

1965

In the Matter of Ronald Lee Kittredge : Brief of Appellant

Utah Supreme Court

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Gardner Tufts Kittredge; Appearing for the Defendant; Phil L. Hanson; Attorney for the Respondent;

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IN THE SUPREME COURT
OF THE STATE OF UTAH.

UNIVERSITY OF UTAH

OCT 15 1965

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In the matter of

Ronald Lee Kittredge,

A Minor over the age of
14 years;

Defendant and
Appellant.

Case No. 10150.

APPELLANT'S BRIEF.

Appeal from a Judgement of the Juvenile
Court, District 11, in and for
Salt Lake County, Utah.

Honorable, Regnal W. Garff, Judge.

Gardner Tufts Kittredge
918 South 5th East,
Salt Lake City, Utah.
Appearing for the
Defendant.

Phil L. Hansen, Esq.,
Attorney General of the
State of Utah,
State Capitol,
Salt Lake City, Utah,
Attorney for the
Respondant.

FILED

AUG 5 - 1965

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IN THE SUPREME COURT

OF THE STATE OF UTAH.

In the matter of

Ronald Lee Kittredge,

A minor over the age of
14 years

Defendant and
Appellant.

Case No. 10150.

Appellant's Brief.

STATEMENT OF NATURE OF CASE.

This action was brought by and for the State of Utah, against the Appellant charging him with a Felony.

DISPOSITION IN JUVENILE COURT.

The Court found the defendant guilty and sentenced him to an indefinite term in the Utah State Industrial School.

STATEMENT OF FACTS.

The defendant attended Irving Junior High School and among the students there was a certain girl, also over the age of Fourteen and on the 19th day of February, 1964 she was brought to the home of the defendant to listen to some records that the

defendant had. His Grandparents were at home at the time. He introduced the girl and stated the girl wished to hear some of his records. The girl removed her coat and laid it upon the sofa. They proceeded downstairs to the room in the basement where the record player and records were. At this time the grandfather was in the basement repairing a washing machine. A tenant also occupied an apartment down there. There were some small children running around. About a half hour later the defendant and the girl went upstairs to leave, the grandmother told the defendant not to walk the girl all the way home. While they were gone, Officer Goodrich came to the house of the defendant and inquired about the girl. He made some statements and left. It has been testified that the girl was "picked up" a little after 7.30 P.M. The next morning the defendant was picked up and taken to the detention center. The defendant was held until March 13th, 1964 when the trial was held. The girl left the defendant's

home about twenty minutes to five. Mrs. Livings testified that it was a little after seven-thirty when her girl came home with the police officers. She further added that there was mud on the back of her coat, she was crying and quite shaky. Upon advise of the police officer she took her to the doctor for examination.

The defendant was apprehended the next morning at the school on a pick-up order being charged as a delinquent, as follows:

On February 20, 1964, said juvenile did have sexual relations with D.... N.....; further to accomplish this he did use force." Defendant was detained until March 12, 1964 at which time a trial was held in the Juvenile Court; there was no written notice personally served upon the defendants paren as required by Law. The Court was without Jurisdic

ARGUMENT.

In Code, 55-10-15; 55-10-16; 55-10-17; specifies the requirements and manner in which said summons or notice should be served.

(4)

**"SUMMONS SHALL BE SERVED PERSONALLY
BY DELIVERY OF ATTESTED COPIES TO
THE PERSONS SUMMONED."**

It has been held that an appearance does not waive the said service. To do so it has to be an INTENTIONAL RELINQUISHMENT of a known right and there can be no waiver unless, the person against whom the waiver is claimed had full knowledge of his rights. Neither will waiver be implied from slight circumstances, but must be evidenced by an unequivocal and decisive act clearly proven. To be valid a waiver must be made intentionally and voluntary. The existence of an intent to waive in question of Fact, must be made to clearly appear. (Hopkins v No. Nat. Life. 41-Wash-592; 83-Pac-109-20-21.)

Meyers -vs-Collette; 1-U-2nd-406; Enumeration of Private Laws forbidden; UTAH CONSTITUTION, Article VI- Section 26; There is no record in the proceedings to show the date, place and time in which said SUMMONS was served upon whom; Article 1- Section 9, provides no Cruel and unusual punishment and a person is not compelled to testify against themself

POINT 11.

The Testiment clearly shows many discrepencies, which in accordance with proper Legal Proceedure should have been weighed in the favor of the defendant; the mother of the girl testified to an unusual set of circumstances. The mother testified that her husband called her about a quarter to four at Woolworths, where she was employed and told her that her daughter had not come home from school and that she should come home as soon as possible, (Page 7.) At the Trial she said that after some searching and inquiry she called the Police, "about 4 minutes to (inaudible.)"

? Well, at this time did you check (inaud.).

A. I took (inaud.) her down to the Doctor.

? What time did you (inaud.)

A. (inaud.)

? Did you have the child examined at this time.

A. Yes sir.

? What was the child's appearance Physically, were there any (inaud) on her body.

A. She had mud on the back of her coat and dress and her shoes were all muddy.

P. 9

Q. Did she have (inaud.)

A. Well, I had it operated on about three or four weeks before, the right breast, there was a slight bruise on it then.

Q. Had you seen her before this occasion.

A. Yes.

Q. You testified that your daughter came back she was crying.

A. Well, she was quiet, but she was kind of shaky she had tears in her eyes.

Q. Was she that way for long.

A. She was shaking quite a bit down at the Doctor's office.

P. 10

Cross examination.

Q. What time does she usually get home from school.

A. She usually comes straight home from school.

Q. What time is that.

A. About five minutes after school.

Q. What time would that be.

A. What?

Q. 2-3-4-5- what.

A. That gets off at 3.30 and she comes right straight home after school.

(7.)

A. Inaud.)

Page 9.

9. Is she always home at 3.40.

A. She's always right straight home after school.

9. What time did she get home.

A. A little after 7.30.

1 How do you know.

A. (Inaud.) her father.

Cont'd. P. 10.

7 Where else did you call.

A. Mrs. Kittredge.

1. No one else.

A. (insud.)

1. What time of day, 2-3-4-5.

A. Well it was after 5, right around like that.

THE ATTORNEY FOR THE PEOPLE OF THE STATE OF NEW HAMPSHIRE, AS THEIR ITNESS THE GRANDMOTHER OF THE DEFENDANT, and by so doing become bound with the answers to the questions.

P. 13.

7. Was Ronald at this house on the 19th of February with ?

A. Yes sir.

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and said, "Ronald, introduce your girl friend"
and he introduced her as D. . . .
and she said "Hi", Ronald said that he wanted
to play some records
(rest immaterial.)

P. 14

Q. Now Mrs. Kittredge, when the two youngsters
left did they come up from the basement,
around 5.30

A. Yes Sir.

Q. Now was the girl D . . crying at the time.

A. No Sir, she was just as level headed and
non-responsive as anything, she was just
the same as she went down.

Q. What about her coat.

A. Her coat was just as neat as it was when she
went down, she took it off and laid it down
on our couch in our living room, she picked
it up and they started to walk out the door.

Q. Did she say anything to you.

A. Not a word - not a word.

Q. The only conversation that was had between
you and the youngsters was that you told
Ronald to walk her part of the way home.

A. Thats right.

Q. And during the period of time when the children
were in the basement did you hear any crying
or anything or any

A. Nothing Sir (rest immaterial.)

P. 21.

(Cross-examination of Officer Denis Goodrich.)

Q. Now you indicated that when you saw the girl at the home of Mrs. Livings that she was quiet and reserved, was she crying.

A. No.

Q. (Inaud.)

A. Well its hard to describe, she just had her head down and didn't want to talk.

Q. What about the appearance of her clothing.

A. I don't recall the appearance of her clothing. she was wearing a coat and (inaud.)

Q.

Q. Were you there when she arrived.

A. I was there before she arrived. The time the officer picked her up he called me on the air and told me that he had picked her up. I drove directly to her home.

Q. Did you observe any mud on her coat.

A. No, I didn't, it was dark outside, she went in the house and I talked to the other officer on the porch.

Q/ Did you go inside the house.

A. Yes, I did, she sat down in the arm chair and I didn't examine her any better then, just to look at her.

Q. Did you see any messy clothing or anything out of place or any mud on her.

A. Not any mud any place.

P. 22.

After being duly sworn in by the Court
the direct examination of the girl, D..N..
continues:

- Q. - - - (immaterial) now I want you to tell
us what happened after you went to his house
after school. I want you to tell us what hap-
pened after you got to his house.
- A. Well we went to his house and we went down
the basement, then he played some records,
then he told me to lie down on the floor
(inaud.)
- Q. Then you went to his house and went down the
basement did anyone else go down besides you and
him.
- A. No.
- Q. Just you two.
- A. Yes.
- Q. Do you recall what you were doing all that
time.
- A. Uh huh.
- Q. Now what about the door, was it closed.
- A. Uh huh.
- Q. I didn't hear you, D. . . .
- A. It was closed, he closed it when we went
in there.
- P. 23.
- Q. Now after he closed the door what happened.
- A. After he closed the door he (inaud.)
- Q. Now after he closed the door he (inaud.)

A. Yes.

?. Did you say anything then.

A. Yes.

?. What did you say

A. (inaud.)

?. Then what did you say, do you remember.

A. (inaud.)

?. Did you take your blouse off or did he take it off.

A. (inaud.)

?. After your blouse was off, then what.

A. Then he told me to (inaud.)

?. What did you think about that.

A. Nothing.

Judge. Could you speak a little louder, D

?. Did you tak off the rest of your clothes.

A/ Yes.

?. Did he help you.

A. Yes.

?. What did he do.

A. He undid the buttons (inaud.)

?. I can't hear you D

A. He took my blouse off (inaud.) then.

?. W (inaud) did you take
a or just part of them

Cross examination.

P. 28.

Q. Did you get your clothes dirty.

A. No.

Q. Did you get your mothers coat muddy

A. No, just my shoes.

Q. Just your shoes, where did you get your shoes muddy.

A. (Inaud.)

Q. Now you played nasty down there didn't you, Is this the first time you played nasty.

A. Uh huh.

Q. Did you know what Ronnie was doing.

A. Yes.

Q. Did Ronnie hit or slug you that day.

A. Yes.

Q. Where did he hit you.

A. On my stomach.

Q. Why did he do this.

A. (Inaud.)

Q. Do you know where he hit you, was it at his house or at the apartment or at school or where was it.

A. He hit me in the apartment.

Q. He didn't hit you at his house did he.

A. No.

Q. 29

Q. Did it hurt.

A. Yes.

Q. Did you get mad.

A. Yes.

Q. Now when you took off your clothes down the basement and he got on top of you, how long was he on top of you.

A. It wasn't long.

Q. Was it a few seconds.

A. Yes.

Q. Did he put his thing between your legs or did he put it right in you.

A. Between my legs.

Q. He just put it between your legs, huh.

A. Yeah.

Q. Did he ever put it in you when he was in that position.

A. Yes.

Q. He did both.

A. Oh huh.

Q. Did you get all messy.

A. Oh huh.

Q. Where, on your clothes or on your legs, where did he get you all messy.

A. On my legs.

Q. Did it hurt you when he put his thing in you

A. Yes.

Q. Now when you left the house did you see Ronnie's family.

A. Just his grandmother.

Q. Did you say anything to her.

A. No.

Q. Why didn't you tell his grandmother about it.

R. 30

A. He told me not to tell anyone anything.

Q. (inaud.)

A. Yes.

Q. Now how far did you walk before you saw this apartment.

A. Not too far.

Q. Were you crying during this period.

A. Yes.

Q. Then why did you go into this apartment with him.

A. (inaud.)

Q. Who wanted to go in this aptment.

A. Me and Ron.

Q. Did you both want to go in.

A. Uh huh, (inaud.)

Q. Then you went in the apartment.

A. Yes.

Q. Were they opened.

A. Yes.

Q. What did Ronnie do.

A. (inaud.)

Q. About when.

A. (inaud.)

Q. Did you take all your clothes off.

A. Yes.

Q. Where did - did you lay down on the floor.

A. Yes.

Q. What was on the floor, anything.

A. Just dirt.

Q. Dirt in the apartment.

A. Uh huh.

P. 31

Judge: Were they new apartments under construction,
did you know.

Q. Now when he did this, this time, when you played nasty, did he put it between your legs or did he put it in.

A. He did both.

Q. He did like the first time.

A. Yes.

Q. And did you get messy.

A. Uh huh.

Q. On your legs again.

A. Uh huh.

Q. Then you went home, huh.

A. Yes.

Q. What'd you tell your mother when you got home.

A. I told her what Ron did.

Q. What did you tell her.

A. That he played nasty.

Q. That'll be all D

P. 33

Officer Eskerridge called by the State.

Q. Where did you pick the boy up.

A. Irving Jr. High School.

Q. And where did you take him.

A. To the Detention Center.

Q. Where is that - did you notify his parents.

A. His

P. 34.

Q. Do you usually ask these boys a few questions without asking if they want their father or parents in.

A. Yes.

Q. Did you tell the boy that anything he might say might be used in Court against him.

A. I did.

Motion by Mr. Frandsen, Atty. for the Defendant.

I (inaud.) by a boy 14 or 15 years by telling him that he (inaud.) without asking for his father.

Judge. Motion denied.

P. 34.

Attorney for the State announces that he would like to call Mr. Cooke to the stand.

Mr. Frandsen, Attorney for the Defendant objects; upon the grounds that he requested that all witnesses in the matter be excluded from the Court until called to testify.

Judge. Swears in Cooke.

Cooke testifies that he talked to defendant on Feb. 24th, 27th, Mar. 4th.

Mr. Frandsen objects to his talking to the boy without parents.

No decision.

Mr. Frandsen examines Mr. Cooke.

Q. Is this nominal procedure just to go ahead and talk with them without asking for their parents.

A. In the Detention Center, yes.

Q. Regard

P. 45.

Q. Even if they're 6 or 7 years old you do it.

A. I don't handle the 6 or 7 year olds.

Q. What age.

A. 13 on.

Q. 13 year old boys, you take them in a room and ask them these questions without asking them if they want their parents, is that right.

A. Yes.

Q. Even if they're scared and fearful.

A. Not as a prosecutor, as a friend.

Q. So you give them this appearance that your friend and that you want them to give the whole story to you.

A. Yes, I do.

Q. Did you tell Ronnie that whatever he might say that you might come back at a later date and testify against him.

A. I told Ronnie that I wanted the truth so I could help him in the long run.

Q. How could you help him in the long run.

P. 46.

A. If the truth is brought out at the present time then the subject wouldn't be brought up again.

Q. Did you tell him that maybe two weeks from now there would be a hearing on this and I may have to testify to.

A. I told him there would be a hearing and all I want to say is that I was straight so that would be correct.

47.

Q. Did you tell him at the time that at a hearing you would testify against him.

A. No I didn't, no.

Objection by Mr. Frandsen.

I think this testimony should be stricken as to the conversation. I think a boy at his age without asking for his parents, without asking for an Attorney, having him tell the truth put him in a false sense of security, and then give a statement and come back afterwards and testify against him. I don't think that's fair and I think this testimony should be stricken he shouldn't be able to testify.

Judge.

I deny this motion on the same basis that I did the previous time. I might add this, that the Juvenile Court handles children from birth until up to eighteen and this is common procedure and I feel it unreasonable to expect for example if you were talking to a seven or eight year old about a complex situation at home to have the parents present, (inaud).

Mr. Frandsen.

I can see it in that situation and I think there's a point, but if this was charged with stealing apples it would be something else but when charged with intercourse with force, I think this is in a - in the Criminal Statutes a capital punishment and he should be entitled to at least have his parents there even without an Attorney.

Judge.

Well Mr. Frandsen, I'll deny your motion. I'll send you to the Juvenile Court in Utah.

Mr. Frandsen;

I know the petition and what's in the Constitution.

Judge.

Well (inaud.)

The prosecution continues the examination. ^{at}

P. 18. ^{of all}
I ^{in the} ^{would}

1. Continue if you will the question I put to you about what was in the conversation.

A. I asked Ronnie to relate in his own words exactly what had happened, banning anything he had mentioned previously, to make sure that it was the whole truth. He said that he had been sitting with D . . . in a movie at school. She had asked him if he had any records that she could listen to and he said "yes," he told her he could only let her listen to two, they were Elvis Presley records, so after class was out they went to the Kittredge home and proceeded to listen to the records. He said that the door was open while they were in the room. He said that the grandfather was out working on the washing machine and there was a little boy running around in, and out and he said, if your going to do anything you won't do anything with people running around like that. He told me that while they were listening to records they were sitting together on a box, that for a minute he had to go out and listen to his grandfather, and I asked him if at any time the girl had taken her clothes off - - - - - with the

Mr. Frandsen;

I have another objection I'd like to make at this time. The State has indicated that it has six or seven more witnesses and I made the motion that all of them be excluded and I think Mr. Cooke has sat here and heard everyone testify. For him to come back on a rebuttal as a witness is unfair to this boy.

Mr. Avery.

I hadn't anticipated calling him.

Mr. Frandsen.

Well I think your wrong bringing it up at this late date and have him testify after he's heard - a - make - a composite of all the testifying he's heard, I think he should have been excluded in the first instance.

P. 49

I don't think he should be in here for the purpose of tying loose ends of who didn't testify what way, he comes in and makes a summary of what happened.

Mr. Avery.

I think he's here to testify of the conversation between him and Ron. I did not ordinarily anticipate putting this boy on the stand. I don't think - - -

Mr. Frandsen.

I think its quite obvious that the boy himself is going to testify and I don't see any reason for Mr. Cooke being here in the first place.

Judge.

As long as Mr. Cooke doesn't testify to anything other than this conversation with the boy, I'll permit it.

Mr. Frandsen.

Well I think its going to be hard to determine what he's heard for two and one half hours this morning from what his conversation was three weeks ago. Subconsciously he's going to (inaud) what he's heard this morning, its impossible to say.

Mr. Avery.

I really don't think there's that much difference between (inaud) he's an officer of the Court (inaud). He's closely enough related to it that he's not going to be prejudiced to it. He's just going to testify only to the conversation that doesn't include any other conversation that he heard this morning. The only possible conflict there could be would be the testimony given by Sergeant Eskeridge.

Mr. Prandsen:

I don't think the human mind is that perfect that it can exclude that which he's heard this morning from what he's talked about three weeks ago regardless of how careful he is, he's going (inaud) his testimony.

Judge.

Go ahead with your questioning.

A. Ron stated that he went out to see his grandfather and when he returned to the room D . . . had her shoes off at the time, he asked her if she was trying to perform a strip tease or something.

P. 50

Then I asked him if any other clothes were taken off and he said "No". I asked him why the girl had said she had taken off her clothes and he said "well perhaps while I was out of the room it could happen in three minutes." Another part of this would be

Judge.

Just respond to the question.

?. Is that all that happened in that conversation.

A. No.

Library Services and Technology Act, administered by the Utah State Library.

7. Is there more to it.

1. There's more to it, he said that, one part I did not understand, on the way home he said that D.... had talked about being promiscuous with other boys. He couldn't understand why she would talk to him about it when all he wanted to talk about cars and things like that. Then other than that the conversation went on like this. The same time when that happened in the room...

7. Now this was the same day.

A. Yes, he said that a girl would have to "get him up" as he put it before he could have relations with her and he said this was something that D.... did not do. I asked him what would be the difference, he pointed out the gestures that usually used like this and when he is affected by girls like this D.... affected him like this and then I referred to the part where D.... said the he had this

Mr. Franzen.

as to the conversation you had I object to this. (inaud) now you talked later.

Judge.

I'll overrule the objection.

A. he said that he turned his head and changed the records on the machine and he was wearing a pair of pants that had a very loose zipper and that it came down by itself. I asked him if it were possible that the girl had taken the zipper down and he said "she might have while I was turned." I asked him if he couldn't tell if somebody was handling him or touching him and he said "not really because I have a strong body, if anything touches me that is cool, cold or warm-- I can't tell the remainder of the conversation as very close to what he said about (inaud).

7. Did you have conversation with him after that day?

7. (inaud.)

A. There was prior to taking him to Utah Psychological Center for testing.

7. On this occasion did you talk to him about the story or what happened.

A. Yes we went back over the his story.

7. You made him repeat the story every time you talked to him.

A. It was almost the same story, there were some changes.

Mr. Frandsen.

I object, when your summarizing three or four stories, of course there going to be discrepancies on four or five different occasions as to who was there and the time and place.

No decision by the Court.

7. You testified as to the conversation you had with him, you be heard (inaud) now you talked with him on other dates.

A. Yes sir.

7. On the twenty-fourth you (inaud.)

A. That was the twenty-seventh.

7. Now when you talked with him about it then did his testimony change or wasn't it the same the first time you talked to him.

P. 52

A. I did not discuss his testimony at this point.

7. You didn't discuss it then. Then when was the next conversation you had with him when this came up.

A. Mar

1. March fourth, at that time was it the same story he had told you at the first conversation you had with him or a different one.

A. The change at that time was like the story he told the officer. He told me that he told the officer this story as a big joke.

2. Did you go into that in the first conversation with him.

A. Yes, I did not go into the specifics, such as how his zipper was undone or how (inaud.)

3. What I'm asking you is was this conversation similar to the story he gave the first time.

A. It was similar to the story he gave the first time.

Mr. Avery.

I have no further.

Cross examination.

1. Now what story did he give you the first time.

A. That he took D.... home from school to listen to some records, they went into the basement, they went to the toom, they left the door ajar because he said that his grandfather was working outside on the washer and a little boy downstairs was running in and out. He stated that while they were listening to records he left to help his grandfather with the washing machine, when he came back D... had her shoes off and he asked her if she was doing a strip tease or something. Then he stated he didn't know how his zipper got undone but it probably happened because it was a loose zipper and she might have taken it down while he had his head turned changing the record that he had high body heat or temperature and cool touching him he can't feel it after listening to records. They went upstairs and he wall

P.53

per part way home

Q. What did he say the second time you talked to him.

A. The second conversation was just about his psychological test.

Q. The second conversation was (clinical). Was he

A. This conversation was approximately the same as the first one, but he did not tell how the sipper was down.

Q. The actually there was no discrepancy on the first and third conversation.

A. Well the third conversation he did bring up the fact that he told the officer it was a joke.

Q. Well you just went deeper into the conversation didn't you. There wasn't any discrepancies, was there. Did you discuss this with the police officer on the third conversation.

A. Yes. So we on last time talked to him. I saw glasses, he was getting

Q. What did he say then.

A. He couldn't remember.

Q. On this time he did remember something I heard

A. Yes.

Q. Do you remember consider that a discrepancy.

A. That's the difference.

Q. Did you ever tell this boy he was going to reform school.

A. I didn't

Q. Have you ever discussed reform school with him.

A. No

7. 54

Q. Have there been any discussions of when he was allowed to go home or when he could see his parents.

A. He knew he could see his parents because of visiting hours as to when he could go home he knew that this would be decided at the hearing, this was mentioned to him.

Q. Did you have a conversation with him on what was going to happen after the hearing.

A. No there wasn't.

Q. Did you have any other conversation with the boy about eye glasses.

A. I beg your pardon.

Q. Did you have any other conversation with the boy about eye glasses.

A. He mentioned to me the last time I talked to him that he needed some glasses, he was getting headaches.

Q. What did he tell you.

A. I told him that the school was going to see about getting them to me. This was something I heard from his grandmother.

Q. There was no discussion at the time about (inaudible)

A. No there wasn't.

Mr. Frandsen, That's all.

ed, it wasn't all
to it and it had
time the nail was
partly open be-
the door and I

Argument

Point III.

The testimony of the Defendant recites a different aspect in the matter; to wit: P. 35.

7. Did you have anybody with you.

A. No, but I kept telling her, I said, I said it well first you'd better go home and tell your mother where your's going I don't want her to worry about you. D... said, well she isn't home and she don't get home until around seven, no one comes home until that time, I kept on trying to tell her; I said, will you please go home and you can write a note and tell her where your's gonna be so she don't worry about you; D.... said, she don't care where I go; and I said, well I live on Ninth South and Fifth East and she said, well I can go much farther than that if I want to, That's just what she said

7. Did you tell her you wanted to listen to these records.

P. 36

A. Yes, she asked me if, right after school, when we were walking from the movies, she asked me if I would take her to my house to listen to two because (insud.)

with girls because.

7. So you went downstairs.

A. Yes.

with girls.

7. Then what happened.

A. Well, the door was partly closed, it wasn't all the way closed. The handle was in it and it had a nail through it. At this time the nail was bent over and I left the door partly open because my grandpa was outside the door and I worry about him

A. Well I put on my first big Elvis Presley record. She sat there while I was behind the table, she was sitting against the wall like this and had her head leaning (inaud.) and I said, D... is there anything the matter with you and she said no, I just (inaud.)

P. 37.

Q. Okay, now when you went down in the basement did she take any of her clothes off.

A. No.

Q. All the time you were down there she didn't take anything off.

A. No.

Q. All the time you were down there she didn't, (interruption)

A. No she didn't, she didn't take anything off.

Q. Did you do anything while, did you play nasty

A. No.

Q. Do you know what nasty means.

A. Yes.

Q. Have you played nasty with girls before.

A. No.

Q. Have you ever played nasty with girls.

A. No.

P. 38.

Q. How old are you.

A. Fifteen.

Q. No, that's all right, go on, (interruption)

1. Yes, there was an apartment and the men were working on it. There was about ten-thirty-forty men working on the apartment, there were all over in that apartment you know, each one in an apartment we walked around and I said, you renting these for and he kidded around with me I was out there every day, he said he had lowered the price every day, he said fifteen dollars, (inaudible).
2. Now the next day when the policeman came, did he pick you up at school.
1. Yes, that's the day D...
2. And what did he have the car with him.
1. Yes.
2. How did you get in a conversation with the policeman.
1. No, they had two more boys and they brought them up to this Highland School, they were you know playing hockey from school. The guy said the next time we come dressed up like that, that he would pick them up he said to the two boys.
2. Well what did they say to you.
1. That.
2. Did you ask them why they picked you up.
1. Yes, they said well they didn't tell me but they said your going to be brought down to the detention home and I said well will you let my mother know so she won't worry.
2. You asked them that.
1. Yeah, I said let my dad and mother or grandmother know so that they won't worry over me.

- A. No, I have a policeman come to my school and bother me about things I didn't do. I proved them.
- Q. You heard the officer say that when you were down in the basement that D... took her clothes off, did you tell him that.
- A. No, I told him that I, I was telling him the story that I told my mother and they say they told you that D... said first before they told me, tell me what you did, then I told my story and they said, are you sure you didn't push her against the wall, that's the way D... said I did it.
- Q. Said you did what.
- A. Well this is the way they told me what she said they said, D... said you pushed her up against the wall and I did it to her, that's all she knows and I said, Well, I didn't, I told my story, they believed me, which I had been telling the truth then D... had told them this other one that I had pushed her up against the wall and did it to her.
- Q. So what your telling us now is really the way it happened.

A. Yes.

P. 41 Cross Examination

- Q. The Sargeant's, what about the Sargeant's testimony.
- A. Well, I didn't say that to the Sargeant. I told him what I told my mother and he said, are you sure that you didn't push her up against the wall.
- Q. I'm not talking about that, I'm talking about what the Sargeant said when you were sitting here and you told him that she grabbed you and you told him that she made you do it.
- A. Yes, I told my mother and he

Father to a son, the first time I told him he said, the second time (inward) and then he said are you sure you did not push her up against the wall.

Q. All the time you were down there you did not unbutton your pants.

A. No.

Q. SHE WENT LIES ON THE FLOOR.

A. No.

Q. You never touch her.

A. No, the only time I touched her was going down stairs so she wouldn't fall.

End of Testimony.

EXHIBITS.

1. Report of,

Ray H. Barton, M.D.

Only qualified, Psychiatrist,
Psychologist, Probation Officer
and Physician.

On 2/19/64 at approximately 8.00 P.M.
D.... H.... was brought to my office for
examination.

Examination of genitalia showed no physical
violence signs. The vagina was adequate for introitus
Sperm test was positive for sperm in lower vaginal
canal. The patient was in no pain during the pro-
cedure and stated that the male counter part had made
entry vaginally.

Sincerely,

(Signed) Ray H. Barton, M.D.

2. Report of,

mit be

Utah Psychological Center.

(Due to the length of this report only pertinent portions are selected.)

"Very disturbed --- not capable of maintaining control over his impulses ----- supervision and or throughout most of his life. --- just as important however is the fact that this youngster has been able to respond to well structured situations and in such situations seem to be able to maintain a certain amount of control over his impulses. It appears --- responds to special education ---- and hopefully every effort will be made to do so. A better understanding ---- what he thinks and feels will ---- provide the Court with enough information ---- what is seen --- a long time ---- program.

3. Alleged report of preliminary inquiry.

State of Utah,
Dept. of Public Welfare.

Form 5
Rev. 5/63

From "A to S2 not material.

"1". Previous history, ref. 1 times.
Assault and Battery.

"2". (10) Disposition; Committed to State
Industrial School.

Amended to; referred to State Hospital

(On other side)

Previous history - 3-24-63, assault and
battery; N.J. 3-14-63.
Adj. by Pro. D.

On 2/24/64 he did admit having sexual
relations and stated about what he told
the police as a joke.

OWA:

Report of Case Worker:

20, 1964, the above

Character Distinctions.

He is a mentally
old.

Large nose. Face resembles prize fighter,
must be a battered around.

Personal hygiene; Body odor, Bad breath.

Appears mentally retarded, acquired name
of Varzan, yells out and beats chest
called Varzan, complains nose spit in
mouth while doing this (Report not checked
out).

It is opinion of this worker while Ronnie
does not admit sexual relations, that he did
and did use force.

Although I do not have the psychological
test results to bear this out I
do feel that Ronald Kittredge is not only
mentally retarded but he is very sick.
This condition probably greatly contribu-
ed to his home environment and the fact
that his parent seemed to be somewhat
mentally disturbed and retarded.

It is respectfully recommended that if
the allegations are found true that the
boy be institutionalized, best institution
be determined after evaluation of
psychological testing.

(signed) _____

Carlton J. Cooke, Jr.

own witnesses, the boy's name

PENDING and DECREE.

4/2/64

did become delinquent as follows:

That on or about February 20, 1964, the above child did have sexual relations with a mentally retarded girl who was 14 years old.

That the child is very disturbed emotionally and incapable of controlling his impulses and lacks ability to handle sexual feelings or control sexual impulses and in his best interests and welfare and also that of the community that he be placed in environment of close supervision and control.

POINT 111B

The statement of Dr. Ray H. Barton discloses the fact that the girl D... was not a Virgin and that his examination showed no physical violence and that there was no pain suffered while so doing. It is therefore reasonable to assume that this girl had previous experience. The testimony concerning D... was injected to attempt to sustain a serious charge: "Rape by Assault". The mother further endeavored to attempt to add the physical "assault" to further this. She also endeavored to add to the facts that her child was in great suffering and pain and additional facts. These statements are denied by the State's own witnesses. The boy's Grandmother

testified for the State and she said "page 15"

Cross Examination by Mr. Frandsen:

Q. Now was the girl D... crying at this time.

A. No sir, she was just as level headed and non-responsive as anything. She was just the same as she went down.

Q. What about her coat.

A. Her coat was just as neat as it was when she went down. She took it off and laid it on our couch in our living room. She picked it up and they started to walk out the door.

Q. Did she say anything to you.

A. Not a word, not a word.

Police officer Goodrich, also a State Witness.
Page 21.

Cross Examination by Mr. Frandsen,

Q. Now you indicated that when you saw the girl at the home of Mrs. Livings that she was quiet and reserved, was she crying.

A. No.

Q. (inaudible) cloth.

A. Well, its hard to describe, she just had her head down and didn't want to talk.

Q. What about her appearance, of her clothes

A. I don't recall the appearance of her clothes, she was wearing a coat and (inaud.)

Q. Did you see any messy clothing or anything out of place or any mud on her.

The girl D.... testified, most of the questions were leading, and many of the answers were insubstantial, but there are some that are of some use to the defendant.

Page 23.

7. Now, did he ask you to take your blouse off.

A. Yes.

7. What did you say.

A. (inaud). by Mr.

7. Then what did he say, do you remember.

A. (inaud).

7. Did you take your blouse off or did he take it off.

A. (inaud).

7. After your blouse was off then what.

A. Then he told me (inaud).

7. What'd you think about that.

A. Nothing. In you.

7. Did you take the rest of your clothing off.

A. Yes.

7. Did he help you.

A. Yes.

7. Did he have his clothes on.

A. He just his shoes.

Q. Did you see him and his pants on?

Q. Did he have his pants on.

A. (Inaud.)

Q. I can't hear you.

A. Yes.

Q. Were they zipped or unzipped.

A. They were unzipped.

Page 28.

Cross examination by Mr. Frandsen.

Q. Did you get your clothes dirty

A. No.

Q. Didn't you get your mother's coat dirty.

A. No, just my shoes.

Q. Just your shoes, where did you get your shoes muddy.

A. (Inaud.)

Q. Did it hurt you when he put his thing in you.

Q. Did it hurt you when he put his thing in you.

A. Yes.

Q. When you left the house did you see Ronnie's family.

A. Just his grandma.

Q. Did you say anything to her.

A. No.

Q. Why didn't you tell his grandma about it.

Page 30

A. He

one anything.

Q. (Inaud.)

to admit having sexual

relations with the girl.

A. Yes.

Q. Did you say.

A. Yes.

1 1 1 1 1 1 1

POINT IV.

The report of the UTAH PSYCHOLOGICAL CENTER,
PHOVS 401 AND 605D.

It starts with a very distressing and de-
pressing view. Then it reverses itself and cites
much encouragement.

POINT V.

admission of
guilt was

THE ALLEGED REPORT OF THE PRELIMINARY
INQUIRY.

1111

This was made and signed by Mr. Cooke, it
apparently was prepared from the records or files,
and not as required by Law.

that

Opposite the letter "T", it refers to
"previous history, ... ref. 1 times, assault and
battery, 3/14/63 . . . adj. by pro. d. "There was
no trial, no arrest, no summons or notice served
upon the Parents as required by Law. It was proven
that the charge was not true by a disinterested
witness.

To carry this on the records is unfair and
cruel, it further destroys the dignity of the Court.
It carries the implication of brutality and appar-
ently meant to infer that the defendant must have
assaulted the girl.

POINT VI.

A statement of which is a copy on page 41
is absolutely false. There is no testimony to
verify it.

"On 2/24/64 he did admit having sexual relations and stated about what he told Police as a joke."

The case workers report is an insult to the Human Race. He seeks to gain a conviction on the grounds that the defendant - + - -

"Has a large nose, face resembles a prize fighter that has been battered around."

"Body odor - - - bad breath." ad

"Appears mentally retarded, acquired name of TARZAN, beats chest, complains boys spit in mouth, does not check it out."

Acts as a Judge: "It is the opinion of this worker while defendant does not admit sex relations, that he did and did use force."

There is no record that he is a qualified psychologist. He attempts to Psycho-analyze the defendant.

He has decided on a question of fact that the defendant is guilty and all the Court has to do is sign the papers.

POINT VII.

The Court erred in its findings and decision.

The defendant was charged with being a delinquent as follows: "On February 20th, 1964, said juvenile did have sexual relations with D...N... Further, to accomplish this he did use force."

The decision of the Court finds the defendant delinquent as follows: That on or about February 20, 1964 the above child did have sexual relations with a mentally retarded girl who was 14 years old.

FINDINGS and DECREE.

April 2, 1964.

- - - - - did become delinquent as follows

That on or about February 20, 1964 the above child did have sexual relations with a mentally retarded girl who was 14 years old.

That the child is very disturbed emotionally and incapable of controlling his impulses and lacks ability to handle sexual feelings or control sexual impulses and in his best interests and welfare and also that of the community that he be placed in environment of close supervision and control.

There is absolutely no expert testimony that the girl is mentally retarded.

That the Court in its decision found as a matter of fact that the defendant did not use force.

This decision nullifies the charges made against the defendant, therefore the weight of evidence was in favor of the defendant and the Court should have found a decision in the defendant's favor and dismissed the case.

NOTE. It was alleged in the original charge that the police record shows the date of the alleged incident as February 19, 1964. Defense Attorney advised the Court of the discrepancy and agreed to a change of dates. The findings and decree also recite the date as February 20, 1964.

CONCLUSION.

The Appellant respectfully asks this Court to find that conviction of the Defendant in the Juvenile Court was against the weight of credible evidence. That the said Court improperly decided against the Defendant when the charge was not proven. That the said Court was without legal and lawful jurisdiction. That the Laws of the State of Utah were violated to the detriment of the Defendant. That the defendant's Constitutional Rights were Violated. That improper material was introduced into evidence containing Hearsay and Immaterial Matter/

At:

Respectfully submitted;

Gardner Tufts Kittredge,
916 South 5th East,
Salt Lake City, Utah.

For the Defendant.

10 - 10

10 - 10 - 365

10 - 10 - 365

10 - 10 - 176

10 - 10 - 177

10 - 10 - 277

10 - 10 - 177

APPENDIX OF NAMES.

In re BLANK: 112-12

Matter of BROWN: 31 - U + 473.

DRY-SALK vs BROWN: 2 - 72 - 334.

FRANK vs STATE: 7 - 72 - 245.

Re GRAHAM: 110 - U + 159.

JENSEN vs HICKLEY: 55 - U + 306.

Re JOHNSON: 110 - U - 486-489-500.

Re JONES ESTATE: 56 - U - 291.

JACOB vs STATE: 7 - U2 - 304.

Int. of K.... B.... 7 - U2 - 26.

Re LINDH: 11 - 72 - 385.

MEYER vs COMPTON: 1 - U2 - 26. also 406.

MCKENDRICK: 75 - U - 176.

MUSSER vs STATE: 333 - U - 534.

MURPHY vs ROAD: 7 - U2 - 315.

NALIA vs BAUD: 100 - U - 562.

OLSON: 111 - U - 365

STATE vs BLACK: 3 - U2 - 315.

STATE vs WHITE: 63 - U - 176

STATE vs BLANK: 3 - U2 - 47.

STATE vs OLSEN: 39 - U - 177.

STATE vs F. D. V. DADE: 14 - U2 - 47.

Article 1, section 9; no cruel treatment.
Not compelled to testify
against ones self.

Article VI, Section 26; Immigration of private
Laws forbidden.

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Plaintiff -

35-10-1: Juvenile Court is special Court of Record.
OM

UM

55-10-6; Right of Supreme Court to review evidence.



55-10-5; Jurisdiction of persons under 18 years

55-10-10, Dallas of Probation Department

55-10-13; Investigation of home life. ENT

7-10-14-15: ⁰ ¹ ² ³ ⁴ ⁵ ⁶ ⁷ ⁸ ⁹ ¹⁰ ¹¹ ¹² ¹³ ¹⁴ ¹⁵ ¹⁶ ¹⁷ ¹⁸ ¹⁹ ²⁰ ²¹ ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸ ²⁹ ³⁰ ³¹ ³² ³³ ³⁴ ³⁵ ³⁶ ³⁷ ³⁸ ³⁹ ⁴⁰ ⁴¹ ⁴² ⁴³ ⁴⁴ ⁴⁵ ⁴⁶ ⁴⁷ ⁴⁸ ⁴⁹ ⁵⁰ ⁵¹ ⁵² ⁵³ ⁵⁴ ⁵⁵ ⁵⁶ ⁵⁷ ⁵⁸ ⁵⁹ ⁶⁰ ⁶¹ ⁶² ⁶³ ⁶⁴ ⁶⁵ ⁶⁶ ⁶⁷ ⁶⁸ ⁶⁹ ⁷⁰ ⁷¹ ⁷² ⁷³ ⁷⁴ ⁷⁵ ⁷⁶ ⁷⁷ ⁷⁸ ⁷⁹ ⁸⁰ ⁸¹ ⁸² ⁸³ ⁸⁴ ⁸⁵ ⁸⁶ ⁸⁷ ⁸⁸ ⁸⁹ ⁹⁰ ⁹¹ ⁹² ⁹³ ⁹⁴ ⁹⁵ ⁹⁶ ⁹⁷ ⁹⁸ ⁹⁹ ¹⁰⁰ ¹⁰¹ ¹⁰² ¹⁰³ ¹⁰⁴ ¹⁰⁵ ¹⁰⁶ ¹⁰⁷ ¹⁰⁸ ¹⁰⁹ ¹¹⁰ ¹¹¹ ¹¹² ¹¹³ ¹¹⁴ ¹¹⁵ ¹¹⁶ ¹¹⁷ ¹¹⁸ ¹¹⁹ ¹²⁰ ¹²¹ ¹²² ¹²³ ¹²⁴ ¹²⁵ ¹²⁶ ¹²⁷ ¹²⁸ ¹²⁹ ¹³⁰ ¹³¹ ¹³² ¹³³ ¹³⁴ ¹³⁵ ¹³⁶ ¹³⁷ ¹³⁸ ¹³⁹ ¹⁴⁰ ¹⁴¹ ¹⁴² ¹⁴³ ¹⁴⁴ ¹⁴⁵ ¹⁴⁶ ¹⁴⁷ ¹⁴⁸ ¹⁴⁹ ¹⁵⁰ ¹⁵¹ ¹⁵² ¹⁵³ ¹⁵⁴ ¹⁵⁵ ¹⁵⁶ ¹⁵⁷ ¹⁵⁸ ¹⁵⁹ ¹⁶⁰ ¹⁶¹ ¹⁶² ¹⁶³ ¹⁶⁴ ¹⁶⁵ ¹⁶⁶ ¹⁶⁷ ¹⁶⁸ ¹⁶⁹ ¹⁷⁰ ¹⁷¹ ¹⁷² ¹⁷³ ¹⁷⁴ ¹⁷⁵ ¹⁷⁶ ¹⁷⁷ ¹⁷⁸ ¹⁷⁹ ¹⁸⁰ ¹⁸¹ ¹⁸² ¹⁸³ ¹⁸⁴ ¹⁸⁵ ¹⁸⁶ ¹⁸⁷ ¹⁸⁸ ¹⁸⁹ ¹⁹⁰ ¹⁹¹ ¹⁹² ¹⁹³ ¹⁹⁴ ¹⁹⁵ ¹⁹⁶ ¹⁹⁷ ¹⁹⁸ ¹⁹⁹ ²⁰⁰ ²⁰¹ ²⁰² ²⁰³ ²⁰⁴ ²⁰⁵ ²⁰⁶ ²⁰⁷ ²⁰⁸ ²⁰⁹ ²¹⁰ ²¹¹ ²¹² ²¹³ ²¹⁴ ²¹⁵ ²¹⁶ ²¹⁷ ²¹⁸ ²¹⁹ ²²⁰ ²²¹ ²²² ²²³ ²²⁴ ²²⁵ ²²⁶ ²²⁷ ²²⁸ ²²⁹ ²³⁰ ²³¹ ²³² ²³³ ²³⁴ ²³⁵ ²³⁶ ²³⁷ ²³⁸ ²³⁹ ²⁴⁰ ²⁴¹ ²⁴² ²⁴³ ²⁴⁴ ²⁴⁵ ²⁴⁶ ²⁴⁷ ²⁴⁸ ²⁴⁹ ²⁵⁰ ²⁵¹ ²⁵² ²⁵³ ²⁵⁴ ²⁵⁵ ²⁵⁶ ²⁵⁷ ²⁵⁸ ²⁵⁹ ²⁶⁰ ²⁶¹ ²⁶² ²⁶³ ²⁶⁴ ²⁶⁵ ²⁶⁶ ²⁶⁷ ²⁶⁸ ²⁶⁹ ²⁷⁰ ²⁷¹ ²⁷² ²⁷³ ²⁷⁴ ²⁷⁵ ²⁷⁶ ²⁷⁷ ²⁷⁸ ²⁷⁹ ²⁸⁰ ²⁸¹ ²⁸² ²⁸³ ²⁸⁴ ²⁸⁵ ²⁸⁶ ²⁸⁷ ²⁸⁸ ²⁸⁹ ²⁹⁰ ²⁹¹ ²⁹² ²⁹³ ²⁹⁴ ²⁹⁵ ²⁹⁶ ²⁹⁷ ²⁹⁸ ²⁹⁹ ³⁰⁰ ³⁰¹ ³⁰² ³⁰³ ³⁰⁴ ³⁰⁵ ³⁰⁶ ³⁰⁷ ³⁰⁸ ³⁰⁹ ³¹⁰ ³¹¹ ³¹² ³¹³ ³¹⁴ ³¹⁵ ³¹⁶ ³¹⁷ ³¹⁸ ³¹⁹ ³²⁰ ³²¹ ³²² ³²³ ³²⁴ ³²⁵ ³²⁶ ³²⁷ ³²⁸ ³²⁹ ³³⁰ ³³¹ ³³² ³³³ ³³⁴ ³³⁵ ³³⁶ ³³⁷ ³³⁸ ³³⁹ ³⁴⁰ ³⁴¹ ³⁴² ³⁴³ ³⁴⁴ ³⁴⁵ ³⁴⁶ ³⁴⁷ ³⁴⁸ ³⁴⁹ ³⁵⁰ ³⁵¹ ³⁵² ³⁵³ ³⁵⁴ ³⁵⁵ ³⁵⁶ ³⁵⁷ ³⁵⁸ ³⁵⁹ ³⁶⁰ ³⁶¹ ³⁶² ³⁶³ ³⁶⁴ ³⁶⁵ ³⁶⁶ ³⁶⁷ ³⁶⁸ ³⁶⁹ ³⁷⁰ ³⁷¹ ³⁷² ³⁷³ ³⁷⁴ ³⁷⁵ ³⁷⁶ ³⁷⁷ ³⁷⁸ ³⁷⁹ ³⁸⁰ ³⁸¹ ³⁸² ³⁸³ ³⁸⁴ ³⁸⁵ ³⁸⁶ ³⁸⁷ ³⁸⁸ ³⁸⁹ ³⁹⁰ ³⁹¹ ³⁹² ³⁹³ ³⁹⁴ ³⁹⁵ ³⁹⁶ ³⁹⁷ ³⁹⁸ ³⁹⁹ ⁴⁰⁰ ⁴⁰¹ ⁴⁰² ⁴⁰³ ⁴⁰⁴ ⁴⁰⁵ ⁴⁰⁶ ⁴⁰⁷ ⁴⁰⁸ ⁴⁰⁹ ⁴¹⁰ ⁴¹¹ ⁴¹² ⁴¹³ ⁴¹⁴ ⁴¹⁵ ⁴¹⁶ ⁴¹⁷ ⁴¹⁸ ⁴¹⁹ ⁴²⁰ ⁴²¹ ⁴²² ⁴²³ ⁴²⁴ ⁴²⁵ ⁴²⁶ ⁴²⁷ ⁴²⁸ ⁴²⁹ ⁴³⁰ ⁴³¹ ⁴³² ⁴³³ ⁴³⁴ ⁴³⁵ ⁴³⁶ ⁴³⁷ ⁴³⁸ ⁴³⁹ ⁴⁴⁰ ⁴⁴¹ ⁴⁴² ⁴⁴³ ⁴⁴⁴ ⁴⁴⁵ ⁴⁴⁶ ⁴⁴⁷ ⁴⁴⁸ ⁴⁴⁹ ⁴⁵⁰ ⁴⁵¹ ⁴⁵² ⁴⁵³ ⁴⁵⁴ ⁴⁵⁵ ⁴⁵⁶ ⁴⁵⁷ ⁴⁵⁸ ⁴⁵⁹ ⁴⁶⁰ ⁴⁶¹ ⁴⁶² ⁴⁶³ ⁴⁶⁴ ⁴⁶⁵

55-10-16: Manner of service of Process, and
55-10-17: proof of service.

55-10-17: proof of service

55-10-29: Felony. ^{Torrey} ^{Stiff-R} ^{endent}
^{with} ^{Direct}

55-10-32: Custody

55-16-34: Right of Supreme Court to review.

El Paso Nat'l
Lake City,

Gas Building