1966

The State of Utah v. Ken Knepper : Brief of Respondent

In The Supreme Court of the State of Utah

THE STATE OF UTAH
Plaintiff-Respondent,

vs.

KEN KNEPPER
Defendant-Appellant

Case No. 10614

BRIEF OF RESPONDENT

Appeal from Judgment of the District Court of Weber County, State of Utah, Honorable Charles G. Cowley, District Judge

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STATEMENT OF NATURE OF THE CASE

The appellant, Ken Knepper, appeals from a judgment of the District Court of Weber County, entering a conviction against the appellant for violation of Section 76-17-5, Utah Code Annotated, 1953, as amended (1961), for the failure to return to the owner leased equipment within ten days after the expiration of the lease or rental agreement.

DISPOSITION IN LOWER COURT

The appellant was charged with a violation of Section 76-17-5, Utah Code Annotated, 1953, as amended (1961). A motion was filed by the appellant to quash the information. The trial court, the Honorable Charles G. Cowley, Judge, denied the motion to quash. Jury trial was waived (R. 7), and the appellant was tried on the 18th day of February, 1966. Upon completion of the evidence, Judge Cowley entered a finding of guilty and on March 1, 1966,

sentenced the appellant to be committed to the Utah State Prison for the indeterminate term provided by law.

RELIEF SOUGHT ON APPEAL

The respondent submits that the conviction entered by the trial court should be affirmed.

STATEMENT OF FACTS

The respondent submits the following statement of facts:

Mr. Don Kammeyer, the owner and manager of Kammeyer's Sports Store, in Weber County, testified that he buys, sells, and leases typewriters (Tr. 3 and 4). On October 30, 1964, the appellant, Ken Knepper, executed Exhibit A, which was a rental loan agreement for a Royal standard typewriter, Serial No. HHE-6122225. The rental was $8.00 per month and the typewriter was valued at $140.00 (Exhibit A - Tr. 5 and 6). The appellant gave a business address at Building 95, Freeport Center, Clearfield, Utah, and a home address of 1184 So. 1000 East, Clearfield, Utah. The appellant paid the $8.00 fee on the first month's rental, but made no other payments (Tr. 7). Approximately a week after the expiration of the first month's rental, Mr. Kammeyer called the appellant. The appellant said that he would either bring $8.00 in or bring the typewriter back. The appellant never brought the typewriter in or paid any sum for an additional rental period (Tr. 8). Mr. Kammeyer went to the appellant's house, but was unable to locate the typewriter (Tr. 8). He

tried on other occasions to get the appellant at home, but was unable to locate him (Tr. 9). Mr. Kammeyer thereafter went to the Freeport Center and found that the office area supposedly occupied by the appellant was locked and he could not see the typewriter (Tr. 9).

Appellant's trial was held on the 18th day of February, 1966, and at the time of trial, the appellant had never returned the typewriter. Mr. Kammeyer asked the Freeport management to endeavor to find the typewriter, and was told that it could not be found (Tr. 17).

The appellant admitted the execution of Exhibit A and stated that at the time he was arrested, he was employed in Long Beach, California, on a construction project building an extension to a roller coaster (Tr. 19). He indicated that he did not recall the discussion with Mr. Kammeyer subsequent to the expiration of the rental period (Tr. 20), but did not deny that there could have been such a conversation. The appellant stated that he was a sign painter by trade, and that the typewriter had been used in conjunction with the promotion of a business of sign painting which he was conducting at the Freeport Center. The appellant admitted that the typewriter had been kept at the home of two boys who were associated with him in the sign painting operation (Tr. 24). He stated that he gave the typewriter to a Danny Buckley and that it had been placed in Richard Jensen's car. He stated that this was around the time that his sign painting operation

had collapsed for lack of capital. The appellant admitted that he never returned the typewriter and that he didn't contact Mr. Kammeyer. He stated that he had told the boys to take the typewriter back (Tr. 38). He stated that at the time he gave the typewriter to the two boys, he stated:

> **"Yes. I just said, 'Here. You guys are going that way. I am going this way.' "**

He stated that approximately two months after the business closed, he left for California (Tr. 32). He admitted that he didn't tell the boys where he got the typewriter, but stated that they "evidently knew" (Tr. 39). The appellant presumed that Mr. Kammeyer had contacted him after he delivered the typewriter to Danny Buckley (Tr. 41). He did nothing thereafter to see that the typewriter was delivered.

The appellant had been convicted of the felony of operating a confidence game in the State of Colorado and served time in prison (Tr. 28). Neither Danny Buckley nor Richard Jensen were ever produced as witnesses. The appellant also indicated that the boys had stated that they were going to keep some other equipment he had to cover their expenses. Appellant testified he told them not to keep it but return it to the proper owner.

Based upon the above evidence, Judge Cowley entered a judgment of guilty.

POINT I.

(A) THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THE APPELLANT'S GUILT.

(B) THE EVIDENCE WAS SUFFICIENT FOR THE TRIAL COURT TO HAVE DENIED THE APPELLANT'S MOTION TO DISMISS AT THE END OF THE PROSECUTION'S CASE AND THE APPELLANT, HAVING GONE FORWARD AND OFFERED EVIDENCE, HAS WAIVED ANY INSUFFICIENCY OF THE EVIDENCE AT THAT TIME.

The appellant contends that the evidence was insufficient to demonstrate his guilt. The primary assault on the State's case is the contention that the evidence did not show the requisite willfulness in failing to return the typewriter. The appellant contends that the evidence is insufficient to prove his guilt beyond a reasonable doubt. It should be remembered that the question of whether the evidence is sufficient to prove the appellant's guilt must now be viewed in a light most favorably with the trial court's decision. Only if it can be said that the evidence, when so viewed would show that Judge Cowley's determination of guilt was completely unreasonable, would this court be justified in reversing the trial court's decision.

In **State v. Ward,** 10 U.2d 34, 347 P.2d 865 (1959), this court stated as to the standard of reviewing the decision of trial courts in criminal cases:

> "The rules governing the scope of review on appeal as to the sufficiency of the evidence to sustain the verdict are well settled: that it is the prerogative of the jury to judge the credibility of the witnesses and to determine the facts; that the evidence will be reviewed in the light most favorable to the verdict; and that if when so viewed it appears that the jury acting fairly and reasonably could find the defendant

> **guilty beyond a reasonable doubt, the verdict will not be disturbed."**

Section 76-17-5, Utah Code Annotated, 1953, as amended (1961), deals with embezzlements by bailees, tenants or attorneys in fact. The law was last amended in 1961, Laws of Utah 1961, Chapter 176, Section 1. The pertinent part of the statute applicable to the instant case now reads:

> **"Every person who has leased or rented a motor vehicle, trailer, appliance, tool or other valuable thing, and who willfully fails to return the same to its owner within ten days after the lease or rental agreement has expired, is guilty of embezzlement."**

It is apparent that the elements of the offense are the leasing of valuable property and the willful failure to return the same to its owner within ten days after the expiration of the lease or rental agreement. The appellant's principal challenge is that the willfulness of his actions in failing to return the property to Mr. Kammeyer is not established by the evidence. The gist of the appellant's argument seems to be that willfulness requires something more than what the evidence on appeal demonstrates. It is submitted that the appellant's position starts from an erroneous premise.

Section 76-1-3(1), Utah Code Annotated, 1953, defines the use of the term "willfully" when used in the penal code as follows:

> **"(1) The term 'willfully,' when applied to the intent with which an act is done or omitted, implies simply**

> a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another or to acquire any advantage."

The appellant contends that this definition is meaningless, and that what should actually be required is the standard imposed in the case of **United States v. Murdock,** 290 U.S. 399 (1933), quoted on page 12 of appellant's brief, that the action be done **"with a particular purpose** . . . without justifiable excuse . . . stubbornly, obstinately, **perversely,** . . ." The appellant's contention that this standard should be imposed is directly contrary to the plain meaning of the statutory definition set forth in Section 76-1-3, Utah Code Annotated, 1953. The last sentence of the definition of the term "willfully," above quoted, indicates that there need not be any intent to violate the law or to act in a malicious manner.

In **State v. Roedl,** 107 Utah 538, 155 P.2d 741 (1945), this court expressly indicated that the use of a statutory definition in instructing the jury was not error, apparently feeling that the language was sufficiently clear that no jury could mistake the required finding. The language in the definition part of the Utah statute is, for the most part, directly contrary to the cases that the appellant urges this court to follow in requiring a showing of some intent towards a deliberate wrongdoing.

Courts have long got away from the standard of willfulness that the appellant now seeks to press upon this court. In **People v. Faber,** 29 Cal.App.2d

751, 77 P.2d 921, the California court stated:

> "There is, of course, no doubt that 'the word "willfully" as used in the criminal law, implies simply the purpose or willingness to commit the unlawful act.' People ex rel. Los Angeles Bar Ass'n v. California Protective Corporation, 76 Cal. App. 354, 363, 244 P. 1089, 1092. It does not necessarily imply any specific intent to violate law or to injure another and, where specific intent is not part of the definition of the crime, such intent as is required to make out the crime is conclusively presumed from the intentional performance of the act denounced though the offender was honestly mistaken as to the meaning of the law."

At common law, there was some confusion as to the mental element required in a crime. There were distinctions drawn between criminal intent and malice which necessarily confused the intent that would be required for particular offenses. See 1 Burdick, Law of Crime, Sections 112, 113, 114, 115, 116, 117, and 122.

A careful analysis of the development of the concept of mens rea is set forth in Hall, General Principals of Criminal Law, 2d Ed., Chapter 3, page 70. At page 104, in summarizing the conclusions, it is stated:

> "In sum: (1) the professional literature, especially beginning with Hale, distinguished mens rea from motive. Mans rea, a fusion of cognition and volition, is the mental state expressed in the voluntary commission of a proscribed harm. (2) The exclusion of motive, as not essential in mens rea, does not deny the importance of motive in determining the culp-

> ability, ('guilt') of the defendant. Instead, the reason for doing that is the necessity to preserve the objectivity of the principle of mens rea and the principle of legality, i.e. to signify some degree of culpability regardless of how good the motive was. Thus questions of motivation and mitigating circumstances are allocated to administration which can explore such issues thoroughly. (3) Implied in the above conclusions is that the principle of mens rea must be given an objective ethical meaning — the premise being that actual harms (disvalues) are proscribed. Accordingly, neither the offender's conscience nor the personal code of ethics of the judge or the jury can be substituted for the ethics of the penal law. The insistence that guilt should be personal must be interpreted to accord with the paramount value of the objectivity of the principle of mens rea."

The fact that willfulness is merely another means of expressing voluntary intent in the criminal law is acknowledged in Williams, Criminal Law, 2d Ed., The General Part, Section 16 (1961).

The model Penal Code no longer uses the terms "willful" or "intentional", but rather, combines all the mental elements into the standard of knowledge. Model Penal Code, SS 2.02(2)(b), 2.02(8).

Consequently, it is apparent that the Legislature merely intended that under the provisions of Section 76-17-5, Utah Code Annotated, 1953, as amended (1961), the failure of the defendant to return leased property within ten days of the expiration of the lease agreement be intentional as distinct from negligent. The statute is, itself, nothing more than a broader and more specific definition of the crime of embezzlement as it existed at common law. 2 Burdick, Law of Crime, Section 575g; Clark and

Marshall, Crimes, 6th Ed., pages 804, 807, 812.

A number of cases have recogniezd that an individual may be guilty of embezzlement by the failure to return property in accordance with the rental agreement. Annotation, 45 A.L.R.2d 623. Proof of the required intent generally can only be evidenced by the words or conduct of the person claimed to have entertained it, but, of course the intent may be shown by the circumstances of the case. 26 Am. Jur. 2d, Embezzlement, Section 53. The conversion of the property is, itself, evidence of an intent to embezzle. 26 Am. Jur.2d, Embezzlement, Section 56.

In **Chapman v. the State,** 90 Okl. Crim. 224, 212 P.2d 485 (1949), the defendant was convicted of larceny of a rented automobile by fraud. The Oklahoma court acknowledged that the intent to commit the larceny by fraud could be shown by circumstantial evidence. The defendant was tried by trial court without jury. The court stated:

> **"But the question of intent to commit larceny is a question of fact to be determined by the jury under the circumstances and the evidence."**

The court found that the evidence was sufficient to show the required intent. The facts in that case bear resemblance to those in the instant case.

The facts in the instant case clearly support the trial court's verdict. There was no question but what the appellant signed the rental loan agreement, paid only one month's rent, and did not return the

property within ten days after the termination of the rental agreement. Within a week after the expiration of the rental agreement and before the ten days had expired, the appellant was contacted by Mr. Kammeyer on the telephone and advised to either return the property or make another rental payment. The appellant said that he would do so the next Monday. He did not do so. The appellant clearly was aware of his obligation to see that the rental was paid on the property rented. The appellant's testimony (a convicted felon) was to the effect that he advised Mr. Danny Buckley to return the property but did not tell him where to return the property, and apparently did not turn the property over to Danny, as indicated in the appellant's brief, until after the ten-day period had expired (appellant's brief, page 8 - Tr. 32, 37). The appellant never made inquiry from Mr. Kammeyer as to whether the machine had been returned and left for California. The appellant was also aware that the boys who had been working for him were claiming interest in his property for the value of their services and investment.

Based on this evidence, it was well within the trial court's prerogative to find the appellant guilty.

The appellant contends that the trial court should have dismissed the case at the end of the State's evidence. The respondent submits that there is no merit to that contention that the evidence did not make out a prima facie case at the time the State rested. However, even assuming for the sake of argument, that the trial court erred, the appellant did

rely upon the State's evidence alone, but went forward with his own evidence, and the appellant, himself, made admissions on the stand which tended to impeach his credibility and support the conclusion that he was guilty of the offense. Consequently, the appellant waived any claim of error for the trial court's failure to dismiss at the end of the State's case.

In Wigmore, Evidence, Section 2496, it is stated:

> "Conversely, however, he cannot take advantage of the judge's original erroneous refusal to direct a verdict for insufficiency at the time of the first motion, (a) if he does not renew the motion at the close of all the evidence, or (b) or if at the time of the final motion the ruling correctly refuses to order a verdict for insufficiency; for the Court is at that time entitled to decide upon a survey of the whole evidence; and this survey naturally renders any prior error immaterial. * * *"

In **State v. Denison,** 352 Mo. 511, 178 S.W.2d 449 (1944), the court said:

> "Since appellant did not stand on it (first demurrer) but presented evidence in his own behalf, the trial court was bound to take the latter evidence into consideration insofar as it helped the State's case, in ruling on the second demurrer at the close of the whole case."

Since the appellant chose to go forward in this case, the only question is whether the evidence at the end of the State's case was sufficient to establish the appellant's guilt. Since it was, there is no merit to the appellant's contention on appeal.

POINT II

THE APPELLANT'S WILLFUL FAILURE TO RETURN A LEASED TYPEWRITER IS A CRIME ENCOMPASSED WITHIN THE PROVISIONS OF SECTION 76-17-5, UTAH CODE ANNOTATED, 1953, AS AMENDED (1961).

The appellant's final contention is that his failure to return the leased typewriter is not encompassed within the provisions of Section 76-17-5, Utah Code Annotated, 1953, as amended by Laws of Utah 1961, Chapter 176, Section 1. The appellant's contention is based upon the theory of ejusdem generis. In effect, the appellant contends that since motor vehicles, trailers, appliances, equipment, and tools are mentioned specifically that a typewriter is not encompassed within the language "or other valuable thing." Appellant also relies upon the maxim of noscitur a sociss, which is somewhat broader than the theory of ejusdem generis in that it means generally that general and specific words which are capable of analogous meaning, being associated together, take color from each other so that the general words are restricted to a sense, analogous to the less general. **Townsend v. State,** 63 Fla. 46, 57 So. 611. However, it is submitted that there is no merit to the appellant's contention. The very language of the statute, itself, evidences a legislative intent to encompass items of a valuable nature which may be the subject of lease or rental agreements. There is no continuity of class in the words "motor vehicle, trailer, appliance, equipment, or tool." Under such circumstances, it is well estab-

lished that the doctrine of ejusdem generis is not applicable.

In Sutherland, Statutory Construction, 3rd Ed., Volume 2, Section 4910, it is stated:

> "The doctrine applies when the following conditions exist: (1) the statute contains an enumeration by specific words; (2) the members of the enumeration constitute a class; (3) the class is not exhausted by the enumeration; (4) a general term follows the enumeration; and (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.
>
> A 'class' is an artificial creation to provide ease in dealing with numerous items with similar characteristics. Thus, 'a class' is a generalization which accurately or inaccurately associates items for a particular purpose or treatment. Without some objective or purpose classification is impossible. Consequestly, the rule of ejusdem generis depending as it does on pure form provides a dangerous yardstick with which to measure the statutory coverage which the legislature intended."

Further, Sutherland, supra, Section 4912, notes that if there is no reasonable enumeration attempted by the Legislature, or the terms used by the language are themselves broad, the doctrine of ejusdem generis is not applicable.

In **Higler v. People,** 44 Mich. 299, 6 N.W. 664 (1880), the Michigan Supreme Court noted that a statute making criminal certain forms of cheats and frauds or by means of "any false trust or writing or by any other false pretense," was in itself so general

and without classification as to render the doctrine of ejusdem generis inapplicable.

A similar result was reached in **Jones v. State,** 104 Ark. 261, 149 S.W. 56 (1912), where the court found that a statute relating to suspension from office of certain public officials involved terms so entirely unalike and antagonistic in meaning as to render the doctrine of ejusdem generis inapplicable. Further, Sutherland, supra, Section 4914, also notes:

> **"A final qualification on the doctrine is that the general words are not restricted in meaning to objects ejusdem generis if there is a clear manifestation of a contrary intent."**

This court has had occasion to recognize the above mentioned limitation on the doctrine of ejusdem generis in **Nephi Plaster and Manufacturing Company v. Juab County,** 33 Utah 114, 93 Pac. 53. In that case, an action was brought to recover a tax imposed upon gymsum obtained from a mine, where the applicable language imposed a tax on "all mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits***" Constitution of the State of Utah, Section 4, Article XIII, January 4, 1896. This court rejected the contention that the doctrine of ejusdem generis was applicable and stated:

> **"We think that it is reasonably clear, that the phrase 'or other valuable mineral deposits,' was not intended to contain minerals only ejusdem generis with the metals specially named, but that it was intended that**

all mineral deposits should be taxed in this way, and not only metalliferous minerals and coal.

In adopting this construction, we think we are sustained by the authorities. In speaking of the application of the doctrine of ejusdem generis, Sutherland on Statutory Construction, sec. 279, says:

> 'It (the doctrine) affords a mere suggestion to the judicial mind that, where it clearly appears that the lawmaker was thinking of a particular class of persons or subjects, his words of more general description may not have been intended to embrace any other than those within the class. The suggestion is one of common sense. Other rules of construction are equally potent, especially the primary rule which suggests that the intent of the Legislature is to be found in the ordinary meaning of the words of the statute. The sense in which general words, or any words, are intended to be used, furnishes the rule of interpretation, and this is to be collected from the context; and a narrower or more extended meaning will be given, according as the intention is thus indicated. To deny any word or phrase its known and natural meaning in any instance, the court ought to be quite sure that they are following the legislative intention. Hence, though a general term follows specific words, it will not be restricted by them when the object of the act and the intention is that the general word shall be understood in its ordinary sense.'

The foregoing test is well illustrated and supported by a great number of decisions, among which are the following well-considered cases: Woodworth v. State, 26 Ohio St. 196; Foster v. Blount, 18 Ala. 687; State vs. Solomon, 33 Ind. 450; Tisdell v. Comb, 7 A. & E. (English Common Law) 223, 788.

> 'The doctrine of ejusdem generis is but a rule of construction,' says the Supreme Court of Min-

> nesota, and is intended 'to aid in the ascertaining the meaning of the Legislature, and does not warrant a court in confining the operation of a statute within narrower limits than intended by the lawmakers. The general object of an act sometimes requires that the final general term shall not be restricted in meaning by its more specific predecessors.' (Willis v. Mabon, 48 Minn. 140, 50 N.W. 1110, 16 L.R.A. 281, 31 Am. St. Rep. 626.)
>
> The following cases are to the same effect: Webber v. Chicago, 148 Ill. 313, 36 N.E. 70; Lent v. Portland, 42 Ore. 488, 71 Pac. 645. The foregoing statement, it seems to us, is most pertinent with regard to the meaning to be given to the phrase 'or other valuable mineral deposits.' To restrict this phrase so as to include no more than metalliferous deposits would, in view of what we have said about the production of metals in this state, practically rob the phrase of any meaning whatever. It would simply eliminate from consideration all other nonmetallic valuable mineral deposits of this state, of which there are a great number. To do this, as we read the constitutional provision, was manifestly not the intention of the framers thereof, nor do we think that such was the intent that the people had of it when they adopted the Constitution."

In **Salt Lake City v. Doran,** 42 Utah 401, 131 Pac. 636 (1913), this court again was called upon to apply the doctrine of ejusdem generis. The court was construing Compiled Laws of Utah 1907, Section 4261, as amended Laws of Utah 1911, page 265, prohibiting certain gambling activities. A large number of games were mentioned as being illegal, followed by the phrase "or any game played with cards, dice, or any other device***." The court ruled that ejusdem generis was not applicable, stating:

> "In our judgment the legislature, in adding the phrase in italics, clearly intended to cover and include any and all other games played with cards, in whatever form the cards should be used, and also all other devices where the use thereof amounted to gambling as that term is popularly understood. We had occasion to discuss somewhat at length the application of the doctrine or maxim of ejusdem generis in the case of Plaster Mfg. Co. v. Juab County, 33 Utah 124, 126, 93 Pac. 57, 58. We there pointed out that the doctrine is but a rule of construction to aid courts in ascertaining the meaning and to prevent their transcending the intention of the legislature when using general terms following particular ones in the enactment of laws. It is there held, in effect, that, when the meaning or intention of the lawmaker is clear, the doctrine cannot be applied for the purpose of narrowing or limiting the meaning of a word or phrase so as to defeat the legislative intent. We cannot, nor is it now necessary, to add anything to what is said upon the subject in the case referred to. It must suffice to say that it is as clear in this case as it was in that that the doctrine has no application."

In the instant case, it is clear from the fact that there is no continuity of classification in the items set forth in the statute, and by the additional fact that the enumeration of items is, itself, general, that the Legislature did not intend the statute to be limited to any particular type of equipment, tool, or instrument. Any valuable thing which was the subject of a personal property lease or rental was intended to be encompassed by the statute. Indeed, a typewriter could well fit within the term "equipment," since, according to the testimony of the ap-

pellant, the typewriter was to be used in conjunction with his business.[1]

In **United States v. Alpers,** 338 U.S. 680 (1950), the Supreme Court of the United States was concerned with the question of whether phonograph records were included within a statute prohibiting the shipment in interstate commerce of any "obscene *** book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character." The United States Supreme Court reversed a decision of the Court of Appeals for the Ninth Circuit, applying the doctrine of ejusdem generis, (175 F.2d 137, 9th Cir. 1949):

> "When properly applied, the rule of ejusdem generis is a useful canon of construction. But it is to be resorted to not to obscure and defeat the intent and purpose of Congress, but to elucidate its words and effectuate its intent. It cannot be employed to render general words meaningless. Mason v. United States, 260 U.S. 545, 554, 43 S.Ct. 200, 202, 67 L.Ed. 396. What is or is not a proper case for application of the rule was discussed in Gooch v. United States, 297 U.S. 124, 56 S.Ct. 395, 396, 80 L.Ed. 522. In that case a bandit and a companion had kidnapped two police officers for the purpose of avoiding arrest and had transported them across a state line. The defendant was convicted of kiddnapping under a federal statute which made it an offense to transport across state lines any person who had been kidnapped 'and held for ransom or reward or otherwise.' The police officers had been held not for ransom or reward but for protection, and it was contended that the words 'or oth-

(1) This would be in accord with the definition of "equipment" under the Utah Uniform Commercial Code, Section 70A-7-109(2), Utah Code Annotated, 1953, Supplement.

> erwise' did not cover the defendant's conduct, since under the rule of ejusdem generis, the general phrase was limited in meaning to some kind of monetary reward. This Court rejected such limiting application of the rule, saying: 'The rule of ejusdem generis, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily, it limits general terms which follow specific ones to matters similar to those specified; but it may not be used to defeat the obvious purpose of legislation. And, while penal statutes are narrowly construed, this does not require rejection of that sense of the words which best harmonizes with the context and the end in view.' 297 U.S. at page 128, 56 S.Ct. at page 397.
>
> We think that to apply the rule of ejusdem generis to the present case would be 'to defeat the obvious purpose of legislation.' The obvious purpose of the legislation under consideration was to prevent the channels of interstate commerce from being used to disseminate any matter that, in its essential nature, communicate obscene, lewd, lascivious or filthy ideas. * * * It will be noted that Congress legislated with respect to a number of evils in addition to those proscribed by the portion of the statute under which respondent was charged. Statutes are construed in their entire context. This is a comprehensive statute, which should not be constricted by a mechanical rule of construction. * * *"

Nor is there any merit to the appellant's contention that the maxim of strict construction of penal statutes is involved. First, the statute is rather clear on its face that willfully failing to return rented property within ten days is criminal misconduct. Further, the statute is adequate to show a legislative intention to cover all facets of leased and rented property. Finally, the doctrine of limited construction of penal

statutes has no applicability to Utah law in general.

Section 68-3-2, Utah Code Annotated, 1953, provides:

> **"* * * The statutes establish the laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. * * *"**

This court has previously indicated that the rule of strict construction of penal statutes is not applicable in Utah, and the same rules of statutory construction applicable in civil cases are generally applied in criminal cases. **State v. Ledkins,** 303 P.2d 1099, 5 U.2d 422 (1956).

The legislative policy in enacting the statute presently before the court was clearly to abate a serious problem of bailees converting leased or rented property. The actions of the appellant clearly fall within the ambit of the statute, and the argument that a typewriter is not encompassed within the subjects of the statute is without merit.

CONCLUSION

The facts of the instant case amply demonstrate the appellant's guilt. There is no basis upon which this court could state that the evidence of the appellant's guilt was not proved at the time of trial beyond a reasonable doubt. The appellant's contention that the doctrine of ejusdem generis is somehow applicable to exclude the embezzled type-

writer from the statute has no basis in a proper construction of the statute.

There is no legitimate basis warranting reversal of the appellant's conviction, and this court should affirm.

Respectfully submitted,

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