

1956

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

Utah Supreme Court

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Edward M. Garrett; Attorney for Defendant and Appellant;

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IN THE SUPREME COURT

of the

STATE OF UTAH

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THE STATE OF UTAH :

Plaintiff and :  
Respondent :

: Case No. 8540

-vs-

ROBERT ELTON WOODALL :

Defendant and :  
Appellant :

**FILED**  
OCT 11 1956  
Clerk, Supreme Court, Utah

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SUPPLEMENTAL BRIEF OF APPELLANT

EDWARD M. GARRETT  
Attorney for Defendant  
and Appellant  
511 Walker Bank Building  
Salt Lake City, Utah

IN THE SUPREME COURT

of the

STATE OF UTAH

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THE STATE OF UTAH	:	
Plaintiff and	:	
Respondent	:	
	:	Case No. 3540
-v-	:	
	:	
ROBERT ELTON WOODALL	:	
	:	
Defendant and	:	
Appellant	:	

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SUPPLEMENTAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Defendant, Robert E. Woodall was informed against for the crime of Pandering in San Juan County, Utah on January 12, 1956. Jury trial of the matter on the 23rd day of February, 1955, resulted in defendant's conviction.

He was sentenced to serve a term in the

Utah State Prison from one to twenty years and has been incarcerated therein since the 28th day of February, 1955.

Appellant claims certain prejudicial error was committed by the trial court, among which are these: (1) insufficiency of evidence and (2) error in the court's instructions.

#### STATEMENT OF FACTS

The facts testified to in this case show that in the month of December, 1954, at a place called "the hole in the rock" on the highway between Moab, Utah and Monticello, Utah, the prosecuting witness, Ida Duolo, also known as Pat Morgan, was working as a waitress. (Tr. 6) During the period between October, 1954 and December 1954, she and her husband had become acquainted with the defendant and had on two occasions visited a trailer house near the "hole in the rock" and had a few drinks with him. (Tr. 8)

She testified that on December 12, 1954 in the presence of her husband and others, the

defendant offered her a job tending bar at the trailer house. (Tr. 9, 10) She accepted the job and worked as a bartender for two days. After two days, she testified she became a prostitute and remained such until December 23, 1954 when she was arrested by the police. The State claims that she became a prostitute by reason of the persuasion of the defendant.

#### STATEMENT OF POINTS

Point I. THE MOTION OF DEFENDANT TO DISMISS AT THE CLOSE OF THE STATE'S CASE SHOULD HAVE BEEN GRANTED.

Point II. THE COURT ERRED IN FAILING TO INSTRUCT THE JURY RELATIVE TO CRIMINAL INTENT.

Point III. THE COURT ERRED IN ITS INSTRUCTION #11 CONCERNING CORROBORATION.

Point IV. THE COURT ERRED IN FAILING TO INSTRUCT THE JURY ON APPELLANT'S THEORY OF THE CASE.

## ARGUMENT

Point I. THE MOTION OF DEFENDANT TO DISMISS AT THE CLOSE OF THE STATE'S CASE SHOULD HAVE BEEN GRANTED.

"We believe and hold that under this section (76-53-8) the testimony of the prosecutrix here must be corroborated."

State v. Smith 274 P.2d 246. (Utah)

The holding of that recent Utah decision clearly states that the testimony of the prosecuting witness must be corroborated.

And too, it must be remembered that the gist of the offense is the persuasion. Nothing more.

At the close of the State's case the only evidence of persuasion and corroboration thereof was the testimony of the prosecutrix and one Barbara Miller. On this point the prosecutrix testified, "He said since I started working there that I'd been seen around town with Bobby Miller quite a bit and that I had the same reputation that Bobby Miller had and he asked if I wouldn't go ahead and work as a prostitute."

Barbara Miller testified, "He told us that since she'd been seen around Moab 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 in it that way."

Compare the two statements above with the language of State v. Smith, supra, which says, "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 she could make more money doing something else than being a waitress, and that the prosecutrix was seen to give defendant some money on one occasion, testimony of another woman that she had given accused some money, and testimony of an officer that he had seen the prosecutrix and the accused together on a number of occasions.

Appellant contends that the evidence given by the prosecuting witness is not sufficient to go to the jury on "induced, persuaded, encouraged, inveigled and enticed" the prosecutrix "to become a prostitute." (This matter is argued in his original brief.) But furthermore, can it be said that the testimony of Barbara Miller is sufficient corroborating testimony? The answer is no. There is no legal difference in law between the corroborating evidence in the Smith case, supra, and in the case at bar. In this case the testimony of Barbara Miller shows only a casual, off-hand, equivocal remark made by defendant. A very similar remark was made in the Smith case, supra. If there were a distinction drawn in these two cases it would



be illogical and unsound.

Appellant moved the court to dismiss the information at the close of the State's case. (Tr. 87). It should have been granted.

Point II. THE COURT ERRED IN FAILING TO INSTRUCT THE JURY RELATIVE TO CRIMINAL INTENT.

In its instruction #2, the court stated to the jury that they must find beyond a reasonable doubt, a union of act and intent.

"1. That on or about the 14th day of December, 1954, within this county, Robert Elton Woodall, the defendant, had the intent to cause Ida E. Duclo to become a prostitute;

2. That with such intent the defendant adopted and executed a course of conduct, or spoke such words to Ida E. Duclo, or both, as constituted either encouragement, enticement, persuasion or inducement for her to become a prostitute."

An examination of the entire charge to the jury reveals that nowhere therein did the court define what it meant by the word "intent".

"The court should instruct the jury properly as to the intent necessary to constitute the crime charged, to wit:

that intent is for the jury to determine, and that intent may be inferred from the accused's acts and the circumstances of the case." 23 C.J.S., Sec. 1198 (Criminal law)

"A 'criminal intent' is an intent to do, knowingly and willfully, that which is condemned as wrong by the law and the common morality of the country; an intent to do, without justification or excuse, an act prohibited on pain of punishment.."

Criminal intent has a meaning in law that may differ from that meaning entertained by a jurymen. That being the case the court should have explained its meaning. The failure to do so constitutes reversible error.

Point III. THE COURT ERRED IN ITS INSTRUCTION #11 CONCERNING CORROBORATION.

Instruction #11 reads, "I instruct you Gentlemen of the Jury, that you cannot find the defendant guilty upon the uncorroborated testimony of Ida E. Daclo. That is to say, as to the essential elements of the crime charged in this case you must find her testimony to be corroborated by other credible testimony in the case before you are warranted in finding a verdict of guilty."

The jury is not told what amounts to corroboration in law. "corroborative evi-

dence. Additional evidence of a different character to the same point." Ballentine Law Dictionary, 1948 Edition. "corroborative. Confirmatory; tending to support or uphold." Ibid.

When one considers that the elements were inadequately defined as pointed out under Point II. of the argument, it is at once clear that the jury was free to speculate as to what the "essential elements" of the crime were and further, they were free to speculate as to what was meant by corroborative. The only result in the minds of the jurymen was obviously confusion. Clearly, the rights of an accused should not be submitted to a jury on a basis such as that.

Appellant contends that the inadequacy of instruction #11 constitutes reversible error.

Point IV.. THE COURT ERRED IN FAILING TO INSTRUCT THE JURY ON APPELLANT'S THEORY OF THE CASE.

Jerry McAllister, another prostitute, testifying on behalf of the defendant, stated that the prosecuting witness and her husband

came to her and asked if the prosecuting witness might come to her trailer house and work as a prostitute and that she had worked as a prostitute previously. (Tr. 89, 90)

The prosecuting witness admitted that a conversation had taken place between her husband and Jerry McAllister, but denied that she was present. (Tr. 17)

This conversation occurred before the prosecuting witness went to work at the trailer house because the evidence showed that Jerry McAllister had left the trailer house before Ida E. Duolo went there to work.

Appellant asked the trial court to instruct the jury that if the prosecuting witness embarked upon this enterprise of her own free will and choice anything he might have said could not be considered as persuasion and therefore he should be acquitted. Both instructions (#3 and #4 - requested instructions) embodying this theory were refused by the court.

The jury could have found under the evidence that the prosecuting witness had practiced prostitution prior to the events testified to in this case, and that both she and her husband were bent on continuing the practice at the trailer house of Jerry McAllister.

The words of the statute, "persuades, encourages, inveigles or entices a female person to become a prostitute " imply that something be done or said which causes a woman or which could cause a woman to abandon a life of virtue and adopt a life of immorality. The jury could have found that Ida E. Duclou was a prostitute prior to anything that the defendant said or did, as stated above. How then, could anything the defendant said have persuaded her to become a prostitute? Obviously the statute does not apply to a situation where the woman is already a prostitute and where that fact is proved there is a complete defense to the charge.

"Where the statute makes it an offense to solicit or induce a female to enter such a house for the purpose of 'becoming' a prostitute, it is not an offense so to solicit or induce one who is at the time a prostitute." 73 C.J.S. p. 236.

It is true that whether Ida E. Duclou was a prostitute before she started to work at the trailer house was a question of fact on which the evidence was conflicting. But, nonetheless, a jury question was framed on this point and the jury should have been adequately instructed thereon.

See C.J.S. Criminal Law, Sec. 1199.

"Where there is evidence in support of any defense offered by accused, which raises an issue of fact favorable to him, the court should present the issue by an affirmative instruction which fairly and fully declares the law applicable thereto, including the defining or explaining of the elements of the defense...."

The trial court should have instructed the jury on appellant's defense theory and it is reversible error for the court not to do so.

#### CONCLUSION

Appellant urges that the verdict and judgment of the trial court be reversed.

As stated under Point I. of the argument the evidence at the close of the State's case was insufficient to go to the jury. A casual remark of defendant, which is all that was in evidence in this case, should not be the basis of so serious a criminal charge. It was manifestly unjust for the trial court to deny appellant's motion to dismiss, and this court should not hesitate to declare it so. The case should be reversed.

However, if the court disagrees with the reasoning under Point I, it has been clearly shown under Points II, III, and IV that the trial court erred in instructing and failing to instruct the jury. This error is reversible and prejudicial and a new trial should be awarded.

Respectfully submitted

EDWARD M. GARRETT

Attorney for Appellant