

1939

State of Utah v. Richard Jessup : Abstract of Record

Utah Supreme Court

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Claude T. Barnes; attorney for defendant and appellant.

Recommended Citation

Abstract of Record, *State of Utah v. Jessup*, No. 6193 (Utah Supreme Court, 1939).
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IN THE
SUPREME COURT
OF THE STATE OF UTAH

THE STATE OF UTAH.

Plaintiff and Respondent.

vs.

RICHARD JESSUP.

Defendant and Appellant.

CASE
No. 6193

ABSTRACT OF RECORD

APPEAL FROM THE FIFTH DISTRICT COURT
OF UTAH, WASHINGTON, COUNTY
HON. WILL L. HOYT, JUDGE

CLAUDE T. BARNES
*Attorney for Defendant
and Appellant*

FILED
OCT 30 1936

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IN THE
SUPREME COURT
OF THE STATE OF UTAH

THE STATE OF UTAH,
Plaintiff and Respondent,
vs.
RICHARD JESSUP,
Defendant and Appellant.

CASE
No. 6193

ABSTRACT OF RECORD

Complaint issued Sept. 1, 1939.
Warrant of Arrest served Sept. 2, 1939.
Bail bond furnished Sept. 2, 1939.
Preliminary hearing waived Sept. 2, 1939.

Justice of the Peace ordered on Sept. 2, 1939, that the defendant be held to answer before the District Court.

Transcript from Justice of the Peace filed in County Clerk's office Sept. 5, 1939.

(TITLE)

INFORMATION

Richard Jessup the Defendant above named having been heretofore, to-wit: on the 2d day of September, 1939, duly committed to this court by George F. Whitehead, a Committing Magistrate in and for the County of Washington, State of Utah, to answer to the charge hereinafter specifically set forth, is accused by Ellis J. Pickett, District Attorney in and for the Fifth Judicial District of Utah, by this Information, of a felony, to-wit: Unlawful cohabitation, committed as follows:

That the said Richard Jessup on or about the 1st day of September 1939, at Washington County, State of Utah, did cohabit with more than one person of the opposite sex.

Contrary to the forms of the Statutes in such case made and provided and against the peace and dignity of the State of Utah.

(Signed) ELLIS J. PICKETT,
*District Attorney in and for the
the Fifth Judicial District of
Utah.*

The Defendant having waived the preliminary hearing and the State of Utah having consented thereto, no witnesses were sworn to testify on the part of the State of Utah.

(Filed September 12, 1939)

(TITLE)

MOTION TO QUASH INFORMATION

Comes now the defendant herein and moves to quash the information in the above entitled action on the following grounds:

1. That it does not charge the defendant with the commission of an offense.

2. That it does not comply with Sections 105-17-4 and 105-21-5 of the Code of Criminal Procedure, Compiled Laws of Utah, 1933, as amended by the Laws of Utah, 1935, Ch. 118.

(Signed) CLAUDE T. BARNES,
Attorney for Defendant.

(Filed September 18, 1939)

(Motion denied September 18, 1939)

BILL OF EXCEPTIONS

TESTIMONY

(The record being unnumbered, the page references are to the Reporter's Transcript of Testimony). Mary Carling, a witness called by the State, testified as follows (Trans. p. 8):

DIRECT EXAMINATION

My name is Mary Carling; I reside at New

Harmony; I have been staying at a ranch with my cousin Lydia. I know Richard Jessup (Trans. p. 9); he resides near where I have been living. I have been there about two weeks, but I was there two years ago. I was there on September 1st. I know Lola Johnson (p. 11); she is my cousin and I have known her since I was a tiny girl. I know Ida Johnson Jessup; she is my cousin. I saw (p. 12) Lola Johnson near New Harmony on September 1st; I do not know where she was staying. I was staying (p. 13) with my cousin Lydia, the wife of Fred Jessup. Richard Jessup's home is thirty or forty yards from Fred Jessup's home. I know where he lives (p. 15). I saw Lola Johnson about September first—I guess she was visiting at the Richard Jessup home. I dont know what she was doing there (p. 16); she came on a visit. She was there when I came, and as far as I know she is still there. She is ill, pregnant. (p. 17). Ida Johnson Jessup, the wife of Richard Jessup, lives at New Harmony, and has several children by Mr. Jessup. I do not know (p. 18) whether Lola Johnson has a husband.

CROSS EXAMINATION

So far as I know Lola Johnson was visiting at the residence of my cousin on September first.

Antone B. Prince, a witness called by the State, testified (Trans. p. 19):

DIRECT EXAMINATION

My name is Antone B. Prince; I am the Sheriff of Washington County. I saw Richard Jessup on September 1st, three-quarters of a mile (p. 20) southeast of Harmony on the old James E. Taylor ranch. It was around dark; I was with Sam Fullerton, my deputy. We went to the

ranch; there are two houses there forty yards apart. There were no men folks there; later (p. 21) the defendant came with his wagon. I told him I was there to arrest him for unlawful cohabitation; he did not say a thing. He went to his house to clean up, and was gone fifteen minutes (p. 22). I asked him where Lola was, and he said he did not know. I said, "I wish you would call your wife because she is just messing things up." He says, "I don't know where she is." I saw his wife Ida Johnson Jessup there.

On the way to St. George (p. 23). Mr. Jessup said they were being persecuted for the same thing their fathers had done; and "we believe in living according to the laws of God."

The next day I went (p. 24) with Richard Jessup to New Harmony to get a bond and at the Richard Jessup home I saw Ida Jessup and Lola Jessup in the kitchen. Both women were pregnant (p. 25). On the first trips to the home Fred Jessup and Mr. Fullerton were there.

Samuel Fullerton, a witness called by the State, testified (p. 26):

My name is Samuel Fullerton; I am night-watchman at St. George; I was made a deputy sheriff on September 1st. I saw Richard Jessup at his home on September first, around the yard. Mr. Prince asked him where Lola was, and he said he did not know. I seen a lady there prior to Mr. Jessup's coming but I did not know whether it was Lola or not. I saw Ida Jessup in the home. On the way to St. George, Richard Jessup said he couldn't see why people couldn't leave them alone and let them live their lives. He said it was a commandment of God.

Both sides rested.

MOTION FOR DIRECTED VERDICT (Tp. 29)

Mr. Barnes: Comes now the defendant in the above entitled action and moves that this Honorable Court direct the jury to bring in a verdict of not guilty. If the Court please, it is almost so obvious I don't know whether I ought even to argue it. So far as I can see they have proved absolutely nothing—nothing that they couldn't prove against me, against any jurymen, any person, almost in this building. The most that they have proved is that these people were there. Very likely you can go into any man's home in St. George and find the same situation.

Mr. Pickett: We will submit it without argument.

The Court: The Court will take a fifteen minute recess and will consider the matter."

(Recess)

Motion denied.

1.

INSTRUCTIONS TO THE JURY

In this case an information has been filed by the District Attorney charging the defendant Richard Jessup with the commission of a felony, to-wit, unlawful cohabitation, committed as follows: That the said Richard Jessup on or about the 1st day of September, 1939,

at Washington County, Utah, did cohabit with more than one person of the opposite sex, contrary to the statute in such case made and provided. To this information the defendant has entered a plea of not guilty. This plea puts in issue each and every material allegation of the information and requires that you presume the defendant innocent of the offense charged until evidence is presented before you which convinces you beyond a reasonable doubt that the defendant is guilty of such offense. You are instructed that the filing of the information is not to be considered as any evidence of the guilt of the defendant.

2.

You are instructed that "unlawful cohabitation" means cohabitation or dwelling together with more than one person of the opposite sex in the apparent relationship of marriage. The law forbids that a man who has and is living with one wife shall at the same time cohabit or dwell with another woman in the apparent relationship of husband and wife. The law considers that it is demoralizing and offensive to society for a man to live with more than one woman at one time in the apparent relationship of matrimony. You are instructed, therefore, that if from the evidence presented before you in this case you find and are convinced beyond a reasonable doubt that the defendant Richard Jessup at Washington County, Utah, on or shortly prior to the 1st day of September, 1939, at the same time did cohabit or dwell with both Ida Jessup and Lola Johnson in the apparent relationship of marriage as to both or openly claiming

both of them as his wives, or opening claiming the rights and privileges of a husband as to each and both of said women, then you should return a verdict that the defendant is guilty of unlawful cohabitation as charged in the information.

On the other hand, if you are not convinced beyond a reasonable doubt from the evidence presented before you in open court that on or shortly prior to the 1st day of September, 1939, the defendant did cohabit or live with both Ida Jessup and Lola Johnson in the apparent relationship of marriage, then you should return a verdict of not guilty.

3

You are instructed that in this case it is immaterial whether or not the defendant believed or knew that he was doing that which was wrong or unlawful, if you find that he dwelt or cohabited with more than one woman at one time in the apparent relationship of marriage or opening and publicly claiming the rights and privileges of a husband as to each and both of them. In such cases it is immaterial whether he knew that he was breaking the law, and it is immaterial whether or not he believed that he was performing a religious duty or obligation. The law which is adopted for the government of society has the power to control the actions of men to that extent in such cases, regardless of the fact that it has no power or authority to control the beliefs or thoughts or opinions of men in matters of religion.

You are instructed that in order to prove the offense of unlawful cohabitation it is not necessary for the State to prove that the defendant had sexual intercourse with either or both of the women with whom the prosecution claims the defendant was cohabiting. The offense of unlawful cohabitation may be established by proof which satisfies you beyond a reasonable doubt that the defendant at the time and place charged in the information lived with more than one woman in the appearance of the matrimonial relationship. If, however, you find from the evidence that defendant had had sexual intercourse with Lola Johnson, that is a circumstance to be considered by you in determining whether defendant was living with her in the apparent relationship of marriage.

When circumstantial evidence is relied upon to obtain a conviction of a person charged with crime it is not only necessary that the circumstances all concur showing that the defendant is guilty of the crime, but that all such circumstances are inconsistent with any other rational conclusion. The State should not only convince you beyond a reasonable doubt that the alleged facts and circumstances are true, but they must be such facts and circumstances as are incompatible upon any reasonable hypothesis with the innocence of the accused.

(Instructions 8-13, stock instructions)

Thereafter, and on the same day, the jury brought in a verdict of "Guilty".

September 20, 1939, defendant sentenced, and stay of execution granted.

(TITLE)

NOTICE OF APPEAL

To the above named plaintiff and to its Attorneys,
Ellis J. Pickett and Orval Hafen:

Notice is hereby given that the above named defendant, Richard Jessup, hereby appeals to the Supreme Court of the State of Utah from that one certain verdict and judgment rendered in said District Court of Washington County in the above entitled cause on the 19th day of September, 1939, in favor of the above named plaintiff and against the said defendant and from the whole thereof. Said appeal will be taken upon both questions of law and fact.

Dated this 11th day of October, A. D. 1939.

(Signed) CLAUDE T. BARNES,
Attorney for Defendant.

STATE OF UTAH }
COUNTY OF SALT LAKE }ss.

G. M. Barnes being first duly sworn deposes and says: That I am a secretary in the office of Claude T. Barnes; that on the 11th day of October, 1939, I placed

a copy of the above notice of appeal in an envelope addressed to Ellis J. Pickett, District attorney, St. George, Utah, and on said date deposited said envelope with postage fully prepaid thereon in the United States post-office at Salt Lake City, Utah, from which point there is a daily mail service to St. George, Utah.

(Signed) G. M. BARNES.

Subscribed and sworn to before me, this 11th day of October, 1939.

(Signed) CLAUDE T. BARNES,
Notary Public.

(Filed Oct. 3, 1939)

(TITLE)

ASSIGNMENTS OF ERROR

Comes now the defendant and appellant, and makes and files the following assignments of error:

1.

The court erred in overruling defendant's motion to quash the information.

2.

The Court erred in denying the defendant's motion for a directed verdict of "not guilty"—for the reasons stated in the next assignment.

3.

The evidence is insufficient to justify or sustain the verdict for the reason that the evidence failed to disclose the commission of any crime whatsoever. There was a complete failure to establish the corpus delicti. The most that can be gathered from the testimony is that the defendant resided at New Harmony (Reporter's Trans. p. 9) with his wife Ida Johnson Jessup (p. 11) who was being visited by her cousin Lola Johnson (p. 19), who was pregnant. (p. 17.).

4.

Section 103-51-2, Revised Statutes of Utah, 1933, as amended by Chapter 112, Laws of Utah, 1935, under which the information in this action was brought is: 1st, unconstitutional; 2d, it fails to set forth or describe or define a crime; 3rd, it is inconsistent with Section 105, 21-39, Revised statutes of Utah, 1933 as amended by Chapter 118, Laws of Utah, 1935; 4th, it violates the Constitution of the State of Utah and of the United States in that it requires a wife to testify against her husband and an accused person to testify against herself.

5.

The verdict is against law.

6.

The Court erred in failing to strike out the words "sometimes called Lola Jessup" as set forth in the Reporter's Transcript p. 11 as follows:

Q. Alright are you acquainted with Lola Johnson, sometimes called Lola Jessup?

Mr. Barnes: I object to the question. Counsel said, 'sometimes called Lola Jessup'; no evidence of that whatsoever. I move to strike it out as improper.

The Court: The objection is overruled."

7.

The Court erred in overruling defendant's objection to testimony as to where Lola Johnson was on the morning of the trial, as follows. (Trans. p. 16):

Q. Did you see her this morning?

Mr. Barnes: I object to that, if the Court please; it is quite beyond the issue in this case and immaterial.

Mr. Pickett: I submit it.

Mr. Barnes: What difference does it make, whether he saw her this morning or not, if the court please?

Mr. Pickett: I think it would make considerable difference. We submit it your honor.

The Court: The objection is overruled."

8.

The Court erred in overruling defendant's objection to the following question and answer. (Trans. p. 17):

Q. She is in a pregnant condition?

Mr. Barnes: I object to that as irrelevant, immaterial, incompetent; beyond the issues in this case; and beyond any issue that can be involved in this charge.

The Court: The objection is overruled.

9.

The Court erred in overruling the defendant's objection to testimony of what occurred at the Richard Jessup home the day following the arrest of the defendant. (Trans. p. 24):

Q. Whom did you see at his home or on that visit?

Mr. Barnes: I object to that as immaterial, if the Court please. We are now coming to the period of time after the arrest of this man. Nothing to do with whether or not he was guilty of the crime charged, at the time they arrested him.

The Court: The objection is overruled.

10.

The information fails to state or charge a public offense.

11.

The Court erred in giving Instruction No. 3, and especially the two last sentences thereof, wherein mention is made of "performing a religious duty or obligation" and "beliefs or thoughts or opinions of men in matters of religion".

Wherein these errors were committed the defend-

ant was prejudiced in his rights; wherefore by reason of the errors herein set forth defendant and appellant prays that the verdict and judgment be reversed and set aside, and the cause remanded to the trial court for a new trial.

CLAUDE T. BARNES,
*Attorney for Defendant
and Appellant.*

(Served Oct. 17, 1939)

(Filed Oct. 17, 1939)