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IN THE SUPREME COURT OF FLORIDA

CONNIE HOFFMAN, aka
CONNIE GONZALEZ and
DEWEY McLAUGHLIN,

Appellants,

-vs-

STATE OF FLORIDA,

Appellee.

FILED

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APPEAL FROM THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

# BRIEF OF APPELLEE

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## BRIEF OF THE APPELLEE

## STATEMENT OF THE CASE

On March 1, 1962, an information was filed in the Criminal Court of Record in Dade County and charged that Connie Hoffman, a white woman and Dewey McLaughlin, a Negro man, habitually occupied the same room in the night time while not married to each other in violation of Section 798.05, Florida Statutes (Tr. 2, 3).

The defendants moved to quash such information on the grounds that the charging statute was vague and in violation of the Federal and State constitutions (Tr. 4, 5). Such motion was denied on April 12, 1962 (Tr. 6).

The defendants were arraigned and entered pleas of not guilty on April 12, 1962 (Tr. 6).

The trial of defendants by jury commenced on June 27, 1962 (Tr. 18).

Such trial terminated in a verdict of guilty (Tr. 6-7). The court adjudged the defendants guilty and sentenced each to a term of thirty days in the county jail and a fine of $150.00.

Motion for new trial was made July 3, 1962 (Tr. 9-11). Such motion was denied (Tr. 21).

Notice of appeal was filed July 18, 1962 (Tr. 11). The appeal was properly consummated by the filing of assignments of error and record (Tr. 13-18).

## STATEMENT OF THE FACTS

The facts which are supported by substantial evidence and which are pertinent to the points argued on appeal are as follows.

In April of 1961, Connie Hoffman rented an efficiency apartment located at 732 2nd Street, Miami Beach (Tr. 28, 29) from Mrs. Dora Goodrich. At the time of entering into such lease she represented a man other than the defendant to be her husband (Tr. 29). Such man's name was Hoffman (Tr. 29).

In December, 1961, said Connie Hoffman was living with Dewey McLaughlin and represented him to be her husband (Tr. 30, 31).

Connie Hoffman had signed a certain book as Connie Hoffman (Tr. 38).

On February 23, 1962, the police arrested Dewey McLaughlin at 732 2nd Street (Tr. 54, 70-74, 80). Dewey McLaughlin admitted living with Connie Hoffman (Tr. 72-73, 82).

Connie Hoffman admitted living with a Negro (Tr. 74, 84). Connie Hoffman was arrested (Tr. 87). Fred Hoffman brought the child of Connie Hoffman to the police station after the arrest of Connie Hoffman (Tr. 90).

Testimonial evidence indicates Connie Hoffman to be white and Dewey McLaughlin to be Negro (Tr. 164, 136). There was no evidence that McLaughlin had a previous existing marriage before the association with Hoffman. (Tr. 119, 132).

There is also evidence that Hoffman also had a previous existing marriage (Tr. 135).

## POINTS ON APPEAL

The following are the only two issues raised by appellants which have been supported by argument.

I. Does Section 798.05, Florida Statutes, which prohibits unmarried Negro and white from living together violate the equal protection of the laws provision of the Fourteenth Amendment of the United States Constitution?

II. Were defendants' rights guaranteed by the Fourteenth Amendment violated by the court instructing the jury that the defendants could not legally marry in the State of Florida?

## ARGUMENT

### POINT I

The issue raised by the defendants under Point I was resolved against their position in the case of Pace v. Alabama, 106 U.S. 583, 27 L.ed. 250, 1S.Ct. 489. The United States in analyzing the issue which is presently raised by the defendants-appellants stated that the discrimination involved in a statute which prohibited interracial cohabitation was directed against the offense and not against the person of any particular color or race.

Punishment of each offending person, whether white or black, was found to be the same in the Pace case, supra, and is the same in the instant case and therefore there is no discrimination against a particular race. The doctrine of the Pace case, supra, was reaffirmed in the case of Stevens v. U.S., 146 Fed. 2d 210, text 123 (1944), wherein a law which made unlawful marriages between persons of African descent and persons of other races or descents was held to be constitutional by a federal courts despite its being challenged on the ground that it violated the Fourteenth Amendment. It is clear that in order to sustain the position of the defendant it would be necessary for the appellate court to directly overrule the holding of the Supreme Court of the United States in the case of Pace v. Ala., supra. The appellants under this issue make no attack on the validity of Section 798.05, Florida Statutes, in relation to the Florida Constitution but limit their attack solely on its validity under the United States Constitution. The Florida Supreme Court is thus asked by the defendants to overthrow a Florida statute which is not attacked as unconstitutional under the Florida Constitution on the grounds that such statute violates the Federal Constitution. This request is made in spite of the fact that the Federal Supreme Court has taken an unreversed position that the Federal Constitution does not prohibit the enactment of such statute.

It is submitted that the Florida Supreme Court should not itself anticipate a reversal of federal precedent and rule, in accordance with defendants-appellants request, adverse to the stare decisus created by the court which has the primary duty of interpreting the federal constitution. Indeed such action would create a new interpretation of federal law in this state which would be permanent regardless as to the ruling which the United States Supreme Court might render because the appellee-state probably would not be in a position to have the decision of this court reviewed.

## POINT II

A thorough analysis of the case of Naim v. Naim, 87 S.E. 2d 749, 197 Va. 80, requires that the issue which defendants-appellants raised under Point II must be resolved against his contention. The Supreme Court of Virginia ruled in the Naim case, supra, that a state statute which prohibited interracial marriage did not violate either the federal or state constitution. The United States Supreme Court remanded the case to the state court so that such state court would indicate the true relationship of the parties involved in the case to the State of Virginia, 350 U.S. 891, 100 L.ed. 784. The Virginia court then set out in detail that the parties were so related to the State of Virginia at the time of formulating the marriage as to give the Virginia court

jurisdiction to question the validity of such marriage under Virginia law. 197 Va. 734, 90 S.E. 2d 849. The Supreme Court of the United States then held that no federal question was involved in the case. 350 U.S. 985, 100 L.ed. 852. Thus the Supreme Court of the United States said that no federal question was involved in the state statute which prohibited interracial marriage where the parties at the time of such marriage were in such relationship to the state that the state statute was applicable. In effect the United States Supreme Court held that the only constitutional question involved was whether the Virginia law was applicable to the formation of the marriage. When a later decision of the state court indicated that the parties were in such relationship to the state at the time of the marriage that Virginia law was applicable, then the only federal question in the case was put to rest as there was no federal question involved in the state's prohibition of the interracial marriage.

The rationale of the Naim decision emphasized that the miscegenation law served a legitimate state purpose because history had indicated that races have better advanced in human progress when they cultivated their own distinctive characteristics and developed their own peculiarities. A further rationale and justification for ante miscegenation is the prevention of the interracial conflict which may well result from interracial marriages occuring

in communities wherein such marriages create strong adversity in both the white and the colored race. It is well known that both the white and the colored race tend to shun the offspring of interracial marriages. It is further suggested that an interracial marriage occuring in a community may create conditions which are conducive to racial conflict, because the sensibilities of both races are adversely effected by the marriage. Each race resents the invasion.

The validity of laws prohibiting interracial marriages was affirmed by a Federal Court in the case of Stevens v. U.S. (Okla.) ~~149~~ 146 F. 2d 120.

Even if the Florida constitutional provision of Article XVI, Section 24, which prohibits interracial marriage was unconstitutional it is still submitted that such question is not adequately raised in the present case. The question of interracial marriage arose from the fact that the court instructed the jury that the defendants could not legally formulate the marriage in the state of Florida because they were of different races. Such instruction would be harmless error even if the defendants could consumate a legal marriage in the state of Florida if all the evidence pointed to the fact that such marriage was never formulated.

The following constitutes ample evidence that the defendants were not married to each other. Prior to living with McLaughlin, Connie Hoffman had represented a man other than defendant McLaughlin to be her husband (Tr. 29). There would of course be a presumption that such marriage continued. Connie Hoffman had signed a certain book as Connie Hoffman (Tr.38) and thus indicated that she was of a name other than that shared by her co-defendant. Connie Hoffman admitted living with a Negro without the further explanation that such Negro was her husband even though she was told that living with a Negro was in violation of the Florida Statutes. (Tr. 74, 84). There was evidence that McLaughlin had a previous existing marriage before his association with Connie Hoffman (TR. 119, 132). Connie Hoffman herself indicated to the Welfare Association that she had a previous existing marriage (Tr. 135). The only evidence which indicated that Connie Hoffman was married to her co-defendant was a statement made by her to her landlady wherein she represented that Dewy McLaughlin was her husband (Tr. 30, 31). Such statement was only placed before the jury by the testimony of the landlady. It was not given to the jury by the testimony of Connie Hoffman. The statement therefore as far as indicating a valid existing marriage between Connie Hoffman and Dewey McLaughlin was nothing but heresay. The statement was only valid to indicate a representation by Connie Hoffman that there was an existing commonlaw marriage. However, a public representation by one party is not sufficient to constitute a commonlaw marriage. The

record is void of any representation made by Dewey McLaughlin that he was married to Connie Hoffman. It is therefore submitted that there is a total absence of sufficient evidence to substantiate the existence of a common law marriage. There is ample evidence pointing out the absence of any marriage between the defendants. Therefore the instruction of the court which indicated to the jury that the defendant could not marry in this state would be harmless error even if such instruction was erroneous. This is because the evidence amply supported the absence of a marriage and there was no evidence that defendants had ever attempted to formulate a marriage in this state.

## CONCLUSION

WHEREFORE, it is submitted that the defendants-appellants have failed to carry the burden of showing error in the trial court and the judgement of the trial court should be affirmed.

Respectfully submitted,

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I HEREBY CERTIFY that copies of the above Brief of Appellee has been furnished to the Honorable Robert Ramer, Attorney at Law, 3041 N.W. Seventh Street, Miami, Florida and G. E. Graves, Jr., Attorney at Law, 802 N. W. Second Avenue, Miami, Florida, by mail, this 1st day of January, 1963.

J S McCown

Counsel for Appellee