRERA, JOE VAL-
DEZ and RAYMOND O. MAR-
TINEZ,

Defendant.

Case No.
8150

BRIEF OF RESPONDENT

STATEMENT OF FACTS

We add to appellant's Statement of Facts:

First: That, the complaining witness's wallet was found by an officer some fifteen feet from the place where the atrocities and indignities upon his person were inflicted. Where, "It had to be thrown, it couldn't be placed

any other way, the branches are real thick. No one could have passed there. It would have to be thrown" (T. 24). and;

Second: That, when the pants of the complaining witness were recovered by the officers *all of the pockets had been turned inside out* (T. 15).

STATEMENT OF POINTS

POINT I

DEFENDANTS' MOTION TO DISMISS AT CONCLUSION OF THE STATE'S CASE WAS PROPERLY DENIED; THE EVIDENCE ADDUCED ON BEHALF OF THE STATE ESTABLISHED THE COMMISSION OF THE CRIME OF *ROBBERY* AS CHARGED, AND ALL OF THE ELEMENTS THEREOF, AND THE FACTS AND EVIDENCE SUSTAIN THE JUDGMENT OF THE COURT.

ARGUMENT

POINT I

DEFENDANTS' MOTION TO DISMISS AT CONCLUSION OF THE STATE'S CASE WAS PROPERLY DENIED; THE EVIDENCE ADDUCED ON BEHALF OF THE STATE ESTABLISHED THE COMMISSION OF THE CRIME OF *ROBBERY* AS CHARGED, AND ALL OF THE ELEMENTS THEREOF, AND THE

FACTS AND EVIDENCE SUSTAIN THE JUDGMENT OF THE COURT.

As do appellants, we think their points A through E are so interrelated as to best be considered one and altogether. We ask this Court's indulgence in our so doing.

We are here concerned with the statutory crime of robbery as declared by Section 76-51-1, U. C. A. 1953. Of this, each of your appellants was found by the trial court to be guilty. The defendant and appellant, Joe Valdez, has been sentenced to a term of imprisonment of not less than five years, and which may be for life. The defendant and appellant, Raymond O. Martinez, has been sentenced to a term of imprisonment of not less than five years, and which may be for life. The defendant and appellant, Johnny DeHerrera has, so far as the record goes, been granted a stay of execution. Appellants Valdez and Martinez are at liberty on bond, \$3,000.00 each.

At common law, and as ordinarily defined, in words or substance, "robbery" is the felonious taking of *goods or money* from the person or presence of another by means of force or intimidation. *Norris v. U. S.*, C. C. A. Tex., 152 F. 2d 808, 809. *State v. Hockett*, 238 P. 2d 539. Robbery has been said to be a combination of the crime of assault and larceny; *State v. Fouquette*, 67 Nev. 505, 221 P. 2d 404, and, for the sake of argument, we can admit to appellants' contention that "every robbery includes grand larceny and a case of robbery cannot be stated without stating a case of larceny," (be that the law or not) for we think it here immaterial. This Court has held that there is

but one crime of robbery, as defined by statute in this State. *State v. Robbins*, 102 Utah 119, 123, 127 P. 2d 1042. The single question here is: “*Did the defendants and appellants here feloniously take personal property in the possession of Thomas Edwards from his person—against his will—by means of force or fear?*” If they did, they violated the statute and its violation required neither deliberation nor premeditation (since these are not essential elements of the crime of robbery, *People v. Thomas*, 113 P. 2d 706, 45 Cal. App. 2d 128) but only a taking in such manner.

In robbery the value of the property taken is immaterial providing it has some value however slight. *State v. Albert LaChall and John Barry*, 28 Utah 80, 77 P. 3. Coke defined the crime thusly:

“Robbery is a felony by the common law, committed by a violent assault upon the person of another, by putting him in fear, and taking from his person his money or other goods of any value whatsoever.” Coke, III Inst. 69.

And, Blackstone:

“Robbery is the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting him in fear.” IV Blk. Comm. 242.

Now, what say these appellants?

“We have carefully read the transcript of the testimony introduced by the State and have been unable to find any facts to support the charge of a felonious taking of the specified personal property, *or any property*, from the complaining witness, against his will, or accomplished *by means of force and fear, or at all*” (Emphasis added).

The records shows, as to property of the complaining witness, that his *wallet was taken* (T. 24), his shorts were taken (T. 14), his pants were taken (T. 16), his watch also and his cigarette lighter (T. 17). We admit that in order to consitute robbery there must be a taking. *State v. Fouquette*, supra. However, the crime is consummated when the robber acquires possession of the property, even if but for a short time, and it is not necessary that the property be taken into the hands of the robber, or that he should have actually carried the property away, out of the physical presence of the lawful possessor, or that he should have made his escape with it. The distance the property is taken may be very small, the slightest change of location whereby dominion of the property is transferred to the offender being sufficient to establish asportation. Subsequent disposition of the property taken is immaterial. See, 77 C. J. S., Robbery, pages 450, 451; and cases there cited.

The record shows, as to the felonious taking, that there was evidence of a fight (T. 18); there was a pool of blood on the ground (T. 18); the complaining witness was severely beaten (T. 3, 4, 6, 8, 12, 13); he was knocked out more than once (T. 4, 8); his clothes were torn from him (T. 14) and he was disrobed (T. 12); he was crying for help and he was beaten up terribly (T. 14); he feared for his life (T. 23); ad infinitum. Counsel for appellants say, "For the beating and the indignities we make no brief." Nor do we. But for "beating" we would substitute "felonious and murderous assault" and for "indignities," "bestiality;" we mean this not as stultiloquium. By requirement of the statute the robbery had to be accomplished by means

of force or fear. *Rutkowski v. U. S.*, C. C. A. Mich., 149 F. 2d 481. For these elements we contend that record speaks for itself.

The trial court found that the complaining witness was robbed of his wallet and of this fact there can be no doubt. He was robbed of everything he had in his trousers pockets, this the record shows; otherwise, and for what other reason were his trousers ripped from him and the pockets turned inside out.

CONCLUSION

We conclude that the crime of robbery was committed as charged and that these appellants, and each of them, committed the said offense against the peace and dignity of the State of Utah. For such crime, they were properly dealt with.

Respectfully submitted,

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