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

Utah Supreme Court

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In the
Supreme Court of the State of Utah

UNIVERSITY UTAH

JAN 28 1957

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

ROBERT ELTON WOODALL,
Defendant and Appellant.

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Case No.
8540

FILED

OCT 24 1956

BRIEF OF RESPONDENT

Court, Utah

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In the
Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

ROBERT ELTON WOODALL,
Defendant and Appellant.

} Case No.
8540

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

From the facts of the case there seems no question but what a trailer house was utilized as a bar and house of ill fame in Grand County, Utah from on or about October 29, 1954 to December 23rd of that year. The trailer house was divided in two sections, one for each purpose; at the outset Jerry McAllister and Bobby Miller were the "resident oper-

ators". There is some conflict in the evidence as to whether or not Robert Elton Woodall, defendant and appellant, was also an occupant of the premises. The fact that Woodall was in or about the premises in one capacity or another during all of the period of time involved is not controverted by any of the testimony. When Jerry McAllister departed the county, state, *and trailer*, the state complained that Woodall induced, persuaded, encouraged and enticed Ida E. Duclo, also known as Pat Morgan, a female person to become a prostitute. As a result thereof, Robert Elton Woodall was convicted of pandering and thereupon sentenced to a term in the state prison for not to exceed twenty years.

"Jerry" was the blond, "Bobby" the redhead, "Pat" the brunette (R. 7). We shall hereinafter refer to these ladies of the *maison de joie* by their own adopted nicknames.

STATEMENT OF FACTS

Pat, the *victim*, age 22, was employed at a resort some fifteen or so miles out of Moab, Utah, known as the Hole in the Rock; she had been so employed from about the last week in September to about the first week of December, 1954 (R. 6). Pat met the defendant at her work some time in October of that year when he brought two girls in for a meal (R. 6). On December 12, 1954, Pat was among the unemployed, the cafe apparently having ceased operating (R. 9). On the night of December 12th Pat went to work for the defendant as a barmaid selling whiskey at a wage of \$5.00 per night plus 25c on the "Bee shots"; she re-

remained so employed for two nights. Pat's place of employment was a trailer house located on "Blue Hill" a spot some six miles closer to Moab than the Hole in the Rock. Pat's co-tenant of the trailer was "Bobby" (R. 56) whose admitted occupation was prostitution (R. 45).

Bobby had known the defendant since May or June of 1954; she had first met him in Las Vegas, Nevada (R. 43). Bobby arrived in Moab the latter part of October, 1954, and about the third week after that moved into the trailer (R. 44). Bobby resided there with Jerry and the defendant Robert Elton Woodall (R. 44).

Jerry was an alleged prostitute; (R. 56, 57) she admitted having been paid for her services as a prostitute (R. 91). Jerry had a bank account at the First National Bank of Moab in the name of Mrs. Joan Woodall (R. 100). Jerry left the State of Utah some time around the middle of December (R. 91); prior thereto and while Jerry was living at the trailer the defendant was accustomed to leave some of his clothes at the trailer (R. 106). As heretofore stated, Pat replaced Jerry as a tenant of the trailer house; as a barmaid on December 12th (R. 9), and as a prostitute on December 14th (R. 11, 12, 13). The police arrived at the scene on the 23rd day of December and then and there terminated both girls' employment (R. 13).

Pat was the first witness called by the State. Pat testified as to her employment at the Hole in the Rock as a waitress, as to meeting the defendant and as to having accepted employment as a barmaid for the defendant at the trailer (R. 5, 11). Pat said the defendant asked her if she

"wouldn't go ahead and work as a prostitute" (R. 11) and that she told him "I would try anything once" (R. 11). Pat and the defendant reached an agreement: Pat,

"was to charge \$10.00 * * *. He showed me where to put the money in a little drawer and everything. And I was to keep \$5.00 and give him five" (R. 12).

On cross examination, Pat was questioned about an alleged conversation had with Jerry in the presence of Pat's husband; (R. 16). Pat denied having gone to Jerry seeking employment as a prostitute (R. 16). Pat denied having conversed with Bobby on the subject of prostitution before having gone to work at the trailer (R. 21). Pat denied having ever worked as a prostitute prior to her employment by the defendant as such (R. 18, 38). After her arrest, Pat was complained against as being a prostitute and she pleaded guilty to the charge (R. 41).

"Bobby", was the next witness for the State. Bobby told of her acquaintance with the defendant, as to having lived in the trailer with Jerry and as to having occupied herself thereat as a prostitute (R. 42, 45). Bobby told of Pat's employment by the defendant as a barmaid at \$5.00 a night and 25c a "Bee" drink; (R. 46) and that Pat had "said that she would come down with the understanding that she was just to tend bar" (R. 47). Bobby testified as to Pat's having worked as a barmaid for a couple of days (R. 48) and then as to a conversation had in the trailer house on December 14th about Pat's "further employment" (R. 48). Bobby, while addressing her Christmas cards, heard the defendant tell Pat that "since she'd been seen

around Moab with me (Bobby) 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" (R. 48). Bobby said that subsequent to this conversation Pat engaged in prostitution (R. 50, 75). The defendant came to the trailer house almost every day, according to Bobby, to see that they had plenty of water or oil and butane; (R. 51) the defendant took his meals there (R. 51). Bobby said that neither Pat nor Pat's husband had said in her presence that Pat had previously been a prostitute or he a hustler (R. 67). Bobby did not discuss with Pat the possibility of Pat's going to work as a prostitute (R. 68). Bobby did not recall Pat coming to the trailer with her husband and having a conversation with Jerry (R. 71). Bobby was yet to be sentenced on a charge of being a prostitute (R. 75).

The state called next Seth Wright, Sheriff, San Juan County. The sheriff first knew Pat as a waitress at the Hole in the Rock; (R. 77), he later arrested her at the trailer at Blue Hill (R. 77).

Frank Pester, an investigator for the State Health Department V. D. Control was the next witness for the prosecution (R. 81). He investigated the activities at the trailer on the nights of December 21st and 22nd and participated in the raid on December 23rd (R. 82). He found Bobby and Pat at the trailer on these occasions (R. 82). He found that prostitution was being practiced thereat (R. 83).

The State Rested.

The defense moved for a directed verdict of not guilty or to dismiss the information and the court denied the motion (R. 87, 88). The defense called as a witness Jerry (R. 88). The witness was acquainted with the defendant, with Pat and Pat's husband and with Bobby (R. 88, 89). Jerry said that Pat came with her husband Duane to the trailer house, and that "Ida Duclo (Pat) asked me if she could come to work in the trailer as a prostitute and I said 'no'. And she asked why. And I said '*I don't want anything to do with turning a new girl out*'. And Duane Duclo stepped in and said that Ida (Pat) had worked before. *And I asked her a few questions pertaining to prostitution and she couldn't answer them.* And she started to cry and stepped out of the trailer and Duane went out with her" (R. 90). The defendant did errands for this witness while she was residing at the trailer house (R. 91). Jerry and Bobby lived at the trailer together; (R. 93) it was Jerry's trailer and she was in charge (R. 103). The defendant left clothes in the trailer house (R. 106, 107). Jerry departed, *trailer and all*, around the middle of December; (R. 104) she did not come back until the day preceding her being called as a witness (R. 105). Jerry was not in love with the defendant (R. 105) but she had called him on the telephone while he was in jail (R. 106) and had written him (R. 107), closing her letter as follows: "Well honey I better close now. Write to me please. I sure love you. Lots of love, Jerry" (R. 111). Jerry had wired the defendant for money (R. 114). Jerry expected to get the proceeds from the defendant's uranium claim; (R. 115), the friendship she had for the defendant

developed because "he came across with his money easy" (R. 112).

The defense called one Dan Gordon as a witness. Gordon was a trailer salesman (R. 116). He allegedly rented a trailer to Jerry, the rental to apply on the purchase price (R. 117). The witness stated that Jerry made all the rental payments but one; (R. 118) that the redheaded girl (Bobby) made the last payment which was made on December 20th (R. 118). On cross examination Gordon said that Jerry put up collateral for the trailer, (R. 120) three diamond rings (R. 121). One was a man's ring—one and 75/100 carats (R. 122)—this ring the witness was still holding (R. 123). The record is silent as to what became of the other two—presumably Jerry did not leave the rings behind as she did the trailer.

Jerry was recalled to the witness stand for further cross examination by the state. The defendant had given Jerry the man's diamond ring as a present but for a consideration (R. 125).

Charles O. Chapman, a fellow inmate of the defendant at the Monticello bastille, was called for the defense. This witness proffered testimony to the effect that Bobby had visited the defendant at the jail and attempted to induce the defendant to plead guilty and take the pressure off so that Bobby and Pat would be turned loose (R. 125, 129). The state called Mr. Frank Pester as a rebuttal witness and the witness thought that Charles O. Chapman was standing too far away from the defendant and Bobby to have over-

heard the conversation between them to which Chapman had testified.

Upon the evidence, instructions, and argument of counsel, the cause went to the jury.

STATEMENT OF POINTS

POINT I

THE COURT DID NOT ERR IN DENYING DEFENDANT'S MOTION TO DISMISS FOR WANT OF CORROBORATION OF THE VICTIM'S TESTIMONY.

POINT II

THE COURT DID NOT ERR BY FAILING TO DEFINE TO THE JURY THE MEANING OF CRIMINAL INTENT.

POINT III

THE COURT SUFFICIENTLY INSTRUCTED THE JURY AS TO CORROBORATION OF THE VICTIM'S TESTIMONY.

POINT IV

REFUSAL OF DEFENDANT'S REQUESTED INSTRUCTIONS NO. 3 AND 4 WAS NOT ERROR.

ARGUMENT

POINT I

THE COURT DID NOT ERR IN DENYING
DEFENDANT'S MOTION TO DISMISS FOR
WANT OF CORROBORATION OF THE VIC-
TIM'S TESTIMONY.

To sustain a conviction for pandering the testimony of the victim must be corroborated. *State v. Smith*, 2 U. 2nd 358, 284 P. 2d 246. We have no quarrel with this pronouncement of the law for which defendant claims. However, there is nothing in *State v. Smith*, supra, which would indicate that the corroborative evidence required be other than that necessary under Section 77-31-18, U. C. A. 1953. Therefore, the corroboration need not go to all of the material facts as testified by the victim, nor need it be sufficient in itself to support a conviction; it may be slight and entitled to little consideration. It must connect the defendant with the commission of the offense and be inconsistent with his innocence and must do more than cast a grave suspicion on the defendant all without the aid of the testimony of the accomplice. *State v. Vigil*, . . . U. . . ., 260 P. 2d 539, and cases there cited.

What, then, in this case, is the evidence completely aside from the testimony of the victim, Pat, which connects the defendant with the offense charged?

Bobby testified that Pat was employed by the defendant at a stipulated wage only to tend bar; that for two days Pat tended bar and did not become a prostitute until

after the defendant proposed to Pat that she do so and suggested that there would be more money for Pat in it that way. Bobby testified that the defendant attended the daily needs of the trailer house and that for a period he took his meals there. Bobby was not an accomplice and her testimony needed no corroboration and was alone sufficient to prove the offense charged. *State v. Davie*, . . . U. . . , 240 P. 2d 263. But there is more.

Jerry testified that prior to Pat's employment by the defendant Pat knew nothing of prostitution and could not answer questions pertaining thereto. Jerry testified that the defendant attended to errands for her while she was residing at the trailer; that the defendant left his clothes in the trailer house when she was occupying the premises. Although Jerry claimed ownership of the trailer, she admitted that the large diamond ring used as collateral for the purchase of the trailer came from the defendant. The defense witness, Dan Gordon, testified as to the diamond ring, and as to the fact that Bobby, the redhead, made at least one payment on the trailer *after* Jerry had departed the state. There was abundant evidence to connect the defendant with the trailer house and with the goings on thereat.

There was ample competent evidence adduced from which the jury could find beyond a reasonable doubt that the defendant perpetrated the crime of pandering. When such competent evidence appears in the record, there can be no error in failing to direct a verdict of acquittal, *State v. Peterson*, . . . U. . . , 240 P. 2nd 504; or in refusing to grant a motion to dismiss. The rule applicable when a

motion to dismiss challenges the legal sufficiency of the evidence is, as stated by this court:

"The rule which must be applied upon a motion to dismiss a criminal case is that all reasonable inferences are to be taken in favor of the state, and only if the record itself reveals that no reasonable man could draw an inference of guilt therefrom is the trial court justified in taking the case from the jury." *State v. Thatcher*, 108 U. 63, 157 P. 2d 258.

In *State v. Penderville*, 2 U. 2nd 281, 272 P. 2d 195, the court said:

"It has been repeatedly held by this court that upon a motion to dismiss or to direct a verdict of not guilty for lack of evidence that the trial court does not consider the weight of the evidence or credibility of the witnesses, but determines the naked legal proposition of law, whether there is any substantial evidence of the guilt of the accused, and all reasonable inferences are to be taken in favor of the state. *State v. Levellyn*, 71 Utah 331, 266 P. 261; *State v. Thatcher*, 108 Utah 63, 157 P. 2d 258; *State v. Aures*, 102 Utah 113, 127 P. 2d 872; *State v. Peterson*, . . . Utah . . ., 240 P. 2d 504. As is pointed out in one or more of these cases, the trial court has a discretion in the case of a motion for a new trial that it does not have in case of a motion to dismiss or to direct a verdict of not guilty."

The trial court did not err in this case and could have properly done only what it did do in denying the motion for directed verdict or to dismiss the information.

POINT II

THE COURT DID NOT ERR BY FAILING TO
DEFINE TO THE JURY THE MEANING OF
CRIMINAL INTENT.

No instruction was requested of the court as to the meaning of "intent" or "criminal intent" as that word "intent" was used in Instruction No. 2 as given by the court. This court in such cases has said:

"It is the court's duty to try the issues made by the parties and not to make cases for them. We have held that where instructions are palpably erroneous to such an extent that they would, if followed by the jury, prevent a fair or proper determination of the issues, we may notice the error without exception having been taken. *State v. Cobo*, 90 Utah 89, 60 P. 2d 952; *State v. Waid*, 92 Utah 297, 67 P. 2d 647. But we are aware of no holding that the mere failure to give an instruction which might have been given but which was not requested or called to the attention of the court, and no exception taken to the failure to give it will be noticed on appeal."

State v. Peterson, supra, see also *State v. Mitchell*, ... U. ... , 278 P. 2d 618, 622.

The inquiry here then is: was the instruction so palpably erroneous that, if followed by the jury, it would prevent a fair or proper determination of the issues? We think not; specific intent was not an issue of the crime charged. The statutory offense was the *act* of inducing, persuading, encouraging or enticing the victim to become a prostitute; although all "common law crimes" consist of two elements, namely, the criminal act or omission and the mental ele-

ment the legislature may dispense with necessity for a criminal intent and punish particular acts without regard to mental attitude of the doer. *Simmons v. State*, 10 So. 2d 436, 438, 151 Fla. 778. The defendants' cause was not prejudiced by the court's failure to define the meaning of "intent"; no specific intent was necessary to constitute the offense.

POINT III

THE COURT SUFFICIENTLY INSTRUCTED THE JURY AS TO CORROBORATION OF THE VICTIM'S TESTIMONY.

Appellant claims instruction No. 11 erroneous for the reason that the instructions permitted the jury to "speculate as to what was meant by *"corroborative"* testimony. For this contention appellant relies upon no authority other than the legal definition of *"corroborative evidence"*. It has been held that:

"The word 'corroboration' is not one of technical meaning but is in ordinary use, and its meaning is generally understood, and the court is not required to instruct the jury what the word means." *Austin v. State*, 101 S. W. 1162, 51 Tex. Cr. R. 327.

The general rule appears to be that terms in common use with well understood meaning need no special definition. See American Digest System, Criminal Law, key 800(2). Further, here again, no such instruction was requested. Respondent's argument on Point II, *supra*, is equally applicable here.

POINT IV

REFUSAL OF DEFENDANT'S REQUESTED
INSTRUCTIONS NO. 3 AND 4 WAS NOT ER-
ROR.

Defendant requested the following instruction:

"You are instructed that in order for defendant to be guilty as charged in the information on file herein, the State must have shown by the evidence beyond a reasonable doubt that defendant made Ida E. Duclo, also known as Pat A. Morgan, certain promises and inducements which she relied upon and which actually tended to cause her to become a prostitute.

"If you find from the evidence that the said Pat Morgan, also known as Ida Duclo became a prostitute without any promises or inducements which caused her to become such, then you must return a verdict in favor of defendant, not guilty."

The court below was thus asked to instruct the jury that the state must prove beyond a reasonable doubt that the promises and inducements made to the victim by the defendant actually tended to cause her to become a prostitute. That is not the law in this jurisdiction and the instruction was properly refused; for:

"Success is not a necessary component of the crime." *State v. Gates*, 118 U. 172, 221 P. 2d 878.

Defendant also asked the court below to instruct the jury:

"You are instructed that in order for you to find defendant guilty of pandering, under Section

76-53-8, U. C. A. 1953, you must find that defendant's persuasions, 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 became a prostitute because of anything defendant may have said to her, but rather that she became a prostitute upon her own volition and that she engaged in prostitution 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."

This instruction was objectionable for the identical reason; it mattered not whether the defendant's persuasion, inducements or suggestions did in fact cause the victim to become a prostitute any more than it mattered whether she became one or not.

Each party is entitled to his theory of the case *which is supported by competent evidence*, *State v. Newton*, 105 U. 561, 144 P. 2d 290. An examination of the record in the case, however, does not disclose *any testimony or other evidence* which would sustain defendant's theory that the victim was already a prostitute; the presumption is that she was chaste before the defendant induced her to become a prostitute. *State v. Smith*, *supra*. The defendant's own witness, Jerry, testified that the victim knew nothing of prostitution even though she, Jerry, claimed that the victim's husband had contended that Pat had "worked" before. There is no merit to the contention that the court should

have instructed the jury on the defendant's theory of the case in the absence of substantial evidence to sustain such theory.

CONCLUSION

The verdict should be affirmed.

Respectfully submitted,

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