

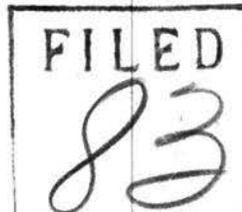
CRIMINAL
COSTS:

Acquittal or dismissal of a case charging larceny of an automobile, tires or parts of an automobile of the value of more than thirty dollars charges the costs to the county and not the state.

June 3, 1940

6-6

Hon. Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of June 1, 1940, which reads as follows:

"We have on file for payment from Howell County, a cost bill in the case of State vs. Valentine. The defendant in this case was charged with stealing two 750 x 20 truck tires, two innertubes and rims, personal property value of \$75.00. The defendant was tried by a jury and acquitted. A cost bill has also been presented from Dunklin County in the case of State vs. Garland. This defendant was charged with stealing one automobile tire, tube and wheel, and one radiator ornament of the value of \$33.00, and the charge against him was dismissed. We call your attention to Sections 4064 and 4065 R. S. Mo. 1929, relating to grand larceny and to Section 7786 R. S. Mo. 1929, relating to larceny of an automobile or automobile equipment.

"We desire your official opinion whether the costs in these cases are payable by the state or county."

Section 4064 R. S. Missouri, 1929, reads as follows:

"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, or any horse, mare, gelding, colt, filly, ass, mule sheep, goat, hog or neat cattle, belonging to another, shall be deemed guilty of grand larceny; and dogs shall for all purposes of this chapter be considered personal property."

Section 4065 R. S. Missouri, 1929, reads as follows:

"Persons convicted of grand larceny shall be punished in the following cases as follows: First, for stealing an automobile or other motor vehicle, by imprisonment in the penitentiary not exceeding ten years; second, for stealing a horse, mare, gelding, colt, filly, mule or ass, by imprisonment in the penitentiary not exceeding seven years; third, in all other cases of grand larceny, by like imprisonment in the penitentiary not exceeding five years."

It will be noticed in the above section that it is specifically stated that the stealing of an automobile or other motor vehicle is subject to imprisonment in the penitentiary for a period not exceeding ten years. It therefore implies that the minimum shall be two years in the penitentiary and not a fine or county jail sentence.

Section 7786, par. (a) R. S. Missouri, 1929, reads as follows:

"Any person who shall be convicted of feloniously stealing, taking or carrying away any motor vehicle, or any part, tire or equipment of a motor vehicle of a value of \$30.00 or more, or any person who shall be convicted of attempting to feloniously steal, take or carry away any such motor vehicle, part, tire or equipment, shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for a term not exceeding twenty-five years or by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars (\$1,000) or by both such fine and imprisonment."

Under this paragraph it will be noticed that the penalty set out is a fine and a maximum of twenty-five years in the penitentiary. It will also be noticed that this penalty is included not only for the stealing, taking or carrying away of a motor vehicle, but also for the stealing, taking or carrying away of any part, tire or equipment of a motor vehicle of the value of thirty dollars or more.

The two penalties have been construed in the case of State v. Mangiaracina, 125 S. W. (2d) 58, par. 1-4, where the court said:

"However, appellants are insisting that in the circumstances here involved they may not be charged in the same count with the larceny of the automobile and the larceny of the fur coats, although both were consummated by the same act. Sec. 7786 is a later enactment than Secs. 4064 and 4065; and said Sec. 7786 deals with the subject matter of the larceny and attempted larceny of automobiles,

whereas Secs. 4064 and 4065 deal with the common subject matter of grand larceny. We adopt a quotation from State v. Harris, 337 Mo. 1052, 1058, 87 S. W. 2d 1026, 1029(6), citing additional authority, as applicable to the general effect of Sec. 7786 upon said Secs. 4064 and 4065: "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one * * *." Our General Assembly in the enactment of Sec. 7786 expressly provided that 'all laws or parts of laws contrary to, inconsistent or in conflict with any of the provisions of this act are hereby repealed * * *.' Laws 1st Ex. Sess. 1921, p. 106, Sec. 31. Thus a clear legislative intent to take the larceny or attempted larceny of the automobile here involved out from under the general provisions of Secs. 4064 and 4065 and to treat such larceny as an offense separate and apart from the offense denounced and punishable under the comprehensive terms of Secs. 4064 and 4065 is

manifested. It follows that the instant information, charging in one count the larceny of the automobile and the larceny of the fur coats, charges offenses denounced by separate provisions of our statutes, calling for separate and distinct punishments, with Sec. 7786 permitting of a lighter punishment than that prescribed by Sec. 4065."

In this case the court has held that the larceny of an automobile should be punishable under the later section, which is 7786, supra, and not under the general section which is section 4065, supra. The holding in this case referred to the stealing, taking and carrying away of an automobile but under the same section 7786, supra, it describes "or any part, tire or equipment of a motor vehicle" of the value of thirty dollars or more. The same holding would be held in the above case if it had been automobile parts of the value of thirty dollars or more.

Under Section 3828 R. S. Missouri, 1929, where the punishment of a crime is solely in the penitentiary, and not in the county jail or a fine, upon an acquittal the state must pay the costs and not the county, and if the defendant is acquitted the costs must be paid by the state. But in all other cases, where the punishment may be in the county jail, or by a fine, upon an acquittal the county must pay the costs. This section reads as follows:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all

other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

Under Section 3826 R. S. Missouri, 1929, where a defendant is convicted and sentenced to the penitentiary in capital cases and in cases which are punishable solely by imprisonment in the penitentiary, or where the defendant is sentenced to imprisonment in the county jail, workhouse, or reform school, because such person is under the age of eighteen years, the state shall pay the costs. This section reads as follows:

"In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary, and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except costs incurred on behalf of defendant. And in all cases of felony, when the jury are not permitted to separate, it shall be the duty of the sheriff in charge of the jury, unless otherwise ordered by the court, to supply them with board and lodging during the time they are required by the court to be kept together, for which a reasonable compensation may be allowed, not to exceed

two dollars per day for each juryman and the officer in charge; and the same shall be taxed as other costs in the case, and the state shall pay such costs, unless in the event of conviction, the same can be made out of the defendant."

Under Section 3827 R. S. Missouri, 1929, the county must pay the costs and not the state, where the defendant is sentenced to imprisonment in the county jail or to pay a fine or both. This section reads as follows:

"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant.

In all of the above sections, 3828, 3826 and 3827, R. S. Missouri, 1929, neither the county nor the state are compelled to pay the costs where the defendant can pay the costs.

CONCLUSION.

In view of the above authorities, it is the opinion of this department that where a defendant is charged with stealing two truck tires, two innertubes and rims of the value of Seventy-five (\$75.00) Dollars, and was acquitted by a jury the county would be liable for the costs and not the state, for the reason that the punishment that could be given is not solely imprisonment in the penitentiary. It is also further

Hon. Forrest Smith

-8-

June 3, 1940

the opinion of this department that where a defendant was charged with stealing one automobile tire, tube and a wheel and one radiator ornament of the value of Thirty-three (\$33.00) Dollars, and the charge against him was dismissed, the county should pay the costs and not the state.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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