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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH,
Plaintiff-Respondent,

vs.

RONDO H. EASTMOND,
Defendant-Appellant.

Case No. 12789

BRIEF OF RESPONDENT

THIS IS AN APPEAL FROM A DEC[illegible] THE THIRD JUVENILE COURT, IN AND [illegible] UTAH COUNTY, STATE OF UTAH, THE [illegible] ABLE JUDGE PAUL C. KELLER, PRESIDIN[illegible]

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2, 3
ARGUMENT	4
POINT I. THE POLICE HAD AMPLE PROBABLE CAUSE TO STOP THE VEHICLE IN WHICH APPELLANT WAS RIDING AND THE OBSERVATION OF ITEMS IN PLAIN VIEW DID NOT CONSTITUTE A SEARCH	4
POINT II. THE SEARCH OF THE VEHICLE AT THE STATION FOR INVENTORY PURPOSES WAS PROPER	8
POINT III. THE APPELLANT WAS IN JOINT POSSESSION OF RECENTLY STOLEN PROPERTY AND NO SATISFACTORY EXPLANATION WAS GIVEN BY APPELLANT FOR HIS POSSESSION	11
CONCLUSION	14

Cases Cited

Carroll v. United States, 267 U. S. 137 (1925)	5, 6
Chambers v. Maroney, 399 U. S. 42 (1970)	6, 9
Coolidge v. New Hampshire, ... U. S. ......, 91 S. Ct. 2022 (1971)	7, 8
Harris v. United States, 390 U. S. 234 (1968)	8, 9
Preston v. United States, 376 U. S. 364 (1964)	10
State v. Allred, 16 Utah 2d 41, 395 P. 2d 535 (1964)	7

TABLE OF CONTENTS—Continued

Page

State v. Brooks, 101 Utah 584, 126 P. 2d 1044 (1942) .. 11

State v. Criscola, 21 Utah 2d 272, 444 P. 2d 519 (1968) 6, 8, 9

State v. Dyett, 114 Utah 379, 199 P. 2d 155 (1948) .. 11, 12

State v. Kirkman, 20 Utah 2d 44, 432 P. 2d 638 (1967) 13

State v. Manger, 7 Utah 2d 1, 315 P. 2d 976 (1957) 13

State v. Richards, ... Utah ......, 489 P. 2d 442 (1971) 9, 10

State v. Thomas, 121 Utah 639, 244 P. 2d 653 (1952) .. 12

United States v. Lee, 274 U. S. 559 (1927) 7

STATUTES CITED

Utah Code Ann. § 77-13-3 (Supp. 1971) 4, 5

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH, *Plaintiff-Respondent,* vs. RONDO H. EASTMOND, *Defendant-Appellant.*		Case No. 12789

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a decree entered on December 10, 1971, committing appellant to the Utah State Industrial School as provided by law.

DISPOSITION IN LOWER COURT

Appellant, a minor, was tried in the Third Juvenile District Court, in and for Utah County, State of Utah, the Honorable Judge Paul C. Keller, presiding. Appellant was found guilty of burglary and a decree was entered committing appellant to the Utah State Industrial School.

RELIEF SOUGHT ON APPEAL

Respondent prays that the decree entered by the Third District Juvenile Court be affirmed.

STATEMENT OF FACTS

In the early morning hours of November 2, 1971, at approximately 3:00 a.m., Richard Murdock, a police officer for Payson City, Utah, on duty at that time, observed the lights of a car flash on and the car pull away from the Nebo Medical Clinic in Payson. The officer followed and stopped the car after 4 or 5 blocks and found it to be a 1964 blue and white Ford. The officer requested identification from each of the three occupants and found that Rondo Eastmond was the person seated in the center front of the stopped car, and that all three occupants were from Orem, Utah. The officer accepted the explanation of the occupants as to why they were in Payson and allowed them to proceed. He then continued his patrol duties and proceeded to make security checks of commercial buildings in the area. Within a few minutes he discovered a broken window and an unlocked door at the Nebo Medical Clinic. Officer Murdock then radioed a request to have the 1964 Ford car stopped and caused notice to be given to Dr. Mangelson whose office had been broken into at the Nebo Clinic.

Officer Larry Withers of the Provo City Police Department stopped the 1964 Ford as it left the freeway at Provo. The occupants were ordered out of the car and frisked. A few moments later, Officer Murdock arrived

having given pursuit from Payson. The driver of the vehicle, an adult, was advised that he was under arrest. Officer Murdock then looked into the 1964 Ford and saw one flashlight on the seat and another on the floorboard of the driver's side. He opened the door on the passenger side and observed a small black leather bag protruding from under the car seat and containing a medical instrument. Also found in plain view was a brown plastic bottle with the letters "alcohol" printed thereon of a type ordinarily used in doctors' offices. One of the flashlights and the black bag were positively identified by Dr. Mangelson as belonging to him and removed from his office the night of November 1 or early morning hours of November 2, prior to his notification of the break-in.

Appellant and the other juvenile occupant were taken into custody by Officer Murdock and returned to the Payson City Police Office where they were advised of their constitutional rights and advised they were being held for burglary of the Nebo Medical Clinic.

In a later inventory of the vehicle that afternoon, the officer found $24.00 in bills secreted under the dashboard in the same denominations (four $5.00 bills and four $1.00 bills) as the $24.00 missing from Dr. Mangelson's office. A hypodermic syringe was also found in the vehicle (R. 10-11).

ARGUMENT

POINT I.

THE POLICE HAD AMPLE PROBABLE CAUSE TO STOP THE VEHICLE IN WHICH APPELLANT WAS RIDING AND THE OBSERVATION OF ITEMS IN PLAIN VIEW DID NOT CONSTITUTE A SEARCH.

Initially, Officer Murdock stopped the car in which appellant was riding after he saw the car leave the Nebo Medical Clinic in Payson, Utah, at approximately 3:00 a.m. on November 2, 1971. After a routine check, the car with appellant in it proceeded on its way. Officer Murdock then proceeded to the area around the Nebo Medical Clinic to make a security check. He found a broken window and an unlocked door in one of the doctor's offices. A request to stop the car in which appellant was riding was issued by Officer Murdock.

This request was based upon the officer's personal knowledge that it was late at night, that a possible burglary had occurred and the appellant was seen in a car that had been at the Nebo Clinic just a few minutes prior. The officer's actions were proper and in accordance with Utah Code Ann. § 77-13-3 (Supp. 1971) which provides:

> "*A peace officer may make* an arrest in obedience to a warrant delivered to him; or may, *without a warrant, arrest a person*:
>
> (1) For a public offense committed in his presence.

(2) When the person arrested has committed a felony, although not in his presence.

(3) *When he has reasonable cause* for believing the person to have committed a public offense, although not in his presence, and there is reasonable cause *for believing that such person before a warrant can be obtained and served may*:

(a) *Flee the jurisdiction or conceal himself to avoid arrest*, or

(b) *Destroy or conceal evidence of the commission of the offense*, or

(c) Injure another person or damage property belonging to another person.

(4) *When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.*

(5) On a charge, made upon reasonable cause, of the commission of a felony by the person arrested.

(6) *At night, when there is reasonable cause to believe that he has committed a felony.*" (Emphasis added.)

The Supreme Court of the United States in *Carroll* v. *United States*, 267 U. S. 137 (1925), was confronted with the issue of the search and seizure of an automobile. The Court stated that the search of an automobile on probable cause proceeds on a theory wholly different from that justifying a search incident to an arrest:

"The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the

> seizing officer has for belief that the contents of the automobile offend against the law." 267 U. S. at 159.

Reasonable cause or probable cause was defined by the Court as follows:

> If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient." 267 U. S. at 161.

The principle was reiterated in *Chambers* v. *Maroney*, 399 U. S. 42 (1970).

This Court in *State* v. *Criscola*, 21 Utah 2d 272, 444 P. 2d 519 (1968), adjudicated a case involving the search of a car driven by the defendant the day after the robbery. This Court stated:

> "The question to be answered is whether under the circumstances the search or seizure is one which fair-minded persons, knowing the facts, and giving due consideration to the rights and interests of the public, as well as to those of the suspect, would judge to be an unreasonable or oppressive intrusion against the latter's rights."

In applying the above standards of *Carroll*, *Chambers*, and *Criscola* to the facts known to Officer Murdock, there can be no doubt that he had probable cause to believe the car and its occupants may have been involved in a burglary at the Nebo Medical Clinic.

Officer Murdock radioed a request to have the car with appellant and the other occupants in it stopped. Officer Withers of the Provo, Utah, Police Department

stopped the car as it left the freeway at Provo. The occupants were ordered out of the car and frisked. Officer Murdock arrived and looked into the car and observed a flashlight on the front seat and another flashlight on the floorboard of the driver's side. He then opened the door and observed a doctor's bag protruding from under the car seat. An alcohol bottle of the type used by doctors was also partially visible.

Appellant does not claim this evidence to be false, but alleges it was an unreasonable search. This Court in *State* v. *Allred,* 16 Utah 2d 41, 395 P. 2d 535 (1964), held in a case where a police officer viewed items of the type taken in a burglary on the front seat of defendant's car that it was not a search. The Court stated:

> "No search was necessary for the officer to find these articles, they being fully disclosed to his view when he approached the car. Under such circumstances, where no search is required the constitutional guaranty is not applicable."

The United States Supreme Court has also held that the observation of something in plain view is not a search. *United States* v. *Lee,* 274 U. S. 559 (1927). Applying the doctrine of *Lee* and *Allred* to the case at bar, there can be no doubt that Officer Murdock's actions did not constitute a search. Therefore, there is no justification to appellant's argument that there was an invalid search incident to appellant's arrest. Appellant cites *Coolidge* v. *New Hampshire,* ...... U. S. ......, 91 S. Ct. 2022 (1971), as precedent for his position. The facts of the present

case ore clearly distinguishable. In *Coolidge*, the appellant was arrested in his home; his car was in his driveway. Later, the car was towed to the police station where a search warrant was obtained. The search was illegal because the search warrant was not issued by a neutral and detached magistrate. The Court stated that the plain view doctrine was not applicable to the facts of *Coolidge* nor was the plain view doctrine in conflict with the Court's decision.

POINT II.

THE SEARCH OF THE VEHICLE AT THE STATION HOUSE FOR INVENTORY PURPOSES WAS PROPER.

Appellant alleges that the search of the car at the police station was unreasonable. This allegation is meritless.

The United States Supreme Court in *Harris* v. *United States*, 390 U. S. 234 (1968), decided the case where petitioner's automobile had been seen leaving the site of a robbery. The police later impounded the car and searched it for inventory purposes. The Court held this procedure was valid. In *State* v. *Criscola, supra,* the police impounded the defendant's automobile and this Court in that case stated:

> "When the officers thus became responsible for the car and its contents, it was in conformity with ordinary prudence and customary practice, for the protection of the car owner as well as the

> police, for the officers to take an inventory of its contents. This of course necessarily involves discovery of what the contents were. To suggest that under those circumstances where the police had thus come into the possession of personal property which they had reason to believe was connected with a felony, they would have to go and obtain a warrant to conduct a 'search' and 'find' that which they already had lawful possession of, seems completely discordant with reason. Accordingly, there is no reason apparent to us why the trial court should have rejected the evidence in question as having been obtained by an 'unreasonable' search. It is our opinion that the officers were not only acting within their rights, but would have been remiss in their duty if they had not done what they did in taking the evidence and making use of it together with other evidence in building the case against the defendant." 444 P. 2d at 519-20.

Under the *Criscola* and *Harris* rulings, the search for inventory practices at the police station was clearly valid.

In addition, the Supreme Court of the United States in *Chambers* v. *Maroney, supra,* held that where police officers had probable cause to stop a vehicle, a search of the car later at the station house was not improper. *Coolidge, supra,* noted that the doctrine announced in *Chambers* was valid in such cases. Therefore, according to either theory, the police acted properly in its actions.

Appellant cites the case of *State* v. *Richards,* ...... Utah ......, 489 P. 2d 442 (1971), as being contradictory to the holdings of *Harris* and *Chambers.*

This Court in *State* v. *Richards* held:

> ". . . that the warrantless seizure of defendant's truck parked across the street from his home, at the time of his arrest in his home was unreasonable. Officers' justification for the seizure was the belief that it was involved in another crime; however, the record was devoid of facts or circumstances to support the belief and therefore was unreasonable and did not support a finding of probable cause.
>
> "This court . . . distinguished that case from *Chambers, supra,* on the facts and the issue of probable cause but did note that a vehicle as in *Chambers* could be searched on the spot or at the station house because the probable cause factor and the mobility of the car still existed." 489 P. 2d at 424.

Appellant also cites *Preston* v. *United States,* 376 U. S. 364 (1964), as being applicable to the case at bar. In *Preston,* the arrest was for vagrancy. It was apparent that the officers had no cause to believe that evidence of an unrelated crime was concealed in the defendant's automobile. The facts of the case at bar distinguish it from *Preston* on the basis that there was probable cause to stop the car; no search was initially involved and a burglary had just occurred in which appellant was suspect.

Appellant's contentions are meritless and the police actions were in accordance with applicable statutory and case law.

POINT III.

THE APPELLANT WAS IN JOINT POSSESSION OF RECENTLY STOLEN PROPERTY AND NO SATISFACTORY EXPLANATION WAS GIVEN BY APPELLANT FOR HIS POSSESSION.

This Court in the case of *State* v. *Brooks*, 101 Utah 584, 126 P. 2d 1044 (1942), adjudicated a case where property was found in appellant's truck shortly after a theft. This Court stated:

> "If property is in one's technical possession, implied possession by being found on one's person or property, but such person is unaware that the article is on his person or property, he does not have a possession as is covered by the statute. The question of his knowledge, of his consciousness of possession, where denied, is for the jury to determine from all the facts and circumstances. . . ." 126 P. 2d at 1046.

The Court further stated that in addition to possession, "[t]here must be one more element, failure of defendant to make a satisfactory explanation of that possession." *Id.*

These elements were clarified even further in *State* v. *Dyett*, 114 Utah 379, 199 P. 2d 155 (1948), wherein the defendants were charged with the theft of a 1947 Dodge. The question this Court had to decide was whether the defendants were in possession of the car. The Court found the defendants jointly guilty of larceny and stated:

> "Many convictions of the crime of larceny have been affirmed in this Court when there has not been any evidence connecting the defendant with the theft apart from his possession of the stolen goods. The legislature has said that such possession, if not reasonably explained is sufficient to support such a conviction. Inasmuch as the State in this case offers no testimony directly connecting the defendants with a felonious taking or asportation the only basis upon which the conviction may be upheld is upon the theory that defendants were in possession of recently stolen property and failed to make a satisfactory explanation." 199 P. 2d at 156-7.

In 1952, this Court in *State* v. *Thomas*, 121 Utah 639, 244 P. 2d 653 (1952), considered the case wherein the defendant was charged with burglary and failed to satisfactorily explain his possession of recently stolen items. This Court found the defendant guilty and stated:

> "Concerning the crime of burglary, we have no statute such as Section 103-36-1, U. C. A. 1943 which makes possession of recently stolen property, coupled with an unsatisfactory explanation thereof, prima facie evidence of guilt of larceny. However, where the larceny must have been committed in connection with a burglary the logic is the same in regard to burglary. In the case of Gransbury v. State, 64 Okl. Cr. 408, 81 P. 2d 874, 876, the court said:
>
> > 'Burglary is one degree removed from larceny; but when the facts in evidence warrant the finding of the larceny, and the surrounding circumstances are such as to show that the larceny could not have been committed with-

> out the burglarious entry, the evidence is sufficient to warrant the finding of the burglary also.'" (Citations omitted.) 244 P. 2d at 654.

The Court further added:

> "According to the foregoing authorities, in order for the defendant's possession of recently stolen property to be sufficient to support a conviction of burglary, such possession must be recent, that is, not too remote in point of time from the crime, personal, exclusive, (*although it may be joint if definite*) distinct, conscious, and such possession must be coupled with a lack of a satisfactory explanation or other incriminating circumstances or conduct as hereinabove mentioned. And if these conditions are met a case sufficient to sustain a conviction is made out." (Emphasis added.) 244 P. 2d at 655.

The above rulings have been reiterated in at least two other burglary cases before the Utah Supreme Court. See *State* v. *Manger*, 7 Utah 2d 1, 315 P. 2d 976 (1957); *State* v. *Kirkman*, 20 Utah 2d 44, 432 P. 2d 638 (1967).

Appellant, Rondo Eastmond, was in joint possession of property that was stolen the same night of his apprehension. His explanation regarding such property and of his presence near the scene of the burglary was unsatisfactory, and when considered in the light of all of the circumstances established by the evidence clearly provides a sufficient connection between the possession of the stolen property and the burglary and justified the conclusion by the Court, as the finder of fact, that Rondo Eastmond did participate in the burglary (R. 10-11).

CONCLUSION

Officer Murdock clearly had reasonable cause to believe that the occupants of the 1964 Ford vehicle had committed the burglary and to seize articles in plain view in the vehicle at the time he placed the adult, David Groneman, under arrest and took the respondent and another juvenile into custody. The incriminating articles found in this manner were admissible in evidence and such admission did not violate appellant Eastmond's constitutional rights.

Appellant Eastmond at no time alleges in his brief that he did not commit the crime. He was in joint possession of recently stolen property and he failed to make a satisfactory explanation of that possession.

Therefore, his allegations are erroneous and the lower court's decree should be affirmed.

Respectfully submitted,

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