

1940

State of Utah v. Angelo Tellay : Abstract of Record

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Robert S. Spooner; George D. O'Connor, Jr.; Attorneys for Appellant;

Recommended Citation

Abstract of Record, *Utah v. Tellay*, No. 6233 (Utah Supreme Court, 1940).
https://digitalcommons.law.byu.edu/uofu_sc1/635

This Abstract of Record is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

 In The
 SUPREME COURT
 of The
 STATE OF UTAH

STATE OF UTAH,
 Respondent

VS.

ANGELO TELLAY,
 APPELLANT

Appeal from the Third Judicial District Court
 Honorable Clarence E. Baker, Judge

ABSTRACT OF RECORD

Robert M. Spooner
 George D. O'Connor, Jr.
 Attorneys for Appellant

FILED

MAR 11 1940

CLERK SUPREME COURT UTAH

I N D E X

<u>Subject</u> - - - - -	<u>Page</u>
Assignments of Error.....	17
Bill of Exceptions.....	9
Certificate of Probable cause.....	8
Defendant's Requested Instructions.....	6
Exhibits: (State's Exhibit "A").....	14,16,20, 21
(Defendant's Exhibit "1").....	16,21
Information.....	1
Instructions to the Jury.....	2
Judgment of the Court.....	8
Motion for a New Trial.....	7
Motion for Directed Verdict.....	17
Motion for Mistrial.....	17
Notice of Appeal.....	8
Verdict.....	2
Witnesses: Helen Fulmer.....	9-12
Dr. H. S. Stevenson.....	12-13
Mrs. John Sommers.....	13,14,18, 19

IN THE SUPREME COURT OF THE STATE OF UTAH

State of Utah,

Respondent

vs.

Angelo Tellay,

Appellant

ABSTRACT OF RECORD

Information

1.6 The information charges that on the 22nd day of May, 1939, at the County of Salt Lake, State of Utah, the defendant and Appellant did wilfully, unlawfully, feloniously, and carnally know and abuse one, Helen Fulmer, a female over the age of thirteen years and under the age of eighteen years, to wit: of the age of fifteen years, the said Helen Fulmer being then and there an unmarried female and not the wife of the said Angelo Tellay

Filed June 23, 1939.

1.6 On June 23, 1939, defendant was arraigned

and waived time in which to enter a plea, and entered a plea of not guilty, and pleads former acquittal and former jeopardy and demands an immediate trial.

9 On September 27, 1939, jury was sworn to try the case.

VERDICT

11 September 28, 1939, jury returned a verdict of guilty of the crime of carnal knowledge as charged in the information. (On good cause shown the case was continued from the 27th day of September, 1939, to the 28th day of September, 1939, Tr. 9.)

Instructions to the Jury

.18 The court instructed the jury in substance as follows:

Instruction No. 1 set out in the information.

.18 Instruction No. 2 sets out that the defendant pleaded not guilty, which puts in issue every material allegation.

.18 Instruction No. 3 gives the statutory definition of Carnal Knowledge.

P.19 In Instruction No. 4 the court instructs the jury that they must find beyond a reasonable doubt the existence of the following facts:

(1) That Helen Fulmer, at the time of the commission of the alleged offense, was a female over the age of thirteen years and under the age of eighteen years, and not the wife of the defendant Angello Melloy;

(2) That the defendant did carnally and unlawfully know the said Helen Fulmer, either with or without her consent;

(3) That the said act was committed in Salt Lake County and State of Utah; and,

(4) That the said act of sexual intercourse occurred on or about the 22nd day of May, 1939, and to find a verdict of guilty as charged each of the above enumerated allegations of the complaint must be proven beyond a reasonable doubt.

P.20 Instruction No. 5 instructs the jury to disregard defendants pleas of former acquittal and former jeopardy.

P.21 Instruction No. 6 instructs the jury that

the defendant is not required to assume the

witness stand or be a witness in his own behalf, and his failure to testify is no indication of guilt - nor shall the jury indulge in any presumptions of guilt by reason thereof.

P.22 Instruction No. 7 charges the jury in substance, that, the jury is not at liberty to indulge in conjectures as to propositions not in evidence, nor follow their own ideas as to what the law is or ought to be. But that they were to follow the law and evidence in the case.

P.22 Instruction No. 8 charges the jury in substance, that, the evidence must be considered fairly and impartially, and that the verdict must be based upon the evidence introduced at the trial, and only such evidence as the court admits in the case; not be influenced by what counsel states the evidence to be, unless it is stated correctly; and statements of the court are not to be taken as indicating any opinion upon the case or the evidence brought out, nor any statement of the court.

P.23 Instruction No. 9 charges the jury that they are the sole judges of the weight of the evidence, the credibility of the witnesses and

the facts. Bias and prejudice, if any is shown, may be taken into consideration, also appearances, conduct and motives of witnesses may be considered, and considering everything determine the weight of the testimony of any witness.

That they are not bound to believe any witness.

In case of conflict they are to reconcile the testimony if possible; that they are to determine the ultimate truth of the case.

That if they believe any witness testified falsely wilfully, they must discredit his testimony.

There must be a union of act and intent in every offense.

That the intent is manifested by the circumstances connected with the offense.

That all presumptions of law are in favor of innocence, and a man must be proven guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based upon reason in view of all the evidence.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
That the State must prove the allegations

of its complaint beyond a reasonable doubt, and if the jury has an abiding conviction of guilt - such as they would be willing to act on in the more weighty matters of their own business - then they have no reasonable doubt.

That the proof that must be made must be such as would convince them if they were bound to conscientiously act upon it.

That every reasonable hypothesis must be excluded other than that of guilt in order to find the defendant guilty.

.24 Instruction No. 10 instructs the jury to consider the instructions as one connected whole and not individual matters.

.24 Instruction No. 11 directs the jury to select a foreman, and then deliberate upon the case before them.

Defendant's Requested Instructions

.15 Defendant's Requested Instruction No. 1--
You are instructed, if you find as a matter of fact, that there was one act, one intent, and one volition, and the defendant has been tried on a charge based on such act, intent, and volition. then you are to return a verdict for the

defendant.

P.16 Defendant's Requested Instruction No. 2 -

You are instructed, that if you find as a matter of fact, that there was one act, one intent, and one volition, and the defendant has been tried and acquitted on a charge based on such volition, act, and intent, then you are to return a verdict for the defendant.

P.17 Defendant's Requested Instruction No. 3 --

You are further instructed, that the unlawful intercourse alleged in the complaint must be with a female under the age of eighteen years and over the age of thirteen years, who at the time and place of such intercourse was not the wife of the defendant, therefore, if you find that the State has failed to establish and prove by competent evidence that the defendant was not the husband of Helen Palmer, then and in that event, you must find against the State and in favor of the defendant - not guilty.

Motion for New Trial

P.26 Filed October 7, 1939.

The motion for new trial sets out all the

statutory grounds for a new trial, among which

are the following:

That the court misdirected the jury in matters of law and erred in the decision of questions of law arising during the course of the trial which were duly excepted to and which were prejudicial to the substantive rights of the defendant.

That the verdict is contrary to the law and contrary to the evidence.

That the court erred to the prejudice of the defendant in the rulings upon and in the admission of evidence upon the trial of the case.

Judgment of the Court

P.27 On October 7, 1939, the defendant was sentenced to an indeterminate term in the State Prison for a period of not more than five years.

Certificate of Probable Cause

As the defendant was returned to the State Prison for a parole violation by reason of the cause herein appealed, the filing of the certificate has not been effected, but the defendant will attempt to obtain such certificate for filing before March 15, 1940.

r.36 Filed December 12, 1939. Notice of Appeal stated that the defendant appeals from the Third Judicial District Court to the Supreme Court of the State of Utah.

r.40 BILL OF EXCEPTIONS

r.41 The spectators were excluded on motion of Mr. Neeley, State's Attorney, and object was waived by the defendant.

The defendant moved the exclusion of all witness, to which the State had no objection.

The information was then read to the jury by the clerk, after which the State made its opening statement to the jury.

r.42 Helen Fulmer, the first witness for the State, was called and sworn. She testified that her name was Helen Fulmer, residing at 164 Yale Ave.; that she was 15 years of age. Testifying further, she stated she knew the defendant, and had been with him on the night of May 22nd, 1939, and there were two other boys with them. That
r.43 they first met at her home, later went out with the two boys, Jack Rose and Pete Karakis, and
r.44 with defendant. The four then got in the automobile and went to some girl's home, but as she

was not at home, the four journeyed to what is known as the Yellowstone Beer Garden. The boys got some beer, the witness refusing to go in with them. The four then motored out to "Pete's" place at about 21st South and Redwood Road, and ate some hamburgers. From here they proceeded to California Street and Monterey where the driver parked the car. Pete Karakis and Jack Rose then left the car with the explanation of going to get some other girl. While the two were gone and while Angelo, the defendant, and the witness were in the automobile, the defendant got in the back seat and had sexual intercourse with the witness, after a little verbal refusal was put up by the witness.

46 There was some conversation of no particular importance had between the three boys and the witness relative to another girl

47-48 Cross-examination by Mr. O'Connor

The matters brought out on cross-examination by Mr. O'Connor were substantially the same as those brought out in chief, except that the witness admitted that she had met one of these boys that night and the other two she had

known a little less than two weeks, and one of the boys she had "known" two weeks was seen by the witness for the second time that night.

r.55 Re-direct examination by Mr. Hesley.

The witness testified that she had returned home about one or one-thirty a.m. the next morning. That prior to coming home, and after the alleged crime had taken place, they went back to the Yellowstone Beer Garden where the four went in - the boys to drink some beer. That subsequently, and on the road home, the driver took some round about route which didn't meet with the witness's approval, whereupon she r.56 jumped from the car, while it was in motion. As a result she was knocked unconscious. After the r.57 witness had regained consciousness, she walked r.58 home, and later reported to her mother.

Re-cross-examination by Mr. O'Connor.

The witness admitted that although there were several people in the Yellowstone Beer Garden when the four visited the place for the second time, yet she made no pretense at asking for their assistance or protection from these three boys who had perpetrated a dastardly crime

not more than half an hour previous to this time.

r.59 Dr. H. S. Stevenson was sworn as a witness on behalf of the State and testified in substance as follows:

That he was acquainted with Helen Palmer, and that he made an examination of her person

r.60 about May 28rd, 1939. That the examination was made in his office. The results of the examination showed abrasions on the inner part of the thigh, and the vulvar outlet to the vaginal canal showed signs of trauma; the flaps of the opening showed recent dilation. The mucous membrane of the vulva was swollen, and there was some evidence of recent penetration.

Cross-examination by Mr. Spooner

r.61 The witness testified that these bruises and abrasions could have been made several days prior to the date of examination. That most any kind of object might cause more or less of a disturbance. That Helen was an over developed girl, and matured beyond her years. It was also admitted that there might have been penetrations prior to this time. That most any kind of

object or instrument might have caused injury such as the expert witness found. The Doctor

r.62 further testified that he could not state with certainty whether or not this was the first of such penetrations.

r.63 Mrs. John Sommers was worn as a witness on behalf of the State and testified in substance as follows:

That she was the mother of Helen Fulber and resided at 164 Yale Avenue; that Helen is 15 years of age. Q. Did you have any conversation with Helen on the morning of May 22nd, 1939?

Objection by MR. O'CONNOR that the answer would r.64 be hearsay. COURT: She may answer. A. Yes sir.

Q. Will you state the conversation? MR. SPOONER:

We renew our objection on the grounds it would

be hearsay. COURT: Objection sustained. MR. NEKLEY:

I will reframe the question. Did Helen make

any complaint to you, Mrs. Sommers. A. Yes, she

did. Q. What complaint did she make? MR. SPOONER:

Objection, just another way of reaching it. COURT:

The question is proper, she may answer. MR. SPOONER:

Her complaint would be precisely what the conversa

tion would have been. And Your Honor has ruled.

r.34C COURT: She may answer. A. In substance, the
65.

witness stated that Helen's complaint was to the effect that the three boys "got her". That she has crying and hysterical. She asked Helen if they had really done anything to her, and Helen said yes. They, Mrs. Formers and her husband, cleaned her up, put her to bed and talked with her for a little while.

Cross-examination by Mr. Spooner.

No cross-examination. At this time your Honor we move that all the testimony be stricken out on the grounds it is irrelevant and immaterial. COURT: Motion denied.

r.66 Mr. Mosley, on behalf of the State, offers State's Exhibit "A", a certified copy of the testimony of Angelo Tolley the defendant in a former trial, being the same party, in evidence. MR. SPOONER: I shall object to this piece of evidence on the ground that it violates the defendant's constitutional rights - he is not required to be a witness against himself. This is a new trial and it has no relation to any other act, and anything in the prior trial that would tend to convict him in this trial is in-

admissible. We object first on the grounds that it would violate his constitutional right not to be compelled to be a witness against himself; secondly, on the grounds that the record is not properly introduced. MR. HANLEY: It is a verified copy, your Honor. MR. SPOONER: We will object to it on the third ground that it is only a part of the record of the testimony of the defendant, and there is no cross-examination set out in it. To save time we will withdraw the second objection, Court: The record may show the second objection to State's Exhibit "A" is withdrawn.

.67 COURT: The objection to the admission of Exhibit "A" is overruled. MR. SPOONER: Exception. MR. HANLEY: I am going to read it to the jury. MR. SPOONER: Object to the reading of it to the jury on the grounds it is prejudicial error and for the reasons stated heretofore. COURT: The objection is overruled. (Exhibit "A" read to the jury as follows:) State's Exhibit "A" consisted of questions propounded by Mr. Horace Beck, defendant's attorney, on a prior trial wherein the same defendant was charged with the

crime of rape allegedly committed on this same girl, and involved the same acts, places, intent, persons, and volition, to this defendant while on the witness stand, under oath, testifying in his own defense, and was substantially as follows, to wit: That he, the defendant Angelo Telly, was with the girl, Helen Fulmer, and that he put his arms around her, kissed her, and made love to her. That she kissed him. That he worked her privates and she didn't object. that she asked him to put on a "bloomer" or a rubber because she had been pregnant before.

There was testimony as to their position in the car and how the act took place. That her clothes were not torn. That they kissed each other and the act in general consumed a period of fifteen minutes or so. No force was used in the act or against it.

Mr. O'Connor, on behalf of the defendant, offered Defendant's Proposed Exhibit "1" in evidence. This consisted of a record of the previous trial as aforesaid. MR. TELLY: For what purpose, may I ask, is it introduced? MR.

jeopardy. MR. NEELEY: If your Honor please, I object to it on the ground it is immaterial and incompetant. There has been no former jeopardy.

p.72 Court: In the matter of Defendant's Exhibit "L", the offer is denied.

The jury having first been excused, comes now Mr. Neeley, on behalf of the State, and makes a motion for a directed verdict, after which the Court denied the motion.

p.73 Mr. Spooner, on behalf of the defendant, now moves the Court to declare a mistrial and discharge the jury on the grounds the defendant had been compelled to come into court dressed in prison garb, which in effect forces him to admit, before the jury, that he had once been convicted of a felony, and was at this time an inmate in the State Penitentiary. Court: The motion is denied.

Assignments of Error

ASSIGNMENT OF ERROR No. 1.

The court erred in it rulings on the following objections made by the defendant to the questions propounded by the State's attorney, Mr. Neeley, and to the answers allowed to be

made thereto by a witness for the State, Mrs.

John Sommers: (On direct examination by Mr. Neeley.) Q. Did you have any conversation with Helen on the morning of May 22nd, 1939? MR.

O'CONNOR: Just a moment, if your Honor please, we object to this on the grounds it is hearsay. She can answer whether she had a conversation.

COURT: She may answer the question. Q. Did you have a conversation with Helen immediately, or on the morning of May 22nd, 1939, about one or one-thirty A.M.? A. Yes, sir, I did. Q. Now will you state that conversation? MR. SPOONER:

Now we will renew our objection, your Honor.

Court: The objection to the question in that form is sustained. MR. NEELEY: I will reframe

the question. Q. Did Helen make any complaint to you, Mrs. Sommers? A. Yes, She did. Q. What was the complaint? MR. SPOONER: Now just a

moment, that is just another way of reaching it. COURT: I think it is proper to state the

nature of her complaint. MR. SPOONER: Of course, that is the same thing your Honor ruled on.

Your Honor has ruled that she cannot say what

her daughter told her about it not in the

presence of the defendant. It is hearsay. Now he is going to ask her another question: What was the nature of her complaint? Her complaint would be exactly what the conversation was. If your Honor please, that is hearsay. COURT: What was the question? (Question read) Court: She may answer.

ASSIGNMENT OF ERROR No. 2.

The court erred in refusing to grant the defendant's motion to strike the testimony in its entirety of one of the State's witnesses, Mrs. John Somers, and in refusing to instruct the jury to disregard the same, the testimony is as follows: (Beginning after the last ruling above.) Q. You may answer. A. When she came in the door I was in bed and she said, "mother, they got me". I jumped out of bed and ran to her. I said, "who got you?" and she told me their names and her hair was all mussed up; her face was dirty; her dress was torn; her stockings were torn. I looked at her and I said, "Where have you been,?" I didn't know where she was. I wasn't home at the time she left. I asked her where she had been and she told me.

She said there were three boys. She told me their names, and I took her in the bath room and got her cleaned up. I asked her if they had really done anything to her, and she said, "yes" two of them had but one had not. So I cleaned her up and put her to bed. She was crying, hysterical, and I sat and talked to her for a little while. My husband and I sat and talked with her. I said, "well, I don't know what we ought to do, whether to call an officer." So I went down to telephone - we haven't a telephone - I went to the service station - it was about two o'clock, and then called the officers. Mr. SPECKARD: Objection and exception. Tr. 64 & 65. COURT: Motion denied. Tr. 65.

ASSIGNMENT OF ERROR No. 3.

The court erred in overruling the defendant's objection to State's Exhibit "A". Tr. 66-67.

ASSIGNMENT OF ERROR No. 4.

The court erred in overruling defendant's objections to the introduction in evidence of State's Exhibit "A". Tr. 66-67.

ASSIGNMENT OF ERROR No. 5.

The court erred in receiving State's

Exhibit "A" in evidence for the reasons and on the grounds stated. Tr. 66-67.

ASSIGNMENT OF ERROR No. 6.

The court erred in overruling defendant's objection to the reading of State's Exhibit "A" to the jury. Tr. 67.

ASSIGNMENT OF ERROR No. 7.

The court erred in denying and refusing to receive defendant's proposed Exhibit "L" in evidence, which was offered as stated. Tr. 71-72.

ASSIGNMENT OF ERROR No. 8.

The court erred in failing and refusing to declare a mistrial and discharge the jury for the reasons given. Tr. 73.

ASSIGNMENT OF ERROR No. 9.

The court erred in refusing to give the defendant's requested instruction No. 1. Tr. 80.

ASSIGNMENT OF ERROR No. 10.

The court erred in refusing to give the defendant's requested instruction No. 2. Tr. 80.

ASSIGNMENT OF ERROR No. 11.

The court erred in refusing to give the defendant's requested instruction No. 3. Tr. 80.

ASSIGNMENT OF ERROR No. 12.

The court erred in giving instruction No. 5, to which defendant duly excepted. Tr.75-80.

ASSIGNMENT OF ERROR No. 13.

The court erred in failing to instruct the jury that as a matter of law they must return a verdict of not guilty, for the reason that there was no evidence that the defendant and Miss Fulmer weren't married when the alleged act took place. Tr.26-45-74.

ASSIGNMENT OF ERROR No. 14.

The court erred in allowing the case to go to the jury as the State failed to offer any proof that Defendant and Helen Fulmer were not married when the alleged act occurred. Tr.45-26-74

ASSIGNMENT OF ERROR No. 15.

The court erred in entering judgment and sentence upon the verdict when such verdict was contrary to the evidence, and to the law of the State. Tr. 26-45-74.

ASSIGNMENT OF ERROR No. 16.

The court erred in refusing to grant defendant's motion for a new trial. Tr.26.

Respectfully Submitted,
Robert S. Spooner
George S. Connor, Jr.
Attorneys for Appellant.

CASE No. 6233

-----0000000-----
IN THE
SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

vs.

ANGELO TELLAY,

Defendant and Appellant.

Appeal from the Third Judicial District Court, in
and for Salt Lake County, State of Utah
Honorable Clarence E. Baker, Judge.

BRIEF OF APPELLANT, ANGELO TELLAY

Robert S. Spooner
George D. O'Connor, Jr.,
Attorneys for Defendant
and Appellant Angelo Tellay
Attorney General Joseph Chez,
Attorney for Plaintiff
and Respondent State of Utah

FILED
APR 13 1949

INDEX

	Page
Statement of the Case.....	1.
Errors Relied Upon.....	2.
Argument.....	3.
A. In proper admissibility of evidence.....	4.
B. To the receiving in evidence of State's Exhibit "A", and in permitting it to be read to the jury.....	11.
C. Failure to receive in evidence defendant's proposed exhibit "1"; refusal of defendant's proposed instructions, and to the giving of Instruction No. 5.....	14.
D. To the court's permitting the case to go to the jury on the evidence adduced; to the court's entering judgment upon the verdict in view of the insufficiency of the evidence; and the court's refusal to grant a new trial.....	22.
Conclusion.....	26.

APPELLANT'S AUTHORITIES

Arnett vs Commonwealth, 109 S.W.(2d) 979....	19.
Boyles vs Commonwealth, 48 S.E.527 (Va.)...	6.
Briston vs State, 92 Pac. (2d) 234.....	21.
Burlen vs. Shannon, 98 Am. Dec. 733 (Mass).	21.
Commonwealth vs Arner, 24 Atl. 83 (Pa.).....	20.
Commonwealth vs McLain, 5 Pa. Dist. 173.....	20.
Commonwealth vs Haynes, 69 Va. 982.....	8.
Cunningham vs State, 11 S.W. 485, (Tex.Cr.)	6.
Cook vs. State, 63 S.W. 873.....	18.
Hamel vs State, 126 Pac. 591 (Okla.).....	24.
Harvil vs State, 146 Pac. 683 (Okla.).....	24.
Gardner vs. State, 197 S. W. 23.....	25.
Gerdes vs. State, 173 N. W. 606 (Iowa).....	24.
Jacoby vs State, 180 N. E. 179.....	6.
Kramer vs State, 197 S. W. 23.....	25.
Lee vs Commonwealth, 18 S. W. 4.....	4.

INDEX (Continued)

	Page
Miller vs State, 125 S. W. 379 (Tex. Cr.)...	25
People vs Day, 191 S.W. 640.....	25
People vs Dubois, 62 Pac. (3d) 335.....	24
People vs. Seattura, 87 N. E. 372.....	8
People vs Stevens, 21 Pac. 856 (Cal).....	20
People vs _____, 160 Pac. 1090 (Cal App) ..	20
People vs Teber, 86 Pac. 671, (Cal).....	6
People vs Notz, 102 N.E. 1007 (Ill).....	6
People vs Pack, 185 Pac. 891 (Cal. App.)...	6
Reed vs People, 15 Am. Jurisp.....	20
Schaefer vs Commonwealth, 15 A. Rep. (Pa) ..	13
Shepard vs United States, 62 Fed. 2d 603...	7
State vs Stubbs, 49 Iowa 203.....	5
State vs Hatledge, 58 Atl. 742 (Del).....	6
State vs McManara, 110 S.W. 1067 (Mo.).....	6
State vs Uzzo, 65 Atl. 775 (Del).....	6
State vs Hinkley, 30 Utah 403, 83 Pac. 453.	8
State vs Johnson, 76 Utah 84, 287 Pac. 908.	13
State vs Thorne, 39 Utah 208, 117 Pac. 58..	13
State vs Baruth, 91 Pac. 977.....	14
State vs Lismore, 126 S. W. 856.....	13
State vs McIntyre, 66 Pac. 879 (Utah).....	19
State vs. Cheeseman, 223 Pac. 783 (Utah)....	20
State vs Mahan, 39 S. W. 465 (Mo).....	25
Wilburn vs State, 77 S. W. 3.....	6

STATUTES

Section 103-1-22 Revised Statutes of Utah, 1933.....	17
Section 105-21-31 Laws of Utah, 1935.....	15

CONSTITUTIONS

Amendment V Constitution of the United States.....	15
Article I, Section 12, Constitution of the State of Utah.....	15