

1956

State of Utah v. Robert E. Woodall : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Robert E. Woodall;

Recommended Citation

Brief of Appellant, *State v. Woodall*, No. 8540 (Utah Supreme Court, 1956).
https://digitalcommons.law.byu.edu/uofu_sc1/2631

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

UNIVERSITY U

JAN 28 1956

LAW LIBRARY

STATE OF UTAH
Plaintiff & Respondent

vs.

Case No. 3540

ROBERT E. WOODALL
Defendant & Appellant

APPELLANT'S BRIEF

FILED
SEP 17 1956

Clerk, Supreme Court, Utah

Appeal from Seventh District Court
San Juan County, State of Utah
Honorable, F. W. KELLER, Judge

ROBERT E. WOODALL

In propria Persona
Box 250, Draper, Utah

TABLE OF CONTENTS

PAGES

STATEMENT OF FACTS 1-6

POINT ONE.

THE VERDICT AND JUDGEMENT IS CONTRARY TO THE LAW AND EVIDENCE AND IS IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO "DUE PROCESS OF LAW" AND "EQUAL PROTECTION OF THE LAWS" GUARANTEED HIM THROUGH THE VIRTUE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.7

ARGUMENT AND AUTHORITIES ON POINT ONE7-19

POINT TWO.

THE APPELLANT WAS DENIED A "FAIR TRIAL" UNDER ARTICLE I. SEC. 12 AND THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND CONTRARY TO THE UNCORROBORATED (AND BELIEVED) TESTIMONY OF ACCOMPLICES.

77-38-15 Appellant was conviction on20

ARGUMENT AND AUTHORITIES ON POINT TWO.....20-40

POINT THREE.

THE TRIAL COURT UNJUDICIALLY ABUSED ITS DISCRETION IN ITS REFUSAL TO GIVE THE APPELLANT'S REQUESTED INSTRUCTION NO. 4 AND GRANT COUNSEL FOR THE DEFENDANT'S MOTION FOR A DISMISSAL. THIS DENYING THE APPELLANT A FAIR TRIAL CONTRARY TO THE PROVISIONS OF THE U. S. CONSTITUTION.

ARGUMENT AND AUTHORITIES ON POINT THREE ..41-47

CONCLUSION.....48-51

(1)

AUTHORITIES CITED

PAGES

STATE v. SPENCER, 101, U. 287, 121, P. 2d. 912	8
STATE v. WMAN, 31 Utah, 336, 88 Pac. 12....	11
PEOPLE v. HILL, 3 U. 334, 355, 3 P. 75.....	9
STATE v. FREDER, 79 U. 115, 121, 8 P. 2d. 509.9
EVANS v. UNITED STATES, 153, U.S. 587, 14, Sup. Ct. 934, 38 L. Ed. 830.....	12
U.S. v. CARL 105, U.S. 611, 26 L. Ed.....	1135
MAK	12
STATE v. TOWN, 41 U. 39, 123 P. 888.....	18
STATE v. SMITH (No. 8158) Supreme Ct. of Utah. September 28, 1954.20
U.S. v. CHWIKSHANK 92, U.S. 542, 23 L. Ed. 588.10
STATE v. JOK, 74 U. 149, 277 P. 972.33

STATUTES CITED

77-31-1 Utah Code Annotated 1953	8
77-31-14 Utah Code Annotated 195329
76-53-20 Utah Code Annotated 1953	29
77-31-18 Utah Code Annotated 1953	29
77-31-18 Utah Code Annotated 1953	18
CONCLUSION48-50

STATEMENT OF FACTS

This appeal is from a verdict of a Jury in the Seventh District Court in and for San Juan County and a trial of a Criminal matter charging the Defendant and Appellant herein, Robert Elton Woodall, with the crime of Pandering in Violation of Section (76-53-8) Utah Code Annotated 1953 as follows:

That the said Defendant at the time and place aforesaid, induced, persuaded, encouraged, and enticed Ida E. Duclo also known as, Pat A. Morgan, a female person to become a prostitute.

A Motion for a change of venue was filed with the court on the 27th. day of January, 1955 on the grounds that a fair and impartial trial could not be had in San Juan County.

A hearing was had January 27th., 1955 and the motion was denied. A plea of not guilty was entered. The case came for trial February 23, 1955.

The Jury was duly impanelled and sworn to try the case. The state proceeded to offer

testimony in support of the charge of Pandering. Opening statement was made by counsel for the Plaintiff. The Defense Counsel made a motion for mistrial on the grounds that the District Attorney referred to other crimes not in question. The motion was denied.

Ida Duclo testified on direct examination that she became acquainted with Woodall, Bobby Miller and Jerry McAllister in October when they came to eat in a cafe where she worked.
(P. 6)

Around the first part of December, 1954 she and her husband made two visits to the trailer where Bobby Miller and Jerry McAllister lived for the purpose of having a few drinks and talking. (P. 8).

It is alleged that on December 12th., 1954 Woodall and Bobby Miller came to the Hole in the Rock and had a conversation with Ida Duclo, in the presents of Duane Duclo her husband and Judy and Eddy Dunn, at which time Woodall asked her to go to work as Bartender at this trailer, which was a house of prostitution, and

she accepted the job for a sum of \$5 per day (P. 10) Then on December 14th., 1954 there was alleged to have been another conversation where as Woodall Said, "Since I have started to work there and had been seen around town with Bobby Miller quite a bit that I had the same reputation that Bobby Miller had and asked me if I wouldn't go ahead and work as a prostitute "and I told him that "I would try anything once" (P. 11).

She further testified that from December 14th., 1954 to December 23, 1954 she worked as a prostitute (P. 13).

On cross examination, Ida Duclo admitted shortly after she went to work as a prostitute, she and her husband moved to a Motel in Moab, Utah (P. 20). She also admitted she and her husband knew it was a house of prostitution when they had previously visited this trailer prior to her working there (P. 23).

She testified that no one forced her, and does not deny being willing to work as a prostitute. On December 23, 1954 the trailer was

raided by Officers of the State and San Juan County and taken to jail in Monticello, Utah. The following evening, December 24th., 1954 while enroute to Price, Utah they stopped at Moab where they were given some whiskey in the presents of a Mr. Pester a State Officer (P.35) Shortly thereafter signing a statement for the Officers.

Bobby Miller testified on direct examination for the state that she was practicing prostitution in this said trailer house from the last of October to December 12th., 1954.

Woodall allegedly hired Ida Duclo for a Bartender (P. 45-46). She also admitted practicing all the prostitution for the two day Ida Duclo was the Bartender. Then on December 14, 1954 she over heard the alleged conversation between Woodall and Ida Duclo, but could only remember a small part of the conversation (P. 48).

Bobby Miller admitted she answered the door admitting the customers and doing the cooking (P. 58). She admits having a few drinks of whis-

thing at all to do with the trailer or the business that was conducted in it. (P. 91)

Don Gordon testifying for the Defendant testified he rented the trailer to Jerry McAllister who made all the payments but one, which was made by Bobby Miller and the only time he saw or spoke to the defendant Woodall was when he came and asked to borrow some oil cans to take some stove oil to Jerry's Trailer (P. 119).

Charles O. Chapman testifying for the Defendant testified he overheard a conversation between Woodall and Bobby Miller on the morning of February 23, 1955 whereas, Bobby Miller tried to persuade Woodall to plead guilty and take the pressure off of them, as if he didn't plead guilty they, Ida Duclou and Bobby Miller to get "Two Years", and if he did plead guilty "They would be turned loose" (P. 126).

Frank Pester called in rebuttal, testified that on his way to the Sheriff's Office he passed within ten feet of Bobby Miller and Woodall talking at the jail through a hole in a solid wall-thus, corroborating both, the foregoing statements of Chapman and Appellant.

THE VERDICT AND JUDGEMENT IS CONTRARY TO THE LAW AND EVIDENCE AND IS IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO "DUE PROCESS OF LAW" AND "EQUAL PROTECTION OF THE LAWS" GUARANTEED HIM THROUGH THE VIRTUE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.

Appellant submits that the foundation on which the whole case against him^{rests} is invalid, hence, the whole case should legally fall under the weight of the following authoritative and documentary subject-matter.

A close parallel is noted between the case of the appellant and the TOPHAM CASE and in both cases identical substance is contained... In the following particulars:

1. The information fails to charge a public offense amid the ambiguity of its context, thus giving the Court no legal jurisdiction upon which to proceed.
2. The accused had no way of knowing "the nature of the accusation against him contrary to his state and Constitutional rights, (Article I, Sec. 12, & 14th. Amendment to U. S. Constitution, respectively)

As a matter of preface to the foregoing premise,
it is noted in 77-21-1 (1)... UCA. 1953 -

"This chapter was adopted to avoid the verbosity and complexity of the old form of pleading. In adopting that chapter, however, the legislature had no intention of permitting the prosecution to jeopardize the accused's rights by evasiveness nor vacillation. The accused is an innocent man. His prosecution - and the prosecutor should be impartial. It is as much the duty of the prosecution to recognize his innocence as it is to accomplish a conviction if the facts justify it. The Code of Criminal Procedure is not intended as a substitute for insufficient facts".

STATE v. SPENCER, 101 U. 237, 121 P. 2d. 912.

"The sufficiency or insufficiency of an information must be tested by its allegations and not by evidence introduced at the trial". STATE v. FISHER, 79 U. 115, 121, 3 P. 2d. 539.

In the Appellant's case as applicable to the TOPHAM case, the ambiguity of the information deprives the Appellant of any knowledge of the "nature of the accusation against him". The information comprising insufficient allegations could not be sufficient in itself. ... "The whole can be no greater than its parts".

"Under any system of criminal pleading it is the duty of the prosecution to so frame every indictment as to apprise the defendant with a reasonable degree of certainty of the character of the charges referred against him. The absence

of direct allegation of anything essential in the description of the substance, character or manner of the crime cannot be supplied by intendment.

PEOPLE v. HILL, 3 U. 334, 355, 3 P. 75.

...(Ibid)... it is well to bear in mind that it is as much an essential requisite under our Criminal Practice Act as it ever was that all matter material to constitute the particular crime charge should be alleged with such positiveness and distinctness as not to need the aid of intendment or implication. All this is embraced in the fundamental declaration that it is the right of every person accused of a crime "to be informed of the nature and cause of the accusation" (PEOPLE v. HILL /cited/

The foregoing subject-matter is in complete harmony with the Appellant's contentions and fully substantiates his position.

The TOPHAM CASE gives further support to the foregoing in the following words:...

"*** a statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended", and by section 4732 that 'the information or indictment must be direct and certain as it regards * * * the offense charged' and the particular

circumstances, when they are necessary to constitute a complete offense", Here, then, we have a Statute which in all cases require the information to contain "A statement of the acts constituting the offense" and to be "direct and certain as it regards the offense charged, and the particular circumstances of the offense, when they are necessary to constitute a complete offense.

Appellant submits that the information in the instant case failed to meet the foregoing requirements and thus fatally defective.

Paralleled to the TOPHAM case, the material parts of the instant case are that the Appellant did "Entice, encourage, persuade, and inveigle Ida Duslo to become a Prostitute". 'The information is charged in the mere language of the Statute' 'Of course there are cases where an information or indictment in the language of the statute is good. But there are many cases where that is not true. Says Mr. Bishop in New Criminal Procedure #624: The indictment must fully state the offense and if the statutory words do not suffice for this, it must expand beyond them". Said the Supreme Court of the United States in U.S. v. Cruikshank, 92, U.s.542, 23 L. Ed. 588: it is an elementary principal of criminal pleading that where the definition of an offense, whether

-10-

it be at common law or statute or by Statute includes Generic terms it is not sufficient that the indictment should charge the offense in the same Generic terms as in the definition but it must state the species-it must descend to particulars". "The same thought is expressed by Mr. Justice Frick in the Case of STATE v. SWAN 31 Utah, 336, 88 Pac. 12 that: "Where and act denounced by the statute is couched in Generic terms, the information must go further in stating the offense than by merely using the language of the statute and that an information in such language is not sufficient in those case where the acts constituting the offense are nearly as varied as the number of cases in which the charge is made".

(IbidP.890) In order that an information merely in the language of the statute may be sufficient, the words of the Statute themselves must fully and directly, and expressly, without any uncertainty or ambiguity set forth all the elements necessary to constitute the offense intended to be punished and must state all the material facts and circumstances embraced in the

definition of the offense". 22 Cys. 340;
EVANS v. UNITED STATES, 153 U. s. 587, 14 Sup.
Ct. 934, 38 L. Ed. 830; United States v. CARLL
105 U. S. 611, 26 L. Ed. 1135.

In the TOPHAM CASE emphasis was seemingly
placed on the question of willingness on the
part of the prosecutrix to remain in the house
of prostitution and practice the trade thereof.
It was shown in the Topham case that the prosecu-
trix not only remained in the "Stockade" WILLING-
LY but voluntarily left it each morning and re-
turned in the evening.

In the instant case, the Prosecutrix was
willing to work in the house of Prostitution
operated by an accomplice, BOBBY MILLER in addit-
ion her husband was willing for her to work there
It is readily apparent that her decision to again
work as a prostitute was wholly motivated by the
fact that she could not support herself and her
UN-EMPLOYED HUSBAND in the MOAB area on the \$5.00
per day that she was being paid in the capacity c
of "Bartender" hence, it was NEED and not the
Appellant that was the factor which produced what

INDUCEMENT, ENCOURAGEMENT, ENTICEMENT AND PERSU-
ASION that may be claimed to have been experien-
ced by the prosecutrix. Like the prosecutrix in
the Topham case, in the instant case, the Prose-
cutrix left the brothel every night and VOLUNTAR-
ILY RETURNED THE NEXT DAY TO CONTINUE HER IMMOR-
AL PRACTICES which included "soliciting the tra-
de" of TWO of the arresting officer in this matt-
er (Tr. 83). At Tr. 26, IDA DUCLO (Prosecutrix in
instant case) admits that she was PERFECTLY
WILLING to work as a prostitute and NO FORCE
WHATSOEVER was used to effect her willingness.

In the TOPHAM CASE, a very tempting promise
was made to the prosecutrix - (quoting "prosecu-
trix)... "I could make good money and could get
some nice clothes". In the instant case no
promises were made at all nor any other form
"INDUCEMENT".

Appellant calls attention to the Record at
page 7 at which it is stated by the Trial Court
Judge (in his instructions to the jury):...

"To this information the defendant has pleaded
not guilty. Such plea puts in issue each and
every material allegation of the information and
casts upon the state the burden of proving same
to the satisfaction beyond all reasonable
doubt."

doubt before you are warranted in finding a verdict of guilty.

Setting before the jury the foregoing premise, Appellant submits that the Trial Court committed a prejudicial error in allowing the instant case to go before the jury for its verdict despite the fact that "EACH AND EVERY MATERIAL ALLEGATION OF THE INFORMATION" could not have been possibly proved "BEYOND A REASONABLE DOUBT" in view of the evidence (as such) in this case. Especially consistent with the Trial Court's Instruction to the Jury - No. 3. . . .

"The words, "Induce, persuade, encourage and entice have no meaning different in law from the common understanding that people generally familiar with the English language give them. In order for a course of conduct or words spoken to come within what may be classed as either inducement, persuasion, encouragement, or enticement to become a prostitute, they must tend to bring about that result. In other words, before you can convict the defendant you must find beyond all reasonable doubt that his actions or the words spoken by him were such as may reasonably be

expected to cause IDA E. DUCLO to become a prostitute. If, therefore, you entertain a reasonable doubt as to whether the conduct of the defendant as you find it from the evidence had a reasonable tendency to cause IDA E. DUCLO to become a prostitute, then you cannot find him guilty.

In accordance with the Trial Court's criteria that one may use in comprehending(if one can) the ambiguity of the somewhat related and general terms "INDUCE, PERSUADE, ENCOURAGE, AND ENTICE", Appellant has sought the assistance of "Webster's New Collegiate" Dictionary and find the following definitions of the words in question which allegedly constitute the offense from which conviction the appellant presently appeals.

- (1) ENCOURAGE: To inspire with courage, to give spirit or hope; to foster.
- (2) ENTICE: To draw on by exciting hope or desire; allure; attract; often in a bad sense - to tempt.
- (3) INDUCE: Implies influence over the reason or judgement; To lead on, prevail upon (move another to act in a certain way

PERSUADE: Implies a appeal to a person's emotions.

Appellant submits that no where in the record or within a impartial line of reasoning is there any form of discourse having occurred between the appellant and the Prosecutrix and/or Bobby Miller wherein it could be concluded nor inferred that the Appellant: inspired, gave spirit, hope, nor fostered IDA DUCLO which would satisfy ENCOURAGEMENT; No where in the record can it be found that the Appellant excited hope or desire; allured; attracted or tempted IDA DUCLO in any way to satisfy enticement. The record (which the Appellant considers to be synonymous with the evidence) fails to show through expression or implication that Appellant appealed to the emotions of IDA DUCLO in any way that would "PERSUADE" her to do anymore than face the fact that what ever integrity she may feel to possess could not be sustained if she chose to associate with (A PROSTITUTE - one BOBBY MILLER; thus an appeal to reason and personal esteem - not an appeal to emotions, hence no persuasion. No where in the claimed discourse between the

Appellant and the Prosecutrix is^{n't} there any basis for a claim that the Appellant exerted any influence over the reason of judgement of Ida Duelo nor moved her to act in a certain way - on the other hand, there was no reluctance shown; nor chastity claimed nor established; the decision of the part of the prosecutrix and her husband to frequent an establishment wherein prostitution was being practiced in one room of a two room trailer and whiskey being illegally sold in the other room - BEFORE THE CLAIMED "INDUCEMENT" ETC., by the Appellant, dismisses any logical inference that influence would be needed in view of such voluntary patronage to the very disagreeable and illegal conditions which existed; therefore, no INDUCEMENT was necessary nor given.

It should be, and should have been apparent that the information was not founded upon a basis that could be supported by the Constitution of Utah and should have fallen before ever being offered to the jury for a decision. No doubt should arise as to the fact that it was PROPERTY AND U

not any words nor acts on the part of the Appellant. IDA DUCLO was in a position whereas she not only had to support herself but she also had to support and UNEMPLOYED HUSBAND - the record in this matter clearly shows such Self-preservation meant that more money had to be made in view of \$5.00 per day earnings of IDA being far insufficient to support IDA DUCLO and her husband; thus Appellant repeats-ANY ENTICEMENT should in all fairness be (accredited to) charged to NEED and personal desire and not to an inferred and /or fabricated contention of guilt on the part of the Appellant when such a contention must attempt to survive in the complete absence of any form of probability.

At page 897 of STATE v. TOPHAM the following applicable summation is made:

"Even though the evidence should support a good information, yet for reasons already stated, the prosecution must fail because of the fatally defective information; such a defect being incurable by evidence or verdict. And information or indictment when assailed as to substance must stand or fall by its own structure. It is not a technical but a sound and fundamental rule in the law of criminal procedure that the accused be apprised not by the evidence adduced but at the outset by the indictment or information

with reasonable certainty of the exact nature of the accusation against him, This rule cannot be bent to meet exigencies of a particular case nor the class or the grade of the person accused. The constitution and Statute prescribe the rules by which the sufficiency of an information may be determined and they apply to all alike. They do not prescribe one rule for a keeper or director of a house of prostitution and another for a NUN, nor one rule for one offense and another rule for another offense."

- 19 -

1

APPELLANT WAS DENIED A "FAIR TRIAL" UNDER ARTICLE I. SEC. 12 AND THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION AND CONTRARY TO 77-31-15 UCA. 1953; APPELLANT WAS CONVICTED ON THE UNCORROBORATED (AND SUBORNED) TESTIMONY OF ACCOMPLICES.

Appellant submits that synonymous with the case of SMITH v. STATE (No. 8158) Supreme Court of Utah - September 28, 1954, his case contains the following fatal defects existing in common to both cases:

- (A) There is no evidence that the prosecutrix was a chaste woman before accused allegedly induced her to become a prostitute;

- (B) Like the SMITH case (Ibid) "the offense with which the Appellant was charged is one of a number found in the pandering Statute 76-53-8 UCA. 1953, 'it differs from some of the others by being predicated on an inducement to become a prostitute. There is no evidence here that the prosecutrix was not a chaste woman before the accused allegedly induced her to become a prostitute and the presumption that she was chaste at that time. Title 77-31-14 requires that:

"Upon a trial for *** inveigling, enticing or taking away any female of previously chaste character for the purpose of prostitution * * the defendant shall not be convicted upon testimony of the woman upon whom or with whom the offense was committed, unless she is corroborated ed by other evidence".

That the prosecutrix was not "CHASTE" is clearly seen in her decision to work at a place of "ill-repute" and associate with prostitutes and less - (See Record at P. 10) At page 11, it is noted that the prosecutrix, IDA DUCLO, worked as bartender in a house of prostitution. and willfully violated the law not only as to employment i.e. she sold WHISKEY including such a fraudulent procedure as selling not only whiskey but "See Shots" knowing such to be illegal.

While working at a cafe not too far from the Trailer in which Prostitution was being practiced IDA DUCLO admits that she knew the place where she was later to sell whiskey (in addition to herself was a place of Prostitution (E-P.20) At the same page she admits that her husband knew her prospective place of employment was a Place wherein prostitution was being practiced. Still, in mockery of any claim of chastity, IDA DUCLO chose to work under such conditions chose to identify herself with Prostitutes "tricks" and "suckers" in a business that was not only in violation of the law but also in violation of Mores and Code of

Ethics which governs the behavior of American Society.

Appellant submits that CHASTITY could not survive beyond an Initial venture unto such immoral conditions and no margin exist wherein the Prosecutrix's WILLFUL Initial step (forestated) would logically encompass a need for and or a reasonable inference of a need for "INDUCEMENT" "ENCOURAGEMENT", "ENTICEMENT" etc. as claimed to have been used by the Appellant, and thus effecting the crime for which he has been incarcerated.

Additional common substance existing in the instant case and the case of SMITH v. STATE (Ibid) is seen in a comparative study of the two cases in connection with the statement of the Honorable Justice, Henroid, author of the opinion in the said Smith Case. . .

"The defendant urges that the evidence as a matter of law, failed to establish guilt and we agree. The only evidence other than the testimony of the prosecutrix was a sister's statement that defendant jokingly had remarked that

else other than being a waitress and that the Prosecutrix was seen to give the defendant some money on one occasion, testimony of another woman that she had given the accused some money and testimony of an officer that he had seen the prosecutrix and the accused together on a number of occasions. None of this evidence tends to prove or corroborate the charge that the defendant "Induced, Persuaded, encouraged, invigled, and enticed" the prosecutrix "to become a prostitute".

In the instant case the foregoing matters are somewhat inseparably related in the following specific ways:

1. The only evidence other than the testimony of the prosecutrix, is that of a confession professional prostitute - and accomplice named (called) Bobby Miller, who in addition to influencing the prosecutrix through showing the appearance of easily practiced prostitution, stated that the Appellant had a conversation with IDA DUCLO (Prosecutrix) which conversation she states she did not hear - (R. 49/top of page

ATTENTION IN THE CONVERSATION, so I guess she must have told him O.K. because she went to work"... It is noted that this bit of uncertainty and prejudicial conjecture immediately followed the seeming POSITIVE OR MANUFACTURED act of eavesdropping on the part of Bobby Miller (See P. 48) . . .

Q. "Relate what you heard Woodall say and what you heard Mrs. Duclé Say?

A. "He told us that since she'd been seen around Meab with me and that I had such a bad reputation that her reputation was the same as mine now so she might as well go all the way. She'd get more money. There was more money in it that way.

In regard to the foregoing, Appellant submits that such a statement, if made by him, (which he doubts) would not in any way satisfy a contention of enticement, encouragement, persuasion, and inveigling of the Prosecutrix to become a prostitute. On the contrary Appellant's statement was in truth and objective analysis of things as they existed - "calling a spade a spade" and the reasoning of such an act on

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.

Machine-generated OCR, may contain errors.

appellant's part falls within the scope of present-day appeals to reason with such slangs as "YOU'RE NO BETTER THAN THE COMPANY YOU KEEP" and "BIRDS OF THE FEATHER FLOCK TOGETHER". And as some prosecuting agencies expound... "GUILT BY ASSOCIATION".

An impartial and unbiased appraisal of claimed words to the Prosecutrix in view of the evident WILLINGNESS of the Prosecutrix to work as a prostitute and by ^her own admission to such effect. (R. PP. 21-22)

Mr. DUNCAN (in regard to Bobby Miller)

Q. "Did you have a conversation about anything with her?"

A. "Not that I remember."

Q. "Don't remember any conversation. Where

Q. "Where did you first meet her?"

A. "There at the Hole in the Rock"

Q. "How did you know that place to be, that trailer was a house of prostitution?"

A. "YES I GUESSE SO"

Q. "Who told you, did somebody tell you it was?"

A. "No, not right out."

Q. "Well, what gave you the impression it was a house of prostitution?"

A. "I DON'T KNOW."

Q. "DID YOUR HUSBAND TELL YOU THAT?"

A. "NO SIR."

Q. "YOU AND YOUR HUSBAND WENT OVER THERE TO
DRINK BEER AND THINGS."

A. "A COUPLE TIMES, YES, SIR."

Q. "AND THAT WAS, OF COURSE, BEFORE YOU WENT
TO WORK THERE WASN'T IT?"

A. "SIR?"

Q. "THAT WAS BEFORE YOU WENT TO WORK THERE
WASN'T IT?"

A. "YES SIR."

- - - - - AT PAGE 23- - - - -

Q. "WELL, you know in your mind it was A HOUSE
OF ILL FAME, is that correct?"

A. "YES."

Q. "So you went there to tend bar, whatever you
were going to do, you knew IT WAS A HOUSE
OF PROSTITUTION, didn't you?"

A. "YES SIR."

Q. "And YOU HUSBAND KNEW IT DIDN'T BE."

A. "YES."

Thus it is evident that in view of the foregoing that the Prosecutrix, IDA DUCLO, went into the crime of Prostitution "with her eyes wide open" and own her volition and independent of any form of enticement, persuasion, encouragement, inveigling that has been alleged. The IDA DUCLO AND, HER HUSBAND KNEW HER PLACE OF employment was a house of Prostitution; IDA DUCLO'S husband was unemployed and the high cost of living in the MOAB area would greatly tend to defeat any premise that IDA and her husband were able to eat and pay rent on the \$5.00 per day that IDA DUCLO alone was making as bartender at the Trailer; hence, the statement of the Appellant relating the cold possible unpleasant truth that IDA had been seen around town with a Prostitute and her associations with such a party would lead any normal thinking human being to believe that Ida was either a prostitute or she had something in common with those in that type of life..."Saints do not walk arm in arm with sinners"; "Kings do not often hold counsel with thieves".

It has been shown in preceding pages that the Prosecutrix and her husband knew all about Prostitution setup BEFORE THE PROSECUTRIX CHOSE TO WORK THERE.

Chasity, would have prevented IDA DUCLO, from accepting such a job.

Chasity, would have resulted in IDA DUCLO and her husband coosing any of several LEGAL ESTABLISHMENTS to go and drink illegally sold alcoholic beverages in a setting of prostitution. (R. 22)

Chasity would have logically demanded that IDA DUCLO decline to associate with a character whom she knew to be a PROSTITUTE - i.e. BOBBY MILLER.

Revelant to the foregoing, this Honorable Court has taken the following position)in concurrence with Mr. Justice Menroid:

(STATE v. SMITH - 274 P. 2d. 246) PP.246-47:)

"Upon a trial for * * * inveigling, enticing or taking away any female of previously Chaste character for the purpose of

prostitution--the defendant shall not be convicted upon testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence"...

Further authoriatative data condemning the prosecution's conviction of the Appellant in a masterful performance of picture-painting with words and therein setting the Prosecutrix, IDA DUCLO, up as a chaste woman who had been encouraged, persuaded, inveigled, and enticed to become a prostitute by the Appellant is seen in the following words of Mr. Justice Henroid in the forestated case (SMITH v. STATE)...

We believe and hold that under this section the testimony of the prosecutrix here must be corroborated. The section, we believe, was intended to supplement that which requires corroboration of an accomplice's testimony, Title 77-31-18, UCA. 1953, since a woman cannot be an accomplice, but only a victim, under the pandering statute and under Title 76-53-20, which deals with taking a female under 18 for prostitution, there appearing to be as much reason for requiring corroboration in such cases as there is where, an accomplice testifies. Title 77-31-14, would be meaningless if it did not apply to the present charge under Title 76-53-8, and/or to a charge under Title 76-53-20, since those two sections are the only ones in our code where it could apply. The language is broad enough to cover both sections, the "inveigling" and "enticing" found in the pandering statute and the "taking away" in the other.

Title 77-31-14. requiring corroboration,
was taken from and is identical to Section
Sponsored by the Salt Lake County Library, and the Utah State Library, under the provisions of the National Library Services
Library Services and Technology Act, administered by the Utah State Library.

4858, of the Revised Statutes of Utah 1898, Title 76-53-20, relating to taking away females under 18 for prostitution, was taken from and is identical to Section 4223 of the 1898 statutes. Title 76-53-8, the pandering statute, although enlarged in 1911, L. 1911 ch. 108, Sec. 1, retained the words "inveigles" or "entices" which are found in the pandering statute of 1898, Sec. 4222. It seems obvious that the 1898 section requiring corroboration applied specifically to the sections dealing with females under 18 and to pandering, which at that time described the victim as being one "of previous chaste character,"--the language found in the 1898 and also the present corroboration statute. The fact that such language is not in the present pandering statute does not destroy the obvious intent of the legislature to require corroboration where the charge is an inveigling of a female to become a prostitute. The phrase "to become" imports previous chastity, unless it is shown that the woman involved was not chaste.

Under 77-31-18, UGA. 1953 is stated: A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence, which in itself and without the aid of the testimony tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient, if it merely shows the commission of the offense or the circumstances thereof.

"Under this section, jury has no legal right to convict defendant upon uncorroborated testimony of accomplice even though they believe testimony of accomplice to be true as to every material fact and are convinced by it of guilt of defendant beyond reasonable doubt."

Thus Appellant submits that in absence of corroboration of the testimony of Bobby Miller, and IDA DUGLO, Prosecutrix, the trial court should have directed the Jury to bring back a verdict of acquittal.

Going beyond the fact and the information in this case consistent with the forgoing position taken the TOPHAM case in *INVALID*, and if by some erroneous application guilt may be assigned to the acts of the Appellant then it is apparent in the following definitions that IDA DUGLO and BOBBY MILLER WERE ACCOMPLICES and no where in the record or elsewhere is there any evidence which corroborates their testimony.

I. "An accomplice is a person who knowingly, voluntarily and WITH COMMON INTENT with principal offender, unites in commission of crime".

STATE v. COROLEX, 74, U. 94, 98, 277 P. 203.

II. "An accomplice is one who in culpably implicated in the commission of the crime of which the defendant is accused".

III. STATE v. BOWMAN, 92, U. 340, 70 P. 2d. 458

The foregoing definitions of an accomplice in application IDA DUCLO (Prosecutrix) and BOBBY MILLER is substantiated by the record in this case -

IDA DUCLO admitted Tr. P. 26. . . .

(bottom of page) - THE COURT: He said no body forced you to be a prostitute did they?

A. "No".

Q. "And now you were perfectly willing to become a prostitute weren't you?"

A. "I don't know."

- - - NOTE page 28 -- (Bottom)

Q. "And at that time, no one at that time forced you to become a Prostitute did they?"

A. "You mean during the conversation?"

Q. "Yes."

A. "NO."

Q. "Just that you might as well be a prostitute you have the reputation, is that about the substance of it?"

A. "THAT'S RIGHT."

Q. "Because YOU WERE RUNNING AROUND WITH A GIRL WHO WAS KNOWN TO BE A PROSTITUTE?"

Thus, no question be existent as to IDA DUCLO "knowingly and VOLUNTARILY and with COMMON INTENT with the Principal (Appellant) united in the commission of the offense now being appealed.

The record at pages 42-75 in addition to the preceding confession of Ida that she ran around with BOBBY MILLER; the record shows that BOBBY MILLER was not only implicated ("culpably") but was an active and self-admitted accomplice in the instant case.

In STATE v. COX, 74 U., 149,277 P. 972, (Relative to corroborative evidence the following position was taken).

" We have heretofore held that the test of sufficiency of corroborative evidence is that it need not be sufficient in itself to support a conviction, but it must implicate the accused in the offense, and not be consistent with his innocence and must do more than cast a grave suspicion on the accused".

See also STATE v. BUTTERFIELD (Utah) 261 P. 804.

Appellant submits that not only was the testimony of the Prosecutrix, IDA DUCLO and her accomplice, BOBBY MILLER, uncorroborated but was also suborned.

Subornation is claimed under the following definition: . . . "To induce to commit perjury; incite or instigate to evil" - (Webster Collegiate - 2nd. Edition)

It is apparent that the circumstances existent at the time of arrest of the Appellant that all that the arresting Officers TESTIMONY FROM IDA DUCLO AND BOBBY MILLER was the findings of a State Officer, Frank Pester who two nights prior to the "raid" of the House of Prostitution, he along with other Officers had observed, that the Prosecutrix, IDA DUCLO, had and her accomplice, BOBBY MILLER were "PRACTICING PROSTITUTING" -(TR. p.p. 82-83). ILLEGALLY SELLING WHISKEY and "BEE SHOTS" (a connection passing as a reasonable facsimile of whiskey). Those crimes, officers, Pester, and Ray Tibbetts could have immediately placed against IDA DUCLO and BOBBY MILLER and consistent with their testimony of Officer Pester, an "OPEN AND CLOSED CASE" in each of the above matters could have been established in the absence of any possible defense. At this time,

before the advent of subornation, the only charge that could have been placed against the Appellant, is "RESORTING IN A HOUSE OF ILL-FAME" and/or doing favors (RUNNING ERRANDS etc.) for Professional prostitutes. Hence, in order to bring about a felony complaint against the Appellant and disregard the fact that only guilty of misdemeanors could possibly be assigned to his conduct in relation to the foregoing possible charges SUBORNATION of perjury had to be effected through allowing IDA DUCLO AND BOBBY MILLER to DRINK WHISKEY (Tr. P. 80 & 85) PATRONIZE A CAFE ("Arches Cafe") wherein they were allowed to join a couple men in drinking whiskey (See Tr. P. 85). And impressed upon them the seriousness of their charges and after some familiarity had been established, it is apparent from the following testimony that the choices before IDA DUCLO and BOBBY MILLER were: (1) Either get the Appellant, to plead guilty to a felony charge that would be manufactured by the prosecution.

(2) Or accept immunity from prosecution for

28
-30-

CONCLUSIVE cases of "PRACTICING PROSTITUTION"
and "ILLEGALLY SELLING WHISKEY", and in return
submit to subornation and give the Prosecution
its ONLY POSSIBLE CHANCE of getting a convict-
ion for "PANDERING" - however, illegal the tac-
tics. (TR. P. 126- - -

(CHARLES O. CHAPMAN) (TESTIFYING)

Q. "Were you in the same cell with the defend-
ant, Mr. Woodall?"

A. "Well, actually it isn't a cell. I was in
the same jail with him."

Q. "The same big room is it?"

A. "Yes Sir."

Q. "Were you present when the young lady came
down yesterday to talk to him?"

A. "Yes Sir."

Q. "Did you hear him talk to her?"

A. "Yes."

Q. "And did you hear her talk to him?"

A. "Yes Sir."

Q. "Could you point that lady out in the Court
room if you saw her?"

A. "Yes it's the girl with the red hair back
there. The girl with the red hair."

Q. "Will you stand up please. Is that the young lady?" (Referring to BOBBY Mc LAR).

A. "Yes Sir".

Q. "Will you tell us what, will you give us that conversation?"

A. "Well, as near as I can, Yes sir, She came down and called Bob over the door. I COULDN'T HELP BUT HEAR HER and she says something about Jerry, I believe she called her, was on his side in the trial. Bob said Yes, she was a witness. So she asked Bob then what he was trying to do, why didn't he GET SMART AND GO AHEAD AND PLEAD GUILTY AND TAKE THE PRESSURE OFF THEM. Says that they stood a chance of getting two-years a piece, her and this other girl if he didn't plead guilty to it. IF HE PLEADED GUILTY THEY'D TURN THEM LOOSE. Bob, (Appellant) told her that he did not have anything to plead guilty to and she left in a big huff and that's all of it that I heard.

Therefore, having been defeated on choice

No. 1, (effecting a guilty plea). BOBBY MILLER and prosecutrix, IDA DUCLO - in a last resort to save themselves from SURE and well-deserved punishment for their immorality, surrendered themselves to choice No. 2, i.e. to enter suborned testimony in a trial predicated upon an invalid and unjustly manufactured charge of Pandering and naming as defendant (and "Fall Guy") One Robert Elton Woodall. Subornation was necessary to build a "smoke screen" around the highly immoral conduct of the prosecutrix and BOBBY MILLER and divert attention from the fact they were indifferent to any regard for ethics and seeming deep-rooted low socio-cultural modes of living as evidenced by their ease at discussing such perverted trends in sexual relations as "Sixty-nine", "full-french" etc. At no place in the record of this matter is there an instance whereas the prosecutrix, (IDA DUCLO) and claimed - "NEW-COMER" to the crime of prostitution, hesitated or quibbled when called upon to explain the terminology akin to the forestated sex-perversion, despite the fact that new-to-the trade of pros-

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act administered by the Utah State Office.

in open Court conversa-

Machine-generated OCR may contain errors.

ing on these unusual matters. (See Tr. 40)

Subornation was necessary, to effect the release of the Prosecutrix and BOBBY MILLER as explained by Bobby Miller on page 126 (Tn) as substantiated by Charles Chapman, who heard Bobby say that if the Appellant pleaded guilty, they (IDA DUCLO & BOBBY MILLER) would be released.

The state evidently had to have a conviction. Someone had to pay for the practices of prostitution by Ida Duele and Bobby Miller - pay in terms of a prison . . . surely, the prosecution would not send to prison two prostitutes whom it had allowed to DRINK WHISKEY and party in the "Arches Cafe" etc. (Tr. 85).

Surely, the prosecutrix who had socialized with two officers in the following manner should not pay. . . .

(Tr. P. 83)

Q. "What if anything, did you see Ida Duele do while you were there, we will say, do or say?"

A. "Well, she served drinks a time or two, SHE ENGAGED IN, YOU MIGHT SAY IN JUST SOCIAL

TALK WITH THE OTHER PEOPLE IN THE TRAILER,

AND SOLICITED MYSELF AND RAY TIBBETTS FOR PURPOSES OF PROSTITUTION.

The only logical "scapegoat" was the Appellant and to give his conviction a legal appearance it was necessary the Prosecution to inject subornation on the part of the Prosecutrix - that she, (and experienced prostitute) (Tr. 90) was "enticed, persuaded, encourgged, and inveigled""to become a prostitute". And to also have the subornation of the prosecutrix strengthened with additional subornation by an uncorroborated accomplice, - BOBBY MILLER.

The subornation and uncorroborated testimony of accomplices was successful... and unjust and illegal conviction has been effected against the appellant and the only two parties guilty of felonious conduct in this case have (after being "unusually favored") have gone free - i.e., IDA DUCLO and BOBBY MILLER.

POINT III.

THE TRIAL COURT PREDJUDICIALLY ABUSED ITS DISCRETION IN ITS REFUSAL TO GIVE THE APPELLANT'S REQUESTED INSTRUCTION NO. 4 AND GRANT COUNSEL-FOR-THE-DEFENDANT'S MOTION FOR A DISMISSAL; THUS DENYING THE APPELLANT A FAIR TRIAL CONTRARY TO THE PROVISIONS OF THE U.S. CONSTITUTION.

Re Appellant submits that the following instruction (No.4)(R.24) was requested of the trial Court which request the trial Court denied.

"You are instructed that in order for you to find defendant guilty of pandering, under Sec. 76-53-8 U. C. A. 1953, you must find that defendant's persuasion, inducements, or suggestions, if any were the efficient or moving cause in bringing about the illicit relations wherein IDA E. DUCLO, also known as Pat A. Morgan became a prostitute. If you find from the evidence that the said IDA E. DUCLO also known as Pat A. Morgan did not engage in illicit relations and become a prostitute because of anything defendant may have said to her, but rather that she became a prostitute because of her own independent desire to do so, then you must find the issues in favor of defendant and return a verdict of not guilty.

- The foregoing requested instruction delves into and sets forth the very essence of the charge constituting the instant case. It clearly and concisely relates the requisites required for a verdict of guilty - which requisites are no where else raised in the instructions to the jury.

Appellant submits that the verdict of the jury should have been based upon the following questions:

1. DID THE DISCOURSE AND/OR ASSOCIATION BETWEEN THE APPELLANT AND THE PROSECUTRIX, IDA DUCLO as established, legally satisfy THE STATE'S CONTENTION OF

"INDUCEMENT, PERSUASION, ENCOURAGEMENT AND ENTICEMENT"?

2. IF NO 1, BE ANSWERED IN THE AFFIRMATIVE THEN DID IT FOLLOW THAT SUCH

INDUCEMENT, ENTICEMENT, PERSUASION, AND ENCOURAGEMENT resulted in the subsequent decision of the prosecutrix to become a prostitute. If not, then the true to Appellant's position under Point 1 of t

BRIEF, THE EVIDENCE DID NOT AND DOES NOT SUPPORT THE CHARGE AND SHOULD NOT HAVE GONE TO THE JURY - - -

The information which clinches the ambiguity of "entice", "encourage", "persuade" and "induce" with the allegation - TO BECOME A PROSTITUTE.

The words "TO BECOME A PROSTITUTE" being a material part of the information against the Appellant "casts upon the State the burden of proving such MATERIAL allegation also.

which would mean that not only would the state have to prove that the Appellant induced, enticed, persuaded and encouraged the Prosecutrix, But consistent with the rule covering MATERIAL ALLEGATIONS of the information the state set itself up to prove that the enticement etc. resulted in the prosecutrix, IDA DUCLO becoming a prostitute. Transcript, at page 26 shows that the Prosecutrix was not FORCED nor threatened into becoming a prostitute on the contrary (at bottom of page 26) IDA DUCLO BECAME a prostitute of her own free will and independent of any enticement, encouragement, persuasion, or inducement.

... 77-31-20 UCA. 1953: The Court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged do constitute an offense punishable by law".

The Trial Court abused its discretion in denying the well warranted motion for a dismissal submitted by the Appellant's lawyer at Tr. 87:

MR. KOSHER: YOUR HONOR, the state having rested the defendant now moves the Court to direct verdict of not guilty or dismiss this information on the ground that there is no evidence or reasonable inference from the evidence that the defendant is guilty of the crime charged. This charge or this information charges that the defendant on or about the 14th. day of December at and within San Juan County, State of Utah and I think we are governed by this information, induced, persuaded, encouraged, and enticed Ida Duclo, also known as Pat A. Morgan, a female person TO BECOME A PROSTITUTE. Now if I understand the full import of this testimony, about all that happened was that this defendant made a suggestion to her that she might as well practice prostitution because she had a bad reputation anyhow. And the some hours later she said to the other girl, "Well, I guess I'll take a twirl at

it, or I guess I'll take a chance or try it" or words to that effect. And then she commenced almost at once to practice prostitution. Now I submit that under this information there should be some evidence that he enticed her, painted a beautiful picture of the life of a prostitute or something of that sort, that he encouraged her and persuaded her and that he induced her to become a prostitute and that she succumbed to all these things. I think that the very import of this testimony was that this girl WANTED TO BECOME A PROSTITUTE AND DID SO. And I submit that mere suggestion isn't enough to convict him under this charge."

The wisdom of the foregoing requested dismissal rest in the reasoning that if mere suggestion or logic which is in harmony with a valid premise were to lend itself to criminal prosecution then it would follow under "Equal protection of the laws" that all publications which substance suggests the practice of immorality and criminal activity would be banned as a

a source of "enticement", "encouragement" "inducement" and "persuasion". Thus depriving the intellectual world of such masterpieces as "Oedipus" "HAMLET", "MACBETH", "ANNA KARENINA" "MOURNING BECOMES ELECTRA" and "MY SISTER AND I" to name but a few... because they entice, persuade, induce and encourage incest, Suicide, Murder, Sex promiscuity, and incest respectively tis a mockery of clear and objective thinking indeed.

One of the principal features of a fair trial is impartiality. In the instant case "OPEN AND ABOVE-BOARD PROSTITUTION" - to which practice Officers Pester and Tibbetts "WERE SOLICITED AS CUSTOMERS" (Tr. 83) was completely over-looked in favor of somewhat unanimously framing a felonious charge on the Appellant whose only relationship with the ACTIVE prostitutes (IDA DUCLO, Bobby miller, and Jerry McAllister) was that of a handy man.

After being catered to with WHISKEY and ALLOWED THE COMPANY OF TWO MEN (Tr.85) and from all reasonable appearances-promised immunity

unjustly and illegally obtaining a conviction of the only person of the three arrested against whom the State could not file a felony complaint.

The record shows that IDA DUCLO and BOBBY MILLER protected by immunity, freely disclosed to their perverted sexual activity and seriously challenged the dignity of the Court with uninhibited revelations of immoral deviations in sexuality activity and did not hesitate to voice such phraseology akin to their trade as "Sixty-Nine", "Full French", "Half-French" and "Straight". (R. 40).

Appellant submits that consistent with the cherish principle of "equal justice for all" when the two - CAUGHT-IN-THE-ACT prostitutes (IDA DUCLO and BOBBY MILLER) were apparently given a Christ-like exoneration (St. John 8: 11 /"Go and sin no more"/) - in such an obvious moment of forgiveness, the Appellant's misdemeanor of "RESORTING AT A HOUSE OF ILL-FAME" should have been dismissed and above all - not magnified and framed into a felony and given the name of Pandering.

Of the following things the Appellant feels that he is guilty:

- (1) Guilty of temporarily being a "Flunkey" (Nandy man) at an establishment of ill-repute. While awaiting the outcome of several favorable looking claims in Uranium around Moab (Tr. 115).
- (2) Guilty of "Resorting in a house of Ill-fame"
- (3) Guilty of appealing to the reasoning of a hypocritical harlot (IDA DUCLO) and telling her what was obvious and no doubt already known by her i.e., that the local appraisal of her was that "she was no better than the company she was keeping" - the company of BOBBY MILLER.

Upon receipt of such community information, CHASITY, would have compelled her to retreat to the inferred virtuous station of life from whence she would have the Court believe she came.

Chasity nor a need for enticement, inducemen

(19)

persuasion, nor encouragement could possibly have any merit where the presumed chaste person harbors such a personal creed of "I'LL TRY ANYTHING ONCE" (Tr. 11).

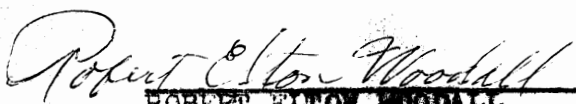
Ida Duclo's Character and personality and integrity is vividly seen in her decision to WILLFULLY patronize a trailer and buy whiskey that was being illegally sold and later accept employment which meant joining in the process of illegal sales.

No "enticement", encouragement" "inducement" nor "persuasion" was used nor claimed to have been used to bring about IDA DUCLO'S Initial step into crime (illegally selling whiskey) to prospective customers of prostitution; Hence, it does not seem reasonable that "enticement" "encouragement" "inducement" nor "persuasion" would be required nor necessary for the prosecutrix to go FURTHER INTO CRIMINAL ACTIVITY in view of her initial step in this matter was on her own volition and void of any form of influence other than poverty which influence ALONE provided the

enticement, encouragement, inducement and persuasion (if necessary) what is claimed to have been supplied by the Appellant.

What guilt that may be attributed to the conduct of the Appellant in the instant case could in no legal sense be adjudged Felonious. Only the misdemeanors listed on page 48 of this brief could have been brought against the Appellant. Thus, justice seemingly would be best served by a Modification, or reversal.

Respectfully submitted,


ROBERT ELTON WOODALL,
APPELLANT