

1940

State of Utah v. Paul Olson : Abstract of Record

Utah Supreme Court

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Lawrence A. Miner; Attorney for Applicant;

Recommended Citation

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6241

**In The
SUPREME COURT
of the
STATE OF UTAH**

STATE OF UTAH,

Plaintiff and Respondent

vs.

PAUL OLSON,

Defendant and Appellant.

CASE NO. 6241

**Appeal from the Fourth Judicial District Court
of Duchesne County, Hon. Abe W. Turner, Judge.**

ABSTRACT OF RECORD

**Lawrence A. Miner
Attorney for Appellant**

FILED
NOV 27 1940

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**In The
SUPREME COURT
of the
STATE OF UTAH.**

STATE OF UTAH,

Plaintiff and Respondent,

vs.

PAUL OLSON?

Defendant and Appellant.

-----*

ABSTRACT OF RECORD

INFORMATION.

Filed August 28, 1939

Title of Court and Cause.

Tr. 6. Wm. Stanley Dunford, District Attorney for the Fourth Judicial District, accuses Paul Olson, that on the 30th day of July, A.D. 1939, he had sexual intercourse with the body of Ruth Dhanens, a female of the age of Fifteen years and not the wife of him, the said Paul Olson.

**Wm. Stanley Dunford,
District Attorney for the
Fourth Judicial District**

VERDICT

Filed Sept. 1, 1939

Tr. 23B Title of Court and Cause.

We the jurors in the above entitled case, find the Defendant guilty of carnal knowledge, as charged in the Information.

Dated Sept. 1, 1939

Fred C. Palmer,
Foreman.

Tr. 39

The jury was excused until further notice and the time for the passing of judgment was set for September 9, 1939 at Ten A.M.

Court was adjourned until September 9, 1939 at ten A.M.

Signed: ABE W. TURNER
Judge.

INSTRUCTIONS to the JURY.

Filed Sept. 21, 1939

Title of the Court and Cause.

Tr. 12 Ladies and Gentlemen of the Jury:

No. 1. This is a criminal action where in the defendant is charged by the Information filed by the District Attorney of the crime of carnal knowledge. The charging part of the information is as follows:

"That the defendant on the 30th day of July

Tr. 12

A.D. 1939, within Duchesne County Utah, did have sexual intercourse with the body of Ruth Dhanens, a female of the age of fifteen years, and not the wife of him the said Paul Olson."

When the defendant was arraigned in this court, on said charge, he entered a plea of not guilty, which plea puts in issue all of the material allegations contained in said information, and casts upon the State the burden of proving to your satisfaction beyond a reasonable doubt, each and all of such material allegations contained in said information, before you can find the defendant guilty of carnal knowledge.

No. 2. The material allegations, contained in the said information are as follows:

(a) That the defendant, Paul Olson, did have carnal knowledge of or sexual intercourse with the body of Ruth Dhanens.

(b) That such sexual intercourse, if any, was had at Roosevelt, Duchesne County, Utah on

Tr. 12

the 30th day of July, 1939.

(c) That at the time of such sexual intercourse, if any, the said Ruth Dhanens was under the age of eighteen years and over the age of thirteen years.

(d) That at the time of such sexual intercourse, if any, was had the said Ruth Dhanens was an unmarried female, and not the wife of the said Paul Olson, the defendant herein.

And if the state has proved to your satisfaction beyond a reasonable doubt, each and all of the material allegations, then the defendant is guilty of the crime of carnal knowledge, and you should find him guilty by your verdict. On the other hand, if the State has failed to prove the defendant guilty beyond a reasonable doubt as to any one or more of the material allegations, or if you have a reasonable doubt as to such proof, then you should find the defendant not guilty.

Tr. 12

No. 3. You are instructed, ladies and gentlemen of the jury, that any person who carnally and unlawfully knows any female over the age of thirteen years and under the age of eighteen years is guilty of a felony. And in this connection you are instructed that the crime of having sexual intercourse with a female, not the wife of the defendant, where the female is fifteen years of age, known in law as the crime of carnal knowledge, is committed whether the female does or does not voluntarily consent to such act of sexual intercourse.

And you are further instructed that the act of sexual intercourse, in such a case, is a crime whether had with a female who is chaste and virtuous, or with a woman who is not chaste; that is to say, the chastity or lack of chastity does not in anyway excuse or affect the nature of such a crime. So in this case you are not called upon to determine the chastity or lack of chastity of the witness Ruth Dhanens, at the time the offense is alleged to have been committed.

Tr. 12.

No. 4. You are further instructed that the provisions of this section make the male participant the only guilty party; the female, although consenting is not liable to indictment for the offense charged. She is therefore, not an accomplice, and her evidence does not, under the charge laid in this cause, need corroboration.

No. 5. The court further instructs the jury that you should put away from your minds any suspicion that may arise from the arrest of the defendant, the filing of the information, and you should reach your conclusions solely from the legal evidence adduced upon this trial. In other words you should consider nothing but the evidence together with the instructions of the court as to the law, in reaching your verdict.

No. 6. I charge you, gentlemen of the jury, that you are not to consider any statement or statements made by counsel on either side in this case as evidence in the case.

Tr. 12.

No. 7. A reasonable doubt is a fair doubt, growing out of the evidence or lack of evidence in the case. It is not a mere imaginary, captious or possible doubt, but a fair doubt, based upon reason and common sense. It is such a doubt as may leave your minds, after a careful examination of all the evidence in the case in that condition that you cannot say that you have an abiding conviction to a moral certainty of the truth of the charge here made against the defendant. A doubt to justify an acquittal must be reasonable, and arise from a candid and impartial consideration of all the evidence admitted in the case.

No. 8.

All presumptions of law independent of evidence, are in favor of innocence, and a man is presumed to be innocent until he is proved guilty beyond a reasonable doubt. This presumption attends a defendant at every step of the trial, and you are bound to presume him innocent until he is proved guilty beyond a reasonable doubt, and in case of a reasonable doubt as to

Tr. 12.

Whether his guilt is satisfactorily shown, he is entitled to an acquittal.

No. 9. In every crime or public offense there must exist a union or joint operation of act and intent. The intent or intention is manifested by circumstances connected with the offense, and the sound mind and discretion of the accused.

No. 10. You are the sole judges of the facts proved, of the credibility of the witnesses, of the weight and effect of the evidence, and of the inferences to be drawn therefrom, and in determining these matters you are to exercise your best judgment, based upon your experiences in life. You may take into consideration the conduct and manner of the witnesses while testifying before you; their intelligence and means of observation their opportunities to know and their capacity to remember and to state the facts to which they testify; their interest or lack of interest, if any has been shown, in the result of the trial; their prejudice or bias, if any has been shown,

and the probability or improbability of the truth of their statements, in view of all the other evidence. You are not bound to believe all that any witness may have testified to, nor are you bound to believe any witness. You may believe one witness as against many, or many witnesses as against one. If you believe any witness has willfully testified falsely as to any material fact in the case, you are at liberty to disregard the whole or any part of the testimony of such witness, except as such witness may have been corroborated by a credible witness or credible evidence in the case. In case there is a conflict in the testimony of the witnesses, it is still for you to determine for yourselves where the ultimate truth of the case is.

No. 11. It is your duty to consider the evidence all together, fairly, impartially, conscientiously and without prejudice of any kind. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should

Tr. 12.

not consider nor be influenced by any evidence offered which was not admitted by the court, nor are you to consider any evidence given, if the same was afterwards by the court ordered stricken out. You should not be influenced by, nor should you consider any rumors or expressions of opinion you may have heard or read out of court, nor by the fact, if you believe it to be a fact that a public sentiment exists in favor of or against the defendant.

No. 12. To warrant you in convicting the defendant, the evidence must to your minds, exclude every reasonable hypothesis other than that of the guilt of the defendant. That is to say, if after an entire consideration and comparison of all the testimony in the case, you can reasonably explain the facts given in evidence on any reasonable ground other than that of the guilt of the defendant, you should acquit him.

Tr. 12.

-11-

No. 13. These instructions are to be considered and construed together as a whole; each instruction should be read and understood with reference to and as a part of the entire charge, and not as though each instruction were intended to present the whole law of the case on any particular point.

No. 14. When you retire to deliberate you will select one of your members as foreman. Your verdict must be in writing, signed by your foreman, and when found must be returned by you into this court.

No. 15. This is a criminal action and it requires the unanimous concurrence of all the jurors to find a verdict. I will herewith hand you blank forms of verdicts, and when you have agreed upon what your verdict shall be, notify the officer having you in charge, and he will conduct you into court. You may take these instructions with you to your jury room for further consideration,

Tr. 12.

and return them with your verdict.

These instructions numbered and
signed this 31st day of August, A.D. 1939.

Abe W. Turner, Judge.

Defendant's Requested Instructions.

Filed Sept. 1, 1939.

Tr. 21

Request No. 1. You are instructed that evidence introduced by (the) State to convict a defendant on a charge such as this defendant is upon trial should be received with caution, and that after considering the evidence introduced in this case you should entertain any reasonable doubt as to defendant's guilt, then you should acquit him, that is, find him not guilty.

Refused as requested,

Abe W. Turner, Judge.

Motion for New Trial.

Filed Sept. 4, 1939

Tr. 24 Comes now the defendant in the above entitled action and moves the Court to vacate and set aside the verdict and judgment rendered in the above cause and to grant a new trial of said cause upon the following grounds:

(3) That the jury have been guilty of misconduct by which a fair and due consideration of the case may have been prevented.

This motion is based upon the minutes of the Court in said action, and upon the record and files in said cause and upon affidavits to be filed herein.

R. R. Hackett,

Attorney for Defendant

Affidavit in Support of Motion for New Trial.

Filed Nov. 20, 1939.

Tr. 30. State of Utah,

County of Duchesne, ss.

Fred O Palmer, being first duly sworn, deposes

Tr. 30

and says: That he was the Foreman of the Jury which heard the case and tried the defendant in the above entitled action. And that as a member of the jury which tried and convicted Paul Olson, that he never was at any time convinced that the said Paul Olson was guilty of the charge for which he was on trial and for which the jury returned the verdict of guilty. And that he held out for the verdict of not guilty as long as his health and strength would permit. That he is not well, being afflicted with a serious heart ailment for some length of time and under the doctor's care. And that when he gave his vote for guilty in this case there was a doubt in his mind as to the guilt of said Paul Olson, and that he would have continued to vote not guilty if it had not been that he was in such a weakened condition and feared for his own life if he had to continue longer in such deliberations as were being

Tr. 30.

conducted by the said jury; and that there is still at this time a doubt in his mind as to the said Paul Olson being guilty of the crime for which the jury returned the verdict of guilty.

Fred O. Palmer

Subscribed and sworn to before me this 6th day of October, 1939.

(Seal)

My Commission Expires

December 17, 1941.

R. R. Hackett,
Notary Public,
Residing at Vernal, Utah

Order Denying Motion for New Trial and Judgment.

Court Minute Dated Nov. 21, 1939

Tr. 40. The motion for a new trial having been heretofore argued and submitted to the Court, and by the Court taken under advisement, now on this date after being fully advised thereon, it is ordered that the said Motion be denied. The defendant having no legal reason why the judgment of the court should not be pronounced on this

Tr. 40.

date, and the State being represented by William Stanley Dunford, District Attorney, the defendant being represented by R. R. Hackett, Esq. it was therefore ordered that the judgment of this court be and hereby is that the defendant be imprisoned in the State Prison for an indeterminate period of time, not exceeding five years; On motion of counsel for the Defendant and good cause appearing therefor, and a Certificate of Probable Cause being made and presented, it was ordered that the stay of execution be granted pending the appeal of the case to the Supreme Court. The defendant was admitted to bail on the continuing bond heretofore given and entered.

Signed ABE W. TURNER
Judge

Certificate of Probable Cause.
Filed Nov. 21, 1939

Tr. 31. I hereby certify that in my opinion, there is probable cause for the appeal to the

Tr. 31.

Supreme Court of Utah by Paul Olson, the defendant in the above entitled action, from the judgment rendered against him in the above entitled Court. The judgment being that he was found guilty of the crime of carnal knowledge of a female under the age of eighteen years and was sentenced to serve a indeterminate period of time in the State Prison of Utah for a term not exceeding five years.

Dated November 21, 1939

Abe W. Turner,
Judge.

Notice of Appeal
Filed Nov. 21, 1939

Tr. 32 To Wm. Stanley Dunford, District
Attorney for the Fourth Judicial District Court
of the State of Utah:

You will please take notice that the defendant in the above entitled action hereby appeals to the Supreme Court of the State of Utah from the judgment therein made and entered

Tr. 32

in the above entitled court. The judgment being that said defendant was found guilty of the crime of Carnal Knowledge of a female person under the age of eighteen years and was sentenced by the court to serve an indeterminate period in the state prison of Utah for a term not exceeding five years.

Dated November 21, 1939

R. R. Hackett,
Attorney for Defendant.

Received copy of the foregoing Notice of Appeal this 21st day of November 1939.

Wm. Stanley Dunford,
District Attorney.

Bill of Exceptions
Filed March 18, 1940

Reporter's Tr. 220.

Be it remembered that the foregoing case came on regularly for trial before the Honorable Abe W. Turner, Judge, sitting with a jury, at Duchesne, Duchesne County, State of Utah, on the

Reporter's Tr. 220

29th day of August, A.D. 1939.

Appearances: For the State:

Wm. Stanley Dunford,
District Attorney
George E. Stewart,
County Attorney

For the Defendant:

R. R. Hackett,

F. M. Alder, Court Reporter.

The following proceedings were had:

Mrs. Julia A. Lewis was called as a witness
for the defendant, and being first duly sworn
on oath, testified as follows:

Direct examination by Mr. Hackett:

Q. Just state your name?

A. Mrs. Julia A. Lewis.

Q. Where do you reside?

A. Vernal.

Q. Approximately how long have you resided there?

A. Twenty seven years last May.

Q. Do you know Ruth Dhanens that has testified
here, the girl sitting at the end of the table?

Reporter's Tr. 220 - 221.

A. Yes, Sir.

Q. How long have you known her?

A. Well she came to our place, I think it was in September and they left -- well they were there a year and over. I forget just when they did leave, but they were there a year and two or three months.

Q. Do you know what the general reputation of Ruth Dhanens is for truth and veracity in the neighborhood where she resides:

Mr. Dunford. Just a minute, we object to that as incompetent, irrelevant, and immaterial.

The Court: The objection is sustained.

Question and Ruling argued.

The Court: I think the ruling shall stand.

Reporter's Tr. 222:

Mr. Hackett: Well I want to make this statement at this time, that we have four witnesses here to testify as to that matter.

The jury was cautioned and temporarily excused.

Reporter's Tr. 222

Mr. Hackett: Now your honor please, Now I hope there is no misunderstanding about this matter, that we are offering this witness to testify that she knew and knows the general reputation of this witness Ruth Dhanens for Truth and veracity in the community where she resides, or has resided and I will change that question if the question was where she resides, to where she did reside.

The matter further argued.

Reporter's Tr. 223-224:

The Court: Well Mr. Hackett do you want to make any further offer of your other witnesses?

Mr. Hackett: Yes.

The Court: You may name them.

Mr. Hackett: We include the witness Mrs. Julia A. Lewis, who is on the witness stand; I offer the testimony of Mr. Watts Thompson and Mrs. Watts Thompson, and Frank Lewis, who would testify that the general reputation of this witness Ruth Dhanens, in the community where

Reporter's Tr. 223-224:

she resides and where she had resided, is bad, for truth and veracity.

The Court: The record may show the offer, and the offer denied. You may call the jury.

Reporter's Tr. 120:

The following is a portion of the examination of the complaining witness on direct examination by the District Attorney:

Q. After you got out of the car, did anything happen?

A. Mr. Baese and I walked up the road.

Q. Up along the highway away from the car?

A. Yes Sir, it was back of the car.

Q. Back of the car?

A. Yes Sir.

Q. How far did you walk?

A. It was quite a ways, about as far as from here to the end of the hall.

Q. About as far as from here to the end of the hall?

A. I don't know how far it was but it was quite

Reporter's Tr. 120:

a ways away.

Q. What was the condition of the light then?

A. Well Mr. Baese asked me ---

Q. No., What was the condition of the light?

Reporter's Tr. 121:

A. The light? It was dark.

Q. Do you remember whether the lights were turned off the car or not?

A. I don't remember.

Q. How long were you down there with Mr. Baese, approximately?

A. Oh about fifteen minutes, I guess.

Q. What occurred during that time?

A. Mr. Baese had sexual intercourse.

Q. With You?

A. Yes Sir.

Q. And then what did you do?

A. I went back to the car.

Q. What else occurred, after you got back to the car?

A. I got in the car, and we started the car for

Court Minute

Dated Sept. 9, 1939

Tr. 40

This cause coming on regularly before the court on this date, Wm. Stanley Dunford, District Attorney representing the State and R. R. Hackett Esq., representing the defendant, and this being the time set for the passing of judgment, Within due time, the defendant filed a motion for a new trial, and requested thirty days additional time for the filing of affidavits in support of the grounds for a new trial, which was granted by the court.

Upon the specific request of counsel for the defendant and in the presence of the defendant that the time for passing of sentence be continued until the hearing of arguments of and disposition of the motion for a New Trial by this court, it was ordered that the time for passing of judgment be continued for resetting of said time on October 9, 1939 at two P.M., to which the defendant consented and requested.

Signed ABE W. TURNER

Judge

Court Minute

Dated Oct. 9, 1939

Tr. 40.

The motion for a new trial was set for argument on November 20, 1939 at two o'clock PM. On the written motion of the defendant, the time for passing of judgment was continued and reset for November 20, 1939 at two P.M.

Signed ABE W. TURNER
Judge

Court Minute

Dated November 20, 1939

Tr. 40.

The argument on the motion for a new trial came on regularly on this date to be heard, William Stanley Dunford, District Attorney appeared for the State and R. R. Hackett Esq. appeared as attorney for the defendant. The Court, after hearing the arguments of counsel, ordered that the matter be continued until November 21, 1939 at ten A.M.

Signed ABE W. TURNER
Judge.

Order Extending Time
Filed Dec. 19, 1939

Tr. 35.

Good cause appearing therefore, it is hereby Ordered that the defendant in the above entitled action be given up to and including the 20th day of January, 1940 in which to prepare serve and file Bill of Exceptions in said above entitled cause.

Dated this 14, day of December 1939.

Abe W. Turner, Judge.

Order Extending Time.
Filed Jan. 20, 1940

Tr. 36

Good cause appearing therefore, it is hereby Ordered that the defendant in the above entitled action be given up to and including the 20th day of February, 1940 in which to prepare, serve and file Bill of Exceptions in said above entitled cause.

Dated this 15, day of January, 1940

Abe W. Turner, Judge.

Order Extending Time
Filed Feb. 19, 1940

Tr. 37

Good cause appearing therefore, it is

Tr. 39

hereby Ordered that the defendant in the above entitled action be given up to and including the 20th day of March, 1940 in which to prepare, serve and file Bill of Exceptions in said above entitled cause.

Dated February 15, 1940.

Abe W. Turner, Judge.

ASSIGNMENTS OF ERROR.

Filed Oct. 21, 1940

Comes now Paul Olson, the above named appellant, and assigns as error for reversal of the Judgment appealed from herein, the following assignments of error, to wit:

1. The Court erred in sustaining an objection to the following question, to wit:

"Do you know what the general reputation of Ruth Dhanens is for truth and veracity in the neighborhood where she resides?"

put to Mrs. Julia A. Lewis, a witness for the defendant, the grounds of the objection being that the question was incompetent, irrelevant, and immaterial; the said Ruth Dhanens named in

said question being the prosecutrix.

Reporter's Tr. Page 2:

2. The Court erred in denying an offer made by the defendant to prove by the following named witnesses, to wit: Mrs. Julia A. Lewis, Mr. Watts Thompson, Mrs. Watts Thompson and Frank Lewis, that said witnesses would testify that the general reputation of the witness Ruth Dhanens, the prosecutrix, in the community where she resides and where she has resided, is bad, for truth and veracity.

Reporter's Tr. Page 223-4

3. The Court erred in refusing to give defendant's requested instruction No. 1.

4. The Court erred in failing to give any cautionary instruction to the jury with respect to the testimony of the prosecutrix Ruth Dhanens.

5. The Court erred in denying defendant's Motion for a New Trial, if in fact said Motion was denied, particularly in view of ground

No. 3 of said Motion.

Respectfully, submitted,

L. A. Miner,
Attorney for Appellant
Room 423-4 Felt Bldg.
Salt Lake City, Utah

Receipt of a copy of the above and
foregoing Assignments of Error is hereby
acknowledged this 19th day of October, 1940.

Zelph Calder,
Deputy Attorney General.