

1972

State of Utah v. Robert Norman Macri : Brief of Appellant

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BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

This appeal arises as a consequence of an adverse decision on the charge of contributing to the delinquency of a minor in the District Juvenile Court for Salt Lake County, the Honorable Paul C. Keller presiding.

DISPOSITION BY LOWER COURT

Appellant found himself convicted in a memorandum decision dated May 27, 1971, and sentenced to serve a period of three months in the county jail and pay a fine of \$200.00.

RELIEF SOUGHT ON APPEAL

Appellant prays for reversal of the adverse decision or to have the lower court proceeding declared a mistrial.

STATEMENT OF FACTS

Socrates, for complicated historical reasons¹, in 399 B.C. found himself accused of "corruption of the young" by the tyrants of Athens. As defense he maintained himself to be a benefactor of the city and illustrated his contention by reference to his life. Time, most would agree, has vindicated Socrates and, as he suspected when he took the hemlock stained the record of his persecutors. My own father keeps penny candy to give the children of his neighborhood and teaches them not to litter with the wrappers, though my mother fears that some day my father will be accused by some filthy minded neighbors of their own imagination.

In this appeal I ask your Honors to consider the context of the incident charged. Summer, 1970 will be remembered as the high point of the youth movement.² Institutions arise from situations: the Alameda Street Church prospered to serve the counter culture in Salt Lake City. Non-denominational, the Church represented service, helping bring healthy natural foods, harmony and ecology into vogue. The Church adapted itself to its community's changing

needs, becoming alternately or simultaneously a craftsmen's workshop, oracle, museum of contemporary history, annex to the Law school (for me and pre-
initiate friends), home.³ In Salt Lake City of
Summer, 1970, any operation so happy, attractive
and profitable received careful scrutiny from its
counter culture.⁴ About her activities at the
Church the young "delinquent" around whom the
state seeded the clouds testified she spoke
with her friends, ate some soup, and received in-
troduction to Tolkien's popular fantasy The Hobbit.
But with the same earnestness it tried to discover
subversiveness in The Hobbit, the state stressed
that the girl did not return to her parents' home.
Kafka-like in non sequitur it concludes the Church
caused or did manifestly tend to cause said child
to become or remain delinquent, though the evidence
showed the church saved her from, among other things
spending her nights in city parks and from running
off to California, and served as a neutral territory
for family conferences. That the state stoops to
level such a far-fetched charge without the fiction
of even a Palsgraf -effect can only be attributed to
the hysteria of that turbulent historical period.

Beyond the fact that there was neither criminal act nor intent, legal rationale for reversal of the lower court's hesitant⁵ ruling includes:

1) the enormous vulgarity of Joe Gee, a police officer, who intruded into court with unsworn and prejudicial comments which justify, at least, that you declare the proceedings a mistrial (Record at 109, lines 25-27 et seq.);

2) the failure of evidence - only the testimony of one police officer so distrustful of his own memory he wanted to rely on a written report, testimony inconsistent in numerous places on the crucial moment, ties me to the Alameda Street Church (Record at 56, lines 12-13, 29-30; at 62, lines 9, 29 and 30; at 63, lines 19-21; at 64, lines 18-19).

3) the due process problem raised by the vagueness of the statute. This last point is supported by the underlying principle established when this Court decided State v. Tritt, 23 U.2d 365, 463 P.2d 806 (1970), especially Justice Tuckett's dissent, by the fact that the 1971 Utah State Legislature amended 55-10-77 U.C.A. to remove run-aways from the jurisdiction of the juvenile court

which suggests legislative intent not to have the runaway stigmatized a criminal or the driver picking up a hitchhiker treated as a peddler of speed, and by the brief of my fellow accursed. I hope I have made clear that I bear no ill will for the inconvenience occasioned by this charge; rather, the situation seemed archetypal and I appreciated the opportunity denied most lawyers by the prejudices of unimaginative Bar Associations to become " . . . the last" or, as we said in Law school, a Δ .

CONCLUSION

Clearly the conduct here charged would not amount to the commission of a crime which by any definition whatsoever constitutes contributing to the delinquency of a minor. The trial failed to produce evidence against defendant, did produce an unrighteousness in form of an angry police officer uttering unsworn testimony prejudicial to defendants, and based itself on a statute of doubtful constitutionality. Wherefore defendant-appellant prays that the adverse decision of the trial court in this case be reversed, or that those proceedings be declared a mistrial.

FOOTNOTES

1. Encyclopedia Brittanica, "Socrates", Vol. 20, (1969).
2. U.S. News and World Reports devoted its Oct. 26, 1970 cover story to "Youth Unrest", both national and international. Theodore Roszak captured the fancy of the social sciences with his pop study/instant book, The Making of a Counter Culture, which, incidently, discusses the political antics of my fellow defendant.

One need only thumb through the Reader's Guide to Periodical Literature to see how the concept of youth, for example, has undergone changes in the past 5 years. No caption of "hippie" existed in 1966. In 1967 many articles commented on the movement's passing; the next two years catalogued hippie humor, heros and love-ins. Then, in 1969 and 1970 came Manson, characterized as a hippie, and the wasted paper chronicles of drug dangers and the fright stories purveyed by paranoid fear merchants. Today the hippie caption enumerates only a few stories of "Jesus Freaks".

3. History now declares the Alameda Street Church the first rehabilitation center in Utah for hard drug users simply because we never locked a door, always welcomed everyone, sharing. Today our function has been institutionalized: the Federal government alone authorized 450 MILLIONS last year to enrich those involved in drug rehabilitation. The Alameda Street Church housed a thousand homeless, fed ten thousand meals on \$2,000. for the year and, respecting the human condition, never told anyone he or she needed "treatment".
4. When the brother of the young "delinquent" in question reported to the police that a good part of his family, at least, knew the daughter visited the Alameda Street Church, the police made an astonishing response. They did not suggest the parents reconcile themselves with their daughter, instead sent 6 or 8 police and sheriff's

officers converging on the Church, cuffed the girl's hands behind her back though she had moments before declared her intentions to return home voluntarily and was leaving the house with her sleeping bag when they arrived, and dragged her crying into one of the screaming police cars surrounding the Church.

To highlight the graphic gruesome nature of this historical perspective, the Court may wish to acknowledge the police raid conducted against the Church 15 days later under a search warrant alleging, inter alia, the manufacture of narcotic substances which justified the raiding officers in knocking down the walls in several rooms, including one wall on which a fresco of a universally accepted holy symbol had been lovingly inscribed. An eviction notice from the landlord arrived the next day.

5. The Judge reached his decision only after 6 months of our earnest entreaty.