Journal of Criminal Law and Criminology

Volume 11 | Issue 2 Article 11

1920

Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER

ESPIONAGE.

Pierce v. *U. S.*, 40 Sup. Ct. Repr. 205. *Evidence; what constitutes a violation of the act.*

Where defendants distributed the pamphlet, the distribution of which was charged to constitute a violation of the Espionage Act, with full understanding of its contents, they were charged with an intent and attempt to bring about any and all such consequences as reasonably might be anticipated from its distribution.

In a prosecution for making and distributing, with intent to interfere with the operation and success of the military and naval forces, false reports and statements, including the statement that the attorney general was so busy sending men to prison who did not stand up when the Star Spangled Banner was played that he had no time to protect the food supply from gamblers, testimony of the United States attorney that no federal law made it a crime not to stand up when the Star Spangled Banner was played, and that he had no knowledge of prosecutions for failure to do so, was admissible to show the falsity of such statements.

On a trial for making and distributing, with intent to interfere with the operation and success of the military and naval forces, false reports and statements, including the statement that our entry into the war was determined by the certainty that if the allies did not win, loans to the allies would be repudiated, the declaration of war and the President's address to Congress on April 2nd preceding were admissible to show the falsity of such statements.

Mr. Justice Brandeis and Mr. Justice Holmes dissenting.

HOMICIDE.

State v. *Gibbs* (S. Car.), 102 S. E. 333. *Self-defense; duty to retreat.*

A person on his own premises and outside of his dwelling, but within the curtilage, if assaulted with a deadly weapon, is not bound to retreat, but may stand on his own ground and meet such attacks even to killing his assailant.

INDICTMENT.

State v. *Lehigh Valley R. Co.* (N. J.), 109 Atl. 294. *Bill of particulars is no part of indictment or judgment record.*

A bill of particulars furnished by the state in a criminal case is no part of the indictment or of the judgment record; and an indictment legally sufficient on its fact cannot be made demurrable or otherwise attacked as to its legality because the bill of particulars puts the state's case on a claim of facts which, if proved, would constitute either no crime at all or one not within the scope of the indictment.

Kalisch, White, Heppenheimer, and Taylor, JJ., dissenting.

INSANITY.

State v. *Kelsie* (Vt.), 108 Atl. 391. *Imbecility and insanity.*

In the matter of criminal responsibility the law makes no distinction between imbecility and insanity and the test, where an issue as to defendant's mental responsibility is raised, is, did accused, as applied to the act in question, have the mental capacity to understand the character, consequences, and quality of such act, and successfully to resist the impulse to do it?

INTOXICATING LIQUORS.

U. S. v. *Simpson,* 40 Sup. Ct. Repr. 364. *Interstate transportation by owner for his own use by his own automobile forbidden by statute.*

Act March 3, 1917, Sec. 5 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 8739a), prohibiting the transportation of intoxicating liquors in interstate commerce, except for specified purposes, into any state where the manufacture or sale of such liquors for beverage purposes is punishable, applies to the interstate transportation of liquor by its owner in his own automobile and for his own personal use.

Mr. Justice Clarke, dissenting.

JURY.

State v. *Brooks* (Mont.), 188 Pac. 942.

A juror who testified on his *voir dire* that he entertained a bitter prejudice against the Industrial Workers of the World and against every member of it, and that it would abide with him throughout the trial, and would require evidence to remove, was not a qualified and impartial juror, and it was error to refuse to grant a challenge for cause, where the defendant was a member of such organization, although the juror testified that he would not be in any ways unfair or impartial toward the defendant.

LARCENY.

State v. *Logan* (Me.), 109 Atl. 593. *Allegation of ownership.*

Where an indictment for larceny laid the ownership of the article in persons unknown, and it appears that the name of the owner was in fact known to the grand jury, the defendant should be discharged subject to be tried on new indictment, but he will not be discharged merely on proof that the grand jury by reasonable diligence might have ascertained the owner's name.

Where the owner of an automobile was killed in an accident, and before administration tires were stolen, and it appeared that the deceased was the exclusive owner of the machine which was left lying by the roadside, an allegation that the tires belonged to a person unknown to the grand jury was warranted.

ROBBERY.

Analytis v. *People* (Colo)., 188 Pac. 1113. *Intent.*

One who had reason to believe, and did believe, that another had stolen $100 from him, and, acting upon that belief, took by force from such other person money which he had, did not commit robbery.

SEDITION.

State v. *Brooks* (Mont.), 188 Pac. 942.

One who distributed a pamphlet while the nation was engaged in war reading: "Let those who own the country do the fighting. Put the wealthiest in the front ranks; the middle class next; follow these with judges lawyers, preachers and politicians. Let the workers remain at home and enjoy what they produce. Follow a declaration of war with an immediate call for a general strike. Make the slogan, 'Rebellion sooner than war' "—was guilty of the crime of sedition by obstructing and attempting to obstruct the national Selective Draft Law and the recruiting and enlistment service of the United States.

SEDUCTION.

Banks v. *State* (Ga.), 102 S. E. 519. *Offer of marriage; double jeopardy.*

An indictment charged that the accused seduced a named woman on January 1, 1918. On the call of the case for trial, and before arraignment and plea, the accused, in response to the charge, presented to the court a written statement to the effect that he had obtained from the ordinary of the county of the woman's residence a license to marry her, and at the time of obtaining it he had given a good and sufficient bond in the sum fixed by such official, payable to him and his successors in office, and conditioned for the maintenance and support of the woman and her child for the period of five years; and in this statement he made, in open court, a bona fide and continuing offer to marry the woman, attaching to such statement the marriage license and the bond referred to, approved by the ordinary. Whereupon the woman, in open court, refused to marry the accused. The trial judge thereupon entered a judgment reciting the facts, and ordered that the prosecution against the accused for seduction "be and the same is hereby at an end, and cannot be further prosecuted against the said defendant. It is further ordered that the said defendant be, and he is hereby, discharged in said case." Thereafter, and on the same day, the grand jury returned a special presentment against the accused, charging him with the offense of fornication, alleging the act to have been committed on February 12, 1918; the woman referred to being the same in both indictments. To this last indictment the accused pleaded in bar that the prosecution for fornication was founded upon the same transaction as that charged in the former indictment for seduction, and that both transactions were founded upon the same evidence, and that, as the lesser offense of fornication charged in the last indictment was involved in the indictment for seduction, his discharge under the indictment for seduction was a bar to the prosecution for fornication. This plea was stricken by the court as insufficient.

The Court of Appeals, after stating in substance the facts as above recited, certified to the Supreme Court the question whether the striking of the plea was error.

In our opinion the plea should not have been stricken. The offense of seduction necessarily embodies, as an element thereof, the offense of fornication. Seduction cannot be accomplished without sexual intercourse. Upon complying with the provisions of the statute (Pen. Code, 1910, Sec. 379), by obtaining a license to marry the woman whom he was charged with seducing,

giving the bond as required by the ordinary, having it approved by him, and by making a bona fide and continuing offer to marry the woman, and she in open court refusing to marry him, the accused, under the statute, had the right to have the prosecution for seduction stopped, and to be discharged from further prosecution thereunder. The judgment of the court effectually ended that prosecution, and the accused could not subsequently be indicted for any essential element involved in that charge of seduction. If the accused, on the trial for fornication, should sustain his plea, he would be entitled to an acquittal. See Disharoon v. State, 95 Ga. 351, 22 S. E. 698; Ingram v. State, 124 Ga. 448, 52 S. E. 759.

TRIAL.

People v. *Harris* (Calif.), 188 Pac. 65. *Court's threat in presence of jury to gag obstreperous defendant.*

Where defendant, on his trial for burglary, frequently interrupted witnesses, calling one a "God damned liar," the court's threat, pursuant to its duty to maintain order to have defendant gagged, though in the presence of the jury, was not error, since if necessary to orderly proceedings, the court would have been justified in actually adopting such means, instead of threatening them.

State v. *Fiore* (N. J.), 108 Atl. 363. *Expression of opinion by court.*

It is not legally objectionable for a trial judge to express to the jury his opinion as to the grade of the prisoner's crime under the evidence, in case the jury shall find the prisoner guilty.

It is not open to the jury, in a case of criminal homicide, to find the prisoner guilty of manslaughter or assault and battery, when the record is barren of any proof tending to support such a finding. It is not error for the trial judge to so state, in the charge to the jury.

State v. *Burcham* (Wash.), 187 Pac. 352. *Permitting jury in liquor case to have liquor with it in jury room.*

In prosecution for unlawfully having in possession intoxicating liquors, where 24 bottles alleged to contain whisky were introduced in evidence, court did not commit error in sending such liquor to jury while in jury room deliberating on verdict, or in permitting jury, while deliberating on verdict, to smell and sample contents of the bottles, for the bona fide purpose of determining whether the contents thereof consisted of whisky.

In prosecution for unlawfully possessing intoxicating liquor, where court permitted jury, while deliberating, to have the liquor in dispute with it, and to smell and sample the contents of bottles claimed to contain whisky, *held,* that the court did not err in denying motion for new trial on the ground that jury abused its discretion by drinking considerable quantities of the liquor, where it was shown that none of the jurors became intoxicated.

The practice of permitting the jury to have with it, while deliberating on its verdict in intoxicating liquor case, large quantities of the liquor, should be discourged, and if the court is of the opinion that jurors should determine for themselves whether certain liquor is intoxicating, jurors should be required to so determine by smelling and tasting during the course of the trial, and in the presence of the court; but, where intoxicating character of liquor can be shown by other means, it is neither necessary nor wise for the jury at any time to sample the liquor.