Volume 59 | Issue 4 Article 16

June 1957

Statutes--Interpretation--Term "Stolen" as Used in the National Motor Vehicle Theft Act

T. E. P.
West Virginia University College of Law

which acquires other property subject to the restrictions, and then violates these restrictions. It leaves open the question as it relates to a public service corporation with the right of eminent domain. The reasoning of the court, seemingly based on public policy considerations, is not convincing. But since the court had not previously determined definitely whether a property interest was created by restrictive covenants, it can not be said that the decision is erroneous.

R. M.

STATUTES—INTERPRETATION—TERM "STOLEN" AS USED IN THE NATIONAL MOTOR VEHICLE THEFT ACT.—The appellee was informed for violation of the National Motor Vehicle Theft Act, making it a criminal offense for one to transport in interstate or foreign commerce a motor vehicle, knowing it to have been "stolen". 41 STAT. 324 (1919), 18 U.S.C. § 2312 (1946). The information charged the appellee with unlawful interstate transportation of an automobile, lawfully acquired in South Carolina, but converted (embezzled) before transportation. Does the term "stolen" as used in this federal act include not only common law larceny, but also embezzlement? *Held,* the word "stolen," as used in the National Motor Vehicle Theft Act, is not limited to a taking which amounts to common law larceny, but includes embezzlement and other felonious takings with the intent to deprive the owner of the rights and benefits of ownership. Reversed and remanded. (6-3 decision). *United States v. Turley,* 77 Sup. Ct. 397 (1957).

At the outset the Court was confronted with a distinct conflict of authority among the federal circuits on this question. The Fifth, Eighth, and Tenth Circuits favored the narrow construction which limited the term "stolen" to mean only common law larceny. *Murphy* v. *United States,* 206 F.2d 571 (5th Cir. 1953); *Ackerson v. United States,* 185 F.2d 485 (8th Cir. 1950); *Hite v. United States,* 168 F.2d 973 (10th Cir. 1948). But the Fourth, Sixth, and Ninth Circuits favored the broad construction which includes embezzlement and other felonious takings. *Boone v. United States,* 235 F.2d 939 (4th Cir. 1956); *Smith v. United States,* 233 F.2d 744 (9th Cir. 1956); *Bruce v. United States,* 218 F.2d 819 (6th Cir. 1954.)

As the *Hite* and *Ackerson* cases pointed out, if this statute is to be administered with any degree of practicability, it is desirable that

the word "stolen" should have a uniform meaning throughout the country and not depend upon the law of the state where the automobile was taken from the owner. In accord with this proposition it has been held that, in the absence of a plain indication to the contrary, the meaning of a federal statute should not depend upon state law. *Jerome v. United States,* 318 U.S. 101, 104 (1943); *United States v. Handley,* 142 F.2d 351, 354 (2d Cir. 1944). The Supreme Court recognized, in the instant case, that where a federal statute uses a common law term of established meaning without otherwise defining it, the general practice is to give that term its common law meaning. *United States v. Carll,* 105 U.S. 611 (1881); *United States v. Smith,* 18 U.S. (5 Wheat.) 153 (1820); *United States v. Brandenburg,* 144 F.2d 656 (3d Cir. 1944). But what is the true common law definition of this term "stolen"?

Upon consulting the lexicographers we are once again confronted with a difference of opinion. Ballantine states that "steal" means to commit larceny. BALLANTINE, LAW DICTIONARY AND PRONUNCIATIONS (1930). On the other hand Bouvier finds the term "stealing" to import nearly the same as larceny; but in common parlance it does not always mean a felony. BOUVIER, LAW DICTIONARY (Balwin ed. 1948). Black writes that the term is commonly used in indictments for larceny and denotes the commission of theft. BLACK, LAW DICTIONARY (4th ed. 1951). As the Court noted, Webster, in defining "theft" says that "stealing" and "theft" are broader terms than "larceny" and include embezzlement. WEBSTER, NEW INTERNATIONAL DICTIONARY (2d ed. 1953).

The state courts have also had some difficulty defining this term. The Oklahoma court when faced with the problem, found that an examination of the authorities showed that "larceny" and "stealing" were synonymous terms at common law. *Hughes v. Territory,* 8 Okla. 28, 56 Pac. 708 (1899). Other states had held the word "steal" in a criminal statute ordinarily imports the common law offense of larceny. *State v. Frost,* 289 S.W. 895, 897 (Mo. 1926); *State v. Uhler,* 32 N.D. 483, 156 N.W. 220, 226 (1916); *Gardner v. State,* 55 N.J.L. 17, 26 Atl. 30, 33 (1892). On the other hand Massachusetts found that "steal" may denote the criminal taking of personal property either by larceny, embezzlement, or false pretenses. *Commonwealth v. Farmer,* 218 Mass. 507, 106 N.E. 150 (1914). West Virginia has given the term two meanings. In its narrow and technical sense the term denotes a felonious taking synonymous with the term "larceny." However, in its popular

and broader meaning, the word "steal" or "stolen" signifies a wrongful or unlawful taking. *State v. Blake,* 95 W. Va. 467, 121 S.E. 488, 489 (1924). Other jurisdictions have also recognized that in popular usage "stealing" may include the unlawful appropriation of things which are not technically the subject of larceny. *Buxton v. International Indemnity Co.,* 47 Calif. App. 583, 191 Pac. 84, 86 (1920); *Barnhart v. State,* 154 Ind. 177, 56 N.E. 212 (1900).

In an early federal decision the court found no use of the word "steal" in defining larceny by any of the common law authorities, and held it not a technical word, in the strict sense of that term, but a common word applied to almost any unlawful taking without regard to exactness of use or accurate technical terminology. *United States v. Stone,* 8 Fed. 232, 247 (W.D. Tenn. 1881). In a more recent decision it was held that the term "stealing" had no common law definition to restrict its meaning as an offense and is commonly used to denote any dishonest transaction whereby one person obtains that which belongs to another. *Crabb v. Zerbst,* 99 F.2d 562 (5th Cir. 1936). The Court, in the instant case, accepts the view that "stolen" or "stealing" has no common law meaning. However, it is submitted that, since faced with this wide difference of opinion of the authorities, the most logical view to adopt is that set forth by the West Virginia court recognizing two definitions, one being technical and restricted to larceny and the other nontechnical including embezzlement and other fraudulent takings. *State v. Blake, supra.* Under this nontechnical meaning the same result would be reached as in the principal case.

The effect of the holding in the instant case is to give a federal penal statute a liberal interpretation, thus engaging in what has been termed as judicial legislation. HALL, PRINCIPLES OF CRIMINAL LAW 32 (1947). It is a universally accepted proposition at common law that criminal statutes are to be construed strictly. However, as pointed out by the Court, this rule does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature. *United States v. Brambett,* 348 U.S. 503 (1955); *United States v. Sullivan,* 332 U.S. 689 (1948). Under this doctrine, if it were reasonably apparent that Congress intended to include offenses other than larceny within this federal act, the Court was justified in its decision. But, if this intent of Congress were not readily apparent then, as Mr. Justice Frankfurter pointed out in the dissent, if Congress desired

to include these other offenses, it should express itself with less ambiguity.

From an examination of the Committee Report concerning this statute, it can be seen that the purpose of the proposed law was to provide severe punishment for those guilty of stealing automobiles in interstate or foreign commerce. H.R. 312, 66th Cong., 1st Sess. (1919). Nothing was said concerning embezzlement or false pretenses although larceny was specifically mentioned. The language does not indicate that Congress intended to include anything other than larceny within the act. Therefore, although it can logically be argued that this statute is directed at automobile theft whether such theft be by larceny, embezzlement, or other felonious takings, it is submitted that such a liberal interpretation, under the circumstances, is a dangerous step away from the lenity toward the defendant which should guide the construction of criminal statutes. The better approach to the problem appears to be that taken by Mr. Justice Holmes in a decision excluding airplanes from the meaning of the term "motor vehicles," as used in this same statute. There he stated, "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *McBoyle v. United States,* 283 U.S. 25 (1931).

T. E. P.