Journal of Criminal Law and Criminology

Volume 13 | Issue 1 Article 14

1922

Judicial Decisions on Criminal Law and Procedure

Chester G. Vernier

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER

CONFESSION.

People v. *Clark,* Calif. App., 203 Pac. 781. *When not voluntary.*

Where a prisoner is denied the benefit of counsel, and is repeatedly assured by the police officers and matrons that they are her friends and will do nothing to harm her, and is brought to a weak physical and mental condition by long-sustained examination, without food or other nourishment, the statement by one of those in authority that it is the best thing for her to tell the truth, must give the impression that, by telling the truth, those who professed to be her friends would aid her in getting lighter punishment, and the confession so obtained is inadmissible.

COUNTERFEITING.

U. S. v. *Sacks,* 42 Sup Ct. Repr. 38. *Tearing war savings stamps from certificate.*

Under act Sept. 24, 1917 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, sec. 6829L), authorizing the issuance of war savings certificates and stamps, and the regulations of the Secretary of the Treasury thereunder, whether the certificates and stamps be considered individual or composite obligations of the United States, the tearing of stamps from certificates with intent to use them without the remainder of the certificates signed by the purchaser and thus defraud the United States by defeating the purposes of the law, the circulars of the secretary, and the terms and conditions indorsed on the certificate, constitutes an alteration of both or either, within Criminal Code, sec. 148 (Comp. St., sec. 10318), making it an offense to falsely make or alter any obligation or other security of the United States with intent to defraud, and sec. 151 (sec. 10321), making it an offense to have possession of such altered obligation or security with such intent.

DISORDERLY CONDUCT.

State v. *Gross,* N. J., 115 Atl. 743. *"Place": what is disorderly conduct?*

While a steam railroad car is a quasi public place, as between the state and the railroad, it is not a "place," within the meaning of an ordinance of a city prohibiting in any place in the city the making of any improper noise, riot, disturbance, or disorderly behavior.

"Therefore an ordinary conversation in a major key, when indulged in, as was the case here, between a conductor with a book of railroad rules in his hand, emphasizing his duty, and a protesting commuter with an innocuous bag, the owner of which attempted to vindicate in Yiddish-English the rights of the American traveling public, might be the means of provoking an innocent mental diversion for the benefit of the curious passengers, but could

hardly be said to evolve the serious accusation of disorderly conduct in a public place, within the meaning of the ordinance. A discussion in an elevated key on a railway carriage, whether it concern a bag, or the suspected contents of a bag, is not an unusual episode in every-day American railway life, nor can it be said to be without its compensating and exhilarating effect upon the general body of passengers, so long as it does not assume the intolerant form of vulgarity, or obscenity, and thus warrant the ejection from the train of the malodorous disputant.

"The fact, of course, is that of voluminous resonance of a conversation cannot be utilized as a standard to gauge either its criminality or its literary value, and yet debates in the halls of legislation, in the courts of justice, not to speak of fulminations from the pulpit, are often measured to a great degree by the volume of vocalization and the density of lung-power behind them."

FALSE PRETENSES.

State v. *Moore,* Dela., 115 Atl. 308. *Effect of failure to describe check—the subject of the pretense.*

Under Rev. Code, 1915, sec. 4757, defining the offense of obtaining chattels, money, or securities by false pretense, an indictment alleging that defendants did obtain a certain check for the payment of money, to-wit, for the sum of $1,750 of the moneys, goods, chattels, and property of the said E, but not giving the name of the maker or payees or bank upon which drawn, or any indorsements, was insufficient for matter of description.

HOMICIDE.

State v. *Green, S. Car.,* 110 S. E. 145. *Using spring gun to protect property.*

Defendant who set spring gun in unoccupied house, with the intention to kill anyone who broke the locks and entered the house without regard to the intent of the intruder, merely to protect his property, and not his life, and who thereby caused the death of one who entered the building merely for the purpose of gratifying his curiosity, held guilty of manslaughter, notwithstanding Cr. Code, 1912, sec. 178, prohibiting the breaking and entering of a dwelling house.

JURY.

People v. *Peete,* Calif., 202 Pac. 51. *Validity of statute providing for alternate juror.*

Pen. Code, sec. 1089, providing that alternate jurors may be drawn and sworn and be substituted for any regular juror dying or becoming sick during the trial, does not violate Bill of Rights, sec. 7, guaranteeing right of trial by jury as known to the common law.

At common law, where a juror became incapacitated by illness or death after the jury was impaneled and sworn in chief, the proper procedure was to discharge the entire panel and begin de novo by forming a new jury.

The word "inviolate," as used in the Bill of Rights, sec. 7, providing that the right of trial by jury shall remain inviolate, connotes no more than

freedom from substantial impairment, and the legislature has a right to make any reasonable regulation or condition respecting the enjoyment of trial by jury, provided only that the essentials of a jury trial, as known to the common law, remain unchanged, and the essentials are number, impartiality, and unanimity.

PUNISHMENT.

Hart v. *Commonwealth,* Va., 109 S. E. 582. *Cruel and unusual punishment.*

Under Const., sec. 9, prohibiting cruel and unusual punishments, only such punishments were prohibited as were regarded as cruel and unusual when such provision of the Constitution was adopted in 1776, namely, such bodily punishments as involve torture or lingering death, such as are inhumane and barbarous, as, for example, punishment by the rack, by drawing and quartering, leaving the body hung in chains, or on the gibbet, exposed to public view, and the like.

The punishment of death by electrocution is not a "cruel or unusual mode of punishment," under the eighth amendment to the Federal Constitution, and Const. Va., 1776, sec. 9,

STATUTORY CRIME.

State v. *Satterlee,* Kans., 202 Pac.. 636. *Indefinite description of forbidden acts.*

That part of sec. 3814 of the General Statutes of 1915, which prohibits a person from carelessly or negligently handling or exposing nitroglycerin violates section 10 of the Bill of Rights of the Constitution of the State of Kansas for the reason that the statute does not name the acts which are prohibited by law. A complaint drawn under that portion of the statute does not charge an offense against the laws of the State of Kansas.

TRIAL.

Burford v. *Commonwealth,* Va., 110 S. E. 428. *Using same jury to try defendant under separate indictments.*

When jurors have been carefully examined on their voir dire, and it has been shown that they are in every respect fair and impartial, and can give the accused a fair trial on merits, they are not disqualified to sit by the fact that, at another time during the term, and on entirely different evidence, they have been compelled as jurors to convict him on an entirely different offense in no way connected with the charge under investigation.

Douglass v. *State,* Ga., 110 S. E. 168. *Influencing jury by display of hangman's noose.*

Another ground complains that after the case had been submitted and the jury were in the room provided for them, and engaged in considering their verdict, numbers of people gathered in the courtyard in sight of the jurors as they came to the windows, and one of the number of people gathered in sight of the jury tied a hangman's knot or noose in a rope, and lifted the same in view of the jurors looking out of the windows, and that

this was done several times. There are counter affidavits denying in part the facts stated in this ground of the motion; nevertheless the importance of preserving the purity of trials by jury, uninfluenced by outside demonstrations or suggestions, requires the grant of a new trial on this ground.

People v. *Caldwell,* Calif. App., 203 Pac. 440. *Comment by trial judge.*

In a prosecution for rape, trial judge's complaint that counsel for the defendant were not establishing anything and did not ask a material question, and only corroborating the state's witnesses and that they certainly knew they were "not getting anywhere with their evidence," and if they had any witness to contradict any witness brought by the state they should call such witness, made in the presence of the jury, held erroneous where such evidence as to the condition of the prosecutrix shortly after the alleged crime contradicted that of a state's witness in a material way.

In a prosecution for rape, where the court was guilty of misconduct in commenting upon the defendant's evidence, stating that the defendant's counsel were getting nowhere with their evidence, the court's admonition to th jury that "the remarks of the court are not for your consideration," but "only addressed to counsel," and to disregard it, held insufficient to cure the error.

Bass v. *State,* Ga., 110 S. E. 237. *Effect of trial judge's absence from bench during argument.*

The fact that the trial judge leaves his seat on the bench and remains a few feet away in the courtroom for a short while during the argument of the attorney for the state is no cause for granting the defendant a new trial, where it is not shown that injury has resulted to the defendant. *Pritchett v. State,* 92 Ga. 65 (2), 18 S. E. 536.

It was alleged that the defendant was injured, because his attorney desired to move the court to expunge certain remarks made by the attorney for the state, and to move for a mistrial on account of such remarks, but could not do so on account of absence of the judge, and when the judge resumed his seat on the bench the matter had "passed out of his (the attorney's) mind." Held, that even if the remarks were improper, any possible injury to the defendant was attributable to the failure of defendant's attorney to make appropriate objection and motion for mistrial, and not to any improper absence of the judge.