Journal of Criminal Law and Criminology

Volume 12 | Issue 1 Article 13

1921

Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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AUTOMOBILES.

People v. *Kaufman,* Calif. App., 193 Pac. 953. *Construction of act requiring driver in collision to render assistance.*

Motor Vehicle Act, Sec. 21, requiring the driver of an automobile colliding with another vehicle to render all necessary assistance, including the carrying of occupants of the vehicle to a physician or surgeon for treatment if required, or, if such carrying is requested, does not permit one of two automobile drivers, equally negligent in bringing about a collision in which neither is injured, by first demanding that he be carried to a hospital or surgeon, to put the stamp of felony on the other refusing the request.

CONSTITUTIONAL LAW.

Gilbert v. *State of Minnesota,* 41 Sup. Ct. Rep. 125. *Validity of state statute forbidding speeches discouraging recruiting.*

A state statute, making it unlawful to utter words in a public meeting which tend to discourage recruiting in the military or naval forces, is sustainable during the time of war under the police power of the state to preserve the public peace, since statements of that character at a public meeting tend to provoke violence.

Even if the right of free speech is a natural right protected by the United States Constitution against state action, that right is not an absolute one, and is not infringed by a state statute, making it unlawful to discourage enlistment in the military or naval forces at a public meeting.

Mr. Chief Justice White and Mr. Justice Brandeis dissenting.

ENTRAPMENT.

Plue v. *People,* Colo., 193 Pac. 496.

Where defendant had been asked by another to procure some whisky for friends, and did so, delivering it at the other's house, and the other did not intend to entrap defendant, but the "friends" proved to be police officers, and arrested defendant upon his delivery of the whisky, such facts showed no incitement or inducement by officers to violate the law, and there was no such entrapment or instigation as to prevent defendant's acts being criminal, as a violation of Laws 1915, p. 275.

HOMICIDE.

James v. *State,* Ga., 105 S. E. 56. *Presumption of malice in assault with intent to kill.*

A charge on assault with intent to murder that all the rules applicable in a case of murder except the fact of the killing apply to assault with intent to murder was erroneous, as, in a murder case under certain circumstances, the

law presumes malice or the intent to kill, while in a case of assault with intent to murder, where death does not result, there is no such presumption.

SEARCHES AND SEIZURES.

State v. *Wagstaff,* S. Car., 105 S. E. 283. *Searching baggage without warrant.*

Evidence that police officer, in the presence and with the apparent consent of the chief of police, snatched a grip away from prosecuting witness to search it for intoxicating liquor, though the officers had no search warrant and did not testify that they had reasonable cause to believe or did believe the grip contained liquor, is sufficient to take to the jury the issue of the guilt of both officer and chief of simple assault.

PARDON.

Ex parte Ray, Okla., 193 Pac. 635. *Pardon granted by mistake; when effective.*

By mistake of the warden of the state penitentiary, the governor was notified that the term of imprisonment of petitioner would expire on and with the 25th day of November, 1920. Acting upon such misinformation, and pursuant to the custom of the governor upon recommendation of the warden, the governor, on the 24th day of September, 1920, forwarded to such warden what purported to be a full and free pardon to petitioner, restoring unto the said petitioner all the rights of citizenship, with the provision in the face of said purported pardon that it was to take effect on the 25th day of October, 1920. It is clear from the recitals contained in said purported pardon that the same was forwarded to the warden under the following mistaken impressions of fact: (1) That the prisoner had been committed to serve only one term of six years for one embezzlement committed by him; (2) that such term would expire on and with the 25th day of November, 1920. Also it is clear from the face of the purported pardon that it was the intention of the governor only to grant petitioner a pardon to take effect a certain number of days (to wit, 30) prior to the expiration of his term, as an additional reward for good conduct and days worked. Prior to the date such purported pardon took effect, and after its having been forwarded to and received by the warden of the penitentiary, the governor recalled the same, took it into his possession, where the same has remained ever since the 21st day of October, 1920. Held, that a pardon is in effect a private deed of the executive, to the validity of which delivery is essential. Held, further, that where a full, free, and unconditional pardon immediately operative is granted for an offense, and delivered to the warden of the penitentiary in which the beneficiary is confined, its receipt by such warden is in legal effect a delivery to the prisoner himself. Held, further, that an unconditional pardon immediately operative, once delivered and accepted, cannot thereafter be revoked except for fraud in its procurement. Held, further, that there has been no delivery of the purported pardon relied upon in this proceeding to petitioner or to any one for his benefit since the date on which the same was to become a valid and operative act, and that the parties stand in the same relative position as if the governor had indited, and had attested, a full and free pardon to a prisoner to take effect immediately, but had never delivered the same. Held, further, that under such circumstances the petitioner cannot

claim that any benefits have accrued to him by reason of the forwarding of such purported pardon to the warden of the penitentiary before the date on which the same was to become effective.

SENTENCE.

Ex parte Ray, Okla., 193 Pac. 635. *Allowances to prisoner sentenced for four separate terms.*

Where a convicted person is committed to the state penitentiary under four separate sentences, providing that the term of imprisonment of the second or subsequent conviction should begin at the termination of the term of imprisonment of the next preceding conviction, it is the duty of the warden, in computing the good time and work time to be allowed such prisoner, to compute and allow the same under each separate term as it is served, and the prisoner is not entitled to an allowance for good time and work time upon the theory that he has been sentenced to serve only a single term of imprisonment equal to the aggregate number of years of the four sentences.

TRIAL.

People v. *Bruno,* Calif. App. 193 Pac. 511. *Expression of opinion by the court.*

On the trial for kidnapping, the court's remark at the conclusion of an explanatory instruction, given on request of the jury after they had been out for some time, that he did not want to try the case again, and felt that it was not necessary to do so, was not ground for reversal, because expressing court's opinion, though such explanations are hazardous and might better be omitted.

Horning v. *District of Columbia,* 41 Sup. Ct. Rep. 53. *Comment by court on facts.*

Where the facts were established by the testimony of both the prosecution and defendant, and showed a violation of the law, an instruction that the jury could not capriciously say the testimony was not the truth, that it was their duty to accept the court's exposition of the law, that the court could not peremptorily instruct them to find the defendant guilty, but that he would if he could, and that the failure to bring in a verdict of guilt would arise only from a flagrant disregard of the evidence, the law, and their obligation as jurors, was at most a formal error, which does not require reversal under Judicial Code, Sec. 269, as amended by Act Feb. 26, 1919 (Comp. St. Ann. Supp. 1919, Sec. 1246).

Mr. Justice Brandeis, the Chief Justice, Mr. Justice McReynolds, and Mr. Justice Day, dissenting.

People v. *Mayen,* Calif. App., 193 Pac. 173. *Attempt to escape; effect on defendant's right to certificate of probable cause.*

An unsuccessful attempt by one convicted of a felony to escape from the county jail does not deprive him of his right to a certificate of probable cause, if there was room for honest difference of opinion as to error in the record, nor of his right to a stay of execution until he can apply to a justice of the appellate court for such certificate.