

1965

The State of Utah v. Harold Nielsen and Jane Baxter : Appellant's Brief

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In the Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff and Respondent.

vs.

HAROLD NIELSEN and
JANE BAXTER,
Defendants and Appellants.

Appeal No. 10342

APPELLANT'S BRIEF

Appeal from the District Court of Cache County, Utah

Honorable Lewis Jones, District Judge

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TABLE OF CONTENTS

Subject	Page
Nature of Case	1
Disposition in Lower Court	1
Nature of Relief Sought on Appeal	1
Statement of Facts	1
Statement of Points	3
Point 1. That Sub-Section 5, Section 76-12-1, U.C.A., 1953, is unconstitutional because of vagueness and uncertainty	3
Argument	3
Conclusion	8

Authorities Cited

Statutes Cited	Page
Utah Code Annotated, 1943, 103-11-1(5)	2,3
Utah Code Annotated, 1953, 76-12-1(5)	1,2,3,5,7 & 8
Utah Code Annotated, 1953, 76-28-3	5

Cases Cited

Connally vs. Gen. Const. Co., 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322	6
Musser vs. State, (1948) 333 U.S. 95, 68 S.Ct. 397, 92 L.Ed. 562	3,4
State vs. Musser, (1950) 118 U. 537, 223 P.(2d) 193	3,6
State vs. Packard, (1952) 122 U. 361, 250 P(2d) 561	6

Texts Cited

39 Am. Jur., Obstructing Justice, 501	5
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In the Supreme Court of the State of Utah

THE STATE OF UTAH,
Plaintiff and Respondent.)

vs.

HAROLD NIELSEN and
JANE BAXTER.)
Defendants and Appellants.

Appeal No. 10342

APPELLANT'S BRIEF

NATURE OF CASE

This case involves a prosecution by The State of Utah charging defendants with criminal conspiracy to commit an act for the perversion or obstruction of justice or the due administration of the laws.

DISPOSITION IN LOWER COURT

The jury found defendants guilty as charged.

NATURE OF RELIEF SOUGHT ON APPEAL

For a determination that sub-section (5) of The Criminal Conspiracy Statute (76-12-1) is unconstitutional because of vagueness and uncertainty.

STATEMENT OF FACTS

The Complaint as originally filed charged Defen-

dants and Appellants with "the crime of conspiracy follows: (indictable misdemeanor) that the said defendants did then and there, wilfully, unlawfully conspire to commit an act for the perversion or obstruction of justice or the due administration of the laws."

At the Preliminary Hearing, Defendants moved to dismiss the Complaint on the grounds that Sub-Section (5) of Section 76-12-1, U. C. A., 1953, was unconstitutional. This Section reads as follows:

"If two or more persons conspire; commit any act injurious to the public health, public morals, or to trade or commerce, or the perversion or obstruction of justice, or the due administration of the laws; they are punishable by imprisonment in the County Jail not exceeding one year, or by fine not exceeding \$1,000.00."

This Section is identical to Section 103-11-1, U. C. A., 1943, Sub-Section (5).

This motion was denied and the State amended the Complaint by changing the period after the words "laws" to a comma, and adding:

"In that the Defendants did conspire to and procure a dismissal of the charge of the State of Utah vs. Vincent Guercio by Defendant Jane Baxter, changing her statement of the facts of said case for money consideration passing to Defendant Guercio to Defendant, Jane Baxter."

The Defendants were bound over to District Court. The Information charged the Defendants with the crime

of Conspiracy in substantially the same language as the complaint, as amended, but at the trial, was amended by striking the words "perversion or."

At the Arraignment and again at the trial, Defendants' Motion to Dismiss or Quash the Complaint or Information were denied.

The jury found the Defendants guilty of Criminal Conspiracy, an indictable misdemeanor, as charged in Information.

STATEMENT OF POINTS

1. That Sub-Section (5), Section 76-12-1, U. C. A., 1953, is unconstitutional because of vagueness and uncertainty.

ARGUMENT

The above provision has been before this Court before, under its prior designation, Sub-Section (5), Section 103-11-1, U. C. A., 1943. *State vs. Musser* (1950) 118 U. 537, 223 P. (2d) 193.

Also, it has been before the Supreme Court of the United States for consideration as to its constitutionality. *Musser vs. State of Utah*, (1948), 333 U. S. 95, 68 S. Ct. 397, 92 L. Ed. 562.

In both instances it was declared void for vagueness and uncertainty.

True, the specific words before this Honorable Supreme Court and the Federal Supreme Court in said

cases were "To commit any acts injurious to the public morals"; while in the case before us now, the words are "To commit an act for the perversion or obstruction of justice or due administration of law". If the State attempts to capitalize on this distinction, is it a distinction of substance? Appellants say no. Nor does it appear that Mr. Justice Jackson, who wrote the opinion in the United States Supreme Court declaring this law void, felt that there was a distinction. He says in the Musser opinion:

"The Supreme Court considered that the prosecution was under Paragraph (5) of 106A, which, so far as relevant defines conspiracy, to commit any act injurious to the public health, the public morals, or to trade or commerce or the *perversion or obstruction of justice or the administration of the laws . . .*" (Emphasis ours). It is obvious that this is no narrowly drawn statute. We do not presume to give an interpretation as to what it may include. Standing by itself, it would seem to be warrant for conviction for agreement to do almost any act which a judge and jury might at the moment find contrary to his or her notions of what was good for health, morals, trade, commerce, *justice or order.*" (Emphasis ours)

Further the Honorable Justice Jackson referring to said statute stated:

"This led to the inquiry as to whether the statute attempts to cover so much that it effectively covers nothing. Statutes defining crimes may be void in their purpose if they do not provide some reasonable standards of guilt."

Under the common law, there was a crime known as Obstructing Justice. 39 Am. Jur., Obstructing Justice, § 500 et seq. There are several main categories under this Chapter, the main ones being Influencing Testimony, Obstructing or Resisting Officer in Performance of his duties, and Harboring Criminals. These common law crimes were apparently codified in statutory form in Article 3 of Chapter 28, Title 76, (Penal Code) U. C. A., 1953, under Crimes Against Public Justice. In this Article, the elements constituting each crime are spelled out in detail, as they should be. But, Defendants are not charged with any of these statutory crimes, nor are they charged with Criminal Conspiracy to Commit a Crime of this nature or any other nature, which would be an Information under Sub-Section (1) of Section 76-12-1, U. C. A., 1953.

Defendants are charged with the commission of an act for the perversion or obstruction of justice or the due administration of the laws, which means they are charged with something other than the commission of a crime defined in our Penal Code

Thus, "perversion or obstruction of justice or the due administration of the laws" must stand on its own two feet as a sufficiently definite term required of our criminal statutes to meet the challenge of unconstitutionality because of vagueness and uncertainty.

"Our problem here is to determine whether the broad sweep of that general language, in view of

the whole context of that statute and our statutes and common laws and the history and background of the enactment of that statute may be by construction limited so as to define the offense therein denounced so as 'to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused' under that sub-division. *Musser v. State*, 333 U. S. 95, 68 S. Ct. 397, 398, 92 L. Ed. 562.

State vs. Musser, supra at page 193.

In *State vs. Packard*, (1952), 122 U. 361, 250 P (2d) 561, a later case, this Honorable Court had occasion to spell these requirements out even more in detail. Quoting from *Connally vs. General Construction Company*, 26 U. S. 385, 46 S. Ct. 126, 70 L. Ed. 322, this Court said:

“ * * * a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. * * * ”

And further on in the same case:

“ The limitations of language are such that neither absolute exactitude or expression nor complete precision of meaning are to be expected, and such a standard cannot be required. On the other hand there is no disagreement among the courts that where a rule is set up, the violation of which subjects one to criminal punishment, the restriction upon conduct should be described with sufficient certainty, so that persons of ordinary intelligence desiring to obey the law, may know how to govern

themselves in conformity with it, and that no one should be compelled at the peril of life, liberty or property, to speculate as to the meaning of penal statutes.”

It might be easy at this point to slip into a miscue by over simplification of the matter with the reasoning that since “obstructing justice” was a crime at common law, the statute before us is definite enough to withstand the attack it is under. But, the point Defendants emphasize is that the Utah Legislature has codified this common law crime into Crimes against Public Justice, and if one of these specifically enumerated crimes were involved, the Defendants could have been charged with either the specific crime under Article 3 of Chapter 28, Title 76, Utah Code, or for criminal conspiracy to commit such a crime under Sub-Section (1) of 76-12-1, Utah Code. They were not.

Obviously, “perversion or obstruction of justice or the due administration of laws” means something else than the common law crime of obstructing justice or its statutory counterpart, a crime against public justice.

This leads us right back to the language of the United States Supreme Court when it said, “It is obvious that this is no narrowly drawn statute,” going on to point out that, “Standing by itself, it would seem to be warrant for conviction for agreement to do almost any act which a judge and jury might at the moment find

contrary to his or its notions of what was good for health, morals, trade, commerce, justice, or order.”

In fact, a Defendant charged with crime discussing with his wife the desire of having his attorney approach the prosecuting authorities for a postponement of his trial for some reason that may be to his advantage, real or fanciful, could be considered by some to be involved in an act of obstructing justice.

The Musser cases were handed down in 1950. Since then the Legislature has done nothing to rectify the defect in the statute, and no amendment has been made to date. Nor has there been any further decision from this Honorable Court which has in any manner or form changed this prior opinion.

CONCLUSION

Defendants respectfully submit that Sub-Section (5), Section 76-12-1, U. C. A., 1953, is unconstitutional and should be so declared by this Court.

Dated this 20th day of October, 1965.

Respectfully submitted,
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