

New York State Car and Truck Renters and Lessors

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State Director

December 30, 1964

Temporary State Commission on Revision
of the Penal Law and Criminal Code
155 Leonard Street
New York, New York

Attention: Messrs. Richard N. Denzer and
Peter J. McQuillan

Gentlemen:

You will recall that I am the New York State Director of the National Car and Truck Renting and Leasing Association which has a considerable membership in this State and I have appeared both before you and the Revision Commission to urge a clarification of the term "gross deviation" which appears in clause 3 of Section 170.10 of the draft of the proposed revision of the New York Penal Law. I have urged that there be added at the end of clause 3 a sentence reading:

"Such retention or possession for a period of ten (10) days after the time specified for the return of the vehicle shall constitute presumptive evidence of a gross deviation from the agreement."

Some members of the Commission indicated that the phrase "gross deviation" was vague and acknowledged that the motor vehicle rental industry has a problem. Other Commission members suggested that while ten (10) days might be reasonable for a rental of short duration, ten (10) days could be too short for a rental of long duration.

At the November 23 Commission hearing, I left with your Commission copies of the statutes of California, Louisiana and North Carolina in all of which States seventy-two (72) hours or less was deemed reasonable for the return of rented vehicles. I have no knowledge of any State which provides for as much as ten (10) days.

Under the Federal Dyer Act, the case of Jarvis v. United States decided by the U. S. District Court of Appeals, 9th Circuit on January 8, 1963, the Court held that where defendant had obtained possession of an automobile in a lawful manner, but had thereafter converted the automobile to his own use before transporting it in interstate commerce, the automobile had been "stolen" within the meaning of the Act. See also Wilson v. United States, 214 Fed. 2d 313 and United States v. Turley 352 U.S. 407.

This should be the law everywhere but unfortunately is not the law in New York.

In my discussions with you, I made reference to a Queens case in which a renter caused the arrest of the customer who initially obtained a rented vehicle on June 10, 1962 for which another vehicle was substituted for him on June 13, 1962, at which time he agreed to return the substitute vehicle two days later. The customer gave a Florida address and stated that he was a scrap metal dealer at the address given and gave a New York reference. The lessor having become suspicious of the customer decided shortly after the rental was made to telephone the Florida number to verify the customer's address and when the response was unsatisfactory the lessor phoned the New York address and was told that the reference had "taken off" two weeks ago. The step-by-step facts are set forth in the enclosed memorandum dated December 16, 1964, and illustrates the problem of the rental industry. The return of the vehicle was not obtained until two weeks after the rental and only after the arrest of defendant. The enclosed memorandum sets forth that the customer was indicted and the case dismissed without being submitted to the jury though two counts had been set forth, - (1) that defendant did take, remove and operate complainant's vehicle for his own profit without complainant's consent, and (2) that defendant had stolen and took possession of complainant's vehicle with intent to deprive the true owner thereof. The defendant did not take the stand and did not testify since the case was dismissed at the end of complainant's case. There is no appeal from such a decision since the complainant's case had been presented to the jury even though it had no opportunity to render a decision.

It is apparent that the provisions of Section 1290 of the Penal Law as now constituted have not been construed meaningfully so as to protect a bailor since the courts have held that in order to obtain a conviction under Section 1290 it is necessary to prove that the bailee had an existing felonious intent in his mind when he obtained possession of the bailed article.

All kinds of equipment are now being rented including boats, automobiles, railroad cars, locomotives, construction machinery, farm, and home equipment of all kinds. The availability of all these and many more items for rent is in the public interest since renting has become an important way of life and a substitute for buying. It affords the customer the use of the required item on a temporary, or long-term, basis without incurring many of the undesirable features of ownership. By renting the customer pays a comparatively small amount for the use of the item without obligating himself to pay a large sum for an item which is only occasionally needed. Renting often relieves the customer from the obligations of repairing and storing items when not needed.

Since automobiles are mobile and cover great distances in a short time, the rental industry must have a practical tool to make it possible to obtain help from the law enforcement officers when situa-

tions such as set forth in the Queens case arise. There is no way of having an alarm sent out to locate a vehicle and a driver which have disappeared under circumstances which would give any reasonable man a belief that the vehicle was stolen without the signing of a complaint for the arrest of the customer or obtaining a warrant for his arrest.

In view of the Greenfield 243 N.Y.S. 2d 836 and People v. Todd cases referred to in my prior correspondence with the Commission, it is not likely that courts will issue warrants and it is unsafe for a lessor to make a larceny complaint even though reasonable men would readily agree that there is a likelihood that the vehicle had been stolen as was charged in the Queens case.

The problem of cases like the Queens case are becoming more and more numerous as certain elements of the public get "wise" to the possibilities involved in renting an automobile for a day and then just disappearing with it. They are learning that if they furnish a temporary address or an address where mail may reach them even though that is not the address at which they currently reside at, then their chances to escape a larceny conviction are very good. The industry does not seek, and it would not be in its interest to have, a criminal statute to use against the customer who by inadvertence or because of some temporary situation is unable to return the rented automobile within the specified time. For such persons the civil remedies are adequate. But the civil remedies are not adequate against the itinerant customer to whom a driver's license has been issued who has no fixed place of abode or who is on the "lam".

If no better solution comes to the attention of the Commission, we urge that the following sentence be added to clause 3 of Sec. 170.10:

"Such retention or possession for a period of seventy-two (72) hours after the time specified for the return of the vehicle shall constitute presumptive evidence of a gross deviation from the agreement if under the agreement the vehicle was to be returned to the owner within one month after the date such person got custody of the vehicle; such retention or possession for a period of ten (10) days after the time specified for the return of the vehicle shall constitute presumptive evidence of a gross deviation if the vehicle was to be returned more than one month and not more than one year after the date such person got custody of the vehicle; and such retention or possession for a period of thirty (30) days after the time specified for the return of the vehicle shall constitute presumptive evidence of a gross deviation if the vehicle was to be returned more than one year after the date such person got custody of the vehicle."

We take this opportunity to thank you and the Commission for your invariable courtesy to all the persons of our industry who have

appeared before you and welcome any further meetings you may suggest to solve this troublesome problem.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Abraham Kleinberg".

Abraham Kleinberg
State Director

AK:BL
encl.

December 16, 1964

On Friday, June 10, 1962 at 10:56 P.M. Raymond Franco rented a Chevrolet Sedan at the Hertz Idlewild station, gave a \$25 deposit, and said he would return the car the next day to the Hertz Union Street station in Brooklyn. He presented a current Florida driver's license showing his address as 2810 Prairie Avenue, Miami Beach, Florida. He did not return the car as promised.

On Monday, June 13, 1962 between 9 P.M. and 10 P.M. Franco brought the Chevrolet to the Hertz LaGuardia station and said he wanted to exchange it for a Thunderbird. He said he would return the Thunderbird on the 15th to the LaGuardia station. The charges then due on the Chevrolet were about \$65 (after giving him credit for his \$25 deposit on that car), and he was asked for that amount plus a \$50 deposit on the Thunderbird. He offered to give his personal check but the rental representative would not take it, and finally took instead \$40 cash which Franco said was all the cash he had on him. At the time of the renting of the Thunderbird, Franco filled out a Hertz form 1-C "Application for Hertz Rent A Car Service" on which he stated that his residence was 2810 Prairie Avenue, Miami Beach, Florida and that he was engaged in business at that address as a scrap metal dealer. He gave as a local New York reference the name of one Robert Colaty, 3019 Avenue W, Brooklyn, phone TW. 1-3357. After Franco had driven off with the Thunderbird, it was discovered that the spare wheel and tire was missing from the trunk of the Chevrolet he had turned in.

The rental representative who had rented the Thunderbird to Franco had felt somewhat suspicious about Franco and, although it was late at night he decided, after Franco had driven off in the Thunderbird, to telephone the Florida telephone number given by Franco as his Florida residence and business number. He put in a

person to person call for Raymond Franco at that number and he listened in while the operator spoke to a woman who answered the phone, and he heard that woman say that Franco hadn't been there for 3 or 4 years and she didn't know where he could be reached. He then cancelled the call. He then phoned the number given for Franco's local reference, Robert Colaty, and he was told at that number that Colaty had "taken off" about 2 weeks ago.

The next day, June 14, the rental representative sent a registered letter to Franco at 2810 Prairie Avenue demanding immediate return of the car to LaGuardia and asking him to advise Hertz immediately by collect telephone call or collect telegram that the car would be returned promptly. That letter reached Miami, Florida on June 15 and, after notification was sent by the Post Office to the addressee on June 15 and a final notice was given on June 20, it was returned (postmarked June 27, Miami, Florida, and received at Jamaica, New York Post Office June 28) to Hertz marked "unclaimed".

When the Thunderbird had not been returned by June 18, a second person to person call was put in for Franco at the number he had given as his Florida residence and business number, and again the woman who answered said he hadn't been there for 3 or 4 years and she didn't know where he could be reached. Thereupon, the rental representative and the station manager went to the local police station and reported the facts, and a stolen car alarm was put out on the car on June 18. On June 29 Franco was arrested in Loch Sheldrake, Sullivan County, New York in possession of the car, and he was returned to Queens County, where he was arraigned, pleaded not guilty, and was released on bail.

On August 15, 1962 he was indicted (Indictment #1014/1962) for grand larceny in the first degree of two counts. The first count charged that the defendant

"on or about and between June 15, 1962 and June 29, 1962, partly in Sullivan County and partly in the County of Queens, did use, take, and remove, and operate and drive for his own profit, use and purpose, an automobile of the value of \$4,000 owned by The Hertz Corporation without the consent of the owner". The second count charged that the defendant "on or about and between June 15, 1962, and June 29, 1962, in the County of Queens, stole and took from the possession of The Hertz Corporation an automobile owned by The Hertz Corporation of the value of \$4,000, with the intent to deprive the owner thereof and of the use and benefit thereof, and to appropriate the same to the use of the defendant".

On October 15 and 16, 1963 defendant was tried before a jury and at the close of the People's case the court granted defendant's motion to dismiss for failure to make out a prima facie case. Although the Assistant District Attorney (Morton Greenspan) urged strenuously upon the Judge (Stier, J.) that there were issues of fact that should be passed upon by the jury, the court ruled that as matter of law the indictment should be dismissed and there were no issues requiring submission to the jury. It will be noted that the defendant did not take the stand and no evidence whatsoever had been offered on behalf of defendant. In his opening to the jury the defendant's attorney, Alfred Charles, had stated that he would prove that the defendant had telephoned Hertz and had asked permission to keep the car several days longer and that Hertz had told him "you can keep the car for 30 days"; that he had given Hertz the name and address of the motel where he was staying; and then the state police arrived and arrested him. Although there was no sworn testimony offered to support that claimed defense, it appears that the Judge swallowed that story hook, line and sinker and let that view of the

case make up his mind for him and cause him to dismiss. The fact is of course that Franco never telephoned Hertz, that they never would have told him to keep the car out for 30 days or even 3 days without getting an appropriate additional deposit, and that Franco never let Hertz know where he was, but on the contrary, kept himself and his whereabouts concealed.