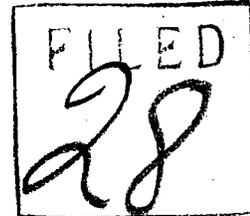


STEALING:  
CRIMINAL LAW:  
BAILMENT:  
TRUST RECEIPTS:  
PROPERTY:

The possessor of property pursuant to a trust receipt executed by him can be prosecuted for stealing under Section 560.156 MRS 1959, if he converts said property in violation of the owner's title, possessory rights, or terms of the trust receipt.

March 22, 1961



Honorable Charles B. Faulkner  
Prosecuting Attorney  
County of Lawrence  
Mount Vernon, Missouri

Dear Mr. Faulkner:

This is in reply to your letter of February 23, 1961, wherein you request an opinion as follows:

"Would you please state your opinion whether under a general trust agreement wherein the possessor of the goods and chattel delivers the trust receipt to the seller of the chattels, with the possessor of the chattels and goods agreeing to hold as trustees, and further agreeing to keep said chattel separate, to hold and exhibit for sale and to sell with the consent of the trustor, and to deliver proceeds either on demand or immediately after sale, and to deliver the chattels or goods immediately on demand, would come within the purview of Sec. 560.156 RSMo 1949, our Stealing Statute?

"After research, it is my opinion that since stealing refers to exercise and dominion over property in a manner inconsistent with the rights of the owner, and since Missouri regards a trust receipt as a bailment for sale or consignment, the chattel entrusted under such an agreement would be owned by the trustor, and the proceeds being owned by the same.

"Undoubtedly this agreement where breached either by the sale of the chattel without the consent of the trustor, or the disposal of the proceeds for the personal interests of the trustee without the consent of the trustor, would have come within

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the previous section 560.250 RSMo 1949 or 560.260 RSMo 1949, and hence it would be the Legislature's intent to now include these statutes in 560.156 RSMo 1949.

"At the present I have two agreements which have been breached, having similar provisions as outlined above. Possibly you have no further information than I. However, I will appreciate any comment on my opinion or any aid or information which you can render."

The initial question to be answered is the relationship of the parties to each other in such a transaction.

In Commercial Credit Co. v. Interstate Securities Co., 197 S.W. 2d 1000, plaintiff, a credit company, filed a replevin action against defendant for return of certain automobiles. Plaintiff had purchased the automobiles from the manufacturer, delivered them to dealer to sell, and received trust receipts from said dealer for the automobiles.

In finding for plaintiff, the court spelled out the relationship of the parties as follows, 1.c. 1004:

"The decisions are not entirely in harmony as to the nature of trust receipts of the character involved in this proceeding, or their proper interpretation, whether they constitute conditional sales contracts, or, are, in their nature, chattel mortgages, or contracts of agency creating bailments. The holding in this state is that they are contracts creating bailments for sale and not in their nature chattel mortgages."

It is an elementary rule of law that in a bailment, title does not pass to the bailee, but remains in the bailor. As stated in 8 C.J.S., Bailments, §20:

"After the creation of a bailment the bailor retains the general title to, ownership of, or property in, the subject matter of the bailment. Indeed there can be no transfer of ownership in a contract of bailment, since, if there is a transfer of ownership, it becomes a sale."

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See also Martin v. The Ashland Mill Co., 49 Mo. App. 23, l.c. 28, wherein the court stated:

"If a bailment, the title to the wheat did not pass to the defendant because a contract of bailment contemplates the return of the goods bailed or growing out of the necessities of commerce, as, where grain is delivered in store, other grain of like quality and grade may be returned in its stead. Nor does the mere fact that it was mixed with a mass of like quality with the knowledge of the bailor convert that into a sale which was originally a bailment."

In order for a bailee to be liable to the bailor, there must be a conversion of the bailed property by the bailee. As stated in State v. Wilcox, 179 S.W. 479, loc. cit. 481:

"\*\*\*conversion is any dealing with the property of another which excludes the owner's dominion."

This "conversion" may be committed in two ways, which are set forth in 6 American Jurisprudence, Bailments, Section 150, page 276:

- "(1) by acts in derogation of the bailor's title; and
- (2) by acts in derogation of the bailor's possessory rights\*\*\*More specifically, conversion of property by a bailee may be committed by using or dealing with the property in a way unauthorized by the terms of the bailment and in defiance of derogation of the owner's title, by an attempted sale or transfer of the property, by delivering it to someone other than the bailor or owner in violation of the terms of the bailment and in derogation of the bailor's rights to the possession, or by failing or refusing to redeliver to the bailor at the expiration or completion of the bailment."

Pursuant to Section 560.260, MRS 1949, such an individual would have been guilty of the crime of embezzlement by bailee.

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However, this section was repealed in 1955, and replaced by Section 560.156, MSRA 1959. "Stealing". (Laws 1955, p. 107).

The scope and effect of Section 560.156 was determined by the Supreme Court in State v. Zammar, 305 S.W. 2d 441, loc. cit. 445:

"The real purpose of the statute was to eliminate technical distinctions between the offenses of larceny, embezzlement and obtaining money under false pretenses\*\*\*\*\*".

See also State v. Woolrey, 324 S.W. 2d. 753.

Under Section 560.156, MRS 1959, "Stealing" is defined as follows:

"'Steal', to appropriate by exercising dominion over property in a manner inconsistent with the rights of the owner, either by taking, obtaining, using, transferring, concealing or retaining possession of his property."

It thus follows that a bailee who converts the property of his bailor is guilty of the crime of stealing within the definition as set forth in MRS 1959, Section 560.156.

Thus, a possessor of property, who has given a trust receipt for same, and who converts said property in derogation of the owner's title, possessory rights, or contrary to the terms of said trust receipt, can be prosecuted for the crime of Stealing under Section 560.156, MRS 1959.

#### CONCLUSION

The possessor of property pursuant to a trust receipt executed by him can be prosecuted for stealing under Section 560.156, MRS 1959, if he converts said property in violation of the owner's title, possessory rights, or terms of the trust receipt.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

GWD:vm