

United States Vs. Wiltberger

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Appellant : United States

Respondent : Wiltberger

Judgement :

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United States v. Wiltberger

18 U.S. (5 Wheat.) 76

ON CERTIFICATE OF DIVISION OF OPINION AMONG

THE JUDGES OF THE CIRCUIT COURT OF PENNSYLVANIA

SYLLABUS

The courts of the United States have no jurisdiction, under the Act of April 30, 1790, c., 36, of the crime of manslaughter, committed by the master upon one of the seamen on board a merchant vessel of the United States, lying in the River

Tigris, in the empire of China, thirty-five miles above its mouth off Wampoa, about one hundred yards from the shore, in four and a half fathoms water, and below low water mark.

Rules for the construction of penal statutes.

Though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature.

In the Act of April 30, 1790, c. 36, the description of *places* contained in the eighth section, within which the offenses therein enumerated must be committed in order to give the courts of the Union jurisdiction over them cannot be transferred to the twelfth section so as to give those courts jurisdiction over a manslaughter committed in the river of a foreign country, and not on the high seas.

This was an indictment for manslaughter in the Circuit Court of Pennsylvania. The jury found the defendant guilty of the offense with which he

Page 18 U. S. 77

stood indicted, subject to the opinion of the court whether this Court has jurisdiction of the case, which was as follows:

The manslaughter charged in the indictment was committed by the defendant, on board of the American ship the *Benjamin Rush* on a seaman belonging to the said ship, whereof the defendant was master, in the River Tigris, in the empire of China, off Wampoa, and about 100 yards from the shore, in four and a half fathoms water, and below the low water mark, thirty-five miles above the mouth of the river. The water at the said place where the offense was committed is fresh, except in very dry seasons, and the tide ebbs and flows at and above the said place. At the mouth of the Tigris, the government of China has forts on each side of the river, where custom house officers are taken in by foreign vessels to prevent smuggling. The river at the mouth and at Wampoa is about half a mile in breadth.

And thereupon, the opinions of the judges of the circuit court, being opposed as to the jurisdiction of the court, the question was by them stated, and directed to be certified to this Court.

Page 18 U. S. 93

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The indictment in this case is founded on the 12th section of the act entitled "An act for the punishment of certain crimes against the United States." That section is in these words:

"And be it enacted that if any seaman or other person shall commit manslaughter on the high seas or confederate, . . . such person or persons so offending

Page 18 U. S. 94

and being thereof convicted shall be imprisoned not exceeding three years and fined not exceeding one thousand dollars."

The jurisdiction of the court depends on the place in which the fact was committed. Manslaughter is not punishable in the courts of the United States, according to the words which have been cited, unless it be committed on the high seas. Is the place described in the special verdict a part of the high seas?

If the words be taken according to the common understanding of mankind, if they be taken in their popular and received sense, the "high seas," if not in all instances confined to the ocean which washes a coast, can never extend to a river about half a mile wide and in the interior of a country. This extended construction of the words, it has been insisted, is still further opposed by a comparison of the 12th with the 8th section of the act. In the 8th section, Congress has shown its attention to the distinction between the "high seas" and "a river, haven, basin, or bay." The well known rule that this is a penal statute, and is to be construed strictly, is also urged upon us.

On the part of the United States, the jurisdiction of the court is sustained not so much on the extension of the words "high seas" as on that construction of the whole act, which would engraft the words of the 8th section, descriptive of the place in which murder may be committed, on the 12th section, which describes the place in which manslaughter may be committed. This transfer of the words of one section to the other is, it has been contended, in pursuance

Page 18 U. S. 95

of the obvious intent of the legislature, and in support of the authority of the court so to do, certain maxims or rules for the construction of statutes have been quoted and relied on. It has been said that although penal laws are to be construed strictly, the intention of the legislature must govern in their construction. That if a case be within the intention, it must be considered as if within the letter of the statute. So if it be within the reason of the statute.

The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative, not in the Judicial Department. It is the legislature, not the court, which is to define a crime and ordain its punishment.

It is said that notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptation or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in

Page 18 U. S. 96

the words, there is no room for construction. The case must be a strong one indeed which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity or of kindred character with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation which it would be unsafe to consider as precedents forming a general rule for other cases.

Having premised these general observations, the Court will proceed to the examination of the act in order to determine whether the intention to incorporate the description of place contained in the 8th section into the 12th be so apparent as to justify the Court in so doing. It is contended that throughout the act, the description of one section is full, and is necessarily to be carried into all the other sections which relate to place or to crime.

The 1st section defines the crime of treason, and declares that "if any person or persons owing allegiance to the United States of America shall levy war," &c.;, "such person or persons shall be adjudged guilty of treason," &c.; The second section defines misprision of treason, and in the description of the

Page 18 U. S. 97

persons who may commit it omits the words "owing allegiance to the United States" and uses without limitation the general terms "any person or persons." Yet it has been said these general terms were obviously intended to be limited, and must be limited, by the words "owing allegiance to the United States," which are used in the preceding section.

It is admitted that the general terms of the 2d section must be so limited, but it is not admitted that the inference drawn from this circumstance in favor of

incorporating the words of one section of this act into another is a fair one. Treason is a breach of allegiance, and can be committed by him only who owes allegiance either perpetual or temporary. The words, therefore, "owing allegiance to the United States," in the first section, are entirely surplus words which do not in the slightest degree affect its sense. The construction would be precisely the same were they omitted. When, therefore, we give the same construction to the second section, we do not carry those words into it, but construe it as it would be construed independent of the first. There is, too, in a penal statute, a difference between restraining general words and enlarging particular words.

The crimes of murder and of manslaughter, it has been truly said, are kindred crimes, and there is much reason for supposing that the legislature intended to make the same provision for the jurisdiction of its courts as to the place in which either might be committed. In illustration of this position, the 3d and 7th sections of the act have been cited.

Page 18 U. S. 98

The 3d section describes the places in which murder on land may be committed of which the courts of the United States may take cognizance, and the 7th section describes in precisely the same terms the places on land if manslaughter be committed in which the offender may be prosecuted in the federal courts.

It is true that so far as respects place, the words of the 3d section concerning murder are repeated in the 7th and applied to manslaughter, but this circumstance suggests a very different inference from that which has been drawn from it. When the legislature is about to describe the places in which manslaughter cognizable in the courts of the United States may be committed, no reference whatsoever is made to a prior section respecting murder, but the description is as full and ample as if the prior section had not been in the act. This would rather justify the opinion that in proceeding to manslaughter, the legislature did not mean to refer us to the section on murder for a description of the place in which the crime might be committed, but did mean to give us a full description in the section on that subject.

So the 6th section, which punishes those who have knowledge of the commission of murder or other felony, describes the places on land in which the murder is to be committed to constitute the crime with the same minuteness which had been before employed in the 3d, and was afterwards employed in the 7th section.

In the 8th section, the legislature takes up the subject

Page 18 U. S. 99

of murder and other felonies committed on the water, and is full in the description of place. "If any person or persons shall commit upon the high seas or in any river, haven, basin or bay out of the jurisdiction of any particular state, murder," &c.;

The 9th section of the act applies to a citizen who shall commit any of the offenses described in the 8th section against the United States, or a citizen thereof under color of a commission from any foreign prince or state.

It is observable that this section, in its description of place, omits the words "in any river, haven, basin, or bay," and uses the words "high seas" only. It has been argued, and we admit with great force, that in this section the legislature intended to take from a citizen offending against the United States, under color of a commission from a foreign power, any pretense to protection from that commission, and it is almost impossible to believe that there could have been a deliberate intention to distinguish between the same offense committed under color of such commission on the high seas and on the waters of a foreign state or of the United States out of the jurisdiction of any particular state. This would unquestionably have been the operation of the section had the words "on the high seas" been omitted. Yet it would be carrying construction very far to strike out those words. Their whole effect is to limit the operation which the sentence would have without them, and it is making very free with legislative language to declare them totally useless when they are sensible and are calculated to have a decided

Page 18 U. S. 100

influence on the meaning of the clause. That case is not directly before us, and we may perhaps be relieved from ever deciding it. For the present purpose, it will be sufficient to say that the determination of that question in the affirmative would not, we think, be conclusive with respect to that now under consideration. The 9th section refers expressly, so far at least as respects piracy or robbery, to the 8th, and its whole language shows that its sole object is to render a citizen who offends against the United States or their citizens under color of a foreign commission, punishable in the same degree as if no such commission existed. The clearness with which this intent is manifested by the language of the whole section might perhaps justify a latitude of construction which would not be allowable where the intent is less clearly manifested, where we are to be guided not so much by the words in which the provision is made as by our opinion of the reasonableness of making it.

But here, too, it cannot escape notice that the legislature has not referred for a description of the place to the preceding section, but has inserted a description, and by that insertion has created the whole difficulty of the case.

The 10th section declares the punishment of accessories before the fact. It enacts

"That every person who shall either upon the land or the seas knowingly and wittingly aid and assist, procure, command, counsel, or advise any person or persons to do or commit any murder or robbery, or other piracy

Page 18 U. S. 101

aforesaid upon the seas which shall affect the life of such persons shall,"

&c.;

Upon this section also, as on the preceding, it has been argued that the legislature cannot have intended to exclude from punishment those who shall be accessories before the fact to a murder or robbery committed "in a river, haven, basin, or bay, out of the jurisdiction of any state," and now as then, the argument has great weight. But it is again to be observed that the legislature has not referred for a

description of place to any previous parts of the law, but has inserted a description, and by so doing has materially varied the obvious sense of the section. "Every person who shall, either upon the land or the seas, knowingly and wittingly aid," &c.; The probability is that the legislature designed to punish all persons amenable to their laws who should in any place aid and assist, procure, command, counsel, or advise any person or persons to commit any murder or piracy punishable under the act. And such would have been the operation of the sentence had the words "upon the land or the seas" been omitted. But the legislature has chosen to describe the place where the accessorial offense is to be committed, and has not referred to a description contained in any other part of the act. The words are "upon the land or the seas." The Court cannot reject this description. If we might supply the words "river, haven," &c.;, because they are stated in the 8th section, must we supply "fort, arsenal," &c.;, which are used in the 3d section, describing the place in which murder may be committed on land? In doing so, we should

Page 18 U. S. 102

probably defeat the will of the legislature. Yet if we depart from the description of place given in the section, in which Congress has obviously intended to describe it, for the purpose of annexing to the word "seas," the words "river, haven, basin, or bay" found in the 8th section, there would be at least some appearance of reason in the argument, which would require us to annex also to the word "land" the words "fort, arsenal," &c.;, found in the 3d section.

After describing the place in which the "aid, assistance, procurement, command, counsel, or advice" must be given in order to give to the courts of the United States jurisdiction over the offense, the legislature proceeds to describe the crime so to be commanded or procured, and the place in which such crime must be committed. The crime is "any murder or robbery or other piracy aforesaid." The place is "upon the seas."

In this section, as in the preceding, had the words "upon the seas" been omitted, the construction would have been that which, according to the argument on the

part of the United States, it ought now to be. But these words are sensible and are material. They constitute the description of place which the legislature has chosen to give us, and courts cannot safely vary that description without some sure guide to direct their way.

The observations made on this section apply so precisely to the 11th that they need not be repeated.

The legal construction of those sections is doubtful, and the Court is not now and may perhaps never

Page 18 U. S. 103

be required to make it. It is sufficient to say that should it even be such as the Attorney General concedes it ought to be, the reasons in favor of that construction do not apply conclusively to the 12th section. They both contain a direct reference to the 8th section. They describe accessorial offenses, which from their nature are more intimately connected with the principal offense than distinct crimes are with each other.

The 12th section takes up the crime of manslaughter, which is not mentioned in the 8th, and without any reference to the 8th describes the place in which it must be committed in order to give jurisdiction to the courts of the United States. That place is "on the high seas." There is nothing in this section which can authorize the Court to take jurisdiction of manslaughter committed elsewhere.

To prove the connection between this section and the 8th, the attention of the Court has been directed to the other offenses it recapitulates, which are said to be accessorial to those enumerated in the 8th. They are admitted to be accessorial, but the Court draws a different inference from this circumstance. Manslaughter is an independent crime distinct from murder, and the legislature annexes to the offense, a description of the place in which it must be committed in order to give the court jurisdiction. The same section then proceeds to enumerate certain other crimes which are accessorial in their nature, without any description of places. To manslaughter, the principal crime, the right to punish which depends on the place

in which it is committed, Congress has annexed a description of place. To the other crimes enumerated

Page 18 U. S. 104

in the same section, which are accessorial in their nature, and some of which at least may be committed anywhere, Congress has annexed no description of place. The conclusion seems irresistible that Congress has not in this section inserted the limitation of place inadvertently, and the distinction which the legislature has taken must, of course, be respected by the Court.

It is the object of the law, among other things, to punish murder and manslaughter on land in places within the jurisdiction of the United States, and also to punish murder and manslaughter committed on the ocean. The two crimes of murder and manslaughter, when committed on land, are described in two distinct sections as two distinct offenses, and the description of place in the one section is complete in itself, and makes no reference to the description of place in the other. The crimes of murder and manslaughter, when committed on water, are also described as two distinct offenses in two sections, each containing a description of the place in which the offense may be committed, without any reference in the one section to the other. That section which affixes the punishment to manslaughter on the seas proceeds to describe other offenses which are accessorial in their nature, without any limitation of place. In every section throughout the act, describing a crime the right to punish which depends on place, and in some instances where the right of punishment does not depend upon place, the legislature has, without any reference to a preceding section, described the place in which it must be committed in order to bring the offender within the act. This characteristic feature

Page 18 U. S. 105

of the law now to be expounded deserves great consideration and affords a powerful reason for restraining the court from annexing to the description contained in one section parts of the description contained in another. From this review of the examination made of the act at the bar, it appears that the argument

chiefly relied on to prove that the words of one section descriptive of the place ought to be incorporated into another is the extreme improbability that Congress could have intended to make those differences with respect to place, which their words import. We admit that it is extremely improbable. But probability is not a guide which a court, in construing a penal statute, can safely take. We can conceive no reason why other crimes which are not comprehended in this act should not be punished. But Congress has not made them punishable, and this Court cannot enlarge the statute.

After giving the subject an attentive consideration, we are unanimously of opinion that the offense charged in this indictment is not cognizable in the courts of the United States, which opinion is to be certified to the Circuit Court for the District of Pennsylvania.

CERTIFICATE. This cause came on to be heard on the transcript of the record of the circuit court for the District of Pennsylvania and on the question on which the judges of that court were divided, and was argued by counsel, on consideration whereof the Court is of opinion that manslaughter committed in a river such as the River Tigris is described

Page 18 U. S. 106

to be, is not punishable by the laws of the United States, and that the Circuit Court of the United States for the District of Pennsylvania has no jurisdiction over the offense. All which is ordered to be certified to the Circuit Court of the United States for the District of Pennsylvania.