

1970

## State of Utah v. Lanson Roy Pratt : Appellant's Brief

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

*Plaintiff and Respondent,*

vs.

LANSON ROY PRATT,

*Defendant and Appellant.*

Case No.  
12061

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## APPELLANT'S BRIEF

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APPEAL FROM VERDICT OF THE JUVENILE COURT  
IN AND FOR DAVIS COUNTY, STATE OF UTAH  
HONORABLE L. ROLAND ANDERSON, JUDGE

BENNETT PETERSON  
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Davis County Courthouse  
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**FILED**

JUN 26 1970

*Clerk, Supreme Court, Utah*

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## APPELLANT'S BRIEF

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### NATURE OF CASE

Defendant was charged in the Juvenile Court of Davis County, State of Utah, with contributing to the delinquency of Nelda Pratt, a minor, on or about August 1, 1969, in that: Number 1. He did give, sell or otherwise supply to Nelda Pratt, a person under the age of 21 years, an alcoholic beverage in violation of U.C.A. 32-7-15.

2. He did cause Nelda Pratt, a minor under the age of 21 years, to be delinquent by causing her to pose nude in a lewd and suggestive manner, and taking photographic pictures at such time and in a manner likely to

cause serious injury to the morals of said minor in violation of U.C.A. 1953, 55-10-80.

## DISPOSITION IN LOWER COURT

Count 1 was dismissed on motion of counsel at the conclusion of the evidence and defendant was found guilty by the Court sitting without a jury on Count No. 2 of causing Nelda Pratt, a minor under the age of 21 years to be delinquent by causing her to pose nude in a lewd and suggestive manner and taking photographic pictures at such time and in a manner likely to cause serious injuries to the morals of said minor in violation of U.C.A. 55-10-80.

## RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the verdict of the Court and a granting of defendant's motion of acquittal or failing that, a new trial.

## STATEMENT OF FACTS

On August 1, 1969 (Tr. 5, 13, Complaint) one Nelda Pratt, under the age of 18 years, was invited by her brother's wife, Lavonne Pratt, to Lavonne's home in Woods Cross, Utah (Tr. 3). While there she was furnished drinks containing alcohol by Lavonne and a man named Harold Zesiger (Tr. 5, 33). Lavonne then suggested that Nelda pose in the nude so that pictures could be taken of her (Tr. 5). Pictures were taken of Nelda in the nude (Exhibits 1, 2, 4, 5, 6, 7). Nelda Pratt stated that while the pictures were being taken she thought some other man was present and holding the light that looked like Roy, the defendant, but she was not sure (Tr. 6). Nelda also testified that Roy Pratt did not cause her to pose in any way (Tr. 36); did not take any pictures of

her (Tr. 36) and that she could not say with any certainty that the defendant, Roy Pratt, was even present when the said Nelda Pratt was posing and the pictures were being taken (Tr. 34, 36, 43, 44). All of the events that transpired on the day of August 1, 1969, insofar as they pertain to the allegations of the Complaint, occurred between the hours of 9 o'clock p.m., on August 1, 1969, and 2:30 a.m., on August 2, 1969 (Tr. 3, 39, 40, 44).

One Harold Zesiger was the only other witness called by the state and he stated that on August 1, 1969, he, Zesiger, Roy Pratt, Lavonne and Nelda were at the home of Lavonne and Roy Pratt (Tr. 10); that he, Zesiger, took the pictures of Nelda and was assisted by Roy and Lavonne Pratt (Tr. 13). Defendant testified that on the day in question, August 1, 1969, he went to his place of employment in Salt Lake City and worked from 4 o'clock p.m. to 2 o'clock a.m. on the following day, August 2 (Tr. 18); that he arrived home at approximately 2:20 a.m., and upon entering the house was handed a lamp to hold by his wife; she turned it on and he saw what was happening and he thereupon left the room and went to bed (Tr. 20). Later, he found the pictures that had been taken that night and delivered them to the Woods Cross Police Department (Tr. 40). At all times mentioned herein, Lavonne Pratt and Roy Pratt were in the process of obtaining a divorce (Tr. 4).

Besides testifying himself, the defendant called Mr. Joseph Whittaker, Department Superintendent at his place of employment who testified that defendant Pratt was at his place of employment in Salt Lake City from 3:45 p.m., on August 1 to 2:01 a.m., on August 2, 1969 (Tr. 53). Mr. Ronald Richards, a fellow employee, who

works on the same machine with Mr. Pratt confirmed the testimony of both Mr. Pratt and Mr. Whittaker that Mr. Pratt was at his place of employment on the day and during the hours when the alleged offenses occurred (Tr. 57).

At the conclusion of the State's evidence, defendant's counsel moved for a Dismissal on the grounds of insufficiency of evidence and that the statute 55-10-80 U.C.A. was unconstitutional in that it was vague and indefinite in that there was no definition as to what constitutes delinquency. The motion was denied by the Court.

At the conclusion of defendant's evidence the motion was renewed and was again denied by the Court.

### ARGUMENT

POINT 1. THAT THE STATUTE U.C.A. 1953 55-10-80 IS UNCONSTITUTIONAL IN THAT IT IS VAGUE AND INDEFINITE.

The defendant was charged that he did cause Nelda Pratt, a minor under the age of 21 years, to be delinquent. The statute 55-10-80 (1) reads as follows:

“Any person eighteen years of age or over who induces, aids, or encourages a child to violate any federal, state, or local law or municipal ordinance, or who tends to cause children to become or remain delinquent, or who aids, contributes to, or becomes responsible for the neglect or delinquency of any child \* \* \* \*”

The statute does not, in any way, attempt to define what “delinquent” means. There is, in fact, no statutory definition of the terms “delinquency” or “delinquent”. The determination of what is meant by these terms and as to whether or not, in fact, such delinquency has occurred is



left entirely to the individual feeling, opinion or definition of the individual Judges of the State of Utah and the accused is completely without any guidance whatsoever from the language used in the statute.

Prior to 1965 Sec. 55-10-6, U.C.A. 1953 contained a definition of what "delinquent child" might be. However, in 1965, when the legislature adopted the code for the Juvenile Court, no definition of the term "delinquency" or "delinquent child" was included in the statute comprising the juvenile code.

As the statute now stands, one can only surmise what is meant by these terms and no accused should be left upon such a shaky premise to determine whether or not he has or may violate a law. Am. Jr. 2d Vol. 16, Sec. 552, p. 952:

"The due process requirement of definiteness is especially important in its application to penal and criminal statutes. The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid."

Am. Jur. 2d. Vol. 16, Sec. 552, p. 954:

"The Constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute \* \* \* \*. The uncertainty in a statute which will amount to a denial of due process of law is not the difficulty of ascertaining whether close cases fall within or without the prohibition of the statute, but whether the standard established by the



statute is so uncertain that it cannot be determined with reasonable definiteness that any particular act is disapproved.”

See also the dissenting opinion of Justice Tuckett in *State of Utah vs. A. G. Tritt*, 463 P. 2d. 806, 809.

POINT 2. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT CAUSED NELDA PRATT TO POSE IN THE NUDE IN A LEWD AND SUGGESTIVE MANNER AND TOOK PHOTOGRAPHIC PICTURES OF HER AT SUCH TIME.

Because Count No. 1 was dismissed on motion of defendant's counsel at the conclusion of all the evidence, the remaining argument will be confined to the evidence as it pertains to Count No. 2.

The only two witnesses called by the State were Nelda Pratt and Harold Zesiger. Harold Zesiger was admittedly an accomplice (Tr. 12, 13, 14).

Sec. 77-31-18 U.C.A. 1953 provides as follows:

“A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.”

This statute was interpreted in *State vs. Vigil* 260 P. 2d 539 (Utah) wherein it was stated:

“In *State vs. Irwin* 101 Utah 365, 120 P. 2d. 285, this Court stated that the corroboration need not go to all the material facts as testified by the ac-

complice, nor need it be sufficient in itself to support a conviction; it may be slight and entitled to little consideration, however, the corroborating evidence must connect the defendant with the commission of the offense, State vs. Lay 38 Utah 143, 110 P. 2d, 986; and be consistent with his guilt and inconsistent with his innocence. State vs. Butterfield 70 Utah 529, 261 P. 804. The corroborating evidence must do more than cast a grave suspicion on the defendant and it must do all of these things without the aid of the testimony of the accomplice.”

Disregarding the testimony of the accomplice then, the only evidence in the State’s case from the mouth of the only other witness, Nelda Pratt, was found on page 6 of the transcript, as follows:

“Q. Did anyone assist Harold in taking the pictures?

A. Lavonne did.

Q. What did she do?

A. She held the light and she suggested poses and she put down the sheets and everything.

Q. I see. Did Roy participate in any regard?

A. *Well, I’m not sure, really, but I think I saw some other man holding some lights that looked like Roy, but I’m not sure”* (emphasis ours).

It is elementary that to support a finding of guilt in this matter, the defendant must be found guilty beyond a reasonable doubt. Surely, there can be no sincere contention that the above quoted statement from Nelda Pratt was evidence beyond a reasonable doubt to support such

finding of guilt. On the contrary, such a statement could support only a finding of innocence.

In finding the defendant guilty, apparently the Court misunderstood the testimony of Nelda Pratt in that he assumed that the defendant was present in the room while the pictures were being taken (Tr. 64). And this was not the fact. For the above reasons, defendant's Motion to dismiss the Complaint and both charges thereof should have been granted.

POINT 3. DEFENDANT'S MOTION FOR DISMISSAL AT THE CONCLUSION OF ALL OF THE EVIDENCE SHOULD HAVE BEEN GRANTED BECAUSE OF AN INSUFFICIENCY OF EVIDENCE TO SUSTAIN THE CHARGES.

When the State rested, the only evidence before the Court to sustain the charge in Count 2 was the testimony of the accomplice, Harold Zesiger, and the answer of Nelda Pratt to the question, "Did Roy participate in any regards?" her answer being, "Well, I'm not sure really, but I think I saw some other man holding some lights that looked like Roy, but I'm not sure." (Tr. 6)

At this point, after the Motion to Dismiss was denied, defendant was sworn and testified that on the day in question he went to work in Salt Lake City as usual at 4 p.m., worked through the night until the shift ended at 2 o'clock a.m., left for home and twenty minutes later arrived there in Woods Cross (Tr. 18, 20). This alibi was substantiated by his department superintendent and the co-worker (Tr. 53, 57).

It must be remembered that it is the sworn testimony of the State's witnesses that the entire alleged epi-

sode transpired from 9 o'clock p.m., August 1, to 2:00 a.m., August 2, 1969. (Tr. 3, 39, 40, 44).

Upon arriving home defendant was called into the front room by his estranged wife who was present with her old boy-friend; handed a lamp; the wife turns it on and when defendant observes what is occurring, he refuses to participate and goes to bed (Tr. 20, 21).

Defendant denied the allegations of Count 2 in that he did not 1. cause Nelda Pratt, a minor under the age of 21 years, to be delinquent by causing her to pose nude in a lewd and suggestive manner (Tr. 19) (2) and taking photographic pictures at such time (Tr. 20).

Nelda Pratt was recalled and testified as follows: (Tr. 34)

“Q. How did you come to take your clothes off and pose for the pictures?

A. I was asked to do it.

Q. Who asked you?

A. Lavonne.

Q. Was Roy present when she asked you to do this?

A. No.

Q. Now then you, did you, you said you had two after, now two drinks afterwards, was this after the pictures were taken or during the process of taking the pictures?

A. It was after the pictures were taken.

Q. Alright then during the time the pictures were taken do you remember everything that was going on at the time?

A. Well, I knew the pictures were being

taken and that somebody was holding a light and that Lavonne was suggesting poses.

Q. Now was Lavonne helping you pose in any way?

A. Well, in a way she was putting my legs and everything and my arms and everything in different positions.

Q. Was Roy doing any of this?

A. Not that I can remember, no.

Q. Alright can you say with any certainty that Roy was present at the time these pictures were, at the time you were posing in this lewd, or in this lewd manner and these pictures were being taken?

A. No, because there was a light shining in my face and I couldn't see past the light."

(Tr. 36)

"Q. Alright, and when these pictures were taken did Roy cause you to pose in any way?

A. No.

Q. Did he take any pictures of you?

A. No he didn't.

Q. And as far (sic) as you were (tape not clear) (sic) he was not even present during the time there was this picture taking?

A. As far as what I've said yes.

Q. Yes what, yes he was or?

A. Yes, he wasn't."

It was Roy Pratt who informed the police officials of

the unusual activities at his home while he was away and placed in their possession the photographs. It must be remembered when it is asked how Roy Pratt gets involved at all that he and his wife are in the throes of a divorce and Lavonne's old boy-friend is involved.

The defendant is not charged with being stupid or not doing or saying the proper thing when he has the lamp thrust into his hand and there is an attempt to implicate him in the childish mess. Rather, he is charged with causing Nelda Pratt to pose in the nude and with taking photographic pictures of her at that time.

There is no evidence to support the charge. The Court assumed defendant was present (Tr. 64) when all there was before the Court was the statement of Nelda, "I think he was, I'm not sure" (Tr. 6). No one has testified that the defendant caused Nelda Pratt to pose or that he took pictures of her at that time. Nelda Pratt has emphatically denied this.

### CONCLUSION

There has been no proof, beyond a reasonable doubt to sustain the charge and defendant's Motion for Dismissal at the conclusion of all of the evidence should have been granted.

Respectfully submitted,  
GEORGE B. HANDY  
*Attorney for Appellant*