

1960

## State of Utah v. Ray J. Smith : Brief of Respondent

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

— vs. —

RAY J. SMITH,

*Respondent,*

*Appellant.*

Case  
No. 9260

**FILED**

SEP 29 1960

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Clerk, Supreme Court, Utah

## BRIEF OF RESPONDENT

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

*Respondent,*

— vs. —

RAY J. SMITH,

*Appellant.*

} Case  
No. 9260

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## BRIEF OF RESPONDENT

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### STATEMENT OF FACTS

The defendant-appellant in this matter was subpoenaed to appear and testify before the Davis County Grand Jury investigating polygamy. He testified on the 10th day of September, 1959. On October 14, 1959, an indictment was returned by the Grand Jury, charging the defendant with perjury in the second degree. Upon arraignment, defendant plead "not guilty" and was tried on January 19th and 20th, 1960. Prior to the trial, on October 20, 1959, defendant, through his counsel, filed a motion for continuance and change of venue (R. 7), which was supported by twenty-four affi-

davits (R. 8. and 9). The motion was denied on November 3, 1959. (R. 15)

The case was submitted to the jury on January 20, 1960, on four counts (T. 172 through 174). The jury returned the verdict of "guilty" as to the first two counts (T. 209 and 210). Subsequently, on February 29, 1960, defendant filed a notice of appeal.

## STATEMENT OF POINTS

### POINT I

THE DENIAL OF APPELLANT'S MOTION FOR CONTINUANCE AND A CHANGE OF VENUE WAS A PROPER EXERCISE OF THE TRIAL COURT'S DISCRETION AND, ACCORDINGLY, NOT ERROR.

## ARGUMENT

### POINT I

THE DENIAL OF APPELLANT'S MOTION FOR CONTINUANCE AND A CHANGE OF VENUE WAS A PROPER EXERCISE OF THE TRIAL COURT'S DISCRETION AND, ACCORDINGLY, NOT ERROR.

Respondent notes that there is neither a Statement of Facts nor Statement of Points itemized in appellant's brief. A reading of appellant's brief, however, as a whole, indicates that he alleges error on the part of the trial court in refusing to grant his motion for a change of venue prior to the trial of this case on the grounds that a fair and impartial trial could not be had in Davis County where the action was heard.

Appellant filed in support of said motion twenty-four affidavits (R. 8 and 9), which are mimeographed forms printed on the reverse side of letterheads of the attorneys for appellant and signed by citizens of Davis County. While appellant's brief mentions adverse newspaper accounts and publicity, no such material appears in the record.

Respondent contends that this fact situation is controlled by the ruling of this court in the case of *State v. Green* (1935), 86 U. 192 at page 202, 40 P. 2d 961 at page 966. There this court held that the matter of granting a motion for change of venue is in the discretion of the trial court. Since in this case appellant-defendant assigns no specific abuse of discretion, the denial of his motion by the trial court should be affirmed. The pertinent language of the *Green* case is as follows:

“Prior to the trial of this cause in the court below, defendant moved for a change of venue upon the alleged ground of the bias and prejudice of the citizens of Davis county and particularly those who were likely to be selected as jurors. Two affidavits, one by counsel for the defendant and one by a resident citizen of Davis county, were filed in support of the motion. The state resisted the motion and filed counter affidavits. The motion was by the court denied. Such ruling is assigned as error. The record before us contains all of the questions and answers of the jurors touching their qualifications to act in the trial of this cause. The examination shows that many of the jurors had read or heard something concerning the cause about to be tried, but, so far as it appears, no serious difficulty was experienced in securing a jury. The matter of granting or refusing to grant

a change of venue is largely in the discretion of the trial court. This court will not interfere with such discretion in the absence of a showing that it has been abused. State v. Haworth, 24 Utah 398, 68 P. 155; State v. Carrington, 15 Utah 480, 50 P. 526; State v. Riley, 41 Utah 225, 126 P. 294; State v. Cano, 64 Utah 87, 228 P. 563; State v. Kukis, 65 Utah 362, 237 P. 476; State v. Christensen, 73 Utah 575, 276 P. 163. The record fails to disclose an abuse of discretion by the trial judge in refusing to grant a change of venue.”

The transcript discloses on pages 9 through 40 that the jury was impaneled and questioned; that counsel for appellant-defendant had ample opportunity to interrogate the prospective jurors touching their qualifications to act; and that he did in fact pass the jury for cause.

## CONCLUSION

Accordingly, respondent requests this court to affirm the court below.

Respectfully submitted,

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