1948

# State of Utah v. George Ross Huntsman : Brief of Respondent

Utah Supreme Court


Grover A. Giles; Attorney General; Andrew John Brennan; Assistant Attorney General;

7192

# In the Supreme Court

## of the State of Utah

STATE OF UTAH,

*Respondent,*

vs.

GEORGE ROSS HUNTSMAN,

*Appellant.*

Case No. 7192

RESPONDENT'S BRIEF



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RESPONDENT'S BRIEF

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George Ross Huntsman was tried and convicted for violation of section 103-51-19, Utah Code Annotated, 1943 which reads as follows:

> "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."

It is from the verdict of the Court who tried the case, without a jury, that this appeal is taken.

## FACTS

The facts disclose that on or about the 2nd day of February, 1948 the accused was discovered in room 116 of the Marion Hotel in the company of one, Ruth Armstrong Oran. Joseph F. Johnson, the proprietor of the hotel at 114 West South Temple Street, Salt Lake City, Utah, testified that the accused registered under the name of George Gail Bennett and that he represented on the register that he was in the company of his wife (Tr. 8). Mr. Johnson further testified that he entered room 116 in the hotel on the 2nd day of February, 1948 because of complaints received that the room was in a "terrible mess"; and that when he went into the room on that date, having been given entrance by the defendant, the lady with whom he was registered was in bed and not clothed (Tr. 9).

Officer E. J. Blazzard of the Salt Lake City Police Department testified that on or about February 5, 1948, he was called to the Marion Hotel to investigate a theft and that he entered room 116 and talked to the defendant, who advised him that the woman in his company was his wife. Blazzard stated that when he entered Huntsman's room the woman was in the clothes closet purportedly dressing (Tr. 16); that he asked Huntsman where he married the girl and Huntsman advised him that they were married at Houston, Texas and that they had previously lived in room 14 at the "New Villa" and had been registered and living at the Marion Hotel for approximately 10 days. Officer Blazzard further stated that he found room 116 at the Marion Hotel to be in

complete disorder and that the bed was unmade and had been slept in (Tr. 17-18). The officer further advised the court that the girl gave him her name as Ruth Armstrong Oran.

Officer Charles W. Farnsworth of the Salt Lake City Police Department, assigned to the Youth Bureau, testified that on or about the 6th day of February, 1948, he talked to the defendant, in company with Detective Victor Heath, in the Salt Lake City jail and also to Ruth Armstrong Oran, whom he had known previously (Tr. 22.) At that time the following occurred:

> "Well, I asked the defendant a point blank question, I asked him how many times he 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."

Farnsworth further testified that the defendant stated that he and the young lady had registered at the Marion Hotel on January 31st or the early morning of February 1st and that they had been there for 2 or 3 days (Tr. 23).

Mrs. Martha Armstrong testified that Ruth Armstrong was born February 15, 1930 and that she would be 18 years of age on the 15th day of February, 1948; and that her daughter, Ruth, was married to John Oran, Jr., who was then residing in Colorado (Tr. 35). Mrs. Armstrong further testified that her daughter, Ruth, married March 1, 1947 at Gary, Indiana (Tr. 37) and to her knowledge had never been divorced; and that they had lived together as man and wife, both in Colorado

Springs, Colorado, and at the Armstrong home in Salt Lake City (Tr. 43).

It was stipulated between the prosecutor and counsel for the accused that a marriage certificate between Ruth Armstrong and John Oran, Jr., dated March 20, 1947 could be made a part of the record as though properly introduced.

## ASSERTION NO. 1

## PREVIOUS MARRIAGE OF A FEMALE UNDER EIGHTEEN IS NO DEFENSE TO THE CHARGE OF CARNAL KNOWLEDGE

Counsel for appellant assigns error in that the court denied a motion to acquit because the female in the case was shown to have been previously married. Counsel argues that the statute was not intended to protect married women and that this honorable court has so indicated by its remarks in the decisions of State vs. Wade, 66 Utah 267, 241 Pac. 838. However, as indicated in Appellant's Brief, the question of marriage was not involved in that case and was not decided by this court. The court in the Wade case was concerned with the question of consent.

Numerous authorities could be cited to the effect that the question of the chasity of the prosecutrix, or any female under 18, is not an issue in a prosecution under this section. In State vs. Hilberg, 22 Utah 27, 61 Pac. 215, this court held that the law will never presume that she consented and that, as to the particular act, she was incapable of consent. In 44 Am. Juris., page 912, para. 17, subject "Rape" it is stated:

> "Such statutes were designed to correct the ommission in the common-law crime and include the many cases which, while presenting the same degree of heinousness, were not within such crime. *The object sought by these acts is the protection of young girls, and the precise thing intended to be discouraged, and punished if committed, is sexual intercourse with them.*"

Under this statement are cited various cases, including those of State vs. Burns, 82 Conn. 213, 72 Atl. 1083. In the Burns case the accused was a female, a proprietor of a house of ill-fame, who was convicted as a principal in violation of the statute providing that "any person who shall be guilty of carnally knowing or abusing a female under 16 shall be imprisoned in the penitentiary * * *." The court, in a very interesting decision, held that this madam, who induced a young female under 16 to enter a bedroom and disrobe and thereafter brought in a male person to have sexual intercourse with the young woman, was guilty as a principal in violation of the statute; and that while not capable of directly committing the act, nevertheless the statute was intended to discourage intercourse and sexual relations with girls of tender years.

In Bishop on Criminal Law, 9th Ed. pg. 840, in discussing crimes involving intercourse or other sexual offenses with small girls, the author states.

> "The whole subject has been regulated by legislation in many, perhaps all of the states. It is treated in "Statutory Crimes." One matter, however, stands out: If knowledge of age were to be injected into the situation the very purpose

> of the statute would be thwarted for precocious girls are the very ones intended for protection."

I am sure it will be agreed by both counsel for the appellant and by the court that it is settled law that misapprehension as to a girl's age or even her statements in this connection, is no defense. See People vs. Marks, 130 N.Y.S. 524, 146 App. Div. 11, wherein the court ruled that neither previous unchasity of a girl, nor her appearance, nor her representations, nor information derived from others as to her age, nor her appearance with respect to age, is a defense to a prosecution for rape on a girl under statutory age.

In the case of State vs. Hanna, 81 Utah 583, 21 Pac. (2d) 537, this court held that generally evidence of other acts of unchasity on the prosecutrix' part are inadmissible in a trial for carnal knowledge of a female under age of consent. See also State vs. Smith, 90 Utah 482, 62 Pac. (2) 1110.

In Renfroe vs. State, 104 S.W. 542, 84 Ark. 16, in a prosecution for carnally knowing a female under 16 years of age, it was held that evidence of other persons, to the effect that they had sexual intercourse with the same female, was immaterial. And in People vs. Parish, 25 Cal. App. 314, 143 Pac. 546 and State vs. Gay, 82 Wash. 423, 144 Pac. 711, it was held that in a prosecution for statutory rape, it is immaterial whether the prosecutrix was previously chaste.

It seems reasonable to counsel for the respondent that it matters not whether or not the prosecutrix may

have lost her chasity through marriage. The same rule regarding age and morals would apply.

Counsel cites section 14-1-14, Utah Code Annotated, 1943 to the effect that all minors attain their majority by marriage; however, no exception is made in the statutory provision defining carnal knowledge. The language of the section is concise and strict and to the effect that "any person" who has carnal knowledge of a female under the age of 18 is guilty of a felony.

The age of majority, referred to in section 14-1-1, does not in all instances change legal rights under the law. We may consider the election statutes which provide that both men and women must be 21 years of age at the time of the election in order to be able to vote. In fact, this court in the case of Stoker vs. Gowans, 45 Utah 556, 147 Pac. 91 Annotated Cases 1916 E 1025, held that a delinquent child who had been sentenced to a term in the industrial school and placed on parole, did not deprive the juvenile court of its jurisdiction through marriage. In that case section 14-7-4 was considered in the light of the section which stated that all persons attained their majority by marriage.

It is submitted that it is the intent and purpose of the Legislature to protect young girls and to punish any person who would induce them to commit the act, regardless of the persons misapprehension as to age or previous marriage.

Several cases are hereinafter cited which hold that in a charge of rape on a child under 16 years of age,

it is immaterial that the child may have been previously married to another. See People vs. Sheffield, 9 Cal. App. 130, 98 Pac. 67; State vs. Schobe ——Mo.——, 268 S.W. 81; and Smith vs. State, 74 S.W. 556—— —— ——.

## ASSERTION NO. 2

## THE CORPUS DELICTI WAS ADEQUATELY ESTABLISHED INDEPENDENTLY OF THE ADMISSIONS OF THE ACCUSED

Counsel for appellant asserts through his first Assignment of Error and Argument in Chief, that any admissions made by the accused to the officers at the Salt Lake City jail could not be received in evidence because the corpus delicti had not been established and that the conviction for the offense could not rest upon the uncorroborated confession or admission.

This court, in the case of State vs. Johnson, 95 Utah 572, 83 Pac. (2) 1010 at page 1014 of the Pac., stated that:

> "By the corpus delicti is meant the body or substance of the offense, the existence of a criminal fact. Unless such fact exists there is nothing to investigate. There is no foundation on which to build the evidential structure, showing who was the perpetrator."

The facts in this matter disclose that several witnesses established that the accused was found in a hotel with a woman to whom he was not married and that the circumstances certainly justify the conclusion that the accused was cohabitating with her. The officers had previously established that he was living with Ruth Armstrong Oran, purportedly as husband and wife.

## CONCLUSION

A review of the record discloses that the appellant, throughout the course of the trial would rely upon a legal defense, to-wit, that he could not be convicted of the crime of having carnal knowledge of a female who was previously married. It is submitted, as a matter of law, that his defense must fail and that the decision of the court must be sustained.

Respectfully submitted,

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