Journal of Criminal Law and Criminology

Volume 11 | Issue 1 Article 15

1920

Judicial Decisions on Criminal Law and Procedure

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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EVIDENCE.

State v. *Yearwood* (N. Car.), 101 S. E. 513. *Admissibility of evidence of action of bloodhounds.*

In prosecution for arson, evidence that an English bloodhound of established reputation, which had been trained and handled by its owner in a large number of cases when human beings had been trailed, was put on well-defined tracks of a person near the margin of burned place and followed them to defendant's house, where he went up to the bed in which defendant had slept the night before, was admissible.

Where evidence as to defendant being traced by a bloodhound is proposed to be introduced, it is proper to allow a witness, familiar with the dogs and accustomed to handling them, to testify that they are skilled in trailing or tracking of men and within what time after the making of tracks the dogs would take up and follow the trail.

HOMICIDE.

State v. *Weisengoff* (W. Va.), 101 S. E. 451. *Homicide in resisting lawful arrest; contributory negligence.*

Contributory negligence has no application in a criminal prosecution, and where it appears a sheriff sought to arrest the accused by jumping upon the running board of his automobile while it was in motion and informing him that he had a warrant for him, and, when he failed to slacken his speed, by then trying to gain control of the steering wheel, whereupon the speed of the automobile was immediately greatly increased, and continued for a distance of about 800 feet, when the automobile collided with an iron bridge, wrecking the machine and dashing the sheriff to his death against one of the iron columns of the bridge, the accused is guilty of murder if he could have stopped his machine and willfully refused to do so and intentionally collided with the bridge; but, if the collision was accidental, the killing is manslaughter only, and the fact that the sheriff's efforts to obtain control of the steering wheel may have been a contributing cause of the collision is no defense.

Resisting an arrest, which a proper officer is trying to make in a lawful manner by one charged with crime and knowing the officer's authority, is an unlawful act, and such officer has the legal right to use such reasonable force as may be necessary to overcome the resistance, and if in resisting or attempting to escape the accused maliciously kills or fatally wounds the officer while he is acting in a lawful manner, the homicide amounts to "murder"; but if there was no intention to kill or do great bodily harm and the killing was purely accidental, the homicide amounts to "manslaughter" only. Malice is an essential element in murder of either the first or second degree.

Commonwealth v. *Tompkins* (Pa.), 108 Atl. 350. *Effect of judicial ridicule of defense of insanity.*

Where insanity was the defense in a murder trial, it was reversible error for the trial judge to hold up the plea of judicial ridicule, by stating to jury in instructions that the prisoner was "of a class vulgarly called cranks," and that "those beings who live with these unsettled minds, who are not taken care of by friends, relatives, or the state, when caught in the act of crime, must be punished."

State v. *Carrigan* (N. J.), 108 Atl. 315. *Insanity: irresistible impulse.*

Instruction that if "there existed in the defendant's mind an irresistible impulse to take the life of the deceased, and the shooting took place under the influence of such an impulse, the defendant cannot be convicted of murder in the first degree," was erroneous, since, conceding that such impulse may be considered in determining degree of homicide, the question whether act was wilful, deliberate, and premeditated, notwithstanding impulse, is for the jury.

The doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender had the mental capacity to appreciate his legal and moral duty in respect to it, has no place in the law.

Dickens v. *People* (Colo.), 186 Pac. 277. *Instruction favorable to defendant —whether harmless error.*

The fact that an instruction submitting second degree murder, which was not in issue, was favorable to defendant, does not make the error harmless.

Garrigues, C. J., and Burke and Scott, JJ., dissenting.

State v. *Terrell* (Utah), 186 Pac. 108. *Justification for slaying infant criminal.*

Notwithstanding Comp. Laws of 1917, Secs. 1829, 7915, a child between 7 and 14 years of age may violate the law and commit an offense against person or property the same as an adult person, and it cannot be said as a matter of law that such a child cannot be shot in defense of habitation, property, or person under Section 8032, subd. 2.

Breedlove v. *State* (Ga.), 101 S. E. 709. *Deadly weapon.*

The accused was convicted of assault with intent to murder. The weapon used was a pistol. A new trial is sought on the contention that the evidence shows that the pistol was so loaded as not to be a weapon likely to produce death. The evidence shows that, while the pistol itself was without mechanical defect, yet it was loaded only with five cartridges designed for use in a different kind of pistol; that the accused, while a prisoner in jail, pointed the pistol so loaded at the jailer and ordered him to hold up his hands; and that, upon the jailer reaching for his own pistol instead of throwing up his hands, the accused snapped his pistol at the jailer four times, without succeeding in firing it once. Both the pistol and the cartridges in question were put in evidence for inspection by the jury, and four of the cartridges showed signs of having been snapped. As to the pistol and cartridges in evidence, one witness testified: "If the plunger goes far enough against the cap to knock the paint off of it, as it shows it did, it is, of course, liable to explode, and just why it

did not do it on this occasion nobody can tell, unless the cartridges went in just a little too far." Another witness testified: "Even with those cartridges in it, and even though they were not made for this particular make of pistol, the chances are, if you were to snap them, the pistol would fire." *Held:*

(a) The pistol and the cartridges being in evidence, whether or not they constituted a weapon likely to produce death, was, under all the evidence, a question exclusively for the jury. *Paschal* v. *State,* 68 Ga. 818; *Paschal* v. *State,* 125 Ga. 279, 54 S. E. 173; *Meriwether* v. *State,* 104 Ga. 500, 30 S. E. 806.

State v. *Burdette* (S. Car.), 101 S. E. 664. *Duty to retreat to avoid killing in self-defense.*

Where deceased and defendant's sister were in the woods on the lands of the deceased for the unlawful purpose of sexual intercourse, defendant not only had the right, but it was his duty, to resort to all reasonable means to prevent his sister and deceased from accomplishing their purpose, though the sister was of mature years, provided he did not commit a breach of the peace, and the mere fact that his protest or conduct was calculated to bring on a difficulty, and did so, did not deprive him of the right of self-defense, if in apparent danger of losing his life or suffering serious bodily harm, nor was he bound to retreat.

In a prosecution for homicide, the court in charging on self-defense erred in stating that the law required defendant to take any reasonable way of safeguarding himself even if it was to "run," the word "run" not having the same meaning as the word "retreat," when applied to the conduct of one claiming to have acted in self-defense.

VERDICT.

State v. *Levin* (N. J.), 108 Atl. 10.

Where the indictment charged both a misdemeanor and a high misdemeanor (grand larceny), verdict of "guilty of the misdemeanor aforesaid" must be referred to the charge of misdemeanor, and not of grand larceny.

Walker, Ch., and White and Williams, JJ., dissenting.

WAR.

State v. *Wyman* (Mont.), 186 Pac. 1. *Violation of Sedition Act.*

Under Rev. Codes, Secs. 9147, 9148, information charging violation of Sedition Act, by stating that "our soldiers would act in the same way and commit the same atrocities as have been reported of the German soldiers" *held* sufficient without setting out the German atrocities, notwithstanding information charged words to have been spoken "in speaking of the atrocities reported to have been committed by the German soldiers in the present war," the latter quotation being merely parenthetical and no part of the seditious utterance, such language being calculated to bring soldiers of the United States into contempt, and disrepute, the charge of "atrocity" implying that our soldiers would be outrageously or wantonly wicked, criminal, vile, cruel, and their conduct extremely horrible and shocking.