STATE V. MEEKS, 1919-NMSC-015, 25 N.M. 231, 180 P. 295 (S. Ct. 1919)

STATE
vs.
MEEKS.

No. 2289

SUPREME COURT OF NEW MEXICO

1919-NMSC-015, 25 N.M. 231, 180 P. 295

April 07, 1919, Decided

Appeal from District Court, Quay County; Leib, Judge.

Charles Meeks was convicted of larceny of live stock, and he appeals. Affirmed and remanded, with directions.

SYLLABUS

SYLLABUS BY THE COURT.

1. Larceny is a "continuing offense," and, if property is stolen in one county and taken by the thief into another, he is guilty of a new caption and asportation in the latter county.

2. It is only when the evidence of ownership of animals depend upon a brand that a certified copy of the recorded brand is necessary to be introduced in evidence.

3. A verified motion for a continuance, setting up facts calculated to show prejudice and bias of the regular panel of jurors in attendance upon the court, and which was overruled by the court, presents no facts to this court upon which the action of the district court can be reviewed, in the absence of a showing by way of bill of exceptions of the existence of bias or prejudice on the part of the jurors.

COUNSEL

R. A. PRENTICE, of Tucumcari, for appellant.

H. L. PATTON, Atty. Gen., and C. A. HATCH, Asst. Atty. Gen., for the State.

JUDGES

PARKER, C. J. ROBERTS and RAYNOLDS, J.J., concur.

AUTHOR: PARKER

OPINION

*{*232}* **{1}** OPINION OF THE COURT. PARKER, C. J. The appellant was tried and convicted of the larceny of two head of neat cattle.

{2} Counsel for appellant asserts that there was no evidence of the locus of the crime. The evidence shows that the appellant resided in Quay county, and that one of the animals in question was found in his possession in his corral at his place of residence. It becomes immaterial therefore to discuss from the evidence as to where the first taking of the animal was perpetrated. Larceny is a "continuing offense," and, if the property is stolen in one county and taken by the thief into another, he is guilty of a new caption and asportation in the latter county. 17 R. C. L. tit. "Larceny," § 50.

{3} Counsel for appellant claims that there is no evidence of ownership. His argument proceeds upon the theory that the only evidence of ownership of cattle is a certified copy of the record of the brand. In this position counsel is plainly in error. It is only when the evidence of ownership depends upon a brand that a certified copy of the recorded brand is necessary to be introduced in evidence. State v. Analla, 18 N.M. 294, 136 P. 600.

{4} Counsel for appellant complains of the action of the court in refusing a continuance. The only manner in which the facts appear upon which the continuance was asked is in the motion for a continuance. It is alleged in the motion that, in a previous case against the same defendant at the same term of court before the regular panel, the prosecuting witness, who was the prosecuting witness in the present case, testified that he had found the appellant killing a cow belonging to said prosecuting witness. It is further set out in the motion that the court at the same term of court and in the presence of the regular panel found two of the appellant's witnesses guilty of contempt for talking to one of the *{*233}* members of the regular panel and sentenced him to serve 30 days in jail. The conclusion is drawn in the motion that the regular panel of jurors were necessarily prejudiced by those facts against the appellant. The motion is not verified, and the court promptly overruled the same.

{5} In the condition of the record, we have no way of knowing anything about the truth of the facts set up in the motion, and the fact that the motion was overruled by the district court would rather seem to contradict the allegations of the motion. There is no transcript of the examination of the jurors as to their qualifications to sit in the trial of the case, and the appellant is therefore in no position to assert that there was any action taken by the court detrimental to his interests. A case similar in principle is State v. Balles, 24 N.M. 16, 172 P. 196. In that case we held that alleged prejudicial remarks of the judge in the presence of the jury could not be considered unless certified in the bill of exceptions, and we further held that, in the absence of a showing that the jurors who sat in the case heard the said remarks, there was no showing of which the appellant could complain. Just so in this case there is no showing that any juror sat in the case

who was biased or prejudiced against the appellant, and he cannot therefore predicate error upon the refusal of the court to continue the case.

{6} There being no error in the record, the judgment should be affirmed, and the cause remanded to the district court, with instructions to enforce the same; and it is so ordered.

ROBERTS and RAYNOLDS, J.J., concur.