

1952

Salt Lake City v. Sammia B. Perkins : Brief of Appellant

Utah Supreme Court

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Brief of Appellant

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7814

IN THE SUPREME COURT OF UTAH

SALT LAKE CITY, a *
Municipal Corporation,
Plaintiff and*
Respondent, *

vs

Case No. 7814

SAMMIA B. PERKINS, *

Defendant and
Appellant. *

APPELLANT'S BRIEF

FILED

MAR 31 1952

Clerk, Supreme Court, Utah

D. H. OLIVER

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

1959

STATE 1

CITING

1. EVILNESS OF STATE IS NOT
SUFFICIENT TO ESTABLISH THE VIOLATION 3

2. A MANIFEST POLICY IS EVIDENCE OF
A VIOLATION OF THE STATE'S OBLIGATION TO
THE PEOPLE, CONSTITUTION OR IMPROVEMENT OF
THE STATE 6

CITING

1. STATE OF UTAH, 1943 6

ADMINISTRATIVE CITING

1. U.S. 3
1. U.S. 6
1. U.S. 7

CASES CITED

App vs State 7
Benton vs State 6
Brown vs State 3
Crittenden vs State 6
Cathron vs State 6
Harrison vs State 6
Holt vs State 7
Hays vs Taylor 7
People vs State 7
Hox vs Price 6
Hines vs Harris 7
Hite vs Fitzgerald 7
State vs Grossman 6
State vs Hanco 6
State vs Miller 6
H. . vs Qualifield 7

Utah State Library vs State 7

IN THE SUPREME COURT OF UTAH

SALT LAKE CITY, a
Municipal Corporation,
Plaintiff and
Respondent.

vs

Case Number 7814

SARNA L. FARMER,
Defendant and
Appellant.

WILL OF APPELLANT

STATEMENT

The defendant was convicted of three violations of certain City Ordinances of Salt Lake City, on three separate complaints charging (1) the operation of a rooming house without a license, (2) operating a disorderly house, and (3) maintaining a nuisance.

From these convictions in the City Court she appealed to the District Court of Salt Lake County, where the three charges

were consolidated for the purpose of trial and tried by the court sitting with a jury, which trial resulted in a verdict of acquittal on the charge of operating a rooming house without a license, and guilty on the other two charges.

The defendant filed a motion for a new trial and upon this motion, the Court granted the motion as to the Charge of Maintaining a House and dismissed the same upon the ground that under the evidence the defendant was twice put in jeopardy for the same offense.

On the Charge of Operating a Disorderly House, the Court fined the defendant \$259.00 and sentenced her to serve 60 days in the County Jail, the jail sentence to be suspended upon payment of the fine. (T 116).

From this verdict and sentence the defendant appeals to this court and for a

reversed thereof rests on the following:

POINTS

1. The evidence is insufficient to sustain the verdict.

2. A married woman is incapable of committing a crime when acting under the consent, coercion or influence of her husband.

ARGUMENT

Point 1.

THE EVIDENCE IN THIS CASE IS NOT SUFFICIENT TO SUSTAIN THE VERDICT.

State vs. Brown, 102 P 641
33 C.2. 1916

Beginning on page 66 of the transcript the defendant testified, in substance, that she was a married woman and living with her husband and two children at the time of the alleged offense; that her husband bought the house in question for the purpose of keeping her from having to work; that after buying the house they operated the house together with him

furnishing the necessary money and providing necessary supplies and doing the work about the house, collecting the rent and doing the ordinary chores about the house, including cooking and serving of meals and that she helped with the housework as any housewife would and should to assist her husband generally with the execution thereof.

The defendant was corroborated in this respect by Lord Byron Williams, Wiley Davis and Shadrick Blair (T 95 and 96). So where in the entire record is there any evidence to the contrary, and in this we respectfully submit that under the law, as pointed out in the next proposition, the evidence is wholly lacking on a material element of the offense charged.

Cases are numerous on the question here presented and the point is so well settled until argument seems unnecessary.

State vs. Brown, supra, is a Utah case and directly in point. There the defendant was charged with forgery and set up the defense of insanity. Several witnesses testified on behalf of the defendant to the effect that he was insane. The state relied upon the legal presumption that the defendant was sane and introduced no evidence to rebut the testimony of the witnesses.

In reversing the conviction this court said:

"The jury in this case either misunderstood the court's instructions, or misapplied them to the evidence, or willfully or inadvertently disregarded all the evidence upon the question of insanity. While we disclaim any right to pass upon the weight of the evidence in either criminal or civil law cases, we nevertheless... at ignore the duty of a court to determine whether the jury have correctly ignored the evidence, and for that purpose may scrutinize the evidence to ascertain whether there is any evidence in the case which is material and competent to a conviction.

in this case the only defense was insanity. The state was, nevertheless, required to prove every essential element constituting the alleged offense. True, the State in the first instance was not required to produce any evidence that appellant was sane, since the presumption of sanity, like a prima facie case upon that issue. But after the appellant, by an overwhelming mass of evidence, had rebutted the presumption of sanity, the jury was not authorized to arbitrarily disregard the evidence of insanity, all of which was, in effect, conceded by the State, to be true, and make a finding in favor of the State, based upon a presumption which had been entirely overcome. When the presumption was overcome, there was absolutely no evidence to support the verdict.

POINT C

A MARRIED WOMAN IS INCAPABLE OF COMMITTING A CRIME WHEN ACTING UNDER THE COERCION, DOMINATION OR INFLUENCE OF HER HUSBAND.

U.S.S.A. 1943, 103-1640
 41 C.J.2. 715
 State vs Miller, 62 SW 692
 21 CYS, 1386
 Ferguson vs State, 235 P 497
 Broxton vs State, 81 So 657
 Caldwell vs State, 137 NE 179
 Cochran vs State, 130 At 620
 State vs Innes 15 SW 222
 Rex vs Tins, 2 CCF 10
 State vs Grossman, 110 At711

Keys vs Taylor, 81 NW 901
 State vs Fitzgerald, 49 W. 260
 U. S. vs Qualifflint, 4 Fed. 127
 State vs Burns 130 SW 401
 Tuleadorich vs state, 150 NE 36
 Hall vs state, 321 r 292
 People vs Smith, 206 1st 76
 Lip vs State, 19 IAA 387

Section 103-1-40 of our Code provides
 as follows:

"All persons are capable of committing
 crimes except those belonging to
 the following classes:

- (8) married women, unless the crime
 is punishable by death, acting
 under the threats, command or
 coercion of their husbands."

This statute is declaratory of the
 common law. Which is defined in 41 C.J.S.
 at page 715 as follows;

"where the crime is committed in
 the husband's presence, the bur-
 den is on the state to prove the
 absence of coercion."

and at 21 Cyc 1386 it is said;

"It is not necessary that the presence
 of the husband be actual or im-
 mediate, his constructive presence
 is sufficient."

The foot note to Lip vs State, reported

in 19 LRS 357 gives a comprehensive analysis of the subject together with the holdings of the various jurisdictions and the application of the rule, under the common law and statutory regulations. The rule at common law is that where the husband is present at the time of the commission of the offense, there is a presumption that the wife acted under the coercion and influence of her husband.

There are few cases that hold this presumption to be conclusive, but the great weight of authority, including the cases cited herein, hold that this presumption may be rebutted by evidence, thus in *Calderwell vs State Supra*, it is said;

"When a married woman is indicted for a crime (excepting treason or a murder) committed in the presence of her husband, the presumption of law arises from the husband's presence that the wife acted under his coercion entitling her to a discharge unless the presumption is rebutted."

Page
Eight

and in state vs Greenwald;

"that a married woman commits an offense in the presence of her husband, or near enough to be within his immediate control and influence. She is presumed to have acted under his coercion and while he is responsible, she is innocent, but this presumption is rebuttable."

also in state vs Greenwald;

"A wife assisting her husband to perform an abortion on a party that he had adulterous connections with, is presumed to have been coerced and the evidence of coercion by the wife did not overcome the presumption."

The California case, People vs

Stetely, holds that there is no presumption in favor of the wife but that when there is some evidence, however slight, that the wife acted at the direction of the husband, it then becomes a question of fact for the jury under appropriate instructions by the court.

In the case at bar we do not quote

the Cl. 's evidence, but concede that it is amply sufficient to show that the defendant's home did constitute or become a disorderly house, but we contend that the prosecution still failed to carry its full burden as applied to this defendant.

The maintaining of a disorderly house requires more than one act of immoral conduct. The evidence discloses a course of conduct existing over a period of several months prior to the date of arrest, May 12th 1921, consisting of visits of several people, young and old, colored and white, and at all times of day and night, who were drunk, boisterous and at times fought, inside and outside the house, and on May 12th the officers found a negro woman and white man in the act of sexual intercourse, when they went to the house.

In cases of this kind we contend that that the fact that the husband may not have been actually present at the time the officers made the raid is immaterial since the evidence shows conclusively that he did live there as head of the family and there is no evidence to dispute the evidence of the defendant to the effect that her husband had charge of and directed the affairs of the home. In this respect the record reveals nothing that the defendant did that is inconsistent with her duty to her husband as required by law, including the commission of crime where the penalty is less than death. This is the purpose of the cited statute.

CONCLUSION

In conclusion we respectfully submit that under any of the rules laid down in any of the cases, even the California

rule, would not justify a conviction in this case. The record shows affirmatively that the defendant acted at the direction and influence of her husband and it then became the duty of the prosecution to go forward and show, by evidence, that the defendant acted of her own free will and accord, and in failing to do so it failed to establish a material and essential element of the offense charged; and in this we respectfully submit that the court erred in refusing defendant's request for a directed verdict (F 13), and that this cause should be reversed and remanded with directions.

Respectfully submitted,

L. L. Oliver
Attorney for Appellant.