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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Respondent,

vs.

GEORGE ROSS HUNTSMAN,

Appellant,

Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Appellant's Brief

The defendant was charged with the crime of carnal knowledge, (Tr. 6) and having waived a jury, evidence was taken before the Honorable Joseph Jeppson, who, at the conclusion of the same, found the appellant guilty of the offense charged. It is from this verdict that this appeal is taken.

It is the contention of the appellant that this case is governed entirely by law, and that the evidence adduced at the trial is wholly insufficient to support the verdict as a matter of law.

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STATEMENT OF FACTS

The defendant and some woman were registered at the Marion Hotel in Salt Lake City, Utah, under the name of George Gail Bennett, (Tr. 7 and 8) that the registration took place on or about February 3rd, 1948, and that they were arrested by E. J. Blazzard, a police detective, on February 5th, 1948, and booked at the Salt Lake City jail (tr. page 18), and that detective Farnsworth had a conversation with the defendant, asking him, "how many times he had sex relations with Ruth", and that the defendant replied "about a dozen times" (tr. page 22) Ruth Armstrong's mother testified that her daughter was born February 15th, 1930, (Tr. page 35) and that she was the wife of John Oran, Jr.

STATEMENT OF ERRORS

1. The court erred in not striking from the record the testimony of witness Farnsworth, (tr. page 22). "I asked him how many times he had had sex relations with Ruth, the young lady that was sitting there at the table, and he said, "about a dozen times." "She spoke up and she said it was not a dozen times. She said it was four times."

The above statement is purely heresay as to the defendant as it is not a matter he is called upon to deny, and the court erred in not granting defendant's motion to strike.

2. The court erred in not granting defendant's motion to strike from the record all of the testimony of

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officer Farnsworth relating to any statement or admission of the defendant for the reason that such statements or admissions should not have been admitted until there is some proof of the corpus delicti.

3. The court erred in not granting defendant's motion to acquit the defendant.

ARGUMENT

The state fails in this case because there is nothing in the evidence of the prosecution to justify sufficient proof of the corpus delecti, other than the admissions of the defendant as testified by the police officer. In the case of State vs. Wells (Utah) 100 Pac. 681, Justice Straup said, p. 685:

> "If the confession of the accused may be received to alone establish the essential element of the crime, then may his confession be received to establish other essential elements, and thus the rule that the corpus delicti must be proved beyond a reasonable doubt, independent of the confession, is violated."

The above rule is also well stated in Vol. 1, Sec. 40, page 41, American Jurisprudence, thus:

> "The corpus delicti should be proved by evidence independent of the confession, and before the confession is admitted in evidence," and cites the Wells case and others.

In the case of State vs. Sheffield, 45 Utah 426, 146 Pac. 306, Justice Straup again says:

> "Whatever diversity of opinion obtains as to whether a confession is alone sufficient to prove

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the corpus delicti, the undoubted weight of authority being that it is not, and that the body of the crime must be proved independently of the confession.''

This appellant now asks what has the state shown here to establish the corpus delicti, other than the admission of the defendant, and the fact that he was taken into custody in the Marion Hotel with some woman. There is nothing in the record to prove that the woman alleged in the information was Ruth Armstrong Oran, the hotel clerk did not know the woman (Tr. p. 7) and the only other evidence submitted by the state is the admission to the officer of the woman in the case, that her name was Ruth Armstrong Oran, she was not, at any time, present in the court room, and wasn't at any time identified as the woman seen by anyone in the Marion Hotel with this defendant.

This appeallant further contends that the statute relied upon in this case, does not apply because the woman alleged in the information was a married woman.

There doesn't appear to be any dispute as to this point as far as the record is concerned. The record shows that Ruth Armstrong Oran had been married to a soldier in the United States Army since the 20th day of March, 1947. (Tr. page 37-38) and the testimony of Martha Armstrong, purported mother of Ruth Armstrong Oran, follows: (Tr. 37)

Q. Do you know where your daughter was married?

A. Gary, Indiana.

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Q. Do you know what day?

A. I think it was the 1st of March.

Q. What year?

A. Just a year ago.

Q. It would be the first of March, 1947?

A. 1947.

(Tr. 40-41)

Q. Mrs. Armstrong, Do you know where John Oran, Jr., is stationed as a soldier?

A. Yes, he is in Camp Carson, Colorado.

Q. Do you know whether Ruth had occasion to visit him late last year, December of last year?

A. She was with him in December.

It was stipulated between counsel that a marriage certificate between Ruth Armstrong and John Oran, Jr. was produced in the court room and that the parties were married in Gary, Indiana, March 20th, 1947.

Under Utah Code Annotated 1943, Title 14-1-1 sets forth:

> "The period of minority extends in males to the age of 21 years and in females to that of eighteen years, but all minors obtain their majority by marriage."

Ruth Armstrong Oran, being the woman named in the information, was married to one John Oran, Jr. at Gary, Indiana, as previously shown in the record, his wife visited him in Colorado in December, 1947, yet there is absolutely no evidence in the record that they were not husband and wife on February 4th, 1948, the date of the

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alleged offense, and the testimony of officer Farnsworth shows that he signed a complaint against this same defendant, in adultery, because he was informed by Ruth Armstrong Oran, that she was the wife of John Oran, a soldier stationed at Camp Carson, Colorado, (Tr. p. 25).

Under the above statute, the woman in the case, though she would not have been eighteen years of age for 11 days after the alleged offense was committed, was unquestionably an adult, entitled to all of the rights and priviledges of so being, and the statute recited in the information could not possibly apply here; the only proper remedy for prosecution, would have been a charge of adultery. It most certainly would be a peculiar system of jurisprudence to have two conflicting rules as to the rights of a married woman who is involved in a sex case. First, in an adultery case, she is classed as an accomplice and must be corroborated, while in carnal knowledge she is not classed as an accomplice and thus does not need corroboration. So does it not seem sound and just that the legislature, in passing the statute on carnal knowledge, only intended to protect single and chaste women who had not attained their majority. This court, as early as 1903, just a few years after the statute we have today, passed upon a carnal knowledge case, (State vs. Evans, 27 Utah 12, 73 Pac. 1047) and it is observed that the district attorney, in drawing his information alleged page 13, "she being an unmarried female," etc. Now it follows that if the legislature intended that married women should come under the carnal knowledge statute, why should such an allegation be necessary, and

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why would the district attorney include the words quoted above, so soon after the passage of our present statute if he had ever intended to prosecute any person for carnal knowledge when the woman in the case was married.

Justice Cherry wrote in the State vs. Wade, 66 Utah 267 (1925) p. 271.

> "It is thus the settled law in this state that an unmarried female under 18 years of age, has not the legal capacity to consent to an act of illicit intercourse and if she willingly submits, etc.

On page 272, he adds:

> "Whether a female person, under 18 years of age and legally married, has a different legal status in this respect is a question not involved here," etc.

What was in the learned judges mind when he wrote that? Was it that a married woman under 18 years of age would not come within the purview of the statute? I am inclined to think it was.

So in summarizing, the defendants submits that there is no evidence other than the alleged admission tending to show that any offense had ever been committed by the appellant with Mrs. Ruth Armstrong Oran, and the so-called admission was inadmissable in evidence for the reason that the corpus delicti was not proven, and because it does not appear in the record that the act complained of was committed on or about February 4th, 1948, as alleged in the information.

I respectfully submit that the case should be reversed and remanded.

W. R. HUNTSMAN,
Attorney for Appellant,

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