

1973

**Thomas Glenn Conners & James Edwards Martin v. John W.
Turner, Warden, Utah State Prison : Brief of Appellants**

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In The Supreme Court of the State of Utah

THOMAS GLENN CONNERS &
JAMES ~~EDWARD~~ MARTIN, *Edwards*
Plaintiffs-Appellants,
-vs-

Case Nos
12866 &
12894

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,
Defendant-Respondent.

Appeal from a denial of a petition for writ of habeas corpus in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Joseph G. Jeppson, presiding.

BRIEF OF APPELLANTS

D. GILBERT ATHAY
Salt Lake Legal Defense
Association

348 South Sixth East
Salt Lake City, Utah

Attorney for Appellants

VERNON B. ROMNEY
Attorney General, State of Utah

286 State Capitol Building
Salt Lake City, Utah

Attorney for Respondent

FILED
JAN 22 1973

Utah Supreme Court

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BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

The appellants, James Edward Martin and Thomas Glenn Connors, appeal from a denial of a petition for a writ of habeas corpus in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The appellants, James Edward Martin and Thomas Glenn Connors, pleaded guilty to charges of Grand Larceny on May 7, 1971, and were thereafter committed to the Utah State Prison for the term prescribed by law. Thereafter on December 10, 1971, appellants petitioned for a writ of habeas corpus in the

Third Judicial District Court, Salt Lake County, State of Utah. The petition was denied on March 28, 1972, after a hearing.

RELIEF SOUGHT ON APPEAL

Appellants seek a reversal of the order of the lower court denying the writ of habeas corpus and an order discharging appellants from the custody of the respondent.

STATEMENT OF FACTS

Appellants, James Edward Martin and Thomas Glenn Connors, came to Salt Lake City in an automobile that was registered and licensed in the State of Texas. While appellants were applying for a license and title change at the Department of Motor Vehicles, it was discovered that the automobile was listed as stolen in the State of Texas. The car was stolen from a Texas resident.

On March 4, 1971, John R. McKnight filed a complaint charging appellants with the crime of Grand Larceny. A warrant of arrest was issued and appellants were arrested on March 4, 1971. Appellants were bound over to the District Court from the City Court of Salt Lake City on April 21, 1971. The informations charging appellants with Grand Larceny were filed on May 5, 1971 (Information numbers 23285 and 23302). Appellants pleaded guilty to the crime of Grand Larceny in case numbers 23285 and 23302 in the Third Judicial

District Court of the State of Utah. The Honorable Bryant H. Croft was presiding. The plea of guilty was accepted and on March 4, 1971, appellants were committed to the Utah State Prison for the term prescribed by law.

On March 28, 1972, appellants petitioned for a writ of habeas corpus in the Third Judicial District Court, Salt Lake County, State of Utah. The petition was denied March 28, 1972 after a hearing. It is from the denial of the petition for a writ of habeas corpus that brings appellants before this court.

ARGUMENT

POINT I

THE LOWER COURT ERRED IN DENYING APPELLANTS' PETITION FOR WRIT OF HABEAS CORPUS IN THAT THE UTAH COURTS LACKED JURISDICTION OF THE SUBSTANTIVE OFFENSE TO WHICH APPELLANTS ENTERED PLEAS OF GUILTY.

Appellants were charged by an information with the crime of Grand Larceny in violation of Utah Code Annotated, Section 76-38-4 (1953). The facts of the case before the court as stipulated to by the Attorney General's Office were that the larceny of the automobile in question was committed in the State of Texas. (R. 42) Thus, the question becomes: does a Utah court

have jurisdiction to take a plea to the charge of Grand Larceny where the subject of the larceny is stolen in Texas and merely transported to the State of Utah.

The issue presented here has been considered by various courts throughout the county and, as is often the case, decisions have been rendered on both sides of the issue: that is, that prosecution will lie under the circumstances as presented here and that prosecution will not be under the circumstances presented here. See, 156 A.L.R. 862.

Appellants contend that the better reasoned approach is that prosecution will not lie in that the contrary view results in the enforcement of the laws of another state in the State of Utah. Any public wrong that was committed in the instant case occurred without the State of Utah and solely within the confines of the State of Texas. To permit the courts of Utah to prosecute for a theft in Texas results in the giving of extraterritorial operation of the laws of the State of Utah. The extreme to which such extraterritorial effect might be carried is best illustrated by the following hypothetical: if a man were to steal a calf (worth less than \$50.00) in a state where value is required to prove grand larceny and brings the calf to Utah, he could be convicted of Grand Larceny without proof of value. Utah Code Annotated § 76-38-4 (1953). Thus, Utah courts could punish for a felony when the state wherein the offense actually occurred could punish only for a misdemeanor.

Appellants contend that the criminal laws were enacted to redress the public wrongs committed against the citizenry of the State and that the State can only define, prosecute, and pardon by the Sovereign Authority vested in it and such authority extends throughout the State yet not beyond its confines.

In the instant case a prosecution for the acts of the appellants could have been initiated in the State of Texas to right a wrong committed against the people of that sovereign state. In this instance Utah would, of course, be obligated to extradite.

The State contends that Utah Code Annotated, Section 76-38-13, (1953), permits and requires the sustaining of the decision of the lower court. It should be noted however, that appellants were not charged with that particular section of the Code but were charged erroneously with the Grand Larceny provision, § 76-38-4.

Appellants submit that Utah Code Annotated, Section 76-38-13 (1953) might well confer jurisdiction on the Utah courts to hear matters such as are now before the court assuming, arguendo, that such statutory provisions were constitutional. But the plain fact of the matter is that an error was made in charging appellants under the wrong statute in that Section 76-38-13 when used to prosecute for actions, such as are before the court, sets forth the substantive elements of the crime;

that is, that property is stolen in another state and brought into the State of Utah. A writ of Habeas Corpus should be granted to rectify such error and permit the state to refile properly if it so desires.

POINT II

ASSUMING ARGUENDO THAT UTAH CODE ANNOTATED, SECTION 76-38-13 (1953), ALTHOUGH NOT PLEAD IN THE INFORMATION, CONFERRED JURISDICTION ON THE COURT TO ACCEPT A PLEA HEREIN SUCH STATUTE IS UNCONSTITUTIONAL IN THAT IT DENIES THE RIGHT TO COMPULSORY PROCESS OF WITNESSES.

Constitution of United States, Amendment Six and Constitution of Utah, Article I, Section 12 guarantee to all accused of crimes the right to compulsory process to compel the attendance of witnesses. Section 76-38-13 seems to permit the trial of an accused for a theft actually perpetrated in another jurisdiction, a jurisdiction wherein the compulsory process of Utah would not be recognized. Thus, a defendant standing trial in Utah for Grand Larceny by virtue of Section 76-38-13 would be deprived of his right to compel witnesses in the jurisdiction where the acts of the alleged larceny occurred to appear and testify. See 156, A.L.R. 886.

POINT III

THE LOWER COURT ERRED IN DENYING APPELLANTS' PETITION FOR WRIT OF HABEAS CORPUS IN THAT THE APPLICATION OF THE UTAH LAW DEFINING THE SUBSTANTIVE CRIME OF GRAND LARCENY CONSTITUTED A DENIAL OF DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

While the principles of conflict of laws are most commonly related to Civil Proceedings rather than criminal, the existence of a statute such as Utah Code Annotated, Section 76-38-13 (1953), renders such principles applicable to the criminal law.

The American Law Institute in *Restatement, Second, Conflict of Laws, Section 9* (P.O.D.I., 1967) provides

A court may not apply the local law of its own state to determine a particular issue unless application of this law would be reasonable in the light of the relationship of the state to the issue and to the person, thing, or occurrence involved.

The particular issue in the present case was whether appellants stole an automobile from a resident of the State of Texas. Utah's relationship to this issue can

only be based on a theoretical legal fiction characterizing larceny as a continuous offense. Utah has no relationship or interest in protecting the residents of the State of Texas.

In the case of *Home Insurance Company v. Dick*, 281 U.S. 397, 50 S.Ct. 338 (1930), the court ruled that the application of Texas law, to a transaction centered outside of the State of Texas, violated due process because the contacts Texas has with the transaction were not sufficient to make it *reasonable* for Texas to enforce the policies underlying the Texas law. The only contact with the State of Texas that Dick could illustrate was his Texas residency. The court that that Dick's residency was without significance.

In the present case the facts illustrate that Utah's *only* contact with the Texas larceny case was that appellants were arrested here. Appellants submit that this contract is no more significant to allow Utah to enforce the policy underlying its larceny statute than was plaintiff's residence in *Home Insurance Company v. Dick, supra*.

CONCLUSION

For the reasons above stated appellants move that the decision of the District Court be reversed and the

case remanded with orders that a Writ of Habeas Corpus be granted.

Respectfully submitted,

D. GILBERT ATHAY

Attorney for Appellants