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State of Utah v. Blaine Gates : Brief of Appellant

Utah Supreme Court

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In The
SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff and Respondent,

--vs.--

BLAINE GATES,

Defendant and Appellant.

Case
No. 13380

APPELLANT'S BRIEF

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Attorney for Defendant
and Appellant.

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Supreme Court, Utah

I N D E X

Page

ARGUMENT NO. I

That the complaint in said case was amended without authority from the court.. 4

ARGUMENT NO. II

That the amendment was such that it charged a different crime than that charged in the original complaint..... 6

ARGUMENT NO. III

That after the amendment the complaint should have been reverified..... 8

CONCLUSION..... 11

STATEMENT OF THE CASE..... 1

Citation of Authorities:

Seay vs. State 19 So. 2nd 549, 31 Ala. App. 545.....	9
State vs. Anderson 35 Utah 496, 101 P. 385.....	9, 10
State vs. Nelson 32 Utah 617, 176 P. 860.....	8, 11
State vs. Clegg 200 S.E. 371, 214 N.C. 675.....	7
State vs. Sheffield 45 Utah 426, 146 P. 306.....	6
Utah Code Annotated, 1943, Section 105-11-1.....	5, 9

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STATE OF UTAH,

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--VS.--

BLAINE GATES,

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STATEMENT OF THE CASE

On the 15th day of August, 1949, the defendant Blaine Gates was charged with the crime of carnal knowledge and unlawfully knowing a female over the age of 13 years and under the age of 18 years, in violation of Title 103, Chapter 61, Section 19, Utah Code Annotated, 1943, (Tr.4).

The complaint alleged that the said crime was committed on or about the 8th day of July, 1949, and was subscribed and sworn to by Elizabeth Mills before Herceillus K.

Snow. A warrant of arrest based on said complaint was issued on the 15th day of August, 1949, (Tr.3), and the defendant was arrested on the same day. On the 16th day of August, 1949, the defendant appeared before Frank E. Hess in the City Court where the complaint was read to him, and the preliminary hearing was set for August 24, 1949, at 2:00 P.M. (Tr.2).

Defendant was present with counsel for the preliminary hearing on the 24th day of August, 1949, and the court proceeded to hear the case. Myrtle Hills, who is the female upon whom the offense was allegedly committed, was called as the first witness for the State of Utah and was examined on behalf of the state. The state then made a motion that the complaint in said case be amended, and the court ordered this done by interlineation (Tr.8).

There is, however, nothing in the record to indicate in what particular the court ordered the complaint amended. An examination of the complaint itself reveals two particular

in which the same may have been amended-- one being the addition of the words "or about", and the other being the striking of (8th) and adding (14th) changing the date of the offense from the 25 day of July, 1949, to the 14th day of July, 1949 (Tr.4).

After the amendment was made, the state proceeded with its case and the defendant was bound to the district court. An information was issued out of the district court charging the defendant with the crime of carnal knowledge committed on the 14th day of July, 1949 (Tr.5). Defendant was eventually tried and convicted on said information and was sentenced to the state penitentiary.

This constitutes a statement of said case as far as it is necessary in this appeal.

POINTS UPON WHICH APPELLANT INTENDS TO RELY

- I. That the complaint in said case was amended without authority from the court.
- II. That the amendment was such that

it charged a different crime than that charged in the original complaint.

III. That after the amendment the complaint should have been reverified.

ARGUMENT NO. I

The complaint in said case was amended without authority from the court. An examination of page 2 of the transcript, which is, I believe, the minute entry kept by the clerk of the proceedings in the City Court, discloses that the court ordered the complaint amended by interlineation. There is, however, nothing in the record of the proceedings in the lower court to indicate what amendment was ordered by said court. We, therefore, have no way of knowing whether the court ordered the complaint amended as it evidentially was amended. As stated in the statement of facts there are 2 changes in the complaint. Either one, both, or neither of these changes may have been ordered. We are left completely in the dark in this particular.

The changes mentioned are as follows:

1. The addition of the words "or about".
2. The striking of (8th) and inserting (10th).

We will discuss these in the order listed.

1. From the complaint as it now appears, we have no way of knowing when the words "or about" were added, whether it was when the complaint was originally drafted and before it was subscribed to by Elizabeth Mills, or whether these words were added at a later date and before the trial commenced, or whether they were added upon the order of the court as an amendment.

2. Again the record is silent as to whether or not this amendment was ordered by the court. From the record as it appears now we can only draw the conclusion that the amendment was wrongfully made and is in fact no amendment at all. If this is true, the court had before it no verified complaint as required by law in Utah Code Annotated, 1943, Section 105-11-1 which charged an offense on the 10th

day of July, 1949, without which the court had no power to act. This court so stated in *State vs. Sheffield*, 45 Utah 486, 143 P. 308.

"A verified complaint or an affidavit before a magistrate charging accused with a public offense is essential to the preliminary examination. Without it the power of the magistrate to act is not judicially invoked."

This being the case we must conclude that the defendant had no preliminary hearing on the crime which he was later charged with by information in the district court.

ARGUMENT II

The amendment of the complaint was such that it charges a different crime than that charged in the original complaint. The crime of carnal knowledge is such that it could very well have been committed by the same defendant with the same female on many different occasions. However, in charging the defendant with the commission of said crime one particular occasion must be designated, and the evidence limited to the occasion named in the complaint

is concerned. It could, therefore, easily be that a defendant in such a case be charged with the crime on one of several dates, the charge on each date being a separate and distinct offense from that charged on another date. If it not so, it would be impossible to determine for which offense he had been once placed in jeopardy. Thus the complaint as amended charged a different offense than the original complaint; and the court is without the power to make such an amendment, and the amendment was of no effect. *State vs. Clark* 200 S.E. 371, 214 S.C. 375.

"While amendment to process and pleadings, in both civil and criminal cases are liberally allowed, court has no power to change nature of offense intended to be charged by permitting amendment of warrant so as to charge different offense."

We therefore contend that the original complaint should have been dismissed; that a new complaint charging a crime on the 10th day of July, 1943, should have been drawn,

Subscribed, and sworn to; that a warrant should

have been issued under this complaint; that the defendant should again have been arrested and brought before the court on the 2nd complaint. In support of this we quote State vs. Nelson 52 Utah 617, 176 P. 860.

"Where complaint on preliminary examination for statutory rape charged act of unlawful intercourse as having occurred on July 16, said defendant could not be convicted for offense committed on same girl on July 16."

ARGUMENT NO. III

After the amendment, the complaint should have been reverified by Elizabeth Mills. The record (p.2) indicates that Myrtle Mills was the only witness examined prior to the amendment of the complaint. It is also indicated on the same page that Elizabeth Mills was within the reach of the court, although she had been excluded from the courtroom on the motion of the state to invoke the exclusion rule and was not within hearing distance of the judge when the amendment was ordered and made.

Elizabeth Mills consented to said amendment or ratified the verification of the complaint as amended. It is stated *Seay vs. State* 19 So. 2nd 549, 31 Ala. App. 545 as follows:

"Signature of the accused when properly raised, may be corrected by reverification of the affidavit before further proceedings in Court, Court."

In the case before the court, it would have been very simple to have had Elizabeth Mills reverify the complaint after the amendment. This, however, was not done, and the complaint was therefore void in its amended state and did not comply with the law requiring that a complaint be subscribed and sworn to. Utah Code Annotated, 1943, Section 100-11-1. After the amendment of said complaint, the court proceeded to hear said case without the time that the offense was allegedly committed, which is a necessary element of a criminal complaint, being subscribed and sworn to. In the case of *State vs. Anderson* 35 Utah 496, 111 P. 385. This court has said.

"Under section 105-11-1 and section 105-12-1 a complaint which states name of crime charged, the time and place of its commission, the name of the accused, if known, and sets out in general terms the acts or omissions constituting public offense or crime charged, is sufficient as basis of preliminary examination, even though it is lacking in other averments which would be necessary in indictment or information."

It will be noted from the above citation that one fact which must appear in a complaint in order that it stand as a proper complaint is the time and place that the crime is allegedly committed. In the case under consideration the time at which the crime was committed must be said not to appear in the complaint as the 11th day of July, 1949, because the amendment stating this as the date upon which the crime was committed was not subscribed and sworn to as required by law. Therefore, the only time which appears in said complaint rightfully would be the 8th day of July, 1946. The defendant could, therefore, only be bound over to the district court on stated basis for a crime which was

committed on the 8th day of July, 1948,
and not on a crime which was committed on
the 16th day of July, 1948. The information
in the district court charges a crime committed
on the 16th day of July, 1948, and therefore
charges a different crime than was covered
by the preliminary hearing of the defendant
in the City Court.

As stated above in State vs. Nelson 52
Utah 617, 176 P. 800, the defendant could
not be convicted in the district court of a
crime committed on a different date than that
upon which the crime charged in the complaint
on preliminary hearing was allegedly committed.

CONCLUSION

In conclusion, it is the contention of
appellant that he was bound over to the dis-
trict court on either a complaint defective
for the reason that it had not been properly
subscribed and sworn to as required by law,
or upon a complaint which charged the commis-
sion of a public offense on the 16th day of July,

1949. If the complaint was defective, the defendant was wrongfully bound over, and the verdict in this case cannot stand.

If the complaint was one charging a crime on the 5th day of July, 1949, he was convicted under an information which charged a crime allegedly committed on a different date, and he could not rightfully be so convicted for he had no preliminary hearing on the offense charged in the information.

Respectfully submitted,

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