



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Z. D. Allen
District Attorney
Wichita Falls, Texas

Dear Sir:

Attention: Elmer H. Parish

Opinion No. O-2016

Re: Under the circumstances,
should Carver be prosecuted
for a felony or misdemeanor?

We have received your letter requesting the opinion of this department upon the above stated question. For factual background of your request, we quote from your letter as follows:

"****. Two men by the name of Morelock and Sauls stole mercury out of meters on oil wells located in Galveston, County, Texas. These wells were located on two separate leases on property owned by two separate individuals. The leases were also owned by different persons. After stealing this mercury, Morelock and Sauls came to Wichita Falls and sold it to M. E. Carver, who we have reason to believe knew that it was stolen property. The total value of the mercury turned over to Carver was over \$50.00, but the value stolen from any one individual did not amount to \$50.00.

"Question:

"Should Carver be prosecuted for a felony or misdemeanor?"

Article 1430 of the Penal Code of Texas provides:

"Whoever shall receive or conceal property which has been acquired by another in such manner as that the acquisition comes

Honorable Z. D. Allen, page 2

within the meaning of the term theft, knowing the same to have been so acquired, shall be punished in the same manner as if he had stolen the property."

Article 1421 of the Penal Code of Texas provides:

"Theft of property of the value of fifty dollars or over shall be punished by confinement in the penitentiary not less than two nor more than ten years."

The offense of theft of property and receiving or concealing the same property are entirely separate and distinct offenses. Kaufman v. State, 70 Cr. R. 438, 159 S. W. 58; Clark v. State, 81 Cr. R. 157, 194 S. W. 157; Snider v. State, 119 Cr. R. 635, 44 S. W. (2d) 997. To constitute the offense of receiving or concealing stolen property, it is not necessary that the defendant know from whom the property was stolen. The gravamen of the offense is the receiving and concealing of the property knowing it to have been stolen. Pannell v. State, 121 Cr. R. 515, 51 S. W. (2d) 398.

We assume from your letter that Carver received all of the mercury, which is valued in excess of \$50.00, all the same time. The aggregate value of the stolen property received or concealed determines the grade of the offense. Brussell v. State, 265 S. W. 164. The fact that the mercury was stolen from two separate leases and that the leases were owned by two separate persons, does not reduce the grade of the offense. Theft of property of the value of \$50.00 or more is made a felony, and receiving or concealing stolen property of the value of \$50.00 or more is likewise made a felony. Articles 1421 and 1430 of the Penal Code.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that if Carver received all of the mercury, which is valued at \$50.00 or more, in the same transaction, knowing it to have been stolen, he should be prosecuted for a felony.

Trusting that the foregoing satisfactorily disposes

Honorable Z. D. Allen, page 3

of your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

/s/
D. Burle Daviss
Assistant

DED:RS

APPROVED AUG 9, 1940
/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION COMMITTEE
By /s/ E. W. B.
Chairman