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MISSOURI SECTION

COMMENTS

CRIMINAL LAW—LARCENY—ASPORTATION BY INNOCENT PURCHASER

State v. Patton, 271 S.W.2d 560 (Mo. 1954)

Defendant sold to an innocent purchaser for value a number of concrete blocks belonging to a third party. In the absence of defendant the purchaser removed the blocks from the actual owner's premises and trucked them to his own farm. The Missouri Supreme Court, affirming the trial court's conviction of defendant for larceny, held that the movement of the blocks by the purchaser was an asportation by the defendant.¹

The requirement that there must be asportation before the crime of larceny is committed existed at common law² and is now generally included in statutory definitions of larceny.³ The requirement is easily satisfied in the usual factual situation in which a defendant himself manually carries away property. The courts, however, have not interpreted the requirement so rigidly that it encompasses only this simple situation, but have affirmed convictions where the facts show much less than a manual carrying away of goods. For example, the use of artificial devices to transport property has been held sufficient to satisfy the requirement of asportation even though the defendant did not personally participate in the act of carrying the goods.⁴ Also, if an innocent agent of the defendant carries away the goods, an asportation by the defendant has been accomplished.⁵

The principal case involves circumstances somewhat different from the innocent agent cases in that the party who actually removed the property was acting for himself and not for the defendant. A majority of courts which have been confronted with this situation have held the defendant guilty of larceny.⁶ A few courts, however, have

1. *State v. Patton*, 271 S.W.2d 560 (Mo. 1954).

2. MILLER, CRIMINAL LAW § 109 (1934). See 2 WHARTON, CRIMINAL LAW § 1097 (12th ed., Ruppenthal, 1932).

3. *E.g.*, MO. REV. STAT. § 560.155 (1949) provides that:

Every person who shall be convicted of feloniously stealing, taking and carrying away any money, goods, rights in action, or other personal property, or valuable thing whatsoever of the value of thirty dollars or more . . . shall be deemed guilty of grand larceny. . . .

See 32 AM. JUR., LARCENY § 2 (1941).

4. *State v. Wellman*, 34 Minn. 221, 25 N.W. 395 (1885) (larceny of gas by means of pipe); *People v. Menagas*, 367 Ill. 330, 11 N.E.2d 403 (1937) (larceny of electricity by means of wire).

5. See CLARK AND MARSHALL, CRIMES §§ 162, 326 (5th ed., Kearney, 1952).

6. *Crutcher v. State*, 156 Ark. 399, 246 S.W. 496 (1923) (overruling reasoning to the contrary in *Ridgel v. State*, 110 Ark. 606, 162 S.W. 773 (1914)); *Smith v. State*, 11 Ga. App. 197, 74 S.E. 1093 (1912); *State v. Hunt*, 45 Iowa 673 (1877);

distinguished between the asportation performed by an innocent purchaser and that done by an innocent agent and have held the defendant seller not guilty when asportation has been accomplished by the former.⁷

Generally, every crime which is *malum in se* includes both an overt act and an unlawful intent by the defendant.⁸ The question raised by the principal case is whether the act of an innocent purchaser can be attributed to the defendant inasmuch as the purchaser was acting for himself. It would seem that whether an actor intends to serve himself or another is unimportant; the main factor is that a physical removal of the property actuated by the felonious intent of the defendant has been accomplished. Since the original purpose of the asportation requirement probably was to insure that the owner suffered a loss of possession⁹ and since this is clearly accomplished in the case where the removal is performed by an innocent purchaser, it would seem sufficient for conviction to prove that the defendant had a felonious intent which directly caused the carrying away of property.

At least two states have legislatively eliminated the problem by removing the asportation requirement in the statutory definition of larceny.¹⁰ Legislative action should not be necessary to accomplish the result reached in the principal case, however, since a broad interpretation by the courts of the term "asportation" appears consonant with the basic purpose behind the requirement.¹¹ It is submitted, therefore, that the Missouri Supreme Court reached the correct decision in the principal case by following the majority view and that opinions to the contrary are in error.

Cummins v. Commonwealth, 5 Ky. L. Rep. 200 (1883); Sanditen v. State, 22 Okla. Crim. Rep. 14, 208 Pac. 1040 (1921). Florida makes the defendant's presence at the time of the taking necessary. Compare Scott v. State, 138 Fla. 568, 189 So. 661 (1939), with Long v. State, 44 Fla. 134, 32 So. 870 (1902).

7. State v. Laborde, 202 La. 59, 11 So.2d 404 (1942); People v. Gillis, 6 Utah 84, 21 Pac. 404 (1889). In the Gillis case, however, it is questionable whether there was a taking at all, since the defendant sold the property, an animal, to a pound-keeper who already had custody of the property.

8. See MILLER, CRIMINAL LAW § 21 (1934).

9. See RAPALJE, LARCENY AND KINDRED OFFENSES § 26 (1892); 2 WHARTON, CRIMINAL LAW § 1163 (12th ed., Ruppenthal, 1932).

10. LA. REV. STAT. ANN. § 14:67 (West 1951); TEX. PEN. CODE ANN. art. 1410 (1953).

11. See text preceding note 9 *supra*.