1-6-1995

Title 76: Criminal Code Chapter 06 Offenses Against Property - 1995 Replacement Volume

Utah Code Annotated

that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

History: C. 1953, 76-5a-4, enacted by L. 1983, ch. 87, § 1; 1985, ch. 226, § 4.

CHAPTER 6
OFFENSES AGAINST PROPERTY

Part 1
Property Destruction

Part 2
Burglary and Criminal Trespass

Part 3
Robbery

Part 4
Theft

Part 5
Fraud

PART 1

PROPERTY DESTRUCTION

76-6-101. Definitions.

For purposes of this chapter:

(1) "Property" means any form of real property or tangible personal property which is capable of being damaged or destroyed and includes a habitable structure.

(2) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

(3) "Property" is that of another, if anyone other than the actor has a possessory or proprietary interest in any portion thereof.

(4) "Value" means:

(a) The market value of the property, if totally destroyed, at the time and place of the offense, or where cost of replacement exceeds the market value; or

(b) Where the market value cannot be ascertained, the cost of repairing or replacing the property within a reasonable time following the offense.

(c) If the property damaged has a value that cannot be ascertained by the criteria set forth in Subsections (a) and (b) above, the property shall be deemed to have a value not to exceed $50.

History: C. 1953, 76-6-101, enacted by L. 1973, ch. 196, § 76-6-101; 1974, ch. 32, § 14.

Cross-References. — Bus Passenger Safety Act, bombing buses or terminals, § 76-10-1505.

NOTES TO DECISIONS

Market value.

Subsection (4)(a), which defines "value" as "the market value of the property, if totally destroyed," will be construed narrowly within its stated meaning, and where property is merely stolen, then recovered, it will be valued as at common law. State v. Logan, 563 P.2d 811 (Utah 1977).

Market value is applicable only to property that has been totally destroyed. State v. Erickson, 568 P.2d 750 (Utah 1977).

COLLATERAL REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d Arson and Related Offenses § 1.

C.J.S. — 6A C.J.S. Arson § 3.

A.L.R. — Pyromania and the criminal law, 51 A.L.R.4th 1243.

76-6-102. Arson.

(1) A person is guilty of arson if under circumstances not amounting to aggravated arson, he by means of fire or explosives unlawfully and intentionally damages:

(a) any property with intention of defrauding an insurer; or

(b) the property of another.

(2) A violation of Subsection (1)(a) is a second degree felony.

(3) A violation of Subsection (1)(b) is:

(a) a second degree felony if the damage caused exceeds $5,000 value;

(b) a third degree felony if the damage caused exceeds $1,000 but is not more than $5,000 value;

(c) a class A misdemeanor if the damage caused exceeds $250 but is not more than $1,000 value; and

(d) a class B misdemeanor if the damage caused is $250 or less.

History: C. 1953, 76-6-102, enacted by L. 1973, ch. 196, § 76-6-102; 1986, ch. 59, § 1; 1989, ch. 5, § 1.

NOTES TO DECISIONS

ANALYSIS

Elements of offense.

This section requires as an element of arson that a person intentionally damage property. State v. Breckenridge, 688 P.2d 440 (Utah 1984).

Evidence.

—Sufficient.

Evidence regarding how and when a fire was started, evidence that a fire was set in exactly the manner that the defendant had threatened in the event that he was fired, and the finding of the defendant's handprint on an overturned drum of a flammable chemical was sufficient to convict the defendant of burglary and arson. State v. Showaker, 721 P.2d 892 (Utah 1986).

Flames unnecessary.

Even though no flames developed, charring of acoustical tile in jail was sufficient burning to make the crime arson. State v. Nielson, 25 Utah 2d 11, 474 P.2d 725 (1970).

Lesser included offense.

Arson is not a lesser included offense of placing an infernal machine. State v. Vickers, 549 P.2d 449 (Utah 1976).

Restitution to insurance company.

The court did not exceed its authority in ordering the defendant, convicted of intentionally, willfully, and maliciously committing arson upon his house, to reimburse insurance companies for their loss in compensating the bank which acquired the house through foreclosure. State v. Stayer, 706 P.2d 611 (Utah 1985).

Cited in United States v. Bedonie, 913 F.2d 782 (10th Cir. 1990).

COLLATERAL REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d Arson and Related Offenses § 5.

C.J.S. — 6A C.J.S. Arson § 4.

Key Numbers. — Arson ⚷ 1.

76-6-103. Aggravated arson.

(1) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages:

(a) a habitable structure; or

(b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

(2) Aggravated arson is a felony of the first degree.

History: C. 1953, 76-6-103, enacted by L. 1973, ch. 196, § 76-6-103; 1986, ch. 59, § 2.

Cross-References. — Destruction of school property, § 76-8-715.

NOTES TO DECISIONS

ANALYSIS

Elements of offense.

Intent to defraud an insurer is not an element of aggravated arson. State v. Bergwerff, 777 P.2d 510 (Utah Ct. App. 1989).

Erroneous inclusion of intent to defraud an insurer in the information as comprising an element of aggravated arson was harmless error, when a correct instruction on the subject was later given to the jury immediately before their deliberations, to which no objection was taken. State v. Bergwerff, 777 P.2d 510 (Utah Ct. App. 1989).

Evidence.

—Sufficient.

Circumstantial evidence sufficient to sustain conviction. See State v. Nickles, 728 P.2d 123 (Utah 1986).

Liability of property owner or his agent.

Where owner of house hired defendant to

burn it, owner could be convicted of aggravated arson for burning his own house in absence of evidence of accident or lawful purpose, and therefore it was no defense for defendant that he was acting under the direction of the owner. State v. Durant, 674 P.2d 638 (Utah 1983).

COLLATERAL REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d Arson and Related Offenses § 3.

C.J.S. — 6A C.J.S. Arson § 19.

76-6-104. Reckless burning.

(1) A person is guilty of reckless burning if he:

(a) recklessly starts a fire or causes an explosion which endangers human life; or

(b) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm; or

(c) damages the property of another by reckless use of fire or causing an explosion.

(2) A violation of Subsections (a) and (b) is a class A misdemeanor. A violation of Subsection (c) is a class A misdemeanor if damage to property exceeds $1,000 value; a class B misdemeanor if the damage to property exceeds $500 value; and a class C misdemeanor if the damage to property exceeds $50 value. Any other violation under Subsection (c) shall constitute an infraction.

History: C. 1953, 76-6-104, enacted by L. 1973, ch. 196, § 76-6-104.

Cross-References. — Fires set during closed fire season without securing permit as misdemeanors, § 65A-8-9.

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Fires § 6.

C.J.S. — 36A C.J.S. Fires § 1.

Key Numbers. — Fires ⇐ 3.

76-6-105. Causing a catastrophe.

(1) Any person who by explosion, fire, flood, avalanche, collapse of a building, release of poison gas, radioactive material, or other harmful or destructive force or substance, or by any other means, causes a widespread injury or damage to persons or property is guilty of causing a catastrophe.

(2) Causing a catastrophe is a felony of the second degree if the person causes it knowingly and a class A misdemeanor if caused recklessly.

History: C. 1953, 76-6-105, enacted by L. 1973, ch. 196, § 76-6-105.

COLLATERAL REFERENCES

Key Numbers. — Criminal Law ⇐ 13.

76-6-106. Criminal mischief.

(1) A person commits criminal mischief if:

(a) under circumstances not amounting to arson, he damages or destroys property with the intention of defrauding an insurer;

(b) he intentionally and unlawfully tampers with the property of another and thereby:

(i) recklessly endangers human life; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any public utility service;

(c) he intentionally damages, defaces, or destroys the property of another, including the use of graffiti as defined in Subsection 78-11-20(2); or

(d) he recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car or caboose, whether moving or standing.

(2) (a) A violation of Subsection (1)(a) is a felony of the third degree.

(b) A violation of Subsection (1)(b) is a class A misdemeanor.

(c) Any other violation of this section is a:

(i) felony of the third degree if the actor's conduct causes or is intended to cause pecuniary loss in excess of $1,000 value;

(ii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of $500;

(iii) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of $250; and

(iv) class C misdemeanor if the actor's conduct causes or is intended to cause loss of less than $250.

History: C. 1953, 76-6-106, enacted by L. 1973, ch. 196, § 76-6-106; 1992, ch. 14, § 1.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, added "including the use of graffiti as defined in Subsection 78-11-20(2); or" to the end of Subsection (1)(c); made stylistic changes in Subsections (2)(a) and (2)(b); and added the numerical designations and made related changes in Subsection (2)(c).

Cross-References. — Aircraft, tampering with, § 2-1-30.

Airports and equipment, tampering with forbidden, § 2-1-31.

Damaging or destroying mining notices, § 40-1-11.

Livestock Brand and Anti-theft Act, Title 4, Chapter 24.

Monuments of official surveys, damaging or removing, § 76-8-415.

Theft, § 76-6-404.

NOTES TO DECISIONS

ANALYSIS

Felony charge.
Intent.
Cited.

Felony charge.

Defendant's smashing of windshields, in rapid succession, of sixteen separately owned automobiles that were parked at the same parking lot was not a single act, but separate acts with each being a violation of this section, and state could not, for purpose of charging defendant with a felony under this section, aggregate the damages suffered by the individual property owners from the separate acts of vandalism to satisfy the minimum valuation required to constitute a felony. State v. Barker, 624 P.2d 694 (Utah 1981).

Intent.

Where defendant was caught in act of peeling safe in closed supermarket, offense was burglary; court could not reasonably have given instructions on offense of unlawful entry with intent to damage, injure or annoy, and jury could not reasonably have found defendant guilty thereof, because his intent must have

been something other than damaging property, or injuring or annoying a person. State v. Dodge, 18 Utah 2d 63, 415 P.2d 212 (1966), cert. denied, 385 U.S. 1013, 87 S. Ct. 726, 17 L. Ed. 2d 550 (1967).

Cited in State v. Cook, 714 P.2d 296 (Utah 1986).

COLLATERAL REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d Malicious Mischief § 1.

C.J.S. — 54 C.J.S. Malicious or Criminal Mischief or Damage to Property § 3.

A.L.R. — Liability for desecration of graves and tombstones, 77 A.L.R.4th 108.

Key Numbers. — Malicious Mischief ⚷ 1.

PART 2

BURGLARY AND CRIMINAL TRESPASS

76-6-201. Definitions.

For the purposes of this part:

(1) "Building," in addition to its ordinary meaning, means any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodation of persons or for carrying on business therein and includes:

(a) each separately secured or occupied portion of the structure or vehicle; and

(b) each structure appurtenant to or connected with the structure or vehicle.

(2) "Dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

(3) A person "enters or remains unlawfully" in or upon premises when the premises or any portion thereof at the time of the entry or remaining are not open to the public and when the actor is not otherwise licensed or privileged to enter or remain on the premises or such portion thereof.

(4) "Enter" means:

(a) intrusion of any part of the body; or

(b) intrusion of any physical object under control of the actor.

History: C. 1953, 76-6-201, enacted by L. 1973, ch. 196, § 76-6-201.

Cross-References. — Civil provisions, entry and detainer, § 78-36-1 et seq.

NOTES TO DECISIONS

Dwelling.

The second-degree burglary statute (§ 76-6-202(2)) is intended to protect people while in places where they are likely to be living and sleeping overnight, as opposed to protecting property in buildings such as stores, business offices, or garages; a cabin in the mountains which is occupied less than fifty percent of the time is a dwelling within the definition in Subsection (2). State v. Cox, 826 P.2d 656 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Burglary § 1.

C.J.S. — 12A C.J.S. Burglary § 2.

A.L.R. — Maintainability of burglary charge, where entry into building is made with consent, 58 A.L.R.4th 335.

What is "building" or "house" within burglary

or breaking and entering statute, 68 A.L.R.4th 425.

Minor's entry into home of parent as sufficient to sustain burglary charge, 17 A.L.R.5th 111.

Use of fraud or trick as "constructive breaking" for purpose of burglary or breaking and entering offense, 17 A.L.R.5th 125.

Key Numbers. — Burglary ⚷ 1.

76-6-202. Burglary.

(1) A person is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit a felony or theft or commit an assault on any person.

(2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

History: C. 1953, 76-6-202, enacted by L. 1973, ch. 196, § 76-6-202.

Cross-References. — Agreement to commit burglary, conspiracy, § 76-4-201.

NOTES TO DECISIONS

ANALYSIS

Attempted burglary.

In prosecution for assault with deadly weapon and attempted burglary, defendants could not have been prejudiced by court's failure to instruct on consummation of crime of attempted burglary where ample evidence was introduced from which jury could find that burglary was attempted. State v. Rowley, 15 Utah 2d 4, 386 P.2d 126 (1963).

Burglar's tools.

In prosecution for burglary in third degree, where marks and abrasions found on door of burglarized house might have been made with tools found in room occupied by defendant, tools were properly admissible in evidence, even though it was not shown that tools admitted were adapted to commission of burglary. State v. Crawford, 59 Utah 39, 201 P. 1030 (1921).

Consent to entry.

Where defendant obtained motel owner's consent to his entry into premises by displaying false identification and then stole television set, consent gained by trick and with necessary intent to steal did not preclude commission of crime of burglary. State v. Pierce, 14 Utah 2d 177, 380 P.2d 725 (1963).

Conviction affirmed.

Even though prosecutor improperly questioned defendant concerning prior convictions that he had already denied, defendant's conviction was nonetheless affirmed because there was no reasonable likelihood that the outcome of the trial would have been any different in the absence of the prosecutor's misconduct. State v. Peterson, 722 P.2d 768 (Utah 1986).

Dwelling.

Subsection (2) is intended to protect people while in places where they are likely to be living and sleeping overnight, as opposed to protecting property in buildings such as stores, business offices, or garages; a cabin in the mountains which is occupied less than fifty percent of the time is a dwelling within the definition in § 76-6-201(2). State v. Cox, 826 P.2d 656 (Utah Ct. App. 1992).

Elements of offense.

Intent to commit larceny was element of crime of burglary, and this intent could be inferred where it was impossible to account for defendant's presence in a closed store except to commit larceny. People v. Morton, 4 Utah 407, 11 P. 512 (1886).

In prosecution for second degree burglary, intent with which defendant entered structure

was crux of case; instruction, as requested, should have been made that if defendant at time of entering believed he had right to property he intended to take, he would not be guilty. State v. Evans, 74 Utah 389, 279 P. 950 (1929).

Crime of third degree burglary was perpetrated by defendant's entering garage with intent to steal. Rogerson v. Harris, 111 Utah 330, 178 P.2d 397 (1947).

Person may be convicted of burglary of a nondwelling if he enters or remains unlawfully in a building, not a dwelling, and does so with the intent to commit a theft. State v. Sisneros, 631 P.2d 856 (Utah 1981).

Enhanced sentence.

—Federal law.

Congress did not intend implicitly to include attempted burglary as a violent offense when it specified burglary as a violent felony under 18 U.S.C. § 924(e)(2)(B)(ii), providing for enhanced sentences in certain circumstances. United States v. Strahl, 958 F.2d 980 (10th Cir. 1992).

A conviction under § 76-4-101 (attempt) and this section for attempted burglary is not a conviction for an offense which "otherwise involves conduct that presents a serious potential risk of physical injury to another" under 18 U.S.C. § 924(e)(2)(B)(ii), providing for enhanced sentences, since attempted burglary convictions, under Utah law, may include conduct well outside the federal statute's target of "violent" felonies. United States v. Strahl, 958 F.2d 980 (10th Cir. 1992).

Evidence.

—Insufficient.

In prosecution for burglary in third degree, finding of stolen articles in room occupied by defendant and another was insufficient to connect defendant with crime. State v. Crawford, 59 Utah 39, 201 P. 1030 (1921).

In prosecution for burglary in third degree, fact that defendant had attempted to escape from officers at time he was charged with crime of robbery was not indicative of guilt of burglary for which accused was subsequently tried. State v. Crawford, 59 Utah 39, 201 P. 1030 (1921).

—Sufficient.

Possession of recently stolen tools, coupled with circumstances inconsistent with innocence, such as hiding or concealing them, or of making false, improbable or unsatisfactory explanation of possession, could be sufficient to connect possessor with offense of third degree burglary and justify his conviction; such possession must have been recent, not too remote in point of time from crime, personal, and exclusive although it could be joint if definite, distinct, and conscious. State v. Thomas, 121 Utah 639, 244 P.2d 653 (1921).

Defendant was properly convicted of second degree burglary where, shortly after it was discovered that an attempt had been made to break into safe in building, he was apprehended in building with materials usable in burglary and had been seen running out of room where safe was located. State v. Burch, 17 Utah 2d 418, 413 P.2d 805 (1966).

Fingerprint evidence, based on a comparison of defendant's fingerprints with those found at the scene of the crime, along with the testimony of defendant's accomplice, was sufficient evidence to find defendant guilty of burglary and theft. State v. Bailey, 712 P.2d 281 (Utah 1985).

Evidence regarding how and when a fire was started, evidence that a fire was set in exactly the manner that the defendant had threatened in the event that he was fired, and the finding of the defendant's handprint on an overturned drum of a flammable chemical was sufficient to convict the defendant of burglary and arson. State v. Showaker, 721 P.2d 892 (Utah 1986).

Evidence was sufficient to support defendant's conviction, where a neighbor positively identified him fleeing from the victim's house and noted the license plate number of defendant's car. State v. Pacheco, 778 P.2d 26 (Utah Ct. App. 1989).

Instructions.

—Elements of offense.

If instructions did not properly reflect accused's theory, judgment of conviction was to be reversed; if defendant at time of entering believed he had right to property he intended to take, he would not be guilty. State v. Evans, 74 Utah 389, 396, 279 P. 950 (1929).

In prosecution for second degree burglary, even though court's instruction and answers to questions on effect of intoxication were long and repetitious and went further than statutory requirement they were not prejudicial; court's statement "If he is so stupidly drunk that he doesn't know anything, you just as well bring in a verdict of not guilty" did not require such drunkenness for finding of not guilty, but this verdict had to follow finding of such condition. State v. Hartley, 16 Utah 2d 123, 396 P.2d 749 (1964).

—Lesser included offense.

It was not error for the court, at trial of defendant on a charge of attempted burglary, to refuse to instruct the jury on the offense of possession of an instrument for burglary or theft, as defined by § 76-6-205, since that offense was not necessarily embraced within the crime of burglary. State v. Sunter, 550 P.2d 184 (Utah 1976).

Defendant was not entitled to an instruction on theft at his trial for burglary where there

was no evidence to provide a rational basis for acquitting him of burglary and convicting him of theft. State v. Pitts, 728 P.2d 113 (Utah 1986).

—Presumptions.

The language of Subsection 76-6-402(1), relating to the presumption arising from possession of recently stolen property, should not be used in any form to instruct juries in theft and burglary cases. State v. Turner, 736 P.2d 1043 (Utah 1987).

Intent.

Intent to steal may be inferred from circumstances even though nothing is actually taken. State v. Tellay, 7 Utah 2d 308, 324 P.2d 490 (1958); State v. Hopkins, 11 Utah 2d 363, 359 P.2d 486 (1961); State v. Clements, 26 Utah 2d 298, 488 P.2d 1044 (1971).

When one breaks and enters a building in the nighttime, without consent, an inference may be drawn that he did so to commit larceny; fact that nothing is missing when the suspect is apprehended does not destroy the inference of intent to steal at the time of entry. State v. Sisneros, 631 P.2d 856 (Utah 1981).

A defendant's intent to commit theft can be inferred from evidence that he broke a window to gain entry into a locked building, even though nothing was missing when he was apprehended. State v. Wilson, 701 P.2d 1058 (Utah 1985).

In a prosecution for aggravated burglary, evidence that the defendant was found with his head, hands, and arms intruding through a window into an apartment, with an open pocket knife in his hand, together with his admission that his intent was to find a place to sleep or to get warm and that he intended to take a blanket if he found one, was sufficient to support the conclusion that he had the requisite intent to commit theft. State v. Isaacson, 704 P.2d 555 (Utah 1985).

In a prosecution for aggravated burglary of an apartment, burglary of a laundry room, and theft, the jury was at liberty to infer from the fact that the defendant had entered the laundry room to commit a theft, that such may have been his intent when he later entered the apartment. State v. Porter, 705 P.2d 1174 (Utah 1985).

While the mere unlawful entry into private premises may not alone support a finding of intent, defendant's unexplained possession of another's property, his subsequent statements and conduct, and other unrebutted evidence of the surrounding circumstances supported the reasonable inference that defendant entered or remained in a convenience store office with the specific intent to commit theft. State v. Pitts, 728 P.2d 113 (Utah 1986).

Evidence supported inference of intent to commit burglary, where apartment door was locked when tenants left but open when they returned, and defendant was found inside, standing near a bedroom door. State v. Johnson, 771 P.2d 1071 (1989).

Intoxication.

Since second degree burglary involved intent to commit larceny, if on account of voluntary intoxication accused did not have necessary intent, jury should have taken into consideration evidence of intoxication in determining existence of such intent. State v. Hartley, 16 Utah 2d 123, 396 P.2d 749 (1964).

Larceny and burglary.

One who entered garage with intent to steal, and stole automobile worth sufficient amount to make crime grand larceny, was properly convicted of both third degree burglary and grand larceny; since larceny was accomplished merely by taking personal property with intent to steal, the same facts did not constitute burglary and larceny. Rogerson v. Harris, 111 Utah 330, 178 P.2d 397 (1947).

Where facts in criminal prosecution showed breaking and entering and larceny, and entering and larceny were independent, each offense required different acts, and defendant was properly convicted of both burglary and larceny. State v. Jones, 13 Utah 2d 35, 368 P.2d 262 (1962).

Separate offenses.

Defendant committed two separate burglaries when he broke into two separately secured parts (a laundry room and an apartment) of an apartment building and stole money from both places. State v. Porter, 705 P.2d 1174 (Utah 1985).

Structures subject to burglary.

Rabbit pens permanently constructed on defendant's home premises were within kind of structures that could be burglarized under statute that included "outhouse, or other building" in structures subject to burglary. State v. Terrell, 55 Utah 314, 186 P. 108, 25 A.L.R. 497 (1919).

Theft distinguished.

While there is some overlap in the offenses of burglary and theft, as each requires the intent of depriving another of property, burglary does not involve unauthorized control over that property. Therefore, burglary may be committed without having committed theft. Since a conviction for burglary does not exclude a conviction for theft, a person can constitutionally be convicted of both offenses. Duran v. Cook, 788 P.2d 1038 (Utah Ct. App. 1990).

Cited in State v. Pacheco, 712 P.2d 192 (Utah 1985); State v. Deitman, 739 P.2d 616 (Utah 1987); State v. Parker, 834 P.2d 592 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Burglary § 10.

C.J.S. — 12A C.J.S. Burglary § 5.

A.L.R. — Breaking and entering of inner door of building as burglary, 43 A.L.R.3d 1147.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin-operated machine, 45 A.L.R.3d 1286.

Maintainability of burglary charge, where entry into building is made with consent, 58 A.L.R.4th 335.

76-6-203. Aggravated burglary.

(1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:

(a) causes bodily injury to any person who is not a participant in the crime;

(b) uses or threatens the immediate use of a dangerous weapon against any person who is not a participant in the crime; or

(c) possesses or attempts to use any explosive or dangerous weapon.

(2) Aggravated burglary is a first degree felony.

(3) As used in this section, "dangerous weapon" has the same definition as under Section 76-1-601.

History: C. 1953, 76-6-203, enacted by L. 1973, ch. 196, § 76-6-203; 1988, ch. 174, § 1; 1989, ch. 170, § 6.

NOTES TO DECISIONS

ANALYSIS

Bodily injury.

Defendant caused "bodily injury" under this section when he struck victim in the mouth with a closed fist, knocking him off balance and drawing blood. State v. Boone, 820 P.2d 930 (Utah Ct. App. 1991).

Evidence.

—Sufficient.

Evidence was sufficient to prove the criminal intent required for aggravated burglary. State v. Featherson, 781 P.2d 424 (1989).

Intent.

See notes under this catchline at § 76-6-202.

Judgment.

—Effect of error.

Although the trial court's oral judgment of "aggravated burglary, a third degree felony" was in error as not conforming to the charge, the jury verdict, or the statute, because defendant's conviction was properly corrected in the subsequent written judgment there was no basis to amend the written judgment to conform to the oral judgment. Parry v. State, 837 P.2d 998 (Utah Ct. App. 1992).

Lesser included offense.

Aggravated assault constituted a lesser and included offense of aggravated burglary, where the jury was instructed that to find defendant guilty of aggravated burglary it must find that he used or threatened the immediate use of a dangerous or deadly weapon against a person and the jury was not required to find any additional elements to convict defendant of aggravated assault once it had found him guilty of aggravated burglary. State v. Bradley, 752 P.2d 874 (Utah 1988).

Liability of all participants.

A defendant was properly charged with aggravated burglary based on the fact that another participant in the crime was knowingly in possession of a dangerous weapon. State v. Seel, 827 P.2d 954 (Utah Ct. App.), cert. denied,

836 P.2d 1383 (Utah 1992).

Sentencing.

—Consideration of uncharged allegations.

Trial court had discretion to consider reliable information as to defendant's sexual assault during commission of burglary, although he had not been charged with the assault. State v. Sweat, 722 P.2d 746 (Utah 1986).

Weapon.

Subsection (1)(b) deals with two distinct concepts: use of a dangerous weapon and the threat to use a dangerous weapon. In adopting this subsection, the legislature intended to prohibit individuals from using or from threatening to use dangerous weapons during the course of burglaries. Use or display of a weapon is not required; threat of such use is sufficient. State v. Hartmann, 783 P.2d 544 (Utah 1989).

—Possession.

A loaded pistol on the back seat of the vehicle of defendants fleeing from burglaries satisfied the requirements of this section pertaining to possession of a weapon. State v. Seel, 827 P.2d 954 (Utah Ct. App.), cert. denied, 836 P.2d 1383 (Utah 1992).

Cited in State v. Bishop, 717 P.2d 261 (Utah 1986); State v. Cantu, 750 P.2d 591 (Utah 1988); State v. Speer, 750 P.2d 186 (Utah 1988); State v. Brooks, 833 P.2d 362 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

A.L.R. — Fact that gun was unloaded as affecting criminal responsibility, 68 A.L.R.4th 507.

76-6-204. Burglary of a vehicle — Charge of other offense.

(1) Any person who unlawfully enters any vehicle with intent to commit a felony or theft is guilty of a burglary of a vehicle.

(2) Burglary of a vehicle is a class A misdemeanor.

(3) A charge against any person for a violation of Subsection (1) shall not preclude a charge for a commission of any other offense.

History: C. 1953, 76-6-204, enacted by L. 1973, ch. 196, § 76-6-204.

Cross-References. — Forcible felony involving a vehicle, § 76-2-402(3).

NOTES TO DECISIONS

Cited in Salt Lake City v. Grotepas, 874 P.2d 136 (Utah Ct. App. 1994).

COLLATERAL REFERENCES

A.L.R. — Burglary, breaking, or entering of motor vehicle, 72 A.L.R.4th 710.

76-6-205. Manufacture or possession of instrument for burglary or theft.

Any person who manufactures or possesses any instrument, tool, device, article, or other thing adapted, designed, or commonly used in advancing or facilitating the commission of any offense under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of a burglary or theft is guilty of a class B misdemeanor.

History: C. 1953, 76-6-205, enacted by L. 1973, ch. 196, § 76-6-205.

NOTES TO DECISIONS

Lesser included offense.

In prosecution for attempted burglary it was not error refuse to instruct jury with respect to the offense defined by this section, since it is not necessarily a lesser included offense of burglary. State v. Sunter, 550 P.2d 184 (Utah 1976).

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Burglary § 74.

C.J.S. — 12A C.J.S. Burglary §§ 43 to 48.

A.L.R. — Validity, construction, and application of statutes relating to burglars' tools, 33 A.L.R.3d 798.

Key Numbers. — Burglary ⚷ 12.

76-6-206. Criminal trespass.

(1) For purposes of this section "enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204:

(a) he enters or remains unlawfully on property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Subsection 78-11-20(2);

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether his presence will cause fear for the safety of another; or

(b) knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders;

(iii) posting of signs reasonably likely to come to the attention of intruders.

(3) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor.

(b) A violation of Subsection (2)(b) is an infraction.

(4) It is a defense to prosecution under this section that the:

(a) property was open to the public when the actor entered or remained; and

(b) actor's conduct did not substantially interfere with the owner's use of the property.

History: C. 1953, 76-6-206, enacted by L. 1973, ch. 196, § 76-6-206; 1974, ch. 32, § 15; 1992, ch. 14, § 2.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, added "including the use of graffiti as defined in Subsection 78-11-20(2)" to Subsection (2)(a)(i); added the (a) and (b) designations in Subsection (3); and made stylistic changes throughout.

Cross-References. — Aircraft, tampering with, § 2-1-30.

Airports and equipment, tampering with forbidden, § 2-1-31.

Wrongful taking of ore from mine, damages, § 40-1-12.

NOTES TO DECISIONS

ANALYSIS

Burglary.

Where defendant was caught in act of peeling safe in closed supermarket, offense was burglary; court could not reasonably have given instructions on offense of unlawful entry with intent to damage, injure or annoy, and jury could not reasonably have found defendant guilty thereof, because defendant's intent must have been something other than damaging property, or injuring or annoying a person. State v. Dodge, 18 Utah 2d 63, 415 P.2d 212 (1966), cert. denied, 385 U.S. 1013, 87 S. Ct. 726, 17 L. Ed. 2d 550 (1967).

Defenses.

—Property open to public.

"Property . . . open to the public" in Subsection (4) is not limited to public, i.e., government-owned property. Steele v. Breinholt, 747 P.2d 433 (Utah Ct. App. 1987).

A question of fact existed as to whether a privately owned and operated skilled nursing home facility was "open" to plaintiff. Steele v. Breinholt, 747 P.2d 433 (Utah Ct. App. 1987).

Elements of offense.

Under this section a person is guilty of criminal trespass if, under circumstances not amounting to burglary, he enters or remains unlawfully on property and intends to commit any crime, other than theft or a felony; therefore, it was error for trial court to instruct jury that it would amount to criminal trespass for the defendant to unlawfully enter or remain on the property with the intention to commit the specific crime of production of a controlled substance, which is a felony. State v. Lesley, 672 P.2d 79 (Utah 1983).

—"Enclosure."

The general word "enclosure" in Subsection (2)(b)(ii) is restricted to a sense analagous to the less general word "fence." State v. Wilson, 701 P.2d 1058 (Utah 1985).

Cited in State v. Neeley, 748 P.2d 1091 (Utah 1988).

COLLATERAL REFERENCES

Am. Jur. 2d. — 75 Am. Jur. 2d Trespass § 162 et seq.

C.J.S. — 87 C.J.S. Trespass § 144.

PART 3
ROBBERY

76-6-301. Robbery.

(1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear.

(2) Robbery is a felony of the second degree.

History: C. 1953, 76-6-301, enacted by L. 1973, ch. 196, § 76-6-301.

Cross-References. — Assault, § 76-5-102. Attempt, § 76-4-101.

NOTES TO DECISIONS

ANALYSIS

Attempt.

Trial court's failure to instruct that in order to convict of attempted robbery the jury must

find, beyond a reasonable doubt, that defendant's conduct constituted a "substantial step" toward commission of the offense and that the substantial step must be "strongly corroborative" of defendant's intent to commit the offense was reversible error. State v. Harmon, 712 P.2d 291 (Utah 1986).

Evidence.

—Sufficiency.

Possession of stolen property alone was not sufficient to sustain conviction for robbery, but its quality as evidence was of such high degree that even slight corroborative proof of other inculpatory circumstances would warrant conviction of felony murder based on intent to rob. State v. Boyland, 27 Utah 2d 268, 495 P.2d 315 (1972).

Evidence was sufficient to support defendant's conviction for robbery. See State v. Ulibarri, 668 P.2d 568 (Utah 1983) (theft from convenience store).

—Testimony.

In prosecution for robbery, based on defendant's alleged act of taking money from person and presence of another, where defense was that, if defendant actually was guilty of the act, he took money under claim of ownership and in honest belief that he had right to it, defendant had the right to testify as to his intent, belief, and motive at time of alleged robbery; it was error for trial court to refuse to permit him to answer question, asked while he was testifying in his own behalf, as to whether at time when he allegedly took the money, he honestly believed money was his and that he had a right to take it. People v. Hughes, 11 Utah 100, 39 P. 492 (1895).

Intent.

In determining whether the defendant had an intent to commit robbery, the jury was entitled to resort to reasonable inferences based upon an examination of all the surrounding circumstances. State v. Gutierrez, 714 P.2d 295 (Utah 1986).

Taking of property.

Defendant who, at gunpoint, demanded money from cashier of motel and then after picking up money turned to walk out of motel but was seized near doorway, subdued and forced to drop the money had sufficiently asportated the money to complete the crime of robbery; escape to place of temporary safety was not necessary to completion of crime. State v. Roberts, 30 Utah 2d 407, 518 P.2d 1246 (1974).

Threats.

Where the victim was not misled by the use of a firearm or a facsimile thereof, but rather by defendant's threatening words and gestures, while this certainly satisfies the elements of robbery which must be accomplished by means of force and fear, a second-degree felony, it does not satisfy the elements of aggravated robbery. State v. Suniville, 741 P.2d 961 (Utah 1987) (reducing conviction to robbery and remanding for resentencing).

Cited in State v. Morrell, 803 P.2d 292 (Utah Ct. App. 1990); State v. Adams, 830 P.2d 310 (Utah Ct. App. 1992); State v. Germonto, 868 P.2d 50 (Utah 1993); Parsons v. Barnes, 871 P.2d 516 (Utah 1994).

COLLATERAL REFERENCES

Am. Jur. 2d. — 67 Am. Jur. 2d Robbery § 1.

C.J.S. — 77 C.J.S. Robbery § 3.

A.L.R. — Earlier prosecution for offense during which homicide was committed as bar to prosecution for homicide, 11 A.L.R.3d 834.

Purse snatching as robbery or theft, 42 A.L.R.3d 1381.

Prosecution for robbery of one person as bar to subsequent prosecution for robbery of another person committed at the same time, 51 A.L.R.3d 693.

Key Numbers. — Robbery ⚷ 1.

76-6-302. Aggravated robbery.

(1) A person commits aggravated robbery if in the course of committing robbery, he:

(a) uses or threatens to use a dangerous weapon as defined in Section 76-1-601;

(b) causes serious bodily injury upon another; or

(c) takes an operable motor vehicle.

(2) Aggravated robbery is a first degree felony.

(3) For the purposes of this part, an act shall be considered to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.

History: C. 1953, 76-6-302, enacted by L. 1973, ch. 196, § 76-6-302; 1975, ch. 51, § 1; 1989, ch. 170, § 7; 1994, ch. 271, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added Subsection (1)(c).

NOTES TO DECISIONS

ANALYSIS

Elements of offense.

In prosecution for robbery with revolver, based on defendant's alleged act of taking money from another, where defense was that, if defendant actually was guilty of the act, he took money under claim of ownership and in honest belief that he had right to it as result of card game, it was error for court to give instruction whereby jury was authorized to convict defendant notwithstanding absence of felonious intent. People v. Hughes, 11 Utah 100, 39 P. 492 (1895).

All essential elements were proved where evidence showed defendant took $120 on March 10 though charged with taking $140 on March 9, and where the victim testified the defendant had a gun stuck in the front of his jeans but evidence did not show defendant handled or pointed a gun and the gun was not found after the robbery. The date charged need only be closely proximated, the value of personal property taken is not an element of robbery, and proof that the gun was actually pointed and placing the gun in evidence are not necessary since if mere exhibition of a gun places the victim in fear it constitutes "use of a firearm." In re R.G.B., 597 P.2d 1333 (Utah 1979).

Proof of all elements necessary to prove a robbery is not required; so long as there is an attempt, coupled with the use of a firearm, knife, facsimile thereof, or another deadly weapon, or the accused causes serious bodily injury, the elements of aggravated robbery are satisfied. State v. Cantu, 750 P.2d 591 (Utah 1988); State v. Hickman, 779 P.2d 670 (1989).

Entrapment defense unavailable.

Defendant, charged with aggravated robbery under Subsection (1)(a), was not entitled to the defense of entrapment, because the threat of bodily injury, which precludes entrapment, was a necessarily implied element of the offense charged. State v. Colonna, 766 P.2d 1062 (Utah 1988).

Evidence.

—Insufficient.

Defendant's conviction was reversed, because the circumstantial evidence connecting him to his alleged accomplice and the crime was insufficient to prove that he was with the accomplice during or immediately after the robbery or that he had the requisite mental state for the crime with which he was charged. State v. Kalisz, 735 P.2d 60 (Utah 1987).

Defendant's menacing gesture accompanied by verbal threats was not sufficient evidence alone to establish the use of a firearm or a facsimile of a firearm. State v. Suniville, 741 P.2d 961 (Utah 1987).

—Prior convictions.

Admission of evidence of defendant's previous convictions for burglary and robbery was prejudicial error, where the evidence of his guilt was far from overwhelming and one of the identification witnesses was involved in the robbery and had questionable motives for identifying defendant. State v. Lanier, 778 P.2d 9 (Utah 1989).

—Sufficient.

Positive identification of defendant and his clothing by robbery victim, and defendant's fresh thumb print on a poster which defendant had handled while in the place he robbed, sustained trial court's finding of guilt beyond a reasonable doubt. In re R.G.B., 597 P.2d 1333 (Utah 1979).

Evidence supported conviction of defendant

who accosted the victim with a knife and club and demanded to know where she kept her silver and gold. State v. Cantu, 750 P.2d 591 (Utah 1988).

Erroneous admission of defendant's prior convictions of retail theft and attempted burglary was harmless, where the state presented sufficient evidence and eyewitness testimony to prove that defendant committed the robbery. State v. Bruce, 779 P.2d 646 (1989).

Evidence, upon which the jury could reasonably find that the defendant solicited, requested, commanded, encouraged, or intentionally aided another person in the aggravated robbery of a jewelry store with the requisite intent, was sufficient to support the defendant's conviction of aggravated robbery. State v. Webb, 790 P.2d 65 (Utah Ct. App. 1990).

There was sufficient evidence for the jury reasonably to find that the defendant committed the crime of aggravated robbery, where two witnesses positively identified the defendant as the robber, and a hat and a coat found inside the stolen car used in the robbery matched the witnesses' description of the clothing worn by the robber. State v. Humphrey, 793 P.2d 918 (Utah Ct. App. 1990).

Evidence was sufficient to support conviction of robbery notwithstanding one eyewitness's initial identification of another person as robber. See State v. Hayes, 860 P.2d 968 (Utah Ct. App. 1993).

Eyewitness identification.

Although the only evidence convicting defendant of aggravated robbery was the eyewitness identification of the victim, it was not prejudicial error for the trial court to refuse to instruct the jury as to the special pitfalls of eyewitness identification. State v. Newton, 681 P.2d 833 (Utah 1984).

Included offense.

Grand larceny conviction was improper when accompanied by conviction of robbery (with pistol) for same conduct since grand larceny was included offense in robbery charge. State v. Montayne, 18 Utah 2d 38, 414 P.2d 958, cert. denied, 385 U.S. 939, 87 S. Ct. 305, 17 L. Ed. 2d 218 (1966).

Under the test for separateness found in Subsection 76-1-402(3), aggravated robbery becomes a lesser included offense of first degree felony murder when the predicate felony for first degree murder is aggravated robbery. State v. Shaffer, 725 P.2d 1301 (Utah 1986).

Aggravated robbery is one of the predicate offenses of felony murder. State v. McCovey, 803 P.2d 1234 (Utah 1990).

Indictment or information.

Information for robbery (with firearm apparently in pocket of robber) that used the word "robbed" sufficiently informed accused of nature and cause of accusation, at least in absence of demand for bill of particulars; there was but one crime of robbery, and words such as "by means of force or fear" were unnecessary. State v. Robbins, 102 Utah 119, 127 P.2d 1042 (1942).

In prosecution for robbery (by force of arms), variance between complaint filed in city court and information filed in district court as to ownership of property taken was not fatal where both alleged that defendant took property from possession or presence of same person. State v. Perry, 27 Utah 2d 48, 492 P.2d 1349 (1972).

Intent.

Intent to commit crime of robbery (using firearms) or assault with intent to commit murder could be found from proof of facts from which it reasonably could have been believed that such was intent of defendant, because additional facts may be inferred from those shown directly by evidence. State v. Kazda, 15 Utah 2d 313, 392 P.2d 486 (1964).

Recent possession of stolen property.

Statute making unexplained recent possession of stolen property prima facie evidence of larceny applied to offense of robbery when larceny and robbery were committed in same transaction. State v. Donovan, 77 Utah 343, 294 P. 1108 (1931).

Recovery of property by force.

Defendant, even if he took money from another by force or fear, was not guilty of robbery (with revolver), regardless of whatever other offense he might have committed in taking of money, if money actually belonged to him, and its possession by person from whom it was taken was wrongful since, in such case, animus furandi element of robbery was lacking. People v. Hughes, 11 Utah 100, 39 P. 492 (1895).

Sentence.

—Use of a firearm.

The legislature's 1975 amendment of the aggravated robbery statute to specify use of a firearm, coupled with the subsequent enactment of the general sentence enhancement provisions, created no ambiguity over what penalty the legislature intended for robbery committed with a firearm. The legislature was merely increasing the degree of a robbery committed with the enumerated instruments of violence. State v. Webb, 790 P.2d 65 (Utah Ct. App. 1990).

Threatening to use weapon.

Threatening to use a dangerous weapon during the commission of a robbery, regardless of whether one actually possesses such a weapon, is sufficient for a charge of aggravated robbery under this section. State v. Adams, 830 P.2d 310 (Utah Ct. App. 1992).

Unloaded firearm.

Aggravated robbery may be committed with an unloaded firearm. State v. Turner, 572 P.2d 387 (Utah 1977).

Cited in State v. Ortiz, 712 P.2d 218 (Utah 1985); State v. DeJesus, 712 P.2d 246 (Utah 1985); State v. Gutierrez, 714 P.2d 295 (Utah 1986); State v. Bishop, 717 P.2d 261 (Utah 1986); State v. Iacono, 725 P.2d 1375 (Utah 1986); State v. Griffiths, 752 P.2d 879 (Utah 1988); State v. Whittle, 780 P.2d 819 (1989); State v. Russell, 791 P.2d 188 (Utah 1990); State v. Severance, 828 P.2d 1066 (Utah Ct. App. 1992); State v. Lee, 831 P.2d 114 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Am. Jur. 2d. — 67 Am. Jur. 2d Robbery § 3.

C.J.S. — 77 C.J.S. Robbery § 27.

A.L.R. — Fact that gun was unloaded as affecting criminal responsibility, 68 A.L.R.4th 507.

Admissibility of expert opinion stating whether a particular knife was, or could have been, the weapon used in a crime, 83 A.L.R.4th 660.

Key Numbers. — Robbery ⚷ 11.

PART 4
THEFT

76-6-401. Definitions.

For the purposes of this part:

(1) "Property" means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing anything of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

(2) "Obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade secret, to make any facsimile, replica, photograph, or other reproduction.

(3) "Purpose to deprive" means to have the conscious object:

(a) To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost; or

(b) To restore the property only upon payment of a reward or other compensation; or

(c) To dispose of the property under circumstances that make it unlikely that the owner will recover it.

(4) "Obtain or exercise unauthorized control" means, but is not necessarily limited to, conduct heretofore defined or known as common-law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.

(5) "Deception" occurs when a person intentionally:

(a) Creates or confirms by words or conduct an impression of law or fact that is false and that the actor does not believe to be true and that is likely to affect the judgment of another in the transaction; or

(b) Fails to correct a false impression of law or fact that the actor previously created or confirmed by words or conduct that is likely to affect the judgment of another and that the actor does not now believe to be true; or

(c) Prevents another from acquiring information likely to affect his judgment in the transaction; or

(d) Sells or otherwise transfers or encumbers property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid or is or is not a matter of official record; or

(e) Promises performance that is likely to affect the judgment of another in the transaction, which performance the actor does not intend to perform or knows will not be performed; provided, however, that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

History: C. 1953, 76-6-401, enacted by L. 1973, ch. 196, § 76-6-401.

NOTES TO DECISIONS

ANALYSIS

Deception.
Purpose to deprive.
Cited.

Deception.

Subsection (a) in the definition of "deception" only applies to impressions of fact that are false at some present time; unfulfilled promises of future performance do not suffice as false representations under that subsection. State v. Lakey, 659 P.2d 1061 (Utah 1983).

Under Subsection (b) in the definition of "deception," the previously created or confirmed impression of fact must be false when the property is obtained in order to constitute "deception." State v. Lakey, 659 P.2d 1061 (Utah 1983).

Under Subsection (e) in the definition of "deception," a promise of future performance can constitute deception when the promising party does not intend to perform or knows the promise will not be performed; a person knows that a promise will not be performed when he is aware that the promise is reasonably certain not to be performed. State v. Lakey, 659 P.2d 1061 (Utah 1983).

Defendant's false representations to a bank employee about his account and line of credit at other banks were sufficient to support finding of deception. State v. LeFevre, 825 P.2d 681 (Utah Ct. App.), cert. denied, 843 P.2d 1042 (Utah 1992).

Purpose to deprive.

Evidence was sufficient to establish defendant's intent to deprive owner of his automobile where defendant drove the automobile in excess of 100 miles per hour when fleeing from police; told police when stopped that he owned the automobile; damaged the automobile by misuse; and drove the car from Utah to California without ever stating he would return the automobile to Utah. State v. Daniels, 584 P.2d 880 (Utah 1978).

The defendant's "purpose to deprive" was inferred from the following facts: in 1984, defendant began borrowing small amounts of money from the victim to buy pet food; the victim's generosity prompted defendant to make subsequent requests for larger sums to pay for everything from automobile repairs to medical bills; with each request, defendant inevitably promised to repay the victim soon or by a specific date; and between 1984 and 1986, defendant borrowed over $70,000 and repaid only about $1,500. State v. Fowler, 745 P.2d 472 (Utah Ct. App. 1987).

Cited in Stevens v. Sanpete County, 640 F. Supp. 376 (D. Utah 1986).

COLLATERAL REFERENCES

Utah Law Review. — Utah's New Penal Code: Theft, 1973 Utah L. Rev. 718.

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 1.

C.J.S. — 52A C.J.S. Larceny § 1(1).

A.L.R. — Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971.

Cat as subject of larceny, 55 A.L.R.4th 1080.

What is "trade secret" so as to render actionable under state law its use or disclosure by former employee, 59 A.L.R.4th 641.

Key Numbers. — Larceny ⚷ 1.

76-6-402. Presumptions and defenses.

The following presumption shall be applicable to this part:

(1) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

(2) It is no defense under this part that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this subsection shall not include a security interest for the repayment of a debt or obligation.

(3) It is a defense under this part that the actor:

(a) Acted under an honest claim of right to the property or service involved; or

(b) Acted in the honest belief that he had the right to obtain or exercise control over the property or service as he did; or

(c) Obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented.

History: C. 1953, 76-6-402, enacted by L. 1973, ch. 196, § 76-6-402; 1974, ch. 32, § 16.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Prima facie evidence provision was not invalid as encroachment by legislature upon perogatives of judiciary. State v. Potello, 40 Utah 56, 119 P. 1023 (1911).

A jury instruction based on Subsection (1) did not infringe on the defendants' constitutional right to remain silent, since nothing in the instruction required testimony by the defendants, because an explanation of possession could have been made by the testimony of other witnesses or by other evidence. State v. Chambers, 709 P.2d 321 (Utah 1985).

Use of the inference raised by possession of recently stolen property does not offend the federal constitution. State v. Graves, 717 P.2d 717 (Utah 1986).

Subsection (1) does not force a defendant to take the stand in violation of his Fifth Amendment right not to take the stand to testify. State v. Smith, 726 P.2d 1232 (Utah 1986).

Applicability to other offenses.

Recent possession of stolen property, when not satisfactorily explained, was also prima facie evidence of guilt of burglary or robbery, at least when larceny, burglary and robbery had been committed in same transaction. State v. Donovan, 77 Utah 343, 294 P. 1108 (1931).

The presumption that a person in possession of recently stolen property stole the property when no satisfactory explanation of the possession is made applies to burglary cases. State v. Sessions, 583 P.2d 44 (Utah 1978).

Effect of presumption.

Provision that unexplained possession of recently stolen property was prima facie evidence of guilt in prosecution for larceny did not relieve state of burden of convicting defendant upon all the evidence by proof beyond a reasonable doubt. State v. Barretta, 47 Utah 479, 155 P. 343 (1916); State v. Merritt, 67 Utah 325, 247 P. 497 (1926).

Possession of articles recently stolen, when coupled with circumstances of hiding or concealing them, or of disposing or attempting to dispose of them, or of making false or unreasonable or unsatisfactory explanations of possession, could be sufficient to connect possessor with commission of offense of larceny; but mere possession, when not coupled with other culpatory or incriminating circumstances, did not alone suffice to justify conviction. State v. Kinsey, 77 Utah 348, 295 P. 247 (1931); State v. Dyett, 114 Utah 379, 199 P.2d 155 (1948).

Fact of possession of stolen property together with lack of satisfactory explanation was matter which jury could consider in its determination of whether state had met burden of proving defendant guilty beyond reasonable doubt. State v. Little, 5 Utah 2d 42, 296 P.2d 289, cert. denied, 352 U.S. 859, 1 L. Ed. 2d 66, 77 S. Ct. 83 (1956).

Mere possession of recently stolen property is sufficient to establish a prima facie case of theft unless the defendant offers some explanation of his possession, in which case the state has the burden of proving the explanation as unsatisfactory before the presumption of theft arises. State v. Jolley, 571 P.2d 582 (Utah 1977).

Proof of possession of recently stolen property constitutes only prima facie evidence of the identity of the possessor as the thief; this section does not create a presumption, permissive or otherwise, regarding the credibility or weight of the evidence so created nor does it shift the burden of persuasion to the defendant. State v. Asay, 631 P.2d 861 (Utah 1981).

Subsection (1) is addressed to the court, not to the jury, and its sole purpose is to provide a standard by which to determine whether the evidence admitted at trial warrants submission of the case to the jury. State v. Pacheco, 712 P.2d 192 (Utah 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 22 (1986).

Evidence.

State's failure to identify goods found in defendant's possession as stolen goods disposed of case, for without identification jury could not draw inference of guilt from possession of recently stolen property. State v. Hall, 105 Utah 162, 145 P.2d 494 (1944).

Evidence was sufficient to lay proper foundation for introduction in evidence of $1,000 in twenty-dollar bills which were found in defendant's possession even though prosecution *failed to identify bills found in defendant's possession as identical bills that were stolen.* State v. Crowder, 114 Utah 202, 197 P.2d 917 (1948).

Defendant's attempts to alter the appearance of the stolen vehicle constituted the necessary corroboration, and together with defendant's possession of the vehicle six days after it was reported stolen, constituted sufficient evidence to support a conviction of auto theft. State v. Clayton, 658 P.2d 621 (Utah 1983).

Defendant's possession of a stolen automobile six days after it was reported stolen could be considered as evidence that defendant stole the automobile; defendant's possession was not so remote in time from the theft to preclude it from consideration as evidence. State v. Clayton, 658 P.2d 621 (Utah 1983).

Under possession of stolen property provision, state need not have presented direct proof identifying defendant as thief or directly connecting him with felonious taking or asportation; the legislature deemed possession of recently stolen property, without satisfactory explanation, as sufficient to support conviction. State v. Gellatly, 22 Utah 2d 149, 449 P.2d 993 (1969).

Explanation of possession.

"Satisfactory" in former definition of larceny meant an explanation that would cause a reasonable person under all circumstances to believe in its sufficiency; it was such an explanation that court was persuaded in its own mind thereby that possession was lawfully accounted for. State v. Brooks, 101 Utah 584, 126 P.2d 1044 (1942).

Where defendant's explanation did not meet requirements of former definition of larceny or did not persuade court to repose sufficient confidence therein, to relieve mind from doubt or uncertainty, it was proper to submit cause to jury to determine, not satisfactoriness of defendant's explanation, but question of his guilt in light of all evidence including his explanation if he had made any. State v. Brooks, 101 Utah 584, 126 P.2d 1044 (1942).

Former statute, which provided that possession of property recently stolen should be deemed prima facie evidence of guilt, controlled despite defendant's contention that no one had asked him to explain his possession, where defendant was convicted of burglary and larceny. State v. Martinez, 21 Utah 2d 187, 442 P.2d 943 (1968).

State was not required to show that defendant failed to make satisfactory explanation to

arresting officer of possession of recently stolen property. State v. Heath, 27 Utah 2d 13, 492 P.2d 978 (1972).

Instructions.

—Good faith.

In a prosecution for theft, instructions taken directly from Subsection (3) of this section were adequate to address fully the good faith concept and the trial court properly refused to give an instruction proffered by defendant. State v. Larsen, 876 P.2d 391 (Utah Ct. App. 1994).

—Other offenses.

Defendant was not entitled to an instruction on theft at his trial for burglary where there was no evidence to provide a rational basis for acquitting him of burglary and convicting him of theft. State v. Pitts, 728 P.2d 113 (Utah 1986).

—Verbatim use of Subsection (1).

Although a jury instruction using the language of Subsection (1) was improper because it directly related to the issue of guilt and relieved the state of its burden of proof, this statutory language itself is not unconstitutional, since it is addressed to the court and merely provides a standard by which to determine whether the evidence presented warrants submission to the jury. State v. Chambers, 709 P.2d 321 (Utah 1985).

Instruction of the jury by a verbatim recitation of Subsection (1) is unconstitutional because the instruction directly relates to the issue of guilt and relieves the state of its burden of proof by use of a mandatory rebuttable presumption. State v. Pacheco, 712 P.2d 192 (Utah 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 22 (1986).

Although the trial court should not have used the statutory language in a jury instruction, the instruction could not be deemed reversible error in light of clear explanatory instructions that all that the jury could make of the term "prima facie" was a permissible inference. State v. Smith, 726 P.2d 1232 (Utah 1986).

The language of Subsection (1) should not be used in any form to instruct juries in theft and burglary cases. State v. Turner, 736 P.2d 1043 (Utah 1987).

Possession as corroborating evidence.

Possession of stolen property was sufficient corroboration of testimony of accomplice to support conviction of defendant or larceny and burglary. State v. Vigil, 123 Utah 495, 260 P.2d 539 (1953).

Possession defined.

Possession meant conscious, personal possession, amounting to express or implied assertion of ownership. State v. Butterfield, 70 Utah 529, 261 P. 804 (1927).

Possession must not only have been personal, exclusive, and unexplained, but must also have been a conscious assertion of possession by accused. State v. Kinsey, 77 Utah 348, 295 P. 247 (1931).

Possession meant "conscious possession." State v. Brooks, 101 Utah 584, 126 P.2d 1044 (1942).

Possession must have been personal, conscious and exclusive; and mere association with or constructive possession of recently stolen property, or mere presence of accused at place where stolen property was found, was insufficient, although it was necessary to show that accused was in physical possession of such property. State v. Dyett, 114 Utah 379, 199 P.2d 155 (1948).

Prima facie evidence.

"Prima facie" as used in former § 76-38-1 meant presumptive evidence, and did not mean that unless rebutted by other evidence, or discredited by circumstances, it became conclusive of fact of guilt. State v. Potello, 40 Utah 56, 119 P. 1023 (1911).

"Prima facie evidence" did not mean that in absence of other evidence jury must have found defendant guilty, but rather that there would have arisen an inference that defendant had committed larceny and that this inference could with all other circumstances be considered in determining whether jury was convinced beyond reasonable doubt of defendant's guilt. State v. Wood, 2 Utah 2d 34, 268 P.2d 998, cert. denied, 348 U.S. 900, 75 S. Ct. 221, 99 L. Ed. 706 (1954); State v. Gellatly, 22 Utah 2d 149, 449 P.2d 993 (1969); State v. Winger, 26 Utah 2d 118, 485 P.2d 1398 (1971).

Questions of law and fact.

Possession could be so remote as to have required as a matter of law that it was not sufficiently recent to raise presumption; standing by itself, possession as remote as four months could hardly have been recent, but whether it was or not was for jury under all facts and circumstances of case. State v. Bowen, 45 Utah 130, 143 P. 134 (1914).

What constituted such recent possession as to have raised the presumption that defendant did the taking depended upon nature of property and circumstances of particular case and, therefore, was ordinarily question of fact for the jury. State v. Bowen, 45 Utah 130, 143 P. 134 (1914).

Satisfactoriness of defendant's explanation of possession of recently stolen property or his failure to explain, as far as statute was concerned, was for court and not jury. State v. Brooks, 101 Utah 584, 126 P.2d 1044 (1942).

Under statute which provided that possession of stolen property, when person in possession failed to make satisfactory explanation, was to be deemed prima facie evidence of guilt,

jury did not determine if explanation was satisfactory; they determined whether, on all evidence in the case, they were convinced beyond reasonable doubt of defendant's guilt; and explanation may have been satisfactory to jury and yet defendant found guilty because other evidence may have, notwithstanding, convinced them beyond reasonable doubt of his guilt; explanation may been been satisfactory, and proved, or admittedly false, and yet jury could acquit because they were not convinced beyond reasonable doubt of defendant's guilt. State v. Brooks, 101 Utah 584, 126 P.2d 1044 (1942).

Uncorroborated explanation of possession.

Evidence was sufficient to support conviction for grand larceny where recently stolen pistol was found in car in which defendant was riding and where defendant's claim that he purchased pistol several months earlier in bar was not supported by either direct or circumstantial evidence. State v. Pappacostas, 17 Utah 2d 197, 407 P.2d 576 (1965).

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 10.
C.J.S. — 52A C.J.S. Larceny § 4.
A.L.R. — What amounts to "exclusive" possession of stolen goods to support inference of burglary or other felonious taking, 51 A.L.R.3d 727.
Key Numbers. — Larceny ⚷ 41.

76-6-403. Theft — Evidence to support accusation.

Conduct denominated theft in this part constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner specified in Sections 76-6-404 through 76-6-410, subject to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

History: C. 1953, 76-6-403, enacted by L. 1973, ch. 196, § 76-6-403; 1974, ch. 32, § 17.

NOTES TO DECISIONS

ANALYSIS

Embezzlement.

In a prosecution for theft, since this section includes the common law embezzlement variation of the crime, and since intent to embezzle by definition is formed after a person obtains control over the property, not at the time of taking, as suggested by defendant, an instruction that "purpose to deprive may be found at any period of time in which the defendant exercised unauthorized control over such property" was a proper statement of law. State v. Larsen, 876 P.2d 391 (Utah Ct. App. 1994).

Evidence.

Fingerprint evidence, based on a comparison of defendant's fingerprints with those found at the scene of the crime, along with the testimony of defendant's accomplice, was sufficient evidence to find defendant guilty of burglary and theft. State v. Bailey, 712 P.2d 281 (Utah 1985).

—Prior convictions.

In a prosecution for theft, admission of the evidence of defendant's prior conviction of securities fraud was proper under U.R.E. 609(a)(2) since the crime involved "dishonesty or false statement." State v. Larsen, 876 P.2d 391 (Utah Ct. App. 1994).

Instructions.

—Good faith.

In a prosecution for theft, instructions taken directly from § 76-6-402 were adequate to address fully the good faith concept, so the trial

court properly refused to give an instruction proffered by defendant. State v. Larsen, 876 P.2d 391 (Utah Ct. App. 1994).

Pleading and practice.

Section 76-6-404 is the "general offense of theft" required to be pled by this section to invoke the provisions of consolidated theft. Once the prosecution charges a defendant with the general offense of "theft" under § 76-6-404, it may then present its evidence to prove the theft was committed in any manner specified in §§ 76-6-404 to 76-6-410. State v. Fowler, 745 P.2d 472 (Utah Ct. App. 1987).

Receiving stolen property.

Evidence that establishes receiving stolen property under § 76-6-408 is sufficient to sustain a conviction of theft without the necessity of establishing theft by taking. State v. Taylor, 570 P.2d 697 (Utah 1977).

76-6-404. Theft — Elements.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

History: C. 1953, 76-6-404, enacted by L. 1973, ch. 196, § 76-6-404.

Cross-References. — Motor vehicles, special anti-theft laws, § 41-1a-1308 et seq.

Shoplifting Act, § 78-11-14 et seq.

NOTES TO DECISIONS

ANALYSIS

Bailments.

Bailor could be guilty of stealing his own property, if done with intent to charge bailee. State v. Parker, 104 Utah 23, 137 P.2d 626 (1943).

Comment on defendant's silence.

Where defendant charged with theft of building materials from construction site did not testify in his own defense and offered no evidence to explain his late-night presence at the site, prosecutor's comment that: "The defense has presented no evidence as to why defendant was out there. What was he doing out there?" was a legitimate comment on what the total evidence did or did not show; it was not impermissible comment on defendant's failure to testify. State v. Kazda, 540 P.2d 949 (Utah 1975).

Corpus delicti.

In prosecution for larceny it was not essential that corpus delicti be established by evidence independent of that adduced to prove that defendant was perpetrator of crime; the same evidence could be used to prove both. State v. Hall, 105 Utah 151, 139 P.2d 228 (1943), rev'd on other grounds, 105 Utah 162, 145 P.2d 494 (1944).

Corpus delicti for offense of theft consists of the elements that one entitled to possession of the property has been deprived of possession and such deprivation has been accomplished by a felonious taking; evidence of the property having been taken from the possession of the owner without his knowledge or consent is evidence of both of the elements of the corpus delicti. State v. Chesnut, 621 P.2d 1228 (Utah 1980).

Elements of offense.

State is not required to prove conclusively who the real owner of the property is, but only that defendant obtained or exercised unauthorized control over the property of another. State v. Simmons, 573 P.2d 341 (Utah 1977).

This section requires a finding of only one of two disjunctives, "obtained" or "exercised unauthorized control" over the property of another with a purpose to deprive him thereof; conviction for theft can be upheld without a finding that defendant "obtained" the property, so long as there is a finding that he "exercised unauthorized control" over it. State v. Walker, 649 P.2d 16 (Utah 1982).

Evidence.

Proof of identity of stolen goods could be by either direct or circumstantial evidence. State

v. Hall, 105 Utah 151, 139 P.2d 228 (1943), rev'd on other grounds, 105 Utah 162, 145 P.2d 494 (1944).

In prosecution for grand larceny, plea of not guilty cast upon state burden of proving every essential element of offense by evidence sufficient to convince jury beyond reasonable doubt; judicial notice of value could not stand without satisfactory evidence of value of property taken. State v. Lawrence, 120 Utah 323, 234 P.2d 600 (1951).

Proof of larceny did not require showing that accused was in possession of property stolen. State v. Pacheco, 13 Utah 2d 148, 369 P.2d 494 (1962).

—Weight and sufficiency.

Where lambs claimed to have been stolen were found a month later in possession of defendant with altered brands, and defendant failed to offer satisfactory explanation, there was sufficient evidence to support verdict of guilty of offense of larceny. State v. Kappas, 100 Utah 274, 114 P.2d 205 (1941).

Testimony of undercover man for police that defendant participated in taking of money was sufficient to sustain conviction of grand larceny. State v. Pacheco, 13 Utah 2d 148, 369 P.2d 494 (1962).

Evidence inter alia that defendants brought stolen camper to third persons for sale, and accepted purchase price, was insufficient to establish guilt, since there was no direct evidence to establish that defendants had taken camper. State v. George, 25 Utah 2d 330, 481 P.2d 667 (1971).

Evidence that establishes receiving stolen property under § 76-6-408 is sufficient to sustain a conviction of theft under this section without the necessity of establishing theft by taking. State v. Taylor, 570 P.2d 697 (Utah 1977).

In a prosecution for third degree felony theft of bull, evidence placing defendant near scene of crime in possession of rifles, in addition to testimony of witness that he saw defendant running away from vicinity of slaughtered bull, was sufficient to sustain conviction. State v. Sparks, 672 P.2d 92 (Utah 1983).

In a prosecution for aggravated burglary, evidence that the defendant was found intruding through a window into an apartment, together with his admission that his intent was to take an item from the apartment, was sufficient to support the conclusion that he had the requisite intent to commit theft. State v. Isaacson, 704 P.2d 555 (Utah 1985).

Evidence supported defendant's conviction of theft of funds invested in a condominium project, where the evidence was not in dispute as to the date and the amount invested by each investor named in the information and the date the sums were deposited in defendant's operating account. State v. Snyder, 747 P.2d 417 (Utah 1987).

Evidence was sufficient to support defendant's conviction, where a neighbor positively identified him fleeing from the victim's house and noted the license plate number of defendant's car. State v. Pacheco, 778 P.2d 26 (Utah Ct. App. 1989).

Included offenses.

Joy riding (former § 41-1-109; now see § 41-1a-1311) is a lesser and included offense of theft of an operable motor vehicle. State v. Lloyd, 568 P.2d 357 (Utah 1977); State v. Cornish, 568 P.2d 360 (Utah 1977).

Where the taking of personal property established the crime of theft and provided an element of aggravated robbery and, to the extent that aggravated robbery served as the aggravating circumstance, first degree murder, the statutory element of taking personal property is common to both theft and first degree murder, making theft a lesser included offense of first degree murder. State v. Shaffer, 725 P.2d 1301 (Utah 1986).

A conviction for theft did not merge with a conviction for first degree murder because evidence at the trial was sufficient to prove the crime of murder in the first degree without relying on the theft conviction as the aggravating circumstance required for the murder conviction. State v. Young, 853 P.2d 327 (Utah 1993).

—Possession.

Possession of a stolen vehicle was a lesser included offense of theft of a vehicle, where the record did not indicate that the defendant ever relinquished his claim of ownership or passed title to the vehicle during the time it had been left at his brother-in-law's house while the defendant was serving a prison sentence. State v. Larocco, 794 P.2d 460 (Utah 1990).

Instructions.

Where accused was charged with taking his auto from possession of repairman without paying for work already done thereon, lack of instruction as to amount of indebtedness could have been not only inadequate, but misleading; value of goods stolen was measure of grand or petit larceny. State v. Parker, 104 Utah 23, 137 P.2d 626 (1943).

Where offense of theft of an operable motor vehicle is charged, and under the circumstances of the case there is either an issue of whether the prosecution has sustained its burden of proving an intent to deprive the owner of possession under circumstances in Subsection 76-6-401(3), or the defendant presents evidence under his theory which negates the factors in Subsection 76-6-401(3), the issue of defendant's intent should be submitted to the trier of fact with a requested instruction on the lesser in-

cluded offense of joyriding. State v. Chesnut, 621 P.2d 1228 (Utah 1980).

The language of Subsection 76-6-402(1), relating to the presumption arising from possession of recently stolen property, should not be used in any form to instruct juries in theft and burglary cases. State v. Turner, 736 P.2d 1043 (Utah 1987).

Intent.

It was necessary to find that intent to steal existed at time of taking and no subsequent felonious intent would suffice. People v. Miller, 4 Utah 410, 11 P. 514 (1886); State v. Allen, 56 Utah 37, 189 P. 84 (1920).

In prosecution for stealing sheep, it was not necessary to prove that defendant and others with him had actually intended to convert sheep to their own use; it was sufficient to prove beyond reasonable doubt that they had taken sheep away against will of their owners, with intention of permanently depriving latter of their property. State v. McKee, 17 Utah 370, 53 P. 733 (1898).

Obtaining money under pretext of betting at cards where everything was fixed so that prosecuting witness had no chance to win, and was only player who actually risked anything, was larceny. State v. Donaldson, 35 Utah 96, 99 P. 447, 20 L.R.A. (n.s.) 1164, 136 Am. St. R. 1041 (1909).

In prosecution for larceny, even though defendant did not intend to keep all of owner's money, and intended to divide with those who were connected with him in card game, it was larceny of whole amount. State v. Donaldson, 35 Utah 96, 99 P. 447, 20 L.R.A. (n.s.) 1164, 136 Am. St. R. 1041 (1909).

Intent, a necessary element of crime of larceny, was not always disclosed by what one said, but could be inferred from what one said and did, or failed to say and do, in a given situation, together with other facts and circumstances surrounding transaction. Loper v. United States, 160 F.2d 293 (10th Cir. 1947).

Evidence was sufficient for reasonable minds to infer that defendant took money with intent to steal it. State v. Shonka, 3 Utah 2d 124, 279 P.2d 711 (1955).

Where defendant who left his car with repairman while owing him for repairs on the car returned and took car thinking that he had legal right to do so, defendant's requested instruction that he could not be found guilty if he honestly believed he had right to possession of car should have been given, and general charge that he must have had intent to steal was not sufficient. State v. Cude, 14 Utah 2d 287, 383 P.2d 399 (1963).

Felonious intent was sufficiently proven by evidence that, on employment by strangers and without asking for or being shown documents of ownership, defendant transported house trailer from Utah to designated road junction in Montana and there turned it over to another stranger. State v. Christensen, 27 Utah 2d 212, 494 P.2d 291 (1972).

Pleading and practice.

This section is the "general offense of theft" required to be pled by § 76-6-403 to invoke the provisions of consolidated theft. Once the prosecution charges a defendant with the general offense of "theft" under this section, it may then present its evidence to prove the theft was committed in any manner specified in this section or §§ 76-6-405 to 76-6-410. State v. Fowler, 745 P.2d 472 (Utah Ct. App. 1987).

Defendant's theft in a single burglary of items listed under different subsections of § 76-6-412 was improperly charged as two separate counts of second degree theft: § 76-6-412 does not establish elements of theft; it simply categorizes theft for sentencing purposes into various degrees. State v. Casias, 772 P.2d 975 (Utah Ct. App. 1989).

Possession of recently stolen property.

Defendant's attempts to alter the appearance of the stolen vehicle constituted the necessary corroborating evidence, and together with his possession of the vehicle six days after it was reported stolen, constituted sufficient evidence to support a conviction of auto theft. State v. Clayton, 658 P.2d 621 (Utah 1983).

"Purpose to deprive."

Evidence was sufficient to establish defendant's intent to deprive owner of his automobile where defendant drove the automobile in excess of 100 miles per hour when fleeing from police; told police when stopped that he owned the automobile; damaged the automobile by misuse; and drove the car from Utah to California without ever stating he would return the automobile to Utah. State v. Daniels, 584 P.2d 880 (Utah 1978).

Separate offenses.

Where facts in criminal prosecution showed breaking and entering and larceny, and entering was independent of larceny, each offense required different acts, and defendant was properly convicted of both burglary and larceny. State v. Jones, 13 Utah 2d 35, 368 P.2d 262 (1962).

While there is some overlap in the offenses of burglary and theft, as each requires the intent of depriving another of property, burglary does not involve unauthorized control over that property. Therefore, burglary may be committed without having committed theft. Since a conviction for burglary does not exclude a conviction for theft, a person may constitutionally be convicted of both offenses. Duran v. Cook, 788 P.2d 1038 (Utah Ct. App. 1990).

Unauthorized control.

An item need not be taken from a retailer's premises to constitute theft of the retailer's property; exercising unauthorized control over an item within a retail establishment is sufficient to constitute the crime of theft. State v. Watts, 639 P.2d 158 (Utah 1981).

The burden is on the state to prove unauthorized control, not on the defendant to prove authorized control; proof of lack of ownership alone does not establish unauthorized control. State v. Franks, 649 P.2d 3 (Utah 1982).

A criminal prosecution of what is essentially a breach of a real estate sale agreement extends this section too broadly and therefore the conviction cannot stand. State v. Burton, 800 P.2d 817 (Utah Ct. App. 1990).

Although a partnership agreement granted the general partners numerous powers, it contained the limitation that a general partner exercise those powers only in the best interests of the partnership; the defendant, a partner, was thus not authorized to deal with partnership property in a manner that he knew was not in the partnership's best interests and he could be convicted of theft for exercising unauthorized control over partnership property. State v. Larsen, 834 P.2d 586 (Utah Ct. App. 1992).

Venue.

Venue for an offense under this section is properly laid in any county where an element of it occurred; the formation of a specific intent to convert another's property within a county is sufficient for venue to be proper there, notwithstanding that the actual conversion took place in another county. State v. Cauble, 563 P.2d 775 (Utah 1977).

Cited in State v. Andreason, 718 P.2d 400 (Utah 1986); In re Jones, 720 P.2d 1356 (Utah 1986); Stevens v. Sanpete County, 640 F. Supp. 376 (D. Utah 1986); State v. Parkin, 742 P.2d 715 (Utah Ct. App. 1987); State v. Jamison, 767 P.2d 134 (Utah Ct. App. 1989); State v. Hunter, 831 P.2d 1033 (Utah Ct. App. 1992); State v. Scott, 860 P.2d 1005 (Utah Ct. App. 1993); State v. Larsen, 876 P.2d 391 (Utah Ct. App. 1994).

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 2.

C.J.S. — 52A C.J.S. Larceny § 1(3).

A.L.R. — Larceny: entrapment or consent, 10 A.L.R.3d 1121.

Criminal offenses in connection with rental of motor vehicles, 38 A.L.R.3d 949.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin-operated machine, 45 A.L.R.3d 1286.

Changing of price tags by patron in self-service store as criminal offense, 60 A.L.R.3d 1293.

Embezzlement, larceny, false pretenses or allied criminal fraud by partner, 82 A.L.R.3d 822.

Criminal liability for theft of, interference with, or unauthorized use of computer programs, files, or systems, 51 A.L.R.4th 971.

76-6-405. Theft by deception.

(1) A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.

(2) Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or worth in communications addressed to the public or to a class or group.

History: C. 1953, 76-6-405, enacted by L. 1973, ch. 196, § 76-6-405.

NOTES TO DECISIONS

ANALYSIS

Forgery distinguished.
Intent.
Jury instructions.
"Purpose to deprive."
Venue of offense.
Cited.

Constitutionality.

This section is not unconstitutionally vague or ambiguous; fact that auto salesman who knew that turning back an odometer was a crime assertedly relied upon the fact that former § 41-6-177 made such crime only a misdemeanor did not preclude conviction of the salesman of theft by deception on basis of his having turned back the odometer. State v. Forshee, 588 P.2d 181 (Utah 1978).

Attempted theft.

Because § 76-4-101 provides for attempted theft by deception, there is no reason to enlarge the scope of this section to include situations in which theft by deception might have happened, but, because of the victim's lack of reliance on the perpetrator's deception, did not occur. State v. LeFevre, 825 P.2d 681 (Utah Ct. App.), cert. denied, 843 P.2d 1042 (Utah 1992).

Distribution of imitation controlled substance.

Defendant who distributed an imitation controlled substance in violation of § 58-37b-4 should have been charged with a violation of § 58-37b-4, which specifically proscribed defendant's conduct, rather than with theft by deception. State v. Hill, 688 P.2d 450 (Utah 1984).

Elements of offense.

For cases discussing elements of former offense of obtaining money by false pretense, see State v. Howd, 55 Utah 527, 188 P. 628 (1920); State v. Casperson, 71 Utah 68, 262 P. 294 (1927); State v. Jensen, 74 Utah 527, 280 P. 1046 (1929); State v. Morris, 85 Utah 210, 38 P.2d 1097 (1934); State v. Timmerman, 88 Utah 481, 55 P.2d 1320 (1936); Ballaine v. District Court ex rel. Box Elder County, 107 Utah 247, 153 P.2d 265 (1944); State v. Vatsis, 10 Utah 2d 244, 351 P.2d 96 (1960); State v. Nuttall, 16 Utah 2d 171, 397 P.2d 797 (1964).

—Reliance.

Reliance by the victim is an element of the crime of theft by deception; even though the alleged victim is deceived, if he does not rely on the deception in parting with his property, there has been no theft by deception. State v. Jones, 657 P.2d 1263 (Utah 1982).

A finding of reliance is sufficient so long as the defendant's misrepresentation has a substantial causal influence upon the victim's decision, i.e., the victim believes the misrepresentation to be true, and includes it as a factor in the decision-making process. State v. LeFevre, 825 P.2d 681 (Utah Ct. App.), cert. denied, 843 P.2d 1042 (Utah 1992) (following State v. Schneider, 715 P.2d 297 (Ariz. App. 1986)).

——Series of misrepresentations.

In situations where the deception consists of a series of misrepresentations, there is no requirement that each false statement or act conform to the level-of-reliance test set out in State v. Schneider, 715 P.2d 297 (Ariz. App. 1986); the victim need only have materially relied on the resulting deception. State v. LeFevre, 825 P.2d 681 (Utah Ct. App.), cert. denied, 843 P.2d 1042 (Utah 1992).

—Pecuniary loss.

Evidence of pecuniary loss can be used to prove the elements of the crime of theft by deception, although pecuniary loss is not an essential element in itself. State v. Roberts, 711 P.2d 235 (Utah 1985).

Evidence.

Evidence that defendant had signed name of alleged buyer of automobile to conditional sales contract which was purchased by finance company, and that automobile was subsequently sold to third person who paid cash sustained conviction for obtaining money by false pretenses. State v. Vatsis, 10 Utah 2d 244, 351 P.2d 96 (1960).

Evidence was not sufficient to support beyond a reasonable doubt finding that buyer was reasonably certain that his promise to make a deposit into his checking account would not be performed, and was therefore insufficient to support his conviction for theft by deception when his personal check for payment of the goods was returned for insufficient funds, where at time buyer gave seller the check he informed seller of the insufficient funds in the account; he requested seller not to cash the check that day; he informed seller that he had assurances from investors of imminent cash investments which he would deposit to cover the check; the seller accepted the check on such terms; and the check was returned for insufficient funds because the buyer did not receive the expected cash to make the deposit. State v. Lakey, 659 P.2d 1061 (Utah 1983).

Evidence held to be sufficient to establish the amount of funds embezzled by a theater manager. See State v. Patterson, 700 P.2d 1104 (Utah 1985).

In a prosecution for theft by deception, there was sufficient evidence that the defendant, who sold a mobile home under a lease-back arrangement, then secured two loans using the same mobile home as collateral, without disclosing that title was encumbered, intended to deceive at the time of the transactions. State v. Noren, 704 P.2d 568 (Utah 1985).

The defendant's convictions of securities fraud and theft by deception were reversed

because the trial court committed prejudicial error by admitting defendant's financial records in violation of the Financial Information Privacy Act. State v. Waite, 803 P.2d 1279 (Utah Ct. App. 1990).

Forgery distinguished.

Court properly ordered release of defendant who had pleaded guilty to crime of obtaining money or property by false pretenses, when information charged him with crime of forgery; former crime was not "necessarily included" in crime of forgery, although both crimes included elements of fraud; forgery had to do with alteration or falsification of written instruments or documents, or use of unauthorized signatures, while false pretenses statute applied to wide range of activities related to property which might have in some instances involved forgery, but usually did not. Williams v. Turner, 421 F.2d 168 (10th Cir. 1970).

Intent.

In a prosecution for theft by deception, the intent of the defendant at the time of taking the victim's money is determinative, and the fact that the defendant later enters an agreement with the victim, appearing to negate any criminal intent, is immaterial. State v. Droddy, 702 P.2d 111 (Utah 1985).

Jury instructions.

Instructions referred to the intent required for commission of the offense but that did not inform the jury that before returning a verdict of guilty they must find beyond a reasonable doubt that defendant had the conscious objective to withhold the property permanently was fatally defective. State v. Laine, 618 P.2d 33 (Utah 1980).

Where defendant was charged with theft by deception, instruction to jury stating that they "may" employ a presumption that "the law presumes that a person intends the reasonable and ordinary consequences of his own act" violated defendant's constitutional right to due process of law because under the instruction given, the burden of persuasion on the element of intent, in the jury's mind, may have been shifted to the defendant. State v. Walton, 646 P.2d 689 (Utah 1982).

"Purpose to deprive."

The defendant's "purpose to deprive" was inferred from the following facts: in 1984, the defendant began borrowing small amounts of money from the victim to buy pet food; the victim's generosity prompted defendant to make subsequent requests for larger sums to pay for everything from automobile repairs to medical bills; with each request, defendant inevitably promised to repay the victim soon or by a specific date; and between 1984 and 1986, defendant borrowed over $70,000 and repaid only about $1,500. State v. Fowler, 745 P.2d 472 (Utah Ct. App. 1987).

Venue of offense.

District court had jurisdiction of offense of obtaining money by false pretense where both mispresentation and delivery of goods were accomplished in Utah. State v. Cobb, 13 Utah 2d 376, 374 P.2d 844 (1962).

Cited in State v. Ortiz, 782 P.2d 959 (Ct. App. 1989).

COLLATERAL REFERENCES

Utah Law Review. — Criminal and Civil Liability for Bad Checks in Utah, 1970 Utah L. Rev. 122.

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 1.

C.J.S. — 35 C.J.S. False Pretenses § 5.

A.L.R. — Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 A.L.R.3d 241.

Criminal liability of corporation for extortion, false pretenses, or similar offenses, 49 A.L.R.3d 820.

Criminal liability in connection with application for, or receipt of, public relief or welfare payments, 80 A.L.R.3d 1280.

Key Numbers. — False Pretenses ⟹ 2.

76-6-406. Theft by extortion.

(1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with the purpose to deprive him thereof.

(2) As used in this section, extortion occurs when a person threatens to:

(a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

(b) Subject the person threatened or any other person to physical confinement or restraint; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse any person of a crime or expose him to hatred, contempt, or ridicule; or

(e) Reveal any information sought to be concealed by the person threatened; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(h) Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

History: C. 1953, 76-6-406, enacted by L. 1973, ch. 196, § 76-6-406.

Cross-References. — Penalty for receiving illegal fees, §§ 21-7-13 to 21-7-15.

NOTES TO DECISIONS

Fear.

If fear was controlling factor in inducing victim to consent to and to pay money to defendant, crime of extortion was complete, even though there was also another different motive, that of entrapping defendant at suggestion of prosecuting attorney; if fear remained as controlling factor, it was unnecessary for it to be sole motive. State v. Prince, 75 Utah 205, 284 P. 108 (1930).

COLLATERAL REFERENCES

Am. Jur. 2d. — 31A Am. Jur. 2d Extortion, Blackmail and Threats § 1.

C.J.S. — 35 C.J.S. Extortion § 1.

A.L.R. — Criminal liability of corporation for extortion, false pretenses, or similar offenses, 49 A.L.R.3d 820.

Key Numbers. — Extortion and Threats ⇐ 1.

76-6-407. Theft of lost, mislaid, or mistakenly delivered property.

A person commits theft when:

(1) He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return it to the owner; and

(2) He has the purpose to deprive the owner of the property when he obtains the property or at any time prior to taking the measures designated in paragraph (1).

History: C. 1953, 76-6-407, enacted by L. 1973, ch. 196, § 76-6-407.

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 101.

C.J.S. — 52A C.J.S. Larceny § 18.
Key Numbers. — Larceny ⚷ 10.

76-6-408. Receiving stolen property — Duties of pawnbrokers.

(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding the property from the owner, knowing the property to be stolen, intending to deprive the owner of it.

(2) The knowledge or belief required for Subsection (1) is presumed in the case of an actor who:

(a) is found in possession or control of other property stolen on a separate occasion;

(b) has received other stolen property within the year preceding the receiving offense charged;

(c) being a dealer in property of the sort received, retained, or disposed, acquires it for a consideration which he knows is far below its reasonable value; or

(d) if the value given for the property exceeds $20, is a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or an agent, employee, or representative of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller or person delivering the property to:

(i) certify, in writing, that he has the legal rights to sell the property;

(ii) provide a legible print, preferably the right thumb, at the bottom of the certificate next to his signature; and

(iii) provide at least one other positive form of picture identification.

(3) Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee, or representative of a pawnbroker or person who fails to comply with the requirements of Subsection (2)(d) shall be presumed to have bought, received, or obtained the property knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

(4) When, in a prosecution under this section, it appears from the evidence that the defendant was a pawnbroker or a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or was an agent, employee, or representative of a pawnbroker or person, that the defendant bought, received, concealed, or withheld the property without obtaining the information required in Subsection (2)(d), then the burden shall be upon the defendant to show that the property bought, received, or obtained was not stolen.

(5) Subsections (2)(d), (3), and (4) do not apply to scrap metal processors as defined in Section 76-10-901.

(6) As used in this section:

(a) "Receives" means acquiring possession, control, or title or lending on the security of the property;

(b) "Dealer" means a person in the business of buying or selling goods.

History: C. 1953, 76-6-408, enacted by L. 1973, ch. 196, § 76-6-408; 1979, ch. 71, § 1; 1993, ch. 102, § 1.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, substituted "Subsection" for "paragraph" in Subsection (2), subdivided Subsection (2)(d), moved "if the value given for the property exceeds $20" which was formerly in Subsection (2)(d)(i) to the introductory language, inserted "picture" in Subsection (2)(d)(iii), redesignated former Subsections (2)(d)(i) and (ii) as Subsections (3) and (4), inserted Subsection (5), making a corresponding designation change, and made stylistic changes.

Cross-References. — Pawnbrokers and secondhand dealers, § 11-6-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

The presumption created in Subsection (2) is constitutional when read in light of § 76-1-503, which provides that a presumption means only that the issue of the presumed fact must be submitted to the jury unless its existence is clearly negated and that the jury may treat proof of the underlying facts as evidence of the presumed fact, but does not disturb the requirement that the presumed fact, like all other elements of the crime, must be proved beyond a reasonable doubt. State v. Mullins, 549 P.2d 454 (Utah 1976).

The phrase "believing that it probably has been stolen" in Subsection (1), while not a model of draftsmanship, is not unconstitutionally vague. State v. Plum, 552 P.2d 124 (Utah 1976).

Applicability.

The plain meaning of Subsection (2)(d) limits its application to pawnbrokers and similar businesses that generally deal in small purchases of secondhand consumer goods. It does not include businesses that regularly deal in large bulk orders of raw industrial material. Alta Indus. Ltd. v. Hurst, 846 P.2d 1282 (Utah 1993).

Elements.

—Concealing stolen property.

The elements in the crime of concealing or aiding in the concealment of stolen property are: (1) property belonging to another has been stolen; (2) the defendant aided in concealing this property; (3) at the time he so aided in concealing it he knew the item had been stolen; and (4) his purpose in acting was to deprive the owner thereof of possession. State v. Lamm, 606 P.2d 229 (Utah 1980).

—Receiving stolen property.

Elements of the crime of receiving stolen property are: property belonging to another has been stolen; the defendant received, retained or disposed of the stolen property; at the time of receiving, retaining or disposing of the property the defendant knew or believed the property was stolen; and the defendant acted purposely to deprive the owner of the possession of the property. State v. Murphy, 617 P.2d 399 (Utah 1980).

Time of the alleged offense is not an essential element of the crime of receiving stolen property; state's proof that offense occurred on a date different than that alleged in the information was not fatal to defendant's conviction for receiving stolen property where the applicable limitations statute had not run at the time the charge was filed. State v. Wilson, 642 P.2d 394 (Utah 1982).

In order to obtain a conviction for theft by receiving, the state must prove beyond a reasonable doubt each of the following elements: (1) The defendant received, retained, or disposed of the property of another, (2) knowing that the property had been stolen or believing that it probably had been stolen, (3) with the purpose to deprive the owner thereof. State v. Hill, 727 P.2d 221 (Utah 1986).

Entrapment.

Trial court properly found entrapment in a "sting" operation involving use of an attractive female undercover police officer to sell stolen merchandise to a jewelry store owner who may have been encouraged to suggest that his relationship with the officer become more intimate. State v. Kaufman, 734 P.2d 465 (Utah 1987).

Evidence.

Evidence establishing receiving stolen prop-

erty under this section is sufficient to sustain a conviction for theft under § 76-6-404 without the necessity of establishing theft by taking. State v. Taylor, 570 P.2d 697 (Utah 1977).

Evidence was sufficient to convict defendant of concealing stolen property where employees of construction company saw stolen welder in a pickup truck belonging to defendant, defendant's son recklessly sped away from restaurant parking lot while employees called the sheriff, and defendant asked the man he purchased the pickup truck from not to tell who he had sold the truck to. State v. Lamm, 606 P.2d 229 (Utah 1980).

Where burglar discovered machine gun parts that had already been stolen and placed in a rental storage unit, it was permissible to obtain a search warrant to obtain the remaining stolen parts in order to prosecute defendant for theft by receiving. State v. Williamson, 674 P.2d 132 (Utah 1983).

Evidence that defendant paid for stolen property with a contraband drug was relevant to show the general circumstances surrounding defendant's purchase, receipt and retention of the stolen property. State v. Pierce, 722 P.2d 780 (Utah 1986).

There was sufficient evidence to support defendant's conviction, where he and a codefendant were seen together by store personnel under conditions that suggested a common shoplifting enterprise, where store personnel saw defendant accompanying the codefendant when the latter returned stolen property for cash, and where defendant had a padlock and a substantial sum of money in his possession when apprehended for which no reasonable explanation was given. State v. Gabaldon, 735 P.2d 410 (Utah Ct. App. 1987).

Evidence was sufficient that reasonable minds could find that defendant believed television sets and videocassette recorders were stolen, where, upon receiving the goods from an undercover police officer, defendant remarked, "I wish you wouldn't cut the serial numbers off. That makes it look hot." State v. Belt, 780 P.2d 1271 (Utah Ct. App. 1989).

Intent.

Conviction for attempted theft by receiving two horses was upheld where defendant believed horses were stolen, even though horses were not stolen but were being used in sting operation. State v. Powell, 672 P.2d 96 (Utah 1983).

A defendant can be convicted of receiving stolen property if he actually believes the property is stolen and takes all the steps within his power to complete the intended theft, even if the property is not in fact stolen. State v. Pappas, 705 P.2d 1169 (Utah 1985).

Evidence was sufficient to sustain conviction for receiving merchandise in the course of a police sting operation, because the jury could reasonably have concluded that the defendant, at the time of the transactions, believed that the property was stolen, despite his self-serving assertion at trial that he had believed otherwise. State v. Jonas, 793 P.2d 902 (Utah Ct. App. 1990).

Prima facie case.

Prosecution failed to establish a prima facie case for the crime of receiving stolen property where it did not introduce any evidence, either circumstantial or direct, to establish and prove an unlawful purpose at the time of the defendant's possession of the property. State v. Murphy, 617 P.2d 399 (Utah 1980).

Separate offenses.

Concealing stolen property is an offense distinct from and independent of receiving stolen property. State v. Ramon, 736 P.2d 1059 (Utah Ct. App.), cert. denied, 765 P.2d 1277 (Utah 1987).

Trial court committed reversible error in allowing the state to amend an information charging defendants with theft by receiving, where the amendment charged concealing stolen property, an additional or different offense. State v. Ramon, 736 P.2d 1059 (Utah Ct. App.), cert. denied, 765 P.2d 1277 (Utah 1987).

Cited in State v. Gallegos, 712 P.2d 207 (Utah 1985); State v. Slowe, 728 P.2d 110 (Utah 1985); State v. Fowler, 745 P.2d 472 (Utah Ct. App. 1987).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Constitutional Law, 1987 Utah L. Rev. 82.

Am. Jur. 2d. — 66 Am. Jur. 2d Receiving and Transporting Stolen Property § 1.

C.J.S. — 76 C.J.S. Receiving Stolen Goods § 2 et seq.

A.L.R. — Conviction of receiving stolen property, or related offenses, where stolen property previously placed under police control, 72 A.L.R.4th 838.

76-6-409. Theft of services.

(1) A person commits theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment for them.

(2) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to his own benefit or to the benefit of another who he knows is not entitled to them.

(3) In this section "services" includes, but is not limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made.

(4) Under this section "services" includes gas, electricity, water, sewer, or cable television services, only if the services are obtained by threat, force, or a form of deception not described in Section 76-6-409.3.

(5) Under this section "services" includes telephone services only if the services are obtained by threat, force, or a form of deception not described in Sections 76-6-409.5 through 76-6-409.9.

History: C. 1953, 76-6-409, enacted by L. 1973, ch. 196, § 76-4-409; 1987, ch. 38, § 1; 1989, ch. 30, § 1; 1994, ch. 215, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added Subsection (5).

NOTES TO DECISIONS

ANALYSIS

Intent to pay for services.
Proof.
Cited.

Intent to pay for services.

A person who accepts the benefit of services for which he plans in good faith to pay later cannot be convicted of theft, even though he subsequently does not pay the provider of services. State v. Leonard, 707 P.2d 650 (Utah 1985).

Proof.

Proof of a mere failure to pay for services is insufficient to sustain a finding of fraudulent intent. State v. Leonard, 707 P.2d 650 (Utah 1985).

Cited in State v. Andreason, 718 P.2d 400 (Utah 1986).

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 77.

A.L.R. — State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

Offense of obtaining telephone services by unauthorized use of another's telephone number — state cases, 61 A.L.R.4th 1197.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation, 78 A.L.R.4th 1127.

76-6-409.1. Devices for theft of services — Seizure and destruction — Civil actions for damages.

(1) A person may not knowingly:

(a) make or possess any instrument, apparatus, equipment, or device for the use of, or for the purpose of, committing or attempting to commit theft under Section 76-6-409 or 76-6-409.3; or

(b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any information, instrument, apparatus, equipment, or device, or any information, plan, or instruction for obtaining, making, or assembling the same, with intent that it be used, or caused to be used, to commit or attempt to commit theft under Section 76-6-409 or 76-6-409.3.

(2) (a) Any information, instrument, apparatus, equipment, or device, or information, plan, or instruction referred to in Subsection (1) may be seized pursuant to a court order, lawful search and seizure, lawful arrest, or other lawful process.

(b) Upon the conviction of any person for a violation of any provision of this section, any information, instrument, apparatus, equipment, device, plan, or instruction shall be destroyed as contraband by the sheriff of the county in which the person was convicted.

(3) A person who violates any provision of Subsection (1) or (2) is guilty of a class A misdemeanor.

(4) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

History: C. 1953, 76-6-601, enacted by L. 1979, ch. 77, § 1; 1987, ch. 38, § 2.

76-6-409.3. Theft of utility or cable television services.

(1) As used in this section:

(a) "Cable television service" means any audio, video, or data service provided by a cable television company over its cable system facilities for payment, but does not include the use of a satellite dish or antenna.

(b) "Owner" includes any part-owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of any building and the property on which it is located.

(c) "Person" means any individual, firm, partnership, corporation, company, association, or other legal entity.

(d) "Tenant or occupant" includes any person, including the owner, who occupies the whole or part of any building, whether alone or with others.

(e) "Utility" means any public utility, municipally-owned utility, or cooperative utility which provides electricity, gas, water, or sewer, or any combination of them, for sale to consumers.

(2) A person is guilty of theft of a utility or cable television service if he commits any of the following acts which make gas, electricity, water, sewer, or cable television available to a tenant or occupant, including himself, with intent to avoid due payment to the utility or cable television company. Any person aiding and abetting in these prohibited acts is a party to the offense under Section 76-2-202. Prohibited acts include:

(a) connecting any tube, pipe, wire, cable, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, water, sewer, or cable television in a manner as permits the use of the gas, electricity, water, sewer, or cable television without its passing through a meter or other instrument recording the usage for billing;

(b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, water, or sewer service, or making or maintaining any modifi-

cation or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by the company which the person is not authorized by the company to receive;

(c) reconnecting gas, electricity, water, sewer, or cable television connections or otherwise restoring service when one or more of those utilities or cable service have been lawfully disconnected or turned off by the provider of the utility or cable service;

(d) intentionally breaking, defacing, or causing to be broken or defaced any seal, locking device, or other part of a metering device for recording usage of gas, electricity, water, or sewer service, or a security system for the recording device, or a cable television control device;

(e) removing a metering device designed to measure quantities of gas, electricity, water, or sewer service;

(f) transferring from one location to another a metering device for measuring quantities of public utility services of gas, electricity, water, or sewer service;

(g) changing the indicated consumption, jamming the measuring device, bypassing the meter or measuring device with a jumper so that it does not indicate use or registers use incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from the utility without their passing through a metering device for measuring quantities of consumption for billing purposes;

(h) using a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(i) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility service diversion, meter tampering, meter thefts, and unauthorized cable television service;

(j) assisting or instructing any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing the service;

(k) making or maintaining a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with any cables, wires, components, or other devices used for the distribution of cable television services without authority from the cable television company; or

(l) possessing without authority any device or printed circuit board designed in whole or in part to receive any cable television programming or services offered for sale over a cable television system with the intent that the device or printed circuit be used for the reception of the cable television company's services without payment. For purposes of this subsection, device or printed circuit board does not include the use of a satellite dish or antenna.

(3) The presence on property in the possession of a person of any device or alteration which permits the diversion or use of utility or cable service to avoid the registration of the use by or on a meter installed by the utility or to otherwise avoid the recording of use of the service for payment or otherwise avoid payment gives rise to an inference that the person in possession of the property installed the device or caused the alteration if:

(a) the presence of the device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television service; and

(b) the person charged has received the direct benefit of the reduction of the cost of the utility or cable television service.

(4) A person who violates this section is guilty of the offense of theft of utility or cable television service.

(a) In the case of theft of utility services, if the value of the gas, electricity, water, or sewer service is:

(i) up to $250, the offense is a class A misdemeanor;

(ii) greater than $250 but not more than $1,000, the offense is a third degree felony;

(iii) greater than $1,000, or if the offender has previously been convicted of a violation of this section, the offense is a second degree felony.

(b) In the case of theft of cable television services, the penalties are prescribed in Section 76-6-412.

(5) A person who violates this section shall make restitution to the utility or cable television company for the value of the gas, electricity, water, sewer, or cable television service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employee time, and equipment use.

(6) Criminal prosecution under this section does not affect the right of a utility or cable television company to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by this section.

(7) This section does not abridge or alter any other right, action, or remedy otherwise available to a utility or cable television company.

History: C. 1953, § 76-6-409.3, enacted by L. 1987, ch. 38, § 3; 1989, ch. 30, § 2; 1990, ch. 130, § 1.

COLLATERAL REFERENCES

A.L.R. — State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

76-6-409.5. Definitions.

As used in this section and Sections 76-6-409.6 through 76-6-409.10:

(1) "Access device" means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone service.

(2) "Manufacture of an unlawful telecommunication device" means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.

(3) "Sell" means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another.

(4) "Telecommunication device" means:

(a) any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications; or

(b) any part of an instrument, device, machine, or equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephony.

(5) "Telecommunication service" includes any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television optical or other electromagnetic system.

(6) "Telecommunication service provider" means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service.

(7) "Unlawful telecommunication device" means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device, so as to be capable of, acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

History: C. 1953, 76-6-409.5, enacted by L. 1994, ch. 215, § 2.

Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-409.6. Use of telecommunication device to avoid lawful charge for service — Penalty.

(1) Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service is guilty of:

(a) a class B misdemeanor, if the value of the telecommunication service cannot be ascertained;

(b) a class A misdemeanor, if the value of the telecommunication service charge is less than $250;

(c) a third degree felony, if the value of the telecommunication service is greater than $250 but not more than $1,000; or

(d) a second degree felony, if the value of the telecommunication service is greater than $1,000.

(2) Any person who has been convicted previously of an offense under this section shall be guilty of a second degree felony upon a second conviction and any subsequent conviction.

History: C. 1953, 76-6-409.6, enacted by L. 1994, ch. 215, § 3.
Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-409.7. Possession of any unlawful telecommunication device — Penalty.

(1) Any person who knowingly possesses an unlawful telecommunication device shall be guilty of a class B misdemeanor.

(2) If any person knowingly possesses five or more unlawful telecommunication devices in the same criminal episode, he shall be guilty of a class A misdemeanor.

History: C. 1953, 76-6-409.7, enacted by L. 1994, ch. 215, § 4.
Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-409.8. Sale of an unlawful telecommunication device — Penalty.

(1) Any person shall be guilty of a class A misdemeanor who intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device.

(2) If the offense under this section involves the intentional sale of five or more unlawful telecommunication devices within a six-month period, the person committing the offense shall be guilty of a third degree felony.

History: C. 1953, 76-6-409.8, enacted by L. 1994, ch. 215, § 5.
Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-409.9. Manufacture of an unlawful telecommunication device — Penalty.

(1) Any person who intentionally manufactures an unlawful telecommunication device shall be guilty of a class A misdemeanor.

(2) If the offense under this section involves the intentional manufacture of five or more unlawful telecommunication devices within a six-month period, the person committing the offense shall be guilty of a third degree felony.

History: C. 1953, 76-6-409.9, enacted by L. 1994, ch. 215, § 6.
Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-409.10. Payment of restitution — Civil action — Other remedies retained.

(1) A person who violates Sections 76-10-409.5 through 76-10-409.9 shall make restitution to the telecommunication service provider for the value of the telecommunication service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this

section. Reasonable expenses and costs include expenses and costs for investigation, service calls, employee time, and equipment use.

(2) Criminal prosecution under this section does not affect the right of a telecommunication service provider to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by this section.

(3) This section does not abridge or alter any other right, action, or remedy otherwise available to a telecommunication service provider.

History: C. 1953, 76-6-409.10, enacted by L. 1994, ch. 215, § 7.

Compiler's Notes. — The reference in Subsection (1) should probably be to §§ 76-6-409.5 through 76-6-409.9, as those sections prohibit theft of telecommunication services and the cited sections do not exist.

Effective Dates. — Laws 1994, ch. 215 became effective on May 2, 1994, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-410. Theft by person having custody of property pursuant to repair or rental agreement.

A person is guilty of theft if:

(1) Having custody of property pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair, or use of such property, he intentionally uses or operates it, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(2) Having custody of any property pursuant to a rental or lease agreement where it is to be returned in a specified manner or at a specified time, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

History: C. 1953, 76-6-410, enacted by L. 1973, ch. 196, § 76-6-410.

Compiler's Notes. — As enacted, this section began with the designation "(1)" but did not contain a subsection (2). The compiler has deleted the "(1)" and redesignated former (a) and (b) as (1) and (2).

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Use of the term "gross deviation" does not make this section unconstitutionally vague. State v. Owens, 638 P.2d 1182 (Utah 1981).

Consent to personal use.

A person who has consent to use property for his own personal purposes, unrelated to the purpose of the entrustment, does not violate the statute if he uses the property in a manner that goes beyond the terms of the consent. State v. Dirker, 610 P.2d 1275 (Utah 1980).

Elements of offense.

—Reliance on deception.

Neither § 76-6-405 nor this section explicitly requires that the state show the victim relied upon the defendant's deception, but courts have generally treated reliance as an implicit element of the offense of theft by deception. State v. LeFevre, 825 P.2d 681 (Utah Ct. App. 1992), cert. denied, 843 P.2d 1042 (Utah 1992).

Failure to return rented property.

Where rented typewriter was not returned by defendant after rental period despite repeated

demands by owner, court, sitting without a jury, was not required to believe defendant's testimony that he gave typewriter to his business partners to return, since partners were not called to corroborate his story, and defendant conveniently forgot important details. State v. Knepper, 18 Utah 2d 215, 418 P.2d 780 (1966).

Evidence supported conviction of embezzlement, where defendant had been given permission to continue to use car on somewhat open-ended contract after initial rental period had expired, but defendant failed to return car on specific date on which he was finally told that he must return it. State v. Heemer, 26 Utah 2d 309, 489 P.2d 107 (1971).

"Gross deviation."

As used in this section, the term "gross deviation" has the common sense meaning of being an extreme deviation. State v. Owens, 638 P.2d 1182 (Utah 1981).

Use related to purpose of agreement.

Subsection (1) assumes that the property may be used by the custodian for purposes properly related to the purpose of the entrustment; only a use that constitutes "a gross deviation from the agreed purpose," without express consent for personal use, is a crime. State v. Dirker, 610 P.2d 1275 (Utah 1980).

Cited in State v. Owens, 753 P.2d 976 (Utah Ct. App. 1988).

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 89.
C.J.S. — 52A C.J.S. Larceny §§ 46,47.

Key Numbers. — Larceny ⚷ 15.

76-6-411. Repealed.

Repeals. — Section 76-6-411, as enacted by L. 1973, ch. 196, § 76-6-411, relating to theft by failure to make required payment or disposition of property subject to legal obligation, was repealed by Laws 1974, ch. 32, § 41.

76-6-412. Theft — Classification of offenses — Action for treble damages against receiver of stolen property.

(1) Theft of property and services as provided in this chapter shall be punishable:

(a) as a felony of the second degree if the:

(i) value of the property or services exceeds $1,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a deadly weapon at the time of the theft; or

(iv) property is stolen from the person of another;

(b) as a felony of the third degree if the:

(i) value of the property or services is more than $250 but not more than $1,000;

(ii) actor has been twice before convicted of theft, any robbery, or any burglary with intent to commit theft; or

(iii) property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, or poultry;

(c) as a class A misdemeanor if the value of the property stolen was more than $100 but does not exceed $250; or

(d) as a class B misdemeanor if the value of the property stolen was $100 or less.

(2) Any person who has been injured by a violation of Subsection 76-6-408(1) may bring an action against any person mentioned in Subsection 76-6-408(2)(d) for three times the amount of actual damages, if any sustained by the plaintiff, costs of suit and reasonable attorneys' fees.

History: C. 1953, 76-6-412, enacted by L. 1973, ch. 196, § 76-6-412; 1974, ch. 32, § 18; 1975, ch. 48, § 1; 1977, ch. 89, § 1; 1989, ch. 78, § 1.

Cross-References. — Bus Passenger Safety Act, theft of baggage or cargo, § 76-10-1508.

Civil liability for treble damages for theft of livestock, § 4-24-27.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

This section, by making theft of certain livestock a third degree felony, irrespective of the value of the livestock, does not deny equal protection of the laws and does not violate the constitutional prohibition against private or special laws. State v. Clark, 632 P.2d 841 (Utah 1981).

Construction.

This section does not outline the elements of the crime of theft; it simply categorizes theft for sentencing purposes into various degrees of felonies and misdemeanors. Thus defendant was improperly charged under § 76-6-404 and this section with two separate counts of second degree theft for stealing both a firearm and property worth over $1000 in a single burglary; the crime was instead one theft offense under § 76-6-404 punishable as a second degree felony under this section. State v. Casias, 772 P.2d 975 (Utah Ct. App. 1989).

No claim for treble damages based on § 76-6-408(2)(d) and this section against businesses that regularly deal in large bulk orders of raw industrial material. See Alta Indus. Ltd. v. Hurst, 846 P.2d 1282 (Utah 1993).

Determining degree of crime.

In theft by deception, degree of the crime is determined by the value of the property obtained by defendant as a result of the deception without reducing that amount by any value received by the victim. State v. Forshee, 588 P.2d 181 (Utah 1978).

Defendant's second degree felony conviction, based on a check written for exactly $1,000, was plain error, since he could only have been convicted of a third degree felony on the basis of the $1,000 check. State v. Burnett, 712 P.2d 260 (Utah 1985).

Evidence.

State's use of color photographs of the stolen property for evidence rather than producing the actual tangible stolen property did not deny defendant due process of law. State v. Ballenberger, 652 P.2d 927 (Utah 1982).

Instructions.

It was reversible error to omit to instruct as to amount of debt owing by defendant on auto, left for repairs, but taken and driven away without satisfying lien existing on car; if jury had found that debt was less than $50, conviction for grand larceny would have been error. State v. Parker, 104 Utah 23, 137 P.2d 626 (1943).

Lesser included offenses.

The crime of carrying a concealed dangerous weapon is a lesser included offense of second-degree felony retail theft when the retail theft is made a felony by the actor's being armed with a deadly weapon in the course of the crime. State v. Kinsey, 797 P.2d 424 (Utah Ct. App. 1990).

Livestock.

Theft of dead calf was grand larceny, even though value of meat did not exceed $50, where animal was killed by thief as means of making theft possible. State v. Laub, 102 Utah 402, 131 P.2d 805 (1942).

Prior convictions.

A judgment of prior conviction must be written, clear and definite, and signed by the court (or the clerk in a jury case) in order to serve as the basis for enhancing a penalty under this section. State v. Anderson, 797 P.2d 1114 (Utah Ct. App. 1990).

Single offense based on separate takings.

Where defendant was employed to solicit advertising contracts and within short time had collected from different persons $235 due publishing company upon contracts solicited and procured by him, and where he had unlawfully converted money to his own use, taking of $235 was one embezzlement and constituted grand larceny, even though $48 was largest amount collected from any one individual. State v. Gibson, 37 Utah 330, 108 P. 349 (1910).

The value of the property stolen in separate transactions can be added together to determine the degree of the crime if the separate transactions are part of one continuing plan and thus constitute a single offense. State v.

Kimbel, 620 P.2d 515 (Utah 1980).

Valuation of stolen property.

Where auto owner took his car from possession of repairman by trick, or otherwise stole special property of bailee, value was amount of indebtedness; where thing stolen was written instrument evidencing debt, its value was determined by amount remaining unpaid thereon. State v. Parker, 104 Utah 23, 137 P.2d 626 (1943).

Stealing of purse which was 1 ½ feet from owner was not grand larceny in absence of proof of value. State v. Lucero, 28 Utah 2d 61, 498 P.2d 350 (1972).

For purposes of determining the degree of an offense graded in terms of the value of the property stolen, the proper measure is the current market value of the property at the time and place where the alleged offense was committed. State v. Logan, 563 P.2d 811 (Utah 1977).

Evidence was sufficient to establish beyond a reasonable doubt that more than $250 had been stolen from washers and dryers in a coin-operated laundromat where laundromat owner, who had operated the business for twelve years, testified that roughly $600 to $800 was missing based upon estimates from money in the machines that were not disturbed and the total amount of money found in defendant's possession was nearly $600. State v. Whittenback, 621 P.2d 103 (Utah 1980).

The prima facie value of a stolen check is its face value whether the check is endorsed or not. State v. Pacheco, 636 P.2d 489 (Utah 1981).

Evidence held sufficient to establish at least $250 embezzled by theater manager. State v. Patterson, 700 P.2d 1104 (Utah 1985).

To prove market value in a different city, the cities must be sufficiently close geographically and similar in population to be considered comparable for purposes of valuing the property. State v. Carter, 707 P.2d 656 (Utah 1985).

—Testimony of owner.

Owner is competent to testify to the value of stolen property where the owner's opinion of the value is based on comparable prices for similar property. State v. Limb, 581 P.2d 142 (Utah 1978).

Owner of the stolen property was allowed to give his opinion as to the value of such property. State v. Ballenberger, 652 P.2d 927 (Utah 1982).

Because an owner is presumed to be familiar with the value of his possessions, an owner is competent to testify on the present market value of his property. State v. Purcell, 711 P.2d 243 (Utah 1985).

Owner's testimony that a stolen ring was worth $200 was inadmissible, because he had no independent knowledge or memory of its value nor was his memory refreshed after looking at a police report. State v. Oliver, 820 P.2d 474 (Utah Ct. App. 1991), cert. denied, 843 P.2d 516 (Utah 1992).

Cited in State v. Slowe, 728 P.2d 110 (Utah 1985); State v. Parkin, 742 P.2d 715 (Utah Ct. App. 1987); State v. Deitman, 739 P.2d 616 (Utah 1987); State v. Branch, 743 P.2d 1187 (Utah 1987); State v. Barber, 747 P.2d 436 (Utah Ct. App. 1987); State v. Hunter, 831 P.2d 1033 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. 2d Larceny § 44.
C.J.S. — 52A C.J.S. Larceny § 60(1).
Key Numbers. — Larceny ⚷ 23.

PART 5

FRAUD

76-6-501. Forgery — "Writing" defined.

(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a) alters any writing of another without his authority or utters any such altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a

numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(2) As used in this section "writing" includes printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification.

(3) Forgery is a felony of the second degree if the writing is or purports to be:

(a) a security, revenue stamp, or any other instrument or writing issued by a government, or any agency thereof; or

(b) a check with a face amount of $100 or more, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(4) Forgery is a felony of the third degree if the writing is or purports to be a check with a face amount of less than $100; all other forgery is a class A misdemeanor.

History: C. 1953, 76-6-501, enacted by L. 1973, ch. 196, § 76-6-501; 1974, ch. 32, § 19; 1975, ch. 52, § 1.

NOTES TO DECISIONS

ANALYSIS

Attempt.

Where information charging offense of forgery contained one count for forgery and another for uttering, attempt to utter could be shown, for it was immaterial that attempt to utter was unsuccessful; it was fact of uttering or attempting to utter that was of evidentiary value. State v. Green, 89 Utah 437, 57 P.2d 750 (1936).

The crime of attempted forgery involves the same culpability and dishonesty as does the crime of forgery itself. State v. Ross, 782 P.2d 529 (Utah Ct. App. 1989).

Attorney signing client's name.

Section 78-51-32, which authorizes an attorney to execute documents in the name of a client, does not authorize an attorney to forge a client's name to a negotiable instrument such as a settlement check and does not preclude the attorney's conviction for forgery as a matter of law when he does so; however, when an attorney acts pursuant to the general authority granted by § 78-51-32 he may not later be convicted of forgery. State v. Musselman, 667 P.2d 1061 (Utah 1983).

Authority to use forged signature.

Where defendant forged his accomplice's name on checks which accomplice owned but had reported stolen, then cashed the checks and split the proceeds with the accomplice, defendant committed forgery as defined under Subsection (1)(b), notwithstanding that the accomplice authorized defendant to sign his name. State v. Collins, 597 P.2d 1317 (Utah 1979).

Classification of document.

The trial court erred in concluding that a "receipt," a document representing that a cus-

tomer had returned merchandise for a cash refund, fell within the ambit of Subsection (3)(b). Rather, such a document is properly included under Subsection (4). State v. Masciantonio, 850 P.2d 492 (Utah Ct. App. 1993).

Defenses.

—Insanity.

Insanity, if sufficiently established, would constitute defense to a charge of forgery. State v. Brown, 36 Utah 46, 102 P. 641, 24 L.R.A. (n.s.) 545 (1909).

—Postdated check.

In prosecution for forgery, fact that forged check was postdated did not help defendant, who had attempted to pass it. State v. Green, 89 Utah 437, 57 P.2d 750 (1936).

Elements of offense.

—Making and passing.

Crime of forgery could consist of making of forged instrument or of passing of instrument known to be false, or of both making and passing such instrument. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937); State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

—Passing.

Even though proof failed to show that defendant had personally forged instrument, showing that defendant passed instrument knowing it to be false or forged would prove crime of forgery. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937); State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

—Signature.

To convict one of uttering and passing forged draft, it was not essential that he should have personally affixed forged name to draft. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937); State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

Evidence.

—Handwriting.

In prosecution for issuing two fictitious checks, defendant's demand that prosecution deliver checks to him so that he could show by handwriting expert that he did not write or endorse them was properly refused since defendant was charged with issuing checks rather than with writing or endorsing them; checks were nonetheless admitted into evidence for purpose of showing identity of person passing them. State v. Redmond, 19 Utah 2d 272, 430 P.2d 901 (1967).

In forgery prosecution, testimony of handwriting expert with surrounding circumstances sufficiently corroborated testimony of accomplice to warrant submission of case to jury. State v. Leek, 85 Utah 531, 39 P.2d 1091 (1934).

—Other crimes.

In forgery prosecution in which defendant denied endorsing check, admission in evidence of other checks, allegedly to prove intent, endorsements upon which accomplice testified were made at same time endorsement involved in prosecution was made, was prejudicial error as tending to prove other and distinct offenses. State v. Leek, 85 Utah 531, 39 P.2d 1091 (1934).

In prosecution for issuing fraudulent paper, state could not prove that defendant committed other offenses merely to show his propensity for commission of crime; however, evidence of other crimes was admissible if it tended to prove that he had necessary intention for crime charged; evidence admissible for one purpose was not inadmissible because it failed to meet requirements for admissibility for another purpose, but jury should have been instructed not to use it for the inadmissible purpose. State v. Wellard, 3 Utah 2d 129, 279 P.2d 914 (1955).

—Sufficient.

Evidence sufficient to sustain conviction for forgery. See State v. Williams, 712 P.2d 220 (Utah 1985); State v. Ross, 782 P.2d 529 (Utah Ct. App. 1989).

Evidence showing that defendant had sold partially completed bogus temporary driver permits to detectives was sufficient to support his conviction of forgery. State v. Singh, 819 P.2d 356 (Utah Ct. App. 1991).

False pretenses distinguished.

Court properly ordered release of defendant where he had pleaded guilty to crime of obtaining money or property by false pretenses, and information charged him with crime of forgery; former crime was not "necessarily included" in crime of forgery; although both crimes included elements of fraud, forgery as defined by statute had to do with alteration or falsification of written instruments or documents, or use of unauthorized signatures, while false pretenses statute applied to wide range of activities related to property, which might in some instances have involved forgery, but usually did not. Williams v. Turner, 421 F.2d 168 (10th Cir. 1970).

Fictitious name.

Evidence that defendant signed check by fictitious name and used it in payment for goods and for cash supported conviction under former statute as to issuing fraudulent paper, as against contention that all that was proven was violation of former § 76-20-11, which made issuance of check against insufficient funds a misdemeanor. State v. Tinnin, 64 Utah 587, 232 P. 543, 43 A.L.R. 46 (1925).

It made no difference, in conviction of forgery, whether name on questioned document was that of real or fictitious person. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937).

Former statute which described offense of issuing fraudulent paper did not require that there had been no person in existence who bore name appended to check, but did require that there had been no person in existence who had purportedly or was claimed to have made such check. State v. Wellard, 3 Utah 2d 129, 279 P.2d 914 (1955).

Indictment or information.

Information in forgery prosecution charging making and passing of forged check was not duplicative and subject to motion to strike on that ground since, where several acts were enumerated alternatively in statute, doing of each one being prohibited under penalty, they could be charged conjunctively as one offense, when not repugnant to each other, and especially when each of acts charged was committed with respect to same instrument. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

Intent.

County warrant did not come under former statute which described offense of issuing fraudulent paper: if instrument was made by purported maker, intending it at time of making to be payable to payee named therein; if instrument was genuine, even though it later developed that there was no such person as payee; if at time instrument was made it was not intended by maker to be false, unreal, and fictitious since no subsequent endorsements thereon could make instrument a fictitious one; and a fortiori, if maker did not intend instrument to be false, unreal, or fictitious since no subsequent holder or passer could make it such. State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

"Make" or "utter."

Substitution of word "utter" for word "make" in original complaint, at preliminary hearing, did not define a crime different from that found in the original complaint, and did not alter the original complaint in a material or prejudicial manner. State v. Sommers, 597 P.2d 1346 (Utah 1979).

Prescription.

Petitioner who uttered a forged prescription to obtain controlled substance was properly sentenced under § 58-37-8, which is specifically designed to prohibit petitioner's act, instead of this section, which deals with offenses of an entirely different nature. Helmuth v. Morris, 598 P.2d 333 (Utah 1979).

Signature.

—In general.

To establish falsity of signature it must have been made to appear not only that person whose name was signed to instrument had not signed it, but also that his name had been signed without authority. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

—Authority to sign another's name.

It was not forgery for one person to have written another's name with authority. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

Where person whose name appeared on check testified that he had not signed check, but did not testify that he had not authorized another to sign his name, conviction of defendant of forgery for passing forged check was improper. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

Standard of proof.

Before defendant could be convicted of passing forged check, state must have proven beyond reasonable doubt that check had been forged. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

Uttering.

Offering forged check to clerk in store with knowledge of its falsity and with intent to defraud constituted uttering. State v. Green, 89 Utah 437, 57 P.2d 750 (1936).

Variance.

Where check showed endorsement, and information charging offense of forgery did not set out such endorsement, there was no material variance. State v. Jones, 81 Utah 503, 20 P.2d 614 (1933).

Verdict.

Verdict of guilty of uttering forged instrument was not contrary to instruction on crime of forging instrument which stated that defendant should not be convicted unless jury should find that defendant wrote instrument and was not authorized to do so by person whose name was appended thereto. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937); State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

Finding of guilty of crime of uttering forged instrument was not finding of guilty of forging instrument, and did not require finding of guilty of latter crime to support it. State v. Gorham, 93 Utah 274, 72 P.2d 656 (1937); State v. Jensen, 103 Utah 478, 136 P.2d 949 (1943).

Cited in State v. Gonzalez, 822 P.2d 1214 (Utah Ct. App. 1991); State v. Gardner, 827 P.2d 980 (Utah Ct. App. 1992).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Forgery § 1.
C.J.S. — 37 C.J.S. Forgery § 1.
A.L.R. — Procuring signature by fraud as forgery, 11 A.L.R.3d 1074.
Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971.
Key Numbers. — Forgery ⚷ 1.

76-6-502. Possession of forged writing or device for writing.

Any person who, with intent to defraud, knowingly possesses any writing that is a forgery as defined in Section 76-6-501, or who with intent to defraud knowingly possesses any device for making any such writing, is guilty of a felony of the third degree, except where the altering, making, completion, execution, issuance, transfer, publication, or utterance of such writing would constitute a class A misdemeanor, in which event the possession of the writing or device for making such a writing shall constitute a class A misdemeanor.

History: C. 1953, 76-6-502, enacted by L. 1973, ch. 196, § 76-6-502; 1974, ch. 32, § 20.

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Forgery § 44.
C.J.S. — 37 C.J.S. Forgery § 78.
Key Numbers. — Forgery ⚷ 17.

76-6-503. Fraudulent handling of recordable writings.

(1) Any person who with intent to deceive or injure anyone falsifies, destroys, removes, or conceals any will, deed, mortgage, security instrument, or other writing for which the law provides public recording is guilty of fraudulent handling of recordable writings.

(2) Fraudulent handling of recordable writings is a felony of the third degree.

History: C. 1953, 76-6-503, enacted by L. 1973, ch. 196, § 76-6-503.

NOTES TO DECISIONS

Articles of incorporation.

Since former § 16-10-50 required articles of incorporation to be filed and not recorded, they were not writings for which the law provides public recording, and the forgery of incorporator's signature upon a company's articles of incorporation was not an offense within the scope of this section. State v. Noren, 621 P.2d 1224 (Utah 1980).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Forgery § 15.
C.J.S. — 37 C.J.S. Forgery § 12.
Key Numbers. — Forgery ⚷ 10.

76-6-504. Tampering with records.

(1) Any person who, having no privilege to do so, knowingly falsifies, destroys, removes, or conceals any writing, other than the writings enumerated in Section 76-6-503, or record, public or private, with intent to deceive or injure any person or to conceal any wrongdoing is guilty of tampering with records.

(2) Tampering with records is a class B misdemeanor.

History: C. 1953, 76-6-504, enacted by L. 1973, ch. 196, § 76-6-504.

Cross-References. — Falsification or alteration of government records, § 76-8-511.

Falsifying public accounts, § 76-8-402.

Mutilating or destroying public records, §§ 76-8-412, 76-8-413.

NOTES TO DECISIONS

ANALYSIS

Application.
Articles of incorporation.
Officer's destruction of records.

Application.

Section 76-8-412 applies to an officer having the custody of any record, whereas this section applies to any person. State v. Hales, 652 P.2d 1290 (Utah 1982).

Articles of incorporation.

Forgery of incorporator's signature upon a company's articles of incorporation is an offense within the scope of this section. State v. Noren, 621 P.2d 1224 (Utah 1980).

Officer's destruction of records.

Former town recorder was properly charged with a felony and punished under § 76-8-412, rather than charged with a misdemeanor under this section, for destroying the town records in her custody after her resignation from office instead of turning the records over to her successor in office. State v. Hales, 652 P.2d 1290 (Utah 1982).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Forgery § 15.

C.J.S. — 37 C.J.S. Forgery § 12.

A.L.R. — What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense, 75 A.L.R.4th 1067.

Key Numbers. — Forgery ⚷ 15.

76-6-505. Issuing a bad check or draft — Presumption.

(1) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check or draft.

For purposes of this subsection, a person who issues a check or draft for which payment is refused by the drawee is presumed to know the check or draft would not be paid if he had no account with the drawee at the time of issue.

(2) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, payment of which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

(3) An offense of issuing a bad check or draft shall be punished as follows:

(a) If the check or draft or series of checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum of not more than $200, such offense shall be a class B misdemeanor.

(b) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum exceeding $200 but not more than $300, such offense shall be a class A misdemeanor.

(c) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum exceeding $300 but not more than $1,000, such offense shall be a felony of the third degree.

(d) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum exceeding $1,000, such offense shall be a second degree felony.

History: C. 1953, 76-6-505, enacted by L. 1973, ch. 196, § 76-6-505; 1977, ch. 91, § 1; 1983, ch. 92, § 1.

Cross-References. — Civil liability of issuer, §§ 7-15-1, 7-15-2.

NOTES TO DECISIONS

ANALYSIS

Agreement between drawer and payee.

Conviction under former § 76-20-11 was improper where receiver of check understood check was to be held for time before it was to be cashed, that drawer had sufficient credit, and elements of fraud by drawer and reliance by payee were lacking. State v. Trogstad, 98 Utah 565, 100 P.2d 564 (1940).

Double jeopardy.

Defendant convicted of misdemeanor for writing check on insufficient funds and also convicted of felony on combination of other checks, all cashed within a six-month period, was not subjected to double jeopardy. State v. Dolan, 28 Utah 2d 331, 502 P.2d 549 (1972).

Elements of offense.

Knowledge of the account's depletion is a material element in the offense of issuing a bad check; intent to defraud is not a necessary element. State v. Delmotte, 665 P.2d 1314 (Utah 1983).

Drawee's refusing payment is an essential element of the crime of issuing a bad check. State v. Coando, 784 P.2d 1228 (Utah Ct. App. 1989), aff'd, 858 P.2d 926 (1992).

Evidence.

—In general.

Evidence was sufficient to sustain conviction of issuing check against insufficient funds where worthlessness of check was undisputed. State v. Myers, 15 Utah 2d 130, 388 P.2d 801 (1964).

Evidence held to be sufficient to show that the defendant had the requisite intent to have been guilty of issuing a bad check. See State v. McClain, 706 P.2d 603 (Utah 1985).

In a prosecution for issuing bad checks, the trial court did not abuse its discretion in permitting evidence of nine returned checks drawn by the defendants, which checks were not at issue, to be presented to the jury, since the admission of the checks was to attack the credibility of both the defendant and her father as witnesses, and to show knowledge, intent, or absence of mistake. State v. McClain, 706 P.2d 603 (Utah 1985).

—Other bad checks.

Admission of evidence that defendant had drawn other checks with insufficient funds was not prejudicial where other offense arose from same transaction giving rise to instant prosecution. State v. Bettis, 27 Utah 2d 373, 496 P.2d 715 (1972).

Fictitious name.

Evidence that defendant signed check by fictitious name and used it in payment for goods and for cash supported conviction under former statute which made passing of fictitious check a felony, as against contention that all that was proved was offense of uttering check drawn on insufficient funds. State v. Tinnin, 64 Utah 587, 232 P. 543, 43 A.L.R. 46 (1925).

Instructions.

It was reversible error to instruct as to whether subsequent payment of amount of check would constitute defense without instructing as to whether intention to defraud was present at time the check was issued. State v. Scott, 105 Utah 31, 140 P.2d 929 (1943).

Trial court erred in instructing that defendant's failure to have sufficient funds or credit at bank at time he wrote check in question would be prima facie evidence of intent to defraud where, before writing check, defendant had phoned bank to ascertain validity of check he intended to deposit to cover check he was about to write, and where defendant did deposit sufficient funds to cover check; such evidence raised reasonable doubt as to defendant's intent to defraud at time of making and delivering check that eventually bounced. State v. Coleman, 17 Utah 2d 166, 406 P.2d 308 (1965).

Intent.

Where defendant wrote bad check for purchase of certificate of deposit, and attempted to cancel or close the certificate on same day, there was not sufficient evidence to prove intent to obtain money or property, since certificate had no actual worth until defendant's check cleared; thus, the defendant's action amounted to nothing more than writing himself a worthless check. State v. Green, 672 P.2d 400 (Utah 1983).

Jurisdiction.

Where drawee bank's refusal of payment occurred in Utah, the state had proper jurisdiction to prosecute Indian defendant for all bad checks written on the bank. State v. Coando, 784 P.2d 1229 (Utah Ct. App. 1989).

Knowledge.

Defendant's trial counsel could not compel the prosecution to charge him under Subsection (2) rather than Subsection (1) since the evidence was clearly susceptible to the interpretation that defendant knew that the checks he issued would not be honored at the time of presentment to his bank. State v. Bartholomew, 724 P.2d 352 (Utah 1986).

Malicious prosecution.

Corporation was not liable for malicious prosecution where local agent initiated prosecution for issuance of check without sufficient funds, and he did so without his principal's express authority, but whether agent was liable for arrest and imprisonment of plaintiff was jury question as to probable cause for agent's belief in plaintiff's guilt and good faith of agent. Sweatman v. Linton, 66 Utah 208, 241 P. 309 (1925).

Omission of payee name in check.

Defendant was properly convicted of issuing check against insufficient funds, though he left payee line blank; check remained negotiable instrument and any due holder was entitled to fill in payee blank and check then became an order on named bank. State v. Donaldson, 14 Utah 2d 401, 385 P.2d 151 (1963).

Payment for labor.

Issuance of check against insufficient funds to repairman in return for "parts and services" violated statute which prohibited such issuance for the payment of money, or wages for labor performed. State v. Pfannenstiel, 22 Utah 2d 31, 448 P.2d 346 (1968).

Penalties.

Sentencing under former statute of various defendants to same number of years even though checks varied in amount from $5.00 to $50 was not violation of due process or equal protection clauses of Constitution. Andrus v. Turner, 421 F.2d 290 (10th Cir. 1970).

Postdated check.

In spite of difficulty in proving present existing intent to defraud where check was postdated, if payee, acting reasonably, accepted check as one of current date, and facts would support a finding beyond reasonable doubt that defendant willfully, with intent to defraud, passed worthless check, question of his guilt of issuing check against insufficient funds would have been submitted to jury. State v. Bruce, 1 Utah 2d 136, 262 P.2d 960 (1953).

Thing of value.

Irrespective of whether defendant actually acquired legal title to stock booked into his company's account, he did receive "a thing of value" within the meaning of this section by acquiring the rights to order the stock in his account sold and to receive any profit that might be realized from such a sale. State v. Bartholomew, 724 P.2d 352 (Utah 1986).

COLLATERAL REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 77.

C.J.S. — 35 C.J.S. False Pretenses § 21.

A.L.R. — Reasonable expectation of payment as affecting offense under "worthless check" statutes, 9 A.L.R.3d 719.

Personal liability of officers or directors of corporation on corporate checks issued against insufficient funds, 47 A.L.R.3d 1250.

Application of "bad check" statute with respect to postdated checks, 52 A.L.R.3d 464.

Cashing check at bank at which account is maintained as violation of bad check statutes, 75 A.L.R.3d 1080.

76-6-506. Financial transaction card offenses — Definitions.

For purposes of this part:

(1) "Authorized credit card merchant" means a person as defined in Section 68-3-12 who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a financial transaction card by a card holder and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom or for whose benefit a financial transaction card is issued by an issuer.

(4) "Credit card sales draft" means any sales slip, draft, or other written or electronic record of a sale of money, goods, services, or anything else of value made or purported to be made to or at the request of a card holder with a financial transaction card, financial transaction card credit number, or personal identification code, whether the record of the sale or purported sale is evidenced by a sales draft, voucher, or other similar document in writing or electronically recorded and transmitted.

(5) "Financial transaction card" means:

(a) any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of the person or business; or

(b) any instrument or device used in providing the card holder access to a demand or time deposit account for the purpose of making deposits of money or checks in the account, or withdrawing funds from the account in the form of money, money orders, travelers' checks or other form representing value, or transferring funds from any demand or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing in the credit card account.

(6) "Issuer" means a business organization or financial institution or its agent that issues a financial transaction card.

(7) "Personal identification code" means any numerical or alphabetical code assigned to a card holder by the issuer to permit the authorized electronic use of his financial transaction card.

History: C. 1953, 76-6-506, enacted by L. 1983, ch. 96, § 1; 1991, ch. 60, § 2.

Repeals and Reenactments. — Laws 1983, ch. 96, § 1 repealed former § 76-6-506 (L. 1977, ch. 90, § 1), relating to fraudulent use of a credit card, and enacted present § 76-6-506.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added Subsections (1) and (4) and redesignated former Subsections (1) to (5) as Subsections (2), (3), (5), (6), and (7), respectively.

COLLATERAL REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 35.

C.J.S. — 35 C.J.S. False Pretenses § 24.

A.L.R. — Criminal liability for unauthorized use of credit card, 24 A.L.R.3d 986.

Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 A.L.R.4th 231.

76-6-506.1. Financial transaction card offenses — Falsely making, coding, or signing card — Falsely signing evidence of card transaction.

Any person who, with intent to defraud, counterfeits, falsely makes, embosses, or encodes magnetically or electronically any financial transaction card, or who, with intent to defraud, uses through carbon or other impressions or copies of credit card sales drafts or through any other means, the account number or personal identification code of a card holder in the creation of a fictitious or counterfeit credit card sales draft, or who, with intent to defraud, signs the name of another or a fictitious name to a financial transaction card, credit card sales draft, or any instrument for the payment of money which evidences a financial transaction card transaction, is guilty of a felony of the second degree.

History: C. 1953, 76-6-506.1, enacted by L. 1983, ch. 96, § 2; 1991, ch. 60, § 3.

Repeals and Reenactments. — Laws 1983, ch. 96, § 2 repealed former § 76-6-506.1 (L. 1977, ch. 90, § 2), relating to classification of offenses, and enacted present § 76-6-506.1.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, inserted "or who, with intent to defraud, uses through carbon or other impressions or copies of credit card sales drafts or through any other means, the account number or personal identification code of a card holder in the creation of a fictitious or counterfeit credit card sales draft" and made related changes and substituted "credit card" for "sales slip" before "sales draft."

NOTES TO DECISIONS

ANALYSIS

Section 76-6-506.2 distinguished.
Cited.

Section 76-6-506.2 distinguished.

This section and § 76-6-506.2 do not proscribe identical conduct because they do not contain the same elements: This section requires proof of a "signing" of a sales slip whereas § 76-6-506.2 instead requires proof of the value of items fraudulently purchased. State v. Gomez, 722 P.2d 747 (Utah 1986).

Cited in State v. Bankhead, 727 P.2d 216 (Utah 1986).

76-6-506.2. Financial transaction card offenses — Unlawful use of card or automated banking device — False application for card.

It is unlawful for any person to:

(1) knowingly, with intent to defraud, obtain or attempt to obtain credit or purchase or attempt to purchase goods, property, or services, by the use of a false, fictitious, altered, counterfeit, revoked, expired, stolen, or fraudulently obtained financial transaction card, by any financial transaction card credit number, personal identification code, or by the use of a financial transaction card not authorized by the issuer or the card holder;

(2) use a financial transaction card, with intent to defraud, to knowingly and willfully exceed the actual balance of a demand or time deposit account;

(3) use a financial transaction card, with intent to defraud, to willfully exceed an authorized credit line by $500 or more, or by 50% of such line, whichever is greater;

(4) willfully, with intent to defraud, deposit into his or any other account by means of an automated banking device a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other similar document;

(5) make application for a financial transaction card to an issuer, while knowingly making or causing to be made a false statement or report relative to his name, occupation, financial condition, assets, or to willfully and substantially undervalue or understate any indebtedness for the purposes of influencing the issuer to issue the financial transaction card; or

(6) knowingly, with intent to defraud any authorized credit card merchant, card holder, or issuer, sell or attempt to sell credit card sales drafts to an authorized credit card merchant or any other person or organization, for any consideration whether at a discount or otherwise, or present or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any such credit card sales draft, if:

(i) the draft is counterfeit or fictitious;

(ii) the purported sales evidenced by any such credit card sales draft did not take place;

(iii) the purported sale was not authorized by the card holder;

(iv) the items or services purported to be sold as evidenced by the credit card sales drafts are not delivered or rendered to the card holder or person intended to receive them; or

(v) when delivered or rendered, the goods or services are materially different or of materially lesser value or quality than represented by the seller or his agent to the purchaser, or have substantial discrepancies from goods or services impliedly represented by the purchase price when compared with the actual goods or services delivered or rendered.

History: C. 1953, 76-6-506.2, enacted by L. 1983, ch. 96, § 3; 1991, ch. 60, § 4.

Repeals and Reenactments. — Laws 1983, ch. 96, § 3 repealed former § 76-6-506.2 (L. 1977, ch. 90, § 3), relating to taking a credit card from a person, and enacted present § 76-6-506.2.

Amendment Notes. — The 1991 amend-

ment, effective April 29, 1991, added Subsection (6) and made minor stylistic changes in Subsections (4) and (5).

NOTES TO DECISIONS

ANALYSIS

Defenses.
—Property obtained by third party.
Section 76-6-506.1 distinguished.
Value question of fact.

Defenses.

—Property obtained by third party.
One who was otherwise guilty of obtaining or attempting to obtain automobile tires by unauthorized use of credit card made no defense by showing that tires were picked up by wife and third party. Combs v. Turner, 25 Utah 2d 397, 483 P.2d 437 (1971).

Section 76-6-506.1 distinguished.
This section and § 76-6-506.1 do not proscribe identical conduct because they do not contain the same elements: Section 76-6-506.1 requires proof of a "signing" of a sales slip whereas this section instead requires proof of the value of items fraudulently purchased. State v. Gomez, 722 P.2d 747 (Utah 1986).

Value question of fact.
Trial court erred in instructing jury that under former statute "value" meant "retail" value; value was a question of fact to be determined by the jury. State v. Harris, 30 Utah 2d 439, 519 P.2d 247 (1974).

76-6-506.3. Financial transaction card offenses — Unlawful acquisition, possession or transfer of card.

It is unlawful for any person to:

(1) Acquire a financial transaction card from another without the consent of the card holder or the issuer, or, with the knowledge that it has been acquired without consent, receive a financial transaction card with intent to use it in violation of Section 76-6-506.2, or sell or transfer a financial transaction card to another person with the knowledge that it will be used in violation of Section 76-6-506.2; or

(2) Acquire a financial transaction card that he knows was lost, mislaid, or delivered under a mistake as to the identity or address of the card holder, and retain possession with intent to use it in violation of Section 76-6-506.2, or sell or transfer a financial transaction card to another person with the knowledge that it will be used in violation of Section 76-6-506.2.

History: C. 1953, 76-6-506.3, enacted by L. 1983, ch. 96, § 4.

Repeals and Reenactments. — Laws 1983, ch. 96, § 4 repealed former § 76-6-506.3 (L. 1977, ch. 90, § 4), relating to possession or receipt of a credit card, and enacted present § 76-6-506.3.

76-6-506.4. Financial transaction card offenses — Property obtained by unlawful conduct.

It is unlawful for any person to receive, retain, conceal, possess, or dispose of personal property, cash, or other form representing value, if he knows or has reason to believe the property, cash, or other form representing value has been obtained through unlawful conduct described in Section 76-6-506.1, 76-6-506.2, or 76-6-506.3.

History: C. 1953, 76-6-506.4, enacted by L. 1983, ch. 96, § 5.

76-6-506.5. Financial transaction card offenses — Classification.

(1) Any person found guilty of unlawful conduct described in Section 76-6-506.2, 76-6-506.3, 76-6-506.4, or 76-6-506.6 is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained, is $100 or less;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained, is more than $100 but does not exceed $1,000;

(c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained, is more than $1,000 but does not exceed $10,000;

(d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained, is more than $10,000 but does not exceed $100,000;

(e) a first degree felony when the value of the property, money, or thing obtained or sought to be obtained, is $100,000 or more.

(2) Each occurrence constituting such unlawful conduct is a separate offense.

(3) The determination of the degree of any offense under this section shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the unlawful conduct.

History: C. 1953, 76-6-506.5, enacted by L. 1983, ch. 96, § 6; 1991, ch. 60, § 5; 1991, ch. 241, § 91.

Amendment Notes. — The 1991 amendment by ch. 60, effective April 29, 1991, added the Subsection (1) designation; in Subsection (1), inserted "or 76-6-506.6" and made related stylistic changes in the first sentence, deleted "a class A misdemeanor" at the end of the first sentence, and deleted the former second sentence, which read "If the retail value of the money, goods, or services obtained or attempted to be obtained through unlawful conduct described in Section 76-6-506.2 or 76-6-506.4 is $250 or more, the person is guilty of a felony of the third degree"; and added Subsections (1)(a) through (1)(e), (2), and (3).

The 1991 amendment by ch. 241, effective April 29, 1991, substituted "class B" for "class A" in the first sentence.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

76-6-506.6. Financial transaction card offenses — Unauthorized factoring of credit card sales drafts.

It is unlawful for any person, knowingly, with intent to defraud, acting without the express authorization of the issuer, to employ, solicit, or otherwise cause an authorized credit card merchant, or for the authorized credit card merchant himself, to present any credit card sales draft to the issuer for payment pertaining to any sale or purported sale of goods or services which was not made by the authorized credit card merchant in the ordinary course of business.

History: C. 1953, 76-6-506.6, enacted by L. 1991, ch. 60, § 6.

Effective Dates. — Laws 1991, ch. 60 became effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

76-6-507. Deceptive business practices — Definitions — Defense.

(1) A person is guilty of a class B misdemeanor if, in the course of business, he:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(b) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(c) sells, offers, or exposes for sale adulterated or mislabeled commodities.

(2) (a) "Adulterated" means varying from the standard of composition or quality prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage.

(b) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage[.]

(3) It is an affirmative defense to prosecution under this section that the defendant's conduct was not knowing or reckless.

History: C. 1953, 76-6-507, enacted by L. 1973, ch. 196, § 76-6-507; 1985, ch. 157, § 1.

Compiler's Notes. — The period at the end of Subsection (2) was added by the compiler. A period should have been substituted for "; or" at the end of Subsection (2) when the section was amended.

Cross-References. — Adulterated or misbranded dairy products, sale prohibited, § 4-3-10.

Adulterated or misbranded food, animal drug or device, sale prohibited, defenses, §§ 4-5-3, 4-5-4.

False weights and measures, § 4-9-12.

Medical practitioners, fraudulent practices by, § 58-12-20.

NOTES TO DECISIONS

ANALYSIS

Civil liability.
Theft distinguished.

Civil liability.

Complaint alleging false, deceptive or misleading advertising and misrepresentation of guarantee was improperly dismissed for failure to state claim upon which relief could be granted; under the circumstances, plaintiff might have had a civil cause of action because a violation of former § 76-4-1 could give rise to civil liability. Christensen v. Lelis Automatic Transmission Serv., Inc., 24 Utah 2d 165, 467 P.2d 605 (1970).

Theft distinguished.

Where defendant took money from investors for the purchase of fruit juice vending machines and exercised control over that money with the criminal intent to permanently deprive investors of it and not deliver any machines at all, such conduct constituted a theft offense and not merely a deceptive business practice. State v. Kerekes, 622 P.2d 1161 (Utah 1980).

COLLATERAL REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 16.

C.J.S. — 37 C.J.S. Fraud § 154.

A.L.R. — What goods or property are "used," "secondhand," or the like, for purposes of state consumer laws prohibiting claims that such items are new, 59 A.L.R.4th 1192.

Key Numbers. — Fraud ⚷ 68.5.

76-6-508. Bribery of or receiving bribe by person in the business of selection, appraisal, or criticism of goods or services.

(1) A person is guilty of a class A misdemeanor when, without the consent of the employer or principal, contrary to the interests of the employer or principal:

(a) he confers, offers, or agrees to confer upon the employee, agent, or fiduciary of an employer or principal any benefit with the purpose of influencing the conduct of the employee, agent, or fiduciary in relating to his employer's or principal's affairs; or

(b) he, as an employee, agent, or fiduciary of an employer or principal, solicits, accepts, or agrees to accept any benefit from another upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs; provided that this section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent, or fiduciary.

(2) A person is guilty of violation of this section if he holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of goods or services and he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal, or criticism.

History: C. 1953, 76-6-508, enacted by L. 1973, ch. 196, § 76-6-508; 1991, ch. 241, § 92.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "class A" for "class B" in Subsection (1).

NOTES TO DECISIONS

ANALYSIS

Business gifts.
Cited.

Business gifts.

Offer by television station of expense-free trips to customers who purchased a certain amount of advertising did not violate former section when offer was made to local branch manager of auto sales agency, who bought the advertising without the authorization of his principal and went on the trips himself, since it did not appear that the station knew of any impropriety. KUTV, Inc. v. Motor Sales, Inc., 546 P.2d 239 (Utah 1976).

Cited in State v. Thompson, 751 P.2d 805 (Utah Ct. App. 1988).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Antitrust, 1989 Utah L. Rev. 153.

Am. Jur. 2d. — 12 Am. Jur. 2d Bribery §§ 3, 16.

C.J.S. — 11 C.J.S. Bribery § 2.

A.L.R. — Validity and construction of statutes punishing commercial bribery, 1 A.L.R.3d 1350.

Criminal liability of corporation for bribery or conspiracy to bribe public official, 52 A.L.R.3d 1274.

Key Numbers. — Bribery ⚷ 2.

76-6-509. Bribery of a labor official.

(1) Any person who offers, confers, or agrees to confer upon a labor official any benefit with intent to influence him in respect to any of his acts, decisions, or duties as a labor official is guilty of bribery of a labor official.

(2) Bribery of a labor official is a felony of the third degree.

History: C. 1953, 76-6-509, enacted by L. 1973, ch. 196, § 76-6-509.

COLLATERAL REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d Bribery § 15.
C.J.S. — 11 C.J.S. Bribery § 2.

76-6-510. Bribe receiving by a labor official.

(1) Any labor official who solicits, accepts, or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence him in any of his acts, decisions, or duties as a labor official is guilty of bribe receiving by a labor official.

(2) Bribe receiving by a labor official is a felony of the third degree.

History: C. 1953, 76-6-510, enacted by L. 1973, ch. 196, § 76-6-510.

COLLATERAL REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d Bribery § 15.
C.J.S. — 11 C.J.S. Bribery § 2.

76-6-511. Defrauding creditors.

A person is guilty of a class A misdemeanor if:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with a purpose to hinder enforcement of that interest; or

(2) knowing that proceedings have been or are about to be instituted for the appointment of a person entitled to administer property for the benefit of creditors, he:

(a) destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) presents to any creditor or to an assignee for the benefit of creditors, orally or in writing, any statement relating to the debtor's estate, knowing that a material part of such statement is false.

History: C. 1953, 76-6-511, enacted by L. 1973, ch. 196, § 76-6-511; 1991, ch. 241, § 93.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "class A" for "class B" near the beginning of the section.

Cross-References. — Conveyance to hinder or defraud, §§ 25-6-1 et seq., 70A-2-402.

COLLATERAL REFERENCES

Am. Jur. 2d. — 37 Am. Jur. 2d Fraudulent Conveyances § 2.
C.J.S. — 37 C.J.S. Fraudulent Conveyances § 469.
A.L.R. — Elements and proof of crime of improper sale, removal, concealment, or disposal of property subject to security interest under UCC, 48 A.L.R.4th 819.

76-6-512. Acceptance of deposit by insolvent financial institution.

A person is guilty of a felony of the third degree if:

(1) As an officer, manager, or other person participating in the direction of a financial institution, as defined in Section 76-6-411, he receives or permits receipt of a deposit or other investment knowing that the institution is or is about to become unable, from any cause, to pay its obligations in the ordinary course of business; and

(2) He knows that the person making the payment to the institution is unaware of such present or prospective inability.

History: C. 1953, 76-6-512, enacted by L. 1973, ch. 196, § 76-6-512.

Compiler's Notes. — Section 76-6-411, cited in Subsection (1), was repealed in 1974.

COLLATERAL REFERENCES

Am. Jur. 2d. — 10 Am. Jur. 2d Banks § 242.
C.J.S. — 9 C.J.S. Banks and Banking § 156.

Key Numbers. — Banks and Banking ⇐ 82(2), 83, 84.

76-6-513. Definitions — Unlawful dealing of property by a fiduciary — Penalties.

(1) As used in this section:

(a) "Fiduciary" is as defined in Section 22-1-1.

(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(c) "Governmental entity" is as defined in Section 63-30-2.

(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

(e) "Property" is as defined in Section 76-6-401.

(f) "Public moneys" is as defined in Section 76-8-401.

(2) A person is guilty of unlawfully dealing with property by a fiduciary if he deals with property that has been entrusted to him as a fiduciary, or property of a governmental entity, public moneys, or of a financial institution, in a manner which he knows is a violation of his duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted. A violation of this subsection is punishable under Section 76-6-412.

(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(b) An offense under Subsection (a) is punishable as:

(i) a felony of the third degree if the value of the property wrongfully pledged exceeds $1,000;

(ii) a class A misdemeanor if the value of the property is more than $250, but not more than $1,000 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iii) a class B misdemeanor if the value of the property is $250 or less.

History: C. 1953, 76-6-513, enacted by L. 1973, ch. 196, § 76-6-513; 1983, ch. 91, § 1; 1994, ch. 70, § 1.

Amendment Notes. — The 1994 amendment, effective May 2, 1994, added Subsections (1) and (3), renumbering former Subsection (1) as Subsection (2); in Subsection (2), substituted "unlawfully dealing with property by a fiduciary" for "theft, punishable under Section 76-6-412" and "a governmental entity" for "the government" and inserted "public moneys" and "or detriment" in the first sentence and added the second sentence; and deleted former Subsection (2), which contained definitions.

COLLATERAL REFERENCES

Utah Law Review. — Note, Utah's Statute Permitting Limits on Corporate Directors' Liability: A Guide for Lawyers and Directors, 1988 Utah L. Rev. 847.

76-6-514. Bribery or threat to influence contest.

A person is guilty of a felony of the third degree if:

(1) With a purpose to influence any participant or prospective participant not to give his best efforts in a publicly exhibited contest, he confers or offers or agrees to confer any benefit upon or threatens any injury to a participant or prospective participant; or

(2) With a purpose to influence an official in a publicly exhibited contest to perform his duties improperly, he confers or offers or agrees to confer any benefit upon or threatens any injury to such official; or

(3) With a purpose to influence the outcome of a publicly exhibited contest, he tampers with any person, animal, or thing contrary to the rules and usages purporting to govern the contest; or

(4) He knowingly solicits, accepts, or agrees to accept any benefit, the giving of which would be criminal under [Subsection] (1) or (2).

History: C. 1953, 76-6-514, enacted by L. 1973, ch. 196, § 76-6-514.

COLLATERAL REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d Bribery § 16.
C.J.S. — 11 C.J.S. Bribery § 2.
A.L.R. — Recovery in tort for wrongful interference with chance to win game, sporting event, or contest, 85 A.L.R.4th 1048.

76-6-515. Using or making slugs.

(1) A person is guilty of a class B misdemeanor if:

(a) With a purpose to defraud the supplier of property or a service offered or sold by means of a coin machine, he inserts, deposits, or uses a slug in that machine; or

(b) He makes, possesses, or disposes of a slug with the purpose of enabling a person to use it fraudulently in a coin machine.

(2) As used in this section:

(a) "Coin machine" means any mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination, or a token made for the purpose, and, in return for the insertion or deposit

thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.

(b) "Slug" means any object which, by virtue of its size, shape, or other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper substitute for a genuine coin, bill, or token.

History: C. 1953, 76-6-515, enacted by L. 1973, ch. 196, § 76-6-515.

76-6-516. Conveyance of real estate by married man without wife's consent.

Any married man who falsely represents himself as unmarried and under such representation knowingly conveys or mortgages real estate situate in this state, without the assent or concurrence of his wife when such consent or concurrence is necessary to relinquish her inchoate statutory interest therein, is guilty of a felony of the third degree.

History: C. 1953, 76-6-516, enacted by L. 1973, ch. 196, § 76-6-516.

Cross-References. — Homesteads generally, § 78-23-3 et seq.

Omission of spouse from will, § 75-2-301.

NOTES TO DECISIONS

Sale of husband's interest.

As to husband's right to sell his interest in property that was not homestead property, subject only to his wife's one-third interest in case she continued to be his wife and survived him, as against contention that husband violated former § 76-20-10, see Adamson v. Adamson, 55 Utah 544, 188 P. 635 (1920).

COLLATERAL REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 30.

C.J.S. — 35 C.J.S. False Pretenses § 5.

76-6-517. Making a false credit report.

(1) Any person who knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another is guilty of making a false credit report.

(2) Making a false credit report is a class A misdemeanor.

History: C. 1953, 76-6-517, enacted by L. 1973, ch. 196, § 76-6-517.

COLLATERAL REFERENCES

Am. Jur. 2d. — 32 Am. Jur. 2d False Pretenses § 28.

C.J.S. — 35 C.J.S. False Pretenses § 13.

Key Numbers. — False Pretenses ⚷ 7(4).

76-6-518. Criminal simulation.

(1) A person is guilty of criminal simulation if, with intent to defraud another:

(a) He makes or alters an object in whole or in part so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have; or

(b) He sells, passes, or otherwise utters an object so made or altered; or

(c) He possesses an object so made or altered with intent to sell, pass, or otherwise utter it; or

(d) He authenticates or certifies an object so made or altered as genuine or as different from what it is.

(2) Criminal simulation is punishable as follows:

(a) If the value defrauded or intended to be defrauded is less than $100, the offense is a class B misdemeanor.

(b) If the value defrauded or intended to be defrauded exceeds $100 but is less than $1,000, the offense is a class A misdemeanor.

(c) If the value defrauded or intended to be defrauded exceeds $1,000 but is less than $2,500, the offense is a felony of the third degree.

(d) If the value defrauded or intended to be defrauded exceeds $2,500, the offense is a felony of the second degree.

History: C. 1953, 76-6-518, enacted by L. 1973, ch. 196, § 76-6-518.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

This section is not void for vagueness, since it clearly indicates the conduct proscribed. State v. Frampton, 737 P.2d 183 (Utah 1987).

Application and construction of section.

This section is, in a sense, a consumer protection statute and, like other consumer protection statutes (such as the Utah Consumer Credit Code), must be construed broadly. State v. Frampton, 737 P.2d 183 (Utah 1987).

This section is not preempted by the federal Trademark (Lanham) Act of 1946. State v. Frampton, 737 P.2d 183 (Utah 1987).

Manufactured products.

—Baseball gloves.

This section prescribes penalties for those who forge, alter, or possess modern commercially manufactured products. Baseball gloves are undisputedly modern commercially manufactured products. State v. Frampton, 737 P.2d 183 (Utah 1987).

Value.

The value defrauded or intended to be defrauded is that amount which the seller of such goods receives, or the price for which he holds the goods out for sale. State v. Frampton, 737 P.2d 183 (Utah 1987).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Constitutional Law, 1988 Utah L. Rev. 153.

Am. Jur. 2d. — 37 Am. Jur. 2d Fraud and Deceit § 11.

C.J.S. — 37 C.J.S. Fraud § 154.

A.L.R. — Validity and construction of state statutes penalizing "criminal simulation" of goods or merchandise, 72 A.L.R.4th 1071.

76-6-519. Repealed.

Repeals. — Section 76-6-519 (L. 1973, ch. 196, § 76-6-519), relating to pyramid schemes, was repealed by Laws 1983, ch. 89, § 3. See § 76-6a-1 et seq. for present provisions.

76-6-520. Criminal usury.

(1) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making loans at a higher rate of interest or consideration therefor than is authorized by law.

(2) Criminal usury is a felony of the third degree.

History: C. 1953, 76-6-520, enacted by L. 1973, ch. 196, § 76-6-520.

COLLATERAL REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d Interest and Usury § 357.

C.J.S. — 91 C.J.S. Usury § 160.

Key Numbers. — Usury ⚷ 149.

76-6-521. False or fraudulent insurance act — Punishment as for theft.

(1) A person commits a fraudulent insurance act if that person with intent to defraud:

(a) presents or causes to be presented any oral or written statement or representation knowing that the statement or representation contains false or fraudulent information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;

(b) presents, or causes to be presented, any oral or written statement or representation as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract, or in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage, knowing that the statement or representation contains false or fraudulent information concerning any fact or thing material to the claim;

(c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;

(d) intentionally, knowingly, or recklessly, devises a scheme or artifice to obtain fees for professional services, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions.

(2) (a) A violation of Subsection (1)(a) is a class B misdemeanor.

(b) A violation of Subsections (1)(b) through (1)(d), is punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value.

(3) A corporation or association is guilty of the offense of insurance fraud under the same conditions as those set forth in Section 76-2-204.

(4) The determination of the degree of any offense under Subsections (1)(b) through (1)(d) shall be measured by the total value of all property, money, or other things obtained or sought to be obtained by the fraudulent insurance act or acts described in Subsections (1)(b) through (1)(d).

History: C. 1953, 76-6-521, enacted by L. 1973, ch. 196, § 76-6-521; 1994, ch. 243, § 13.

Amendment Notes. — The 1994 amendment, effective July 1, 1994, rewrote this section to such an extent that a detailed analysis is impracticable.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Fraudulent claim.
Intent.
Presentment of claim.
Restitution.

Constitutionality.
This section is not unconstitutionally vague. State v. McGehee, 639 P.2d 148 (Utah 1981).

Fraudulent claim.
Before a claim for reimbursement under an insurance policy may be merely "excessive" there must be a lesser valid claim which it exceeds; if there is no valid claim at all, any claim must be fraudulent. State v. Kitchen, 564 P.2d 760 (Utah 1977).

Intent.
Defendants' intention to submit a fraudulent claim in regard to damages caused by an explosion and fire in their home was clear from undisputed evidence that they claimed a nonexistent burglar alarm system and intercom system. State v. Nickles, 728 P.2d 123 (Utah 1986).

Presentment of claim.
An insured's false telephonic notice of an accident was not the "presentment" of a claim, in the face of the insurance company's claim procedures prohibiting payments to a claimant before receiving bids for repairs and the police accident report, neither of which was submitted. State v. Wilson, 710 P.2d 801 (Utah 1985).

Restitution.
For a discussion of a restitution order entered in a criminal case arising out of a false insurance claim, see State v. Chambers, 709 P.2d 339 (Utah 1985).

COLLATERAL REFERENCES

Am. Jur. 2d. — 44 Am. Jur. 2d Insurance § 1371.
C.J.S. — 44 C.J.S. Insurance § 95.
A.L.R. — Admissibility of polygraph or similar lie detector test results, or willingness to submit to test, on issues of coverage under insurance policy, or insurer's good-faith belief that claim was not covered, 7 A.L.R.5th 143.
Key Numbers. — Insurance ⚷ 31.

76-6-522. Definitions — Equity skimming of a vehicle — Penalties.

(1) As used in this section:

(a) "Broker" means any person who, for compensation of any kind, arranges for the sale, lease, sublease, or transfer of a vehicle.

(b) "Dealer" means any person engaged in the business of selling, leasing, or exchanging vehicles for compensation of any kind.

(c) "Lease" means any grant of use or possession of a vehicle for consideration, with or without an option to buy.

(d) "Security interest" means an interest in a vehicle that secures payment or performance of an obligation.

(e) "Transfer" means any delivery or conveyance of a vehicle to another from one person to another.

(f) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, or through the air or water, or over land and includes a manufactured home or mobile home as defined in Section 41-1a-102.

(2) A dealer or broker or any other person in collusion with a dealer or broker is guilty of equity skimming of a vehicle if he transfers or arranges the transfer of a vehicle for consideration or profit, when he knows or should have known the vehicle is subject to a lease or security interest, without first obtaining written authorization of the lessor or holder of the security interest.

(3) Equity skimming of a vehicle is a third degree felony.

(4) It is a defense to the crime of equity skimming of a vehicle if the accused proves by a preponderance of the evidence that the lease obligation or security interest has been satisfied within 30 days following the transfer of the vehicle.

History: C. 1953, 76-6-522, enacted by L. 1991, ch. 291, § 1; 1992, ch. 1, § 208.

Amendment Notes. — The 1992 amendment, effective January 30, 1992, substituted the present code citation in Subsection (1)(f) for "Section 41-1-1" and made stylistic changes.

Effective Dates. — Laws 1991, ch. 291 became effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

PART 6

RETAIL THEFT

76-6-601. Definitions.

As used in this chapter:

(1) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.

(2) "Merchant" means an owner or operator of any retail mercantile establishment where merchandise is displayed, held or offered for sale and includes the merchant's employees, servants or agents.

(3) "Minor" means any unmarried person under 18 years of age.

(4) "Peace officer" has the same meaning as provided in Section 77-1a-1.

(5) "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.

(6) "Retail mercantile establishment" means any place where merchandise is displayed, held, or offered for sale to the public.

(7) "Retail value" means the merchant's stated or advertised price of the merchandise.

(8) "Shopping cart" means those push carts of the types which are commonly provided by grocery stores, drug stores, or other mercantile establishments or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.

(9) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

History: L. 1979, ch. 78, § 1; 1990, ch. 93, § 38; 1993, ch. 234, § 378.

Amendment Notes. — The 1993 amendment, effective July 1, 1993, in Subsection (4), substituted "has the same meaning as provided" for "means an officer as described" and deleted "including a member of the Highway Patrol" after "Section 77-1a-1."

Cross-References. — Civil liability of shoplifter to merchant, §§ 78-11-14 to 78-11-16, 78-11-19.

Detention of suspected shoplifter, arrest, civil and criminal immunity, §§ 78-11-17, 78-11-18.

COLLATERAL REFERENCES

Utah Law Review. — Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

Recent Developments in Utah Law, 1980 Utah L. Rev. 649.

A.L.R. — Validity, construction, and effect of statutes establishing shoplifting or its equivalent as separate criminal offense, 64 A.L.R.4th 1088.

76-6-602. Retail theft, acts constituting.

A person commits the offense of retail theft when he knowingly:

(1) Takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise; or

(2) Alters, transfers, or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value of any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of such merchandise; or

(3) Transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of such merchandise; or

(4) Under-rings with the intention of depriving the merchant of the retail value of the merchandise; or

(5) Removes a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use or benefit of such cart.

History: L. 1979, ch. 78, § 2.

NOTES TO DECISIONS

ANALYSIS

Evidence.

—Sufficient.

Evidence was sufficient to support the conclusion that a father directed his sons' taking and hiding of store property — acts sufficient to constitute concealment or transfer under this section — with the intent permanently to deprive the store of it. State v. Barber, 747 P.2d 436 (Utah Ct. App. 1987).

Lesser included offenses.

The crime of carrying a concealed dangerous weapon is a lesser included offense of second-degree felony retail theft when the retail theft is made a felony by the actor's being armed with a deadly weapon in the course of the crime. State v. Kinsey, 797 P.2d 424 (Utah Ct. App. 1990).

Cited in City of Orem v. Ko-tung Lee, 846 P.2d 450 (Utah Ct. App. 1993).

76-6-603. Detention of suspected violator by merchant — Purposes.

Any merchant who has probable cause to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(1) To make reasonable inquiry as to whether such person has in his possession unpurchased merchandise and to make reasonable investigation of the ownership of such merchandise;

(2) To request identification;

(3) To verify such identification;

(4) To make a reasonable request of such person to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase or for any other reasonable purpose;

(5) To inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer;

(6) In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor immediately, if possible, of this detention and to surrender custody of such minor to such person.

A merchant may make a detention as permitted herein off the premises of a retail mercantile establishment only if such detention is pursuant to an immediate pursuit of such person.

History: L. 1979, ch. 78, § 3.

76-6-604. Defense to action by person detained.

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by the merchant, it shall be a defense to such action that the merchant detaining such person had probable cause to believe that the person had committed retail theft and that the merchant acted reasonably under all circumstances.

History: L. 1979, ch. 78, § 4.

COLLATERAL REFERENCES

A.L.R. — Excessiveness or inadequacy of compensatory damages for false imprisonment or arrest, 48 A.L.R.4th 165.

76-6-605. Photographs of items allegedly taken or converted — Admissibility — Procedure.

(1) As used in this section "items" means:

(a) goods or merchandise as defined in Section 76-6-601; and

(b) library materials, as defined in Title 76, Chapter 6, Part 8.

(2) In any prosecution for a violation of Section 76-6-602 or Title 76, Chapter 6, Part 8, Library Theft, photographs of the items alleged to have been taken or converted are competent evidence of the items and are admissible in any proceeding, hearing, or trial as if the items themselves were introduced as evidence.

(3) The photographs shall bear a written description of the items alleged to have been taken or converted, the name of the owner, or the store, establishment, or library, as appropriate, where the alleged offense occurred, the name of the accused, the name of the arresting peace officer, the date of the photograph, and the name of the photographer.

(4) The writing shall be made under oath by the arresting peace officer, and the photographs identified by the signature of the photographer. Upon the filing of the photograph and writing with the authority or court holding the items as evidence, they shall be returned to their owner, or returned to the proprietor or manager of the store or establishment, or to an employee of the library, as is appropriate.

History: L. 1979, ch. 78, § 5; 1987, ch. 245, § 1; 1989, ch. 22, § 43.

76-6-606. Penalty.

A violation of this chapter shall be punished in accordance with Section 76-6-412(1).

History: L. 1979, ch. 78, § 6.

76-6-607. Report of arrest to division.

Any arrest made for a violation of this part shall be reported by the appropriate jurisdiction to the Law Enforcement and Technical Services Division of the Department of Public Safety, which shall keep a record of the arrest together with the disposition of the arrest for purposes of inquiry by any law enforcement agency.

History: L. 1979, ch. 78, § 7; 1993, ch. 234, § 379.

Amendment Notes. — The 1993 amendment, effective July 1, 1993, substituted "part" for "act," substituted "Law Enforcement and Technical Services Division of the Department of Public Safety" for "state bureau of criminal identification," and made two stylistic changes.

Severability Clauses. — Section 8 of Laws 1979, ch. 78 provided: "If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

Cross-References. — Law Enforcement and Technical Services Division, § 53-5-103 et seq.

PART 7

COMPUTER CRIMES

76-6-701. Computer Crimes Act — Short title.

This part is known as the "Utah Computer Crimes Act."

History: L. 1979, ch. 75, § 1; 1986, ch. 123, § 1.

COLLATERAL REFERENCES

Utah Law Review. — Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

A.L.R. — Criminal liability for theft of, interference with, or unauthorized use of computer programs, files, or systems, 51 A.L.R.4th 971.

What is computer "trade secret" under state law, 53 A.L.R.4th 1046.

76-6-702. Definitions.

As used in this part:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with any of them.

(2) "Computer" means any electronic device or communication facility with data processing ability.

(3) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(4) "Computer network" means the interconnection of communication or telecommunication lines between computers or computers and remote terminals.

(5) "Computer property" includes, but is not limited to, electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable form, any other tangible or intangible item relating to a computer, computer system, computer network, and copies of any of them.

(6) "Services" include, but are not limited to, computer time, data manipulation, and storage functions.

(7) "Financial instrument" includes, but is not limited to, any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(8) "Software" or "program" means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the functioning of a computer system in a manner designed to provide results including, but not limited to, system control programs, application programs, or copies of any of them.

History: L. 1979, ch. 75, § 2; 1986, ch. 123, § 2.

76-6-703. Computer crimes and penalties.

(1) A person who gains or attempts to gain access to and without authorization intentionally, and to the damage of another, alters, damages, destroys, discloses, or modifies any computer, computer network, computer property, computer system, program, or software is guilty of a felony of the third degree.

(2) A person who intentionally and without authorization uses a computer, computer network, computer property, or computer system to gain or attempt to gain access to any other computer, computer network, computer property, or computer system, program, or software, to the damage of another, and alters, damages, destroys, discloses, or modifies any of these, is guilty of a felony of the third degree.

(3) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is guilty of a felony of the second degree.

(4) A person who intentionally, and without authorization, interferes with or interrupts computer services to another authorized to receive the services is guilty of a class A misdemeanor.

(5) A person who intentionally and without authorization damages or destroys, in whole or in part, any computer, computer network, computer property, or computer system is guilty of a class A misdemeanor unless the amount of damage exceeds $1,000, in which case the person is guilty of a felony of the third degree.

History: C. 1953, 76-6-703, enacted by L. 1986, ch. 123, § 3.

Repeals and Reenactments. — Laws 1986, ch. 123, § 3 repeals § 76-6-703, as enacted by Laws 1979, ch. 75, § 3, and enacts the above section.

76-6-704. Attorney general, county attorney, or district attorney to prosecute — Conduct violating other statutes.

(1) The attorney general, district attorney, or the county attorney shall prosecute suspected criminal violations of this part.

(2) Prosecution under this part does not prevent any prosecutions under any other law.

History: L. 1979, ch. 75, § 4; 1986, ch. 123, § 4; 1993, ch. 38, § 77.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, inserted "district attorney" in Subsection (1).

76-6-705. Reporting violations.

Every person, except those to whom a statutory or common law privilege applies, who has reason to believe that the provisions of Section 76-6-703 are being or have been violated shall report the suspected violation to the attorney general, or county attorney, or, if within a prosecution district, the district attorney of the county or prosecution district in which part or all of the violations occurred.

History: C. 1953, 76-6-705, enacted by L. 1986, ch. 123, § 5; 1993, ch. 38, § 78.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, inserted "or, if within a prosecution district, the district attorney" and "or prosecution district" and made stylistic changes.

PART 8

LIBRARY THEFT

76-6-801. Acts constituting library theft.

A person is guilty of the crime of library theft when he willfully, for the purpose of converting to personal use, and depriving the owner, conceals on his person or among his belongings library materials while on the premises of the library or willfully and without authority removes library materials from the library building with the intention of converting them to his own use.

History: L. 1981, ch. 168, § 1; 1987, ch. 245, § 2.

76-6-802. Presumption of intent.

A person who willfully conceals library materials on his person or among his belongings while on the premises of the library or in its immediate vicinity is prima facie presumed to have concealed library materials with the intention of converting them to his own use. If library materials are found concealed upon his person or among his belongings, or electronic security devices are activated by the person's presence, it is prima facie evidence of willful concealment.

History: L. 1981, ch. 168, § 2; 1987, ch. 245, § 3.

76-6-803. Mutilation or damaging of library material as library theft.

A person is guilty of the crime of library theft when he intentionally or recklessly writes upon, injures, defaces, tears, cuts, mutilates, destroys, or otherwise damages library materials.

History: L. 1981, ch. 168, § 3; 1987, ch. 245, § 4.

76-6-803.30. Failure to return library material as library theft — Notice — Failure to pay replacement value — Written notice.

(1) A person is guilty of library theft when, having possession or having been in possession of library materials, he:

(a) fails to return the materials within 30 days after receiving written notice demanding return of the materials; or

(b) if the materials are lost or destroyed, fails to pay the replacement value of the materials within 30 days after being notified.

(2) Written notice is considered received upon the sworn affidavit of the person delivering the notice with a statement as to the date, place, and manner of delivery, or upon proof that the notice was mailed postage prepaid, via the United States Postal Service, to the current address listed for the person in the library records.

History: C. 1953, § 76-6-803.30, enacted by L. 1987, ch. 245, § 5.

76-6-803.60. Detention of theft suspect by library employee — Purposes.

(1) Any employee of the library who has probable cause to believe that a person has committed library theft may detain the person, on or off the premises of a library, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to make reasonable inquiry as to whether the person has in his possession concealed library materials;

(b) to request identification;

(c) to verify identification;

(d) to make a reasonable request of the person to place or keep in full view any library materials the individual may have removed, or which the employee has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, or for any other reasonable purpose;

(e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; or

(f) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of the minor as soon as possible of this detention and to surrender custody of the minor to this person.

(2) An employee may make a detention under this section off the library premises only if the detention is pursuant to an immediate pursuit of the person.

History: C. 1953, § 76-6-803.60, enacted by L. 1987, ch. 245, § 6.

76-6-803.90. Liability — Defense — Probable cause — Reasonableness.

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by an employee of the library, it is a defense to the action that the employee of the library detaining the person had probable cause to believe that the person had committed library theft and that the employee acted reasonably under all circumstances.

History: C. 1953, § 76-6-803.90, enacted by L. 1987, ch. 245, § 7.

76-6-804. "Book or other library materials" defined.

The terms "book or other library materials" as used in this act include any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials in any format, electronic data processing records, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of the following:

(1) any public library;

(2) any library of an educational or historical society;

(3) any museum; or

(4) any repository of public records.

History: L. 1981, ch. 168, § 4.

Meaning of "this act." — Laws 1981, ch. 168 enacted §§ 76-6-801 to 76-6-805.

76-6-805. Penalty.

Any person violating the provisions of this act shall be subject to provisions of Section 76-6-412.

History: L. 1981, ch. 168, § 5.
Meaning of "this act." — See note under § 76-6-804.

PART 9
CULTURAL SITES PROTECTION

76-6-901. Definitions.

(1) "Antiquities" means:

(a) all material remains and their associations, recoverable through excavation or surface collection, that provide information pertaining to the historic or prehistoric peoples in the state; and

(b) vertebrate fossils and other exceptional fossils and fossil sites designated as state landmarks.

(2) "Persons" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Native American tribe, or of any state or political subdivision of any state.

(3) "State lands" means all lands owned by Utah, including all lands owned by political subdivisions, and school and institutional trust lands.

History: C. 1953, 76-6-901, enacted by L. 1990, ch. 277, § 1.

76-6-902. Prohibitions.

(1) It is unlawful for any person to alter, remove, injure, or destroy antiquities without the landowner's consent.

(2) It is unlawful to reproduce, rework, or forge any antiquities or make any object, whether copies or not, or falsely label, describe, identify, or offer for sale or exchange any object with the intent to represent the object as original and genuine, nor may any person offer any object for sale or exchange that was collected or excavated in violation of this chapter.

History: C. 1953, 76-6-902, enacted by L. 1990, ch. 277, § 2.

76-6-903. Penalties.

(1) (a) Any person who violates this part or who counsels, procures, solicits, or employs any other person to violate this part is guilty of a class B misdemeanor.

(b) In the case of a second or subsequent violation, the person is guilty of a third degree felony.

(2) All property used in conjunction with the criminal activity, together with all photographs and records, shall be forfeited to the state, and all articles and

material discovered, collected, excavated, or offered for sale or exchange shall be surrendered to the landowner.

History: C. 1953, 76-6-903, enacted by L. 1990, ch. 277, § 3; 1991, ch. 241, § 94.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "class B" for "class A" in Subsection (1).

CHAPTER 6a

PYRAMID SCHEMES

76-6a-1. Short title.

This act shall be known and may be cited as the "Pyramid Scheme Act."

History: C. 1953, 76-6a-1, enacted by L. 1983, ch. 89, § 1.

COLLATERAL REFERENCES

Utah Law Review. — Utah Legislative Survey — 1983, 1984 Utah L. Rev. 115, 208.

A.L.R. — Validity of pyramid distribution plan, 54 A.L.R.3d 217.

76-6a-2. Definitions.

As used in this chapter:

(1) "Consideration" does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale, or time or effort spent in selling or recruiting activities.

(2) "Compensation" means money bonuses, commissions, overrides, prizes, or other real or personal property, tangible or intangible.

(3) "Person" includes a business trust, estate, trust, joint venture, or any other legal or commercial entity.

(4) "Pyramid scheme" means any sales device or plan under which a person gives consideration to another person in exchange for compensation or the right to receive compensation which is derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.

History: C. 1953, 76-6a-2, enacted by L. 1983, ch. 89, § 1.

76-6a-3. Schemes prohibited — Violation as deceptive consumer sales practice — Prosecution of civil violations.

(1) A person may not organize, establish, promote, or administer any pyramid scheme.

(2) A criminal conviction under this chapter is prima facie evidence of a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.

(3) Any violation of this chapter constitutes a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.

(4) All civil violations of this chapter shall be investigated and prosecuted as prescribed by the Utah Consumer Sales Practices Act.

History: C. 1953, 76-6a-3, enacted by L. 1983, ch. 89, § 1.

76-6a-4. Operation as felony — Investigation — Prosecution.

(1) Any person who knowingly organizes, establishes, promotes, or administers a pyramid scheme is guilty of a third degree felony.

(2) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting criminal violations of this chapter.

History: C. 1953, 76-6a-4, enacted by L. 1983, ch. 89, § 1; 1993, ch. 38, § 79.

Amendment Notes. — The 1993 amendment, effective May 3, 1993, inserted "or district attorney" in Subsection (2).

76-6a-5. Plan provisions not constituting defenses.

It is not a defense to an action brought under this chapter if:

(1) The sales device or plan limits the number of persons who may be introduced into it;

(2) The sales device or plan includes additional conditions affecting eligibility for introduction into it or when compensation is received from it; or

(3) A person receives property or services in addition to the compensation or right to receive compensation in connection with a pyramid scheme.

History: C. 1953, 76-6a-5, enacted by L. 1983, ch. 89, § 1.

76-6a-6. Rights of persons giving consideration in scheme.

(1) Any person giving consideration in connection with a pyramid scheme may, notwithstanding any agreement to the contrary, declare his giving of consideration and the related sale or contract for sale void, and may bring a court action to recover the consideration. In the action, the court shall, in addition to any judgment awarded to the plaintiff, require the defendant to pay to the plaintiff interest as provided in Section 15-1-4, reasonable attorneys'

fees, and the costs of the action reduced by any compensation paid by the defendant to the plaintiff in connection with the pyramid scheme.

(2) The rights, remedies, and penalties provided in this chapter are independent of and supplemental to each other and to any other right, remedy or penalty available in law or equity. Nothing contained in this chapter shall be construed to diminish or abrogate any other right, remedy or penalty.

History: C. 1953, 76-6a-6, enacted by L. 1983, ch. 89, § 1.

Severability Clauses. — Section 2 of Laws 1983, ch. 89 provided: "If any provision of this chapter, or the application of any provision to any person or circumstance, is held invalid, the remainder of this chapter shall not be affected thereby."

CHAPTER 7
OFFENSES AGAINST THE FAMILY