CRIMINAL COSTS: Where property is taken from a dwelling house, valued at less than $30.00, county pays the costs; and, if more than $30.00, the State pays the costs.

- -

June 10, 1943

FILED
34

Mr. Arthur U. Goodman, Jr.
Prosecuting Attorney
Kennett, Missouri

Dear Sir:

This is in reply to your letter of June 8th, 1943, in which you request an opinion from this department, as follows:

> "Please advise me whether or not in your opinion a county is liable for the costs in a case wherein a defendant who is 16 years of age pleads guilty to larceny from a dwelling house and his punishment is by the Court fixed at confinement in the Missouri Training School for Boys for a term of three years."

Section 4459, R. S. Mo. 1939, reads as follows:

> "If any larceny be committed in a dwelling house, or in any boat or vessel, or in any railroad car, or street car or interurban car, or by stealing from the person, if the value of the property taken is thirty dollars or upwards, the offender shall be punished by imprisonment in the penitentiary not exceeding seven years."

Section 4460, R. S. Mo. 1939, reads as follows:

> "When the property taken under the circumstances stated in the next preceding section is less than thirty dollars in value, the offender may be punished by imprisonment in the penitentiary not exceeding seven years, or by imprisonment in the county jail not exceeding one year."

The above two sections are applicable to cases in which the charge is larceny in a dwelling house. In most criminal prosecutions under these two sections there is a combination of burglary and larceny and, upon an acquittal of the burglary charge, it would be necessary for the trial court to instruct on the larceny charge as to all degrees. If the property taken in the dwelling house is $30.00 or upwards, the sole punishment would be imprisonment in the penitentiary, but if the property taken in the dwelling house is less than $30.00 the punishment may be as low as one year in the county jail, as set out under Section 4460, supra. State v. Nicholas, 222 Mo. 425.

In your request you merely state that the defendant, who is 16 years of age, plead guilty to larceny from a dwelling house and was sentenced to the Missouri Training School for boys for a term of three years. Even if the property taken was valued under $30.00 he could have received a sentence of three years in the penitentiary. The information to which he plead guilty, of course, sets out the value of the property taken and would be the governing authority as to who should pay the costs in the case, where the confinement is fixed in the Missouri Training School for Boys.

The section applicable to your question is Section 4221, R. S. Mo. 1939, which partially reads as follows:

> "In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall

> be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary, and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except costs incurred on behalf of defendant. * * * * * * * * *"

Under the above section it will be specifically noticed that the state only pays the costs when the defendant is unable to pay them, and when the conviction was had of the 16 year old boy on an offense punishable solely by imprisonment in the penitentiary. If the conviction was had under Section 4459, supra, then, under Section 4221, supra, the state should pay the costs. But, if the conviction was had under Section 4460, supra, which applies to property taken where the value was less than $30.00, the county should pay the costs.

CONCLUSION

It is, therefore, the opinion of this department that where a defendant, who is 16 years of age, pleads guilty to larceny from a dwelling house and his punishment is, by the court, fixed at confinement in the Missouri Training School for Boys for a term of three years, the county should pay the costs if the value of the property is $30.00 or less, and the state should pay the costs if the value of the property is $30.00 and upwards. If the defendant was charged and plead guilty to a delinquency charge in which the evidence was larceny from a dwelling, the county and not the state would be liable for the costs. In order that the state be liable for the costs it would be necessary that the defendant,

who is 16 years of age, should be filed upon in the criminal court on a criminal charge on an offense which is punishable solely in the penitentiary, or punishable as a capital offense.

Respectfully submitted,

W. J. BURGE
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WJB:CP