

1967

## The State Of Utah v. Robert Lee Dixon : Brief of Respondent

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

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. Phil L. Hansen and Tom G. Platis; Attorneys for Respondent

---

### Recommended Citation

Brief of Respondent, *Utah v. Dixon*, No. 10905 (1967).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/4300](https://digitalcommons.law.byu.edu/uofu_sc2/4300)

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 (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 - Respondent,

- vs. -

ROBERT LEE DIXON,

Defendant - Appellant.

Case No.  
10995

## BRIEF OF RESPONDENT

Appeal from Judgment of 2nd District Court  
for Weber County

Honorable Charles G. Cowley, Judge

PHIL L. HANSEN

Attorney General

TOM G. PLATIS

Assistant Attorney General

Attorneys for Respondent

236 State Capitol

Salt Lake City, Utah

HATCH & McRAE

Attorneys for Appellant

707 Boston Building

Salt Lake City, Utah

# FILED

DEC 1 - 1967

Clerk, Supreme Court, Utah

## TABLE OF CONTENTS

	Page
STATEMENT OF NATURE OF CASE .....	1
DISPOSITION IN LOWER COURT .....	1
RELIEF SOUGHT ON APPEAL .....	1
STATEMENT OF FACTS .....	2
ARGUMENT .....	3
POINT I. THE LOWER COURT DID NOT ERR IN ADMITTING INTO EVIDENCE CUR- RENCY OFFERED BY THE PROSECUTION AT THE TIME OF TRIAL. ....	3
POINT II. APPELLANT'S ARGUMENT, THAT THE COURT ERRED IN FAILING TO PRO- HIBIT HE STATE'S ATTORNEY FROM ARGU- ING FLIGHT BY DEFENDANT IN HIS CLOS- ING ARGUMENT, IS NOT SUPPORTED BY THE RECORD. ....	6
CONCLUSION .....	7

### Cases Cited

Clayton v. Metropolitan Life Insurance Co., 96 Utah 331, 85 P.2d 819 (1938) .....	4
Eisentrager v. State, 79 Nev. 38, 378 P.2d 526 (1963) .....	3
People v. Riser, 47 Cal.2d 566, 305 P.2d 1 (1956), cert. den. 353 U.S. 930, E L.Ed.2d 724, 77 S.Ct. 721, appeal dismiss. 358 U.S. 646, 3 L.Ed.2d 568, 79 S.Ct. 537 .....	4, 5
Schlatter v. McCarthy, 113 Utah 543, 196 P.2d 968 (1948) .....	7
Spittorff v. State, 108 Ind. 171, 8 N.E. 911 (1886) ....	5
State v. Campbell, 116 Utah 74, 208 P.2d 539 (1949) ....	5, 6

## TABLE OF CONTENTS—(Continued)

	Page
State v. Cooper, 114 Utah 531, 201 P.2d 764 (1949) .....	7
State v. Hall, 105 Utah 151, 139 P.2d 228 (1943), re- versed on other grounds 105 Utah 162, 145 P.2d 494 (1944) .....	5
State v. Hanna, 81 Utah 583, 21 P.2d 537 (1933) .....	6
State v. Lee, 80 Ariz. 213, 295 P.2d 380 (1956) .....	4
State v. Little, 5 U.2d 42, 296 P.2d 289 (1956) .....	6
State v. Myers, 5 U.2d 365, 302 P.2d 276 (1956) .....	6
State v. Price, 76 Ariz. 385, 265 P.2d 444 (1954) .....	4
State v. Vigil, 123 Utah 495, 260 P.2d 539 (1953) .....	6
State v. Weis, 92 Ariz. 254, 375 P.2d 735 (1962) .....	4
Utah Farm Bureau Insurance Co. v. Chugg, 6 U.2d 399, 315 P.2d 277 (1957) .....	4

### Other Authorities

21 A.L.R.2d 1216 (1952) .....	5
67 A.L.R.2d 297, § 13 (1959) .....	7
4 Am. Jur.2d <b>Appeal and Error</b> § 541 (1962) .....	7
2 Wharton, Criminal Evidence § 675 (12th ed. 1955) ....	4

# In The Supreme Court of the State of Utah

---

STATE OF UTAH,

Plaintiff - Respondent,

- vs. -

ROBERT LEE DIXON,

Defendant - Appellant.

} Case No.  
10905

---

## BRIEF OF RESPONDENT

---

### STATEMENT OF NATURE OF CASE

The appellant, Robert Lee Dixon, appeals from a conviction by jury trial for the crime of grand larceny.

### DISPOSITION IN LOWER COURT

The appellant was convicted on jury trial for the charged offense of grand larceny.

### RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the conviction in the lower court or, in the alternative, a new trial.

## STATEMENT OF FACTS

Respondent, State of Utah, agrees with the statement of facts as contained in the brief of the appellant, with the following additional facts and exceptions.

Two to three minutes prior to the occurrence of the incident in question, the assistant manager of the store, Mr. Thomas Woodside, observed a stack of \$20 bills in the cash register in question (R. 19-20). Mr. Woodside testified that immediately after the incident, he closed off the register (R. 39, 68). After apprehending the defendant, he made a preliminary determination as to the amount of money that was missing from the cash register and was able to determine that all of the \$20 bills were missing (R. 26). Mr. Woodside also testified on cross-examination that it was dark at the time of the chase (R. 30).

Mr. Dennis H. Richardson, assistant store manager, testified that he made a search of the area that same evening the incident occurred in an effort to find the money, but found nothing because it was dark (R. 75). The next morning a number of \$20 bills were found by Mr. Richardson in a weed patch (R. 78). Mr. Richardson testified that when he first counted the money, he thought there was \$180. Two days later, Mr. Richardson obtained the money from the safe and handed it to Mr. Woodside (R. 24), who in turn gave ten \$20 bills to Officer Larry J. Sturdevant (R. 24 and 92), in the presence of Mr. Richardson (R. 93-4).

## ARGUMENT

## POINT I

THE LOWER COURT DID NOT ERR IN ADMITTING INTO EVIDENCE CURRENCY OFFERED BY THE PROSECUTION AT THE TIME OF TRIAL.

Assuming, for the sake of argument, that the admission of the currency into evidence by the State is controlled by the law, as set out in appellant's brief in regard to the chain of possession, respondent submits that the testimony produced at the time of trial sustains a complete chain of evidence identifying the currency from the moment it was found to its admission.

The record discloses that Mr. Dennis H. Richardson found the money (R. 77), placed it in a safe (R. 78), later handed it to Mr. Thomas Woodside (R. 24), who, in turn, gave it to Officer Larry Sturdevant (R. 24 and 92). Officer Sturdevant testified that Exhibit A, the currency in question, was the ten \$20 bills he acquired from Thomas Woodside (R. 91-2).

The appellant in his brief would require the prosecution to establish a complete chain of control over the evidence and affirmatively establish that no others had access to such evidence, without any regard as to the ease or difficulty with which the particular evidence could have been altered. As to the practicalities of proof, it is submitted that the prosecution need only establish that it is reasonably certain that substitution, alteration, or tampering did not occur. **Eisentrager v. State**, 79 Nev. 38, 378 P.2d

526 (1963); **People v. Riser**, 47 Cal.2d 566, 305 P.2d 721 (1956), cert. den. 353 U.S. 930, 1 L.Ed.2d 724, 77 S.Ct. 721, appeal dism. 358 U.S. 646, 3 L.Ed.2d 568, 79 S.Ct. 537.

Respondent submits that the type of evidence involved in the cases cited by appellant is unlike that in the instant case in that alteration of the evidence in this case, if any, does not obliterate or change the condition which is sought to be shown, that is, the amount taken was more than \$50.

The confusion of this case rests on the fact that money, in general, is all alike. Since Mr. Richardson could not absolutely identify the currency on the stand, the prosecution attempted to establish a chain, showing the possession of the currency from the moment it was found until the moment it was introduced at the time of trial. The exhibit was admissible so far as identity is concerned when it had been identified as being the same object about which the testimony was being given and when it was stated as being in the same condition as at the time of the occurrence in question. **State v. Lee**, 87 Ariz. 213, 295 P.2d 380 (1956); **State v. Price**, 76 Ariz. 385, 265 P.2d 444 (1954); **State v. Weis**, 92 Ariz. 253, 375 P.2d 735 (1962). See generally 2 Wharton, **Criminal Evidence**, § 675 (12th ed. 1955).

The type of evidence involved in the case of **Utah Farm Bureau Insurance Co. v. Chugg**, 6 Utah 399, 315 P.2d 277 (1957), and **Clayton v. Metropolitan Life Insurance Co.**, 96 Utah 331, 85 P.2d 819 (1939) was an expert's analysis of an object where a fact



of a chain of possession shows it is as likely as not that the evidence analyzed was not the evidence originally received. See **People v. Riser, supra**, and cases collected in 21 A.L.R.2d 1216 (1952).

It is the further contention of respondent that the currency admitted into evidence merely supplemented the testimony of the witnesses. The admission of the currency into evidence is not necessary, since the evidence without the admission of the currency was sufficient to sustain a conviction. **State v. Campbell**, 116 Utah 74, 208 P.2d 530 (1949). In that case, this court stated:

"If the expert's opinion was founded upon false premises—the wrong articles, or defective articles—that is a matter of cross examination, and of defense. The prosecution proved generally the condition of articles by their valuations; the defense has the burden of tearing down that testimony by cross-examination or by demanding the production of the articles and introducing them if their presentation would refute the values advanced by the prosecution. If the condition of clothes or of other articles is to be shown in a case, it is not absolutely necessary that they be produced in court; they may be described."

(116 Utah at 80)

See also **State v. Hall**, 105 Utah 151, 139 P.2d 328 (1943), reversed on other grounds, 105 Utah 162, 145 P.2d 494 (1944); **Spittorff v. State**, 108 Ind. 171, 8 N.E. 911 (1886).

It has been held in a number of Utah cases that testimony of one acquainted with the value of the stolen property is sufficient to make out a value of over \$50 for purposes of grand larceny. **State v. Little**, 5 U.2d 42, 296 P.2d 289 (1956); **State v. Myers**, 5 U.2d 365, 302 P.2d 276 (1956); **State v. Vigil**, 123 Utah 495, 260 P.2d 539 (1953); and **State v. Campbell**, *supra*.

## POINT II

APPELLANT'S ARGUMENT, THAT THE COURT ERRED IN FAILING TO PROHIBIT THE STATE'S ATTORNEY FROM ARGUING FLIGHT BY DEFENDANT IN HIS CLOSING ARGUMENT, IS NOT SUPPORTED BY THE RECORD.

The record does not support the conclusion that the lower court denied appellant's requests prohibiting counsel for the State from arguing the inference of flight by the defendant or the fact that counsel for the State even argued such inference before the jury.

**State v. Hanna**, 81 Utah 583, 21 P.2d 537 (1933) on which appellant relies is distinguished from the instant case in that although argument of counsel were not recorded, the objection to the argument and subsequent discussions were part of the transcript.

Where, as in the instant case, arguments to the

any by counsel are not preserved in the record, this court, in **Schlatter v. McCarthy**, 113 Utah 543, 196 P.2d 968 (1948), stated:

"Since the arguments of counsel were not preserved in the record, we are hardly in a position to say that the argument of plaintiff's counsel to the jury was improper, and grounds for reversal. Error will not be presumed, nor can we presume misconduct on the part of counsel. . . . There is nothing in the record before us on which this court could hold counsel guilty of improper conduct." (113 Utah at 558)

This court was held in a criminal case that where arguments of counsel to jury were not preserved in the record, a reversal could not be predicated on the ground that the prosecuting attorney in argument to the jury made improper and prejudicial statements. **State v. Cooper**, 114 Utah 531, 201

This court has held in a criminal case that P.2d 764 (1949). See also 4 Am. Jur.2d, **Appeal and Error**, § 541 (1962), and Annotation 67 A.L.R.2d 297, § 13 (1959).

## CONCLUSION

The lower court did not err in admitting into evidence currency at the time of trial because the record discloses a complete chain of possession and proper identification.

The record does not disclose any prejudicial error committed by the court.

Respondent urges, therefore, that the conviction of the appellant be affirmed.

Respectfully submitted,

PHIL L. HANSEN

Attorney General

TOM G. PLATIS

Assistant Attorney General

Attorneys for Respondent