1954

State of Utah v. Jay D. Ferry : Brief of Respondent

Utah Supreme Court

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In the

Supreme Court of the State of Utah

STATE OF UTAH,
Plaintiff and Respondent,

vs.

JAY D. FERRY,
Defendant and Appellant.

Case No.
8181

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

STATEMENT OF FACTS

Jay D. Ferry was convicted of the offense of carnal knowledge and sentenced to a term of not to exceed five years in the Utah State Penitentiary. From the conviction and sentence, he appeals.

The complaining witness, mother of one June Peer, the person against whom the criminal act was committed, and the said June Peer failed to appear at the trial (R. 2).

The trial court refused a motion by the State for a continuance which was based upon the absence of these witnesses (R. 2). Thereafter, the court, in the absence of the jury, considered the State's offer of proof including the voluntariness of the confession of the defendant, (Exhibit 1) the proffered proof of the corpus delicti, and the defendant's objections thereto (R. 6 to 101). The court then ruled thereupon (R. 101 to 103). The trial resumed in the presence of the jury and the State called as its first witness Lillian Webb Taylor (R. 104). Mrs. Taylor testified that she had known since birth (June 27, 1938) one June Peer (R. 105). A certified copy of the birth certificate of June Peer was, by stipulation of counsel, accepted in evidence (R. 105). Culbert Robison, County Sheriff, was re-called as a witness for the State (R. 106). Sheriff Robison testified that he was acquainted with the defendant and had known the defendant for about two years; (R. 106, 107) that he was present at the County Attorney's office in Delta, Utah, during a conversation had on July 30th, 1953, between the defendant and June Peer in the presence of the County Attorney and himself; (R. 107, 108) the sheriff testified that during this conversation June Peer related an act of intercourse had by herself with the defendant; (R. 109) that she, June Peer, said to the defendant, "Isn't that right, Jay?" And Jay said, "Yes" (R. 110). The witness thereafter testified as to further details of the conversation and to the statements of June Peer and the defendant as to the act of intercourse, the particular place where it was consummated and as to the State's Exhibit 1, the confession

of the defendant (R. 110 to 139). It was stipulated that the offense took place in Millard County (R. 126).

O. J. Bennet, Deputy Sheriff, was called as a witness for the State (R. 140). The deputy testified that he was acquainted with the defendant, (R. 140) and that he had contacted the defendant officially and told him to stay away from June Peer; "* * * I told him he better stay away from her, to leave her alone * * *" (R. 141). The witness further testified that he was present in the County Attorney's office when the defendant confessed to the offense and as to the circumstances thereof; (R. 142 to 146) that he witnessed the defendant's signature thereto (R. 144).

The State's Exhibit 1, confession of the defendant, was introduced in evidence and read to the jury (R. 146 to 150). The State rests (R. 150).

Defendant's motion to dismiss the charge was overruled and denied (R. 151, 152).

John H. Ferry, the father of Jay Ferry, was called as a witness for the defense (R. 153). The witness testified as to the defendant's educational background; (R. 153, 154) as to the preliminary hearing; (R. 154, 155) as to events following the hearing (R. 155 to 157). The defendant was called on his own behalf (R. 157). He testified as to his educational background; (R. 157) as to his apprehension on or about July 22nd, 1953; (R. 158) as to the circumstances surrounding his confession and as to its subsequent amendment; (R. 158 to 162) that he was in fear that if he did not sign the confession he would be returned

to prison for violation of parole (R. 162, 163). There was adduced from the witness no evidence of the nature of a former committed offense. On cross-examination, the defendant testified that he had not read the full context of his confession; (R. 163) that there were parts of it he did not understand; (R. 164 to 166) that he did not remember whether the statement (confession) had been read to him or not; (R. 166) that, "The statement wasn't read to me" (R. 167). The witness further testified that he discussed the contents of the confession with June Peer and that he "corrected" it by writing on the margin thereof (R. 167 to 170). The defense rests (R. 170).

The jury returned its verdict and found the defendant guilty of carnal knowledge of a female under the age of eighteen years and over the age of thirteen years as charged in the information.

STATEMENT OF POINTS

POINT I

THE EVIDENCE ADDUCED BY THE STATE WAS SUFFICIENT TO PROVE THE CORPUS DELICTI.

ARGUMENT

POINT I

THE EVIDENCE ADDUCED BY THE STATE WAS SUFFICIENT TO PROVE THE CORPUS DELICTI.

The only question here to be determined is: *Was there sufficient evidence introduced upon the trial to establish the "corpus delicti" of the crime of carnal knowledge to that degree necessary before the confession of the defendant could be received in evidence?* Lack of such evidence is the sole error complained of by appellant.

Appellant contends that it is essential that the corpus delicti should be established fully and completely by evidence independent of the confession before the latter could properly be received in evidence. We concede that a confession alone is not sufficient to establish the fact that a crime has been committed, but we respectfully contend that it may be competent evidence of that fact. Where, as in this case, there are corroborative circumstances, the confession may be considered with such circumstances to establish the corpus delicti of the crime. For this contention we direct the court's attention to the following authorities:

> "Proof of the corpus delicti may be by circumstantial evidence. Where defendant has confessed commission of the crime, the confession may be considered in connection with other evidence to establish the corpus delicti and it is sufficient if it is corroborated by other evidence. * * *"

State v. *DeHart,* 242 Wis. 562, 8 N. W. 2d 360; *Phillips* v. *State,* 196 Miss. 194, 16 So. 2d 630.

> "While a voluntary confession is insufficient, standing alone, to prove that a crime has been committed, it is, nevertheless, competent evidence of that fact, and may, with slight corroborative circumstances, establish the corpus delicti as well as the defendant's guilty participation."

Sullivan v. *State,* 58 Neb. 796, 79 N. W. 721.

> "The rule requiring corroboration of a confession is met if the additional evidence is sufficient to convince the jury that the crime charged is real and not imaginary."

Bunch v. *People,* 87 Colo. 84, 285 P. 766. See also, *Short* v. *People,* 27 Colo. 175, 60 P. 350; 7 Wigmore on Evidence (3d Ed.) §§ 2070, 2071.

The rule is that the law demands, and only demands, the best proof of the corpus delicti which, in the nature of the case, is attainable. *State* v. *Romo,* 185 P. 2d 757, 767. This court in *State* v. *Johnson,* 95 Utah 572, 83 P. 2d 1010, concerned itself with the identical question here presented as to whether there was sufficient independent proof of the corpus delicti to render a confession admissable in evidence. That case would appear to make clear, every such question must necessarily be determined in the light of the particular facts of the case. It is there held, however, that:

> "* * * the corroborating fact or facts need not independently of the confession conclusively prove the corpus delicti."

In the later case of *State* v. *Cronk, et al.,* . . . Utah . . ., 142 P. 2d 178, 183, this court affirmed the rule as stated in *State* v. *Johnson,* supra, and went on to say:

> "Of course, in some cases, the proof of the corpus delicti may bring in the confession, because the confession itself is so linked in time and place with the commission of the offense that as a practical matter the proof of the two are not segregable."

The corpus delicti in a prosecution for carnal knowledge is the substantial fact of intercourse, and a confession may render sufficient circumstantial evidence that would be insufficient without it. See *Watson* v. *State,* (Texas) 227 S. W. 2d 559 and *Preston* v. *State,* (Texas) 242 S. W. 2d 436.

For the case at bar, what is there in the evidence outside of the confession to establish the act of intercourse? Subsequent to making the confession, the appellant admitted to the act; the scene of the crime was established and stipulated to; it was shown that appellant had been warned to stay away from and leave alone the victim. Further, the appellant desired to marry the victim; appellant had employed counsel; he discussed the details of his confession with the victim and made corrections thereto. All of which was sufficient evidence to convince the jury that the crime charged was real and not imaginary and which, when permissably coupled with the confession, was sufficient to establish the corpus delicti.

CONCLUSION

We believe that the rights of persons accused of crime should be zealously guarded. We do not believe that rules of evidence promulgated to protect such rights should be extended to constitute a fortress impregnable to justice. The conviction and sentence should be affirmed.

Respectfully submitted,

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