

1970

State of Utah v. Lanson Roy Pratt : Brief of Respondent

Utah Supreme Court

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Recommended Citation

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Respondent

vs.

LANSON ROY PRATT,

Defendant-Appellant

BRIEF OF RESPONSE

AN APPEAL FROM VERDICT OF
COURT IN AND FOR DAVIS COUNTY,
UTAH, HONORABLE L. ROLAND
PRESIDING.

VERDICT

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FILE

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In The Supreme Court of the State of Utah

STATE OF UTAH,	} Case No. 12061
Plaintiff-Respondent,	
vs.	
LANSON ROY PRATT,	}
Defendant-Appellant.	

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

The appellant, Lanson Roy Pratt, was convicted of contributing to the delinquency of a minor in violation of Utah Code Ann. § 55-10-80 (Supp. 1969), before the Juvenile Court in and for Davis County, Honorable L. Roland Anderson, presiding.

DISPOSITION IN LOWER COURT

The appellant was tried by the court, sitting without a jury, and was found guilty of causing Nelda Pratt, a minor to pose nude in a lewd and suggestive manner for photographic pictures, in violation of Utah Code Ann. § 55-10-80 (Supp. 1969), i.e., contributing to the delinquency of a minor.

RELIEF SOUGHT ON APPEAL

Respondent submits that the decision of the Juvenile Court should be affirmed.

STATEMENT OF THE FACTS

Respondent does not agree with the statement of facts set forth in Appellant's Brief, and therefore sets forth its own statement as follows:

On August 1, 1969, Nelda Pratt, a minor, Roy and Lavonne Pratt, and Harold Zesiger were at the home of Roy and Lavonne Pratt in Woods Cross (T. 3, 4, 10). Lavonne suggested Roy go in to Salt Lake to get some alcoholic beverages (T. 4, 11). Whereupon Roy and Harold rode into town and purchased some Cherry Sloe Gin (T. 4, 11).

After returning to Woods Cross with the alcoholic beverages, mixed drinks of 7-up and Cherry Sloe Gin were served to Roy, Lavonne, Harold and Nelda (T. 12). Later, Lavonne suggested that Nelda pose in the nude so that photographic pictures could be taken of her (T. 5). Arrangements were then made to take the pictures. Lavonne got a sheet for a backdrop (T. 6). Harold took eight pictures with his polaroid camera of Nelda posing in the nude, in a lewd suggestive manner (T. 12; Exhibits 1, 2, 4, 5, 6, 7). Roy assisted by holding the light (T. 6, 13). Mr. Pratt received four of the pictures and Harold Zesiger took the other four (T. 14).

At the trial Nelda Pratt testified that: Roy and

Harold went to town "to get the booze" (T. 4), that there were two men, Lavonne and myself present (T. 6), that Harold was taking the pictures (T. 6), and that a man who looked like Roy was holding the lights (T. 6). Mr. Harold Zesiger testified to almost exactly the same facts, except that he was sure Roy Pratt was present and held the light (T. 13).

The appellant took the stand in his own defense and testified that he was working from 4:00 p.m. on August 1, 1969, to 2:00 a.m. the next morning (T. 20), that upon coming home, he held the lamp on Nelda's nude figure only briefly, and then retired to bed (T. 20). Others testified for the appellant supporting his allegation that he worked as stated on August 1, 1969.

ARGUMENT

POINT I

THE COURTS HAVE HELD A STATUTE VALID UNDER THE VAGUENESS ISSUE, IF THE PERSON WHO VIOLATED THE STATUTE KNEW OR SHOULD HAVE KNOWN UNDER THE STATUTE THAT HE WAS COMMITTING A CRIME.

The appellant is appealing this case partly on the basis that "Utah Code Ann. (1953) (sic) 55-10-80 is unconstitutional in that it is vague and indefinite." (Appellant's brief pg. 4). Utah Code Ann. (Supp. 1969) § 55-10-80 reads in part 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 become responsible for the neglect or delinquency of any child. . . . Any person who commits any act described above in this section, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by a fine not exceeding \$299, or by both."

Counsel for appellant states that the term "delinquency" is not specific enough to warn appellant that he was committing a crime.

The United States Supreme Court has held that a statute must be specific enough to warn the average person of the crime dealt with in the statute—holding that a person cannot be held guilty for violating a statute that he could not understand. In *Connally v. General Construction Co.*, 296 U.S. 386 (1926), the Supreme Court enforced this principle by holding that:

"The test is whether the language conveys sufficient *definite warning* as to the prescribed conduct when measured by common understanding and practice." *Id.* at 391 (Emphasis added.)

Later in *Jordan v. De George*, 341 U.S. 223 (1951) the Court held:

"The essential purpose of the 'void for Vagueness' doctrine is to *warn individuals* of the

criminal consequences of their conduct.” *Id.* at 341. (Emphasis added.)

Thus, the test handed down by the Supreme Court is whether or not a statute is sufficient to warn or give notice to an individual that he is committing a crime. This test is not applied on a broad scale to everyone who falls under the statute, but the statute is applied specifically to each individual to see if that individual knew or should have known that his actions would constitute a crime. As stated in *United States v. National Dairy Corp.*, 372 U.S. 29 (1962):

“We therefore consider the vagueness attack solely in relation to whether the statute sufficiently warned National Dairy (Defendant) . . .” *Id.* at 33.

Applying the test or precedent established by the Supreme Court to the present situation, the appellant has to prove that Utah Code Ann. § 55-10-80 (Supp. 1969) was so vague that it could not warn Pratt that he was committing a crime. Considering what Pratt did in relation to the statute which he claims is vague leads to a ridiculous conclusion. Pratt and others had a young 17 year old girl strip down and pose for nude photographic pictures in a lewd and suggestive way and now claims that the word “delinquent” in the statute was not precise enough to tell him that his actions were a crime! Anyone with a little intelligence or understanding should conclude that having a minor pose nude in a suggestive way would contribute to her delinquency.

If common intelligence is not enough, and if appellant feels that he did not have the understanding or common sense to realize that taking nude photographs of a minor was a crime, then the Utah Supreme Court has ruled and determined exactly how vague the words "delinquent" and "contributing to the delinquency of a minor are." *State v. Tritt*, 23 Utah 365, 463 P.2d 806 (1970), had exactly the same issue presented as appellant contends in his brief—that the word "delinquent" and "contributing to the delinquency" were vague and therefore unconstitutional. This Court held:

"Terms 'delinquent' and 'contributing to the delinquency' as used in the statute describing offense of contributing to delinquency of minor [U.C.A. § 55-10-80 Supp. 1969], bore connotations sufficiently well known that persons of ordinary intelligence and judgment would have no difficulty in governing their conduct by the statute." *Id.* at 369.

The Supreme Court of the State of Utah has specifically held that the terms alleged by appellant are not vague or indefinite but rather precise and definite so that persons of ordinary intelligence would have no difficulty in governing their conduct by the statute.

POINT II

THE LOWER COURT'S FINDING OF GUILT IS SUPPORTED BY THE ACCOMPLICE'S TESTIMONY AND IS CORROBORATED BY OTHER INDEPENDENT EVIDENCE.

The second point raised by appellant is that there is no evidence connecting him with the crime, other than an accomplice's statement. Appellant contends that under Utah Code Ann. § 77-31-18 (1953) one cannot be convicted on testimony of an accomplice unless it is corroborated by other evidence.

Section 77-31-18 of the Utah Code Ann. (1953) reads:

“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.”

In order to help interpret this statute, Utah courts have adopted a test determining the amount and type of corroborative evidence necessary, combined with an accomplice's testimony, to convict a person. In *State v. Sinclair*, 15 Utah 2d 162, 389 P.2d 465 (1964) this court held:

“Test of corroboration of accomplice is whether there is evidence, independent of accomplice's testimony, which jury could reasonably believe *tends to implicate and connect* the defendant with the commission of the crime.”
Id. at 468. (Emphasis added.)

See also: *State v. Simpson*, 120 Utah 596, 236 P.2d 1077

(1951), *State v. Virgil*, 123 Utah 495, 260 P.2d 539 (1953), and *State v. Bruner*, 106 Utah 49, 145 P.2d 302 (1949).

Note that the test is not one which implicates or connects the person to the crime, but evidence that tends to connect or implicate the accused to the crime.

There are several things which tend to connect Pratt with the crime: (1) Pratt had in his house one half of the nude pictures of Nelda just as Harold Zesiger testified (i.e., they divided the pictures in half, Pratt keeping four and Zesiger keeping four (T. 14)). (2) Nelda testified there were two men in the room besides Lavonne and herself (T. 37). (3) Nelda testified that she heard a voice that sounded like Pratt's (T. 41). (4) Officer Leishman stated on the stand that Nelda signed a statement and also told him that Roy was there while the pictures were being taken (T. 50). The foregoing is all independent evidence, and does not include evidence by Harold Zesiger, an accomplice who had all ready been sentenced. Mr. Zesiger gave a full account of that night's activities, including Pratt's participation.

The independent evidence must tend to connect or implicate the accused with the crime. Each of the above facts does more than tend to implicate Pratt—they along with Mr. Zesiger's testimony prove that Lanson Roy Pratt is guilty of contributing to the delinquency of a minor under Utah Code Ann. § 55-10-80 (Supp. 1969). There were only four people pre-

sent the night the obscene pictures were taken. One was the accused, and only two of the other three testified. Both of these persons indicated in one form or another that Pratt was present.

Nelda Pratt's testimony is not congruent, in several spots she contradicts herself and takes different positions. The last day in court Nelda testifies almost opposite as to what she testified to on the first day in court. The court, in order to get an accurate and true understanding, should take into consideration that the accused was Nelda's step-brother. Notice what Nelda Pratt told the investigating officer:

QUESTION: Alright, and did she (Nelda Pratt) ever say with absolute certainty that Roy was even there?

ANSWER: Yes sir.

QUESTION: Did she, or did she state as she did, has here that I thought he was but I'm not sure.

ANSWER: No, to both Chief Niles and myself she stated directly that he had been present in the room and then again upon my approaching her for a signed statement she made a statement that he had been there.

(T. 50)

It is obvious that Nelda Pratt knew and was aware that the accused was present when the lewd

photographs were taken, but she wanted to protect her step-brother. In *Aagard v. Dayton and Miller Red-E-Mix Concrete Co.*, 12 Utah 2d 34, 361 P.2d 522 (1961), this Court held:

“A witness’ interest may be considered as grounds for refusing to accept his testimony, even though he is not a party.” *Id.* at 36.

Judge Anderson, of the juvenile court, without a jury present, listened to all witnesses and concluded as this court did in *Schlutter v. McCarthy*, 113 Utah 543, 196 P.2d 968 (1948) when they said: “Where plaintiff’s witness and defendant’s witness gave conflicting testimony, jury was entitled to believe testimony of plaintiff’s witness.” *Id.* at 550.

The testimony of others who were present that night, plus the fact that Pratt had one-half of the pictures taken, is sufficient evidence under Utah Court precedence to convict Pratt of contributing to the delinquency of a minor. Zesiger testified that Pratt received four of the eight photographs.

QUESTION: Who had the pictures after they were taken, who kept them?

ANSWER: Roy had four and I had four.

(T. 14)

Later Police Officers got the obscene photographs of Nelda from Harold Zesiger and Roy Pratt (T. 30, 14). Why would Pratt keep the photographs for weeks before reporting the crime? Pratt claims

that he found them on the refrigerator. Respondent contends that it is too much of a coincident for Roy Pratt to have four of the photographs and Harold Zesiger to have four. Rather, the incident occurred just as Zesiger related it—he gave four to Roy and kept four for himself.

Appellant puts great stress on the fact that the evidence, other than the accomplices testimony, is weak. It is a well settled rule of law that corroborative evidence need not be strong. In *State v. Jones*, 95 Mont. 317, 26 P.2d 341 (1933), the Montana Supreme Court observed:

“The corroboratory evidence need not be strong, if as a matter of law it satisfies the requirements of the statute (*People v. Barker*, 114 Cal. 617, 46 P. 601), and in passing upon the weight to be given to corroboratory evidence, the jurors are at liberty to disregard or disbelieve the explanation of facts and circumstances as given by the defendant and his witnesses.”

All the corroborative evidence need do is tend to connect the accused with the crime. There is no court precedent or rule of law which states the corroborative has to be strong. In *State v. Spencer*, 15 Utah 149, 49 Pac. 302 (1897), the court interpreted Comp. Laws of Utah § 5049 (1888) which was the predecessor of § 77-31-18 (1953) Utah Code Ann.

“... and the corroborating evidence must of itself, and without the aid of the testimony of the accomplice, tend in some degree to con-

nect the defendant with the commission of the offense. It need not be sufficient of itself to establish defendant's guilt, but it must tend in some degree to implicate and connect the defendant with the commission of the offense charged. This evidence may be slight, yet the requirements of the statute are fulfilled if it be corroborating evidence." *Id.* at 150.

Independent evidence consisting of photographs and testimony of others present to the effect that Roy was there, more than connects Pratt to the crime.

CONCLUSION

The respondent respectfully submits that the conviction should be affirmed. Pratt had a fair and impartial hearing at which the judge found him guilty. The accomplice's testimony plus other independent evidence supports the finding that appellant, Mr. Pratt, is guilty. Based on the cases cited and the reasoning herein, the lower court conviction of contributing to the delinquency of a minor should be upheld.

Respectfully submitted,

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