

United States Vs. Mills

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Court : US Supreme Court

Decided On : 1833

Appeal No. : 32 U.S. 138

Appellant : United States

Respondent : Mills

Judgement :

United States v. Mills - 32 U.S. 138 (1833)

U.S. Supreme Court United States v. Mills, 32 U.S. 7 Pet. 138 138 (1833)

United States v. Mills

32 U.S. (7 Pet.) 138

ON CERTIFICATE OF DIVISION OF OPINION AMONG

THE JUDGES OF THE CIRCUIT COURT OF NORTH CAROLINA

SYLLABUS

The defendant was indicted upon the twenty-fourth section of the Act of Congress of 3 March, 1825, entitled "An act to reduce into one the several acts establishing and regulating the Post Office Department," for advising, procuring, and assisting

one Joseph I. Stranghan, a mail carrier, to rob the mail, and was found guilty. Upon this finding, the judges of the Circuit Court of North Carolina were divided in opinion on the question whether an indictment founded on the statute for advising, &c., a mail carrier to rob the mail ought to set forth or aver that the said carrier did in fact commit the offense of robbing the mail. By the Court:

"The answer to this, as an abstract proposition, must be in the affirmative. But if the question intended to be put is whether there must be a distinct substantive averment of that fact, it is not necessary. The indictment in this case sufficiently sets out that the offense had been committed by the mail carrier."

The offense charged in this indictment is a misdemeanor where all are principals, and the doctrine applicable to principal and accessory in cases of felony does not apply. This offense, however, charged against the defendant is secondary in its character, and there can be no doubt that it must sufficiently appeal upon the indictment that the offense alleged the chief actor had been committed.

The defendant was indicted at the term of November, 1832, of the circuit court for an offense against the post office laws, passed on 2 March 1824, entitled, "an act to reduce into one act the several acts establishing and regulating the post office department."

The indictment contained two counts. The first count charged, that the defendant did, "at Fayetteville, on 1 June, 1832, procure, advise and assist Joseph I. Straughan to secrete, embezzle, and destroy a mail of letters with which the said Joseph I. Straughan was entrusted and which had come to his possession and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville, also in said district, containing bank notes, the said Joseph I. Straughan being, at the time of such procuring, advising, and assisting, then and there, a person employed in

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one of the departments of the post office establishment, to-wit, a carrier of the mail of the United States from Pittsborough aforesaid, to Fayetteville aforesaid,

contrary to the form of the act of Congress," &c.;

The second count was in the following words:

"That the defendant did procure, advise and assist Joseph I. Straughan to secrete, embezzle and destroy a letter addressed by Joseph Small to Joseph Baker, with which the said Joseph I. Straughan was entrusted and which came to his possession and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville aforesaid, containing sundry bank notes, amounting, in the whole, to sixty dollars, of a denomination to the jurors aforesaid unknown, and of the issue of a bank to the said jurors also unknown, the said Joseph I. Straughan being, at the time of such procuring, advising and assisting, then and there, a person employed in one of the departments of the post office establishment, to-wit, a carrier of the mail of the United States from Pittsborough aforesaid, to Fayetteville aforesaid, contrary to the form of the act of Congress,"

&c.;

The jury found the defendant guilty on both counts, and a motion was made in arrest of judgment on the following grounds:

1. That the indictment doth not aver charge or in any manner show that the said Joseph I. Straughan did commit the offense which this defendant is alleged to have procured and advised and assisted him to commit.
2. That the said indictment is in other respects uncertain, insufficient, informal and defective, and will in no sort warrant any judgment upon the said verdict.

Upon this motion, the following certificate of division was given:

"The defendant was indicted upon the 24th section of the Act of Congress approved 2 March, 1825, entitled 'An act to reduce into one the several acts establishing and regulating the Post Office Department,' for advising, procuring and assisting one Joseph I. Straughan, mail carrier, to rob the mail, and being found guilty, submitted a motion in arrest of judgment, one reason in support of which motion

was that the indictment did not sufficiently show any offense against the said act, because the same did not directly charge or otherwise aver that the said Joseph I. Straughan did actually rob the mail, and, upon argument, the judges were opposed in opinion upon this question, to-wit, whether an indictment grounded upon the said statute, for advising, &c., a mail carrier to rob the mail, ought to set forth or aver that the said carrier did in fact commit the offense of robbing the mail, and therefore the judges directed the same to be certified to the Supreme Court."

THOMPSON, JUSTICE, delivered the opinion of the Court.

The defendant was indicted in the Circuit Court of the United States for the District of North Carolina under the 24th section of the act of 1825, entitled "An act to reduce

into one the several acts establishing and regulating the Post Office Department," 4 Stat. 109, which declares

"That every person who, from and after the passing of this act, shall procure and advise or assist in the doing or perpetration of any of the acts or crimes by this act forbidden, shall be subject to the same penalties and punishments as the persons are subject to, who shall actually do or perpetrate any of the said acts or crimes, according to the provisions of this act."

Upon the trial, the defendant was convicted of the offense charged in the indictment, and a motion was made in arrest of judgment, upon which motion the judges were opposed in opinion, and the case comes here upon the following certificate:

"The defendant was indicted upon the 24th section of the act of Congress, approved 3 March, 1825, entitled 'an act to reduce into one the several acts establishing and regulating the post office department,' for advising, procuring and assisting one Joseph I. Straughan, mail carrier, to rob the mail, and being found

guilty, submitted a motion arrest of judgment, one reason in support of which motion was that the indictment did not sufficiently show any offense against the said act because the same did not directly charge or otherwise aver that the said Joseph I. Straughan did actually rob the mail, and upon argument, the judges were opposed in opinion upon this question, to-wit, whether an indictment grounded upon the said statute, for advising, &c., a mail carrier to rob the mail, ought to set forth or aver that the said carrier did in fact commit the offense of robbing the mail, and therefore the judges directed the same to be certified to the supreme court."

The offense charged in this indictment is a misdemeanor, where all are principals, and the doctrine applicable to principal and accessory in cases of felony does not apply. The offense, however, charged against the defendant is secondary in its character, and there can be no doubt that it must sufficiently appear upon the indictment that the offense alleged against the chief actor had in fact been committed.

The first count in the indictment alleges that the defendant did, at the time and place therein mentioned, procure, advise and assist Joseph I. Straughan to secrete, embezzle and destroy a letter with which he, the said Joseph I. Straughan,

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was entrusted, and which had come to his possession, and was intended to be conveyed by post, &c., containing bank notes &c., he, the said Joseph I. Straughan, being, at the time of such procuring, advising and assisting, a person employed in one of the departments of the post office establishment, to-wit a carrier of the mail, &c., contrary to the form of the act of Congress in such case made and provided. The second count in the indictment sets out the particular letter secreted, embezzled, and destroyed, containing bank notes amounting to sixty dollars. The offense here set out against Straughan, the mail carrier, is substantially in the words of the statute, § 2. If any person employed in any of the departments of the post office establishment, shall secrete, embezzle or destroy any letter, packet, bag, or mail of letters, with which he shall be entrusted or which

shall have come to his possession, and is intended to be conveyed by post, containing any bank note, &c.;, such person shall, on conviction, be imprisoned, &c.;

The general rule is that in indictments for misdemeanors created by statute, it is sufficient to charge the offense in the words of the statute. There is not that technical nicety required as to form which seems to have been adopted and sanctioned by long practice in cases of felony and with respect to some crimes, where particular words must be used and no other words, however synonymous they may seem, can be substituted. But in all cases, the offense must be set forth with clearness and all necessary certainty to apprise the accused of the crime with which he stands charged. And we think the present indictment contains such certainty, and sufficiently alleges that the offense had, in point of fact, been committed by Straughan. It charges the defendant not only with advising, but procuring and assisting Straughan to secrete and embezzle, &c.; This necessarily implies that the act was done, and is such an averment or allegation as made it necessary on the part of the prosecution to prove that the act had been done.

The particular question put in the certificate of division is whether an indictment grounded upon the said statute for advising, &c.;, a mail carrier to rob the mail ought to set forth or

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aver that the said carrier did in fact commit the offense of robbing the mail. The answer to this as an abstract proposition, must be in the affirmative; but if the question intended to be put is whether there must be a distinct, substantive and independent averment of that fact, we should say it is not necessary, and that the indictment in this case sufficiently sets out that the offense had been committed by Straughan, the mail carrier, and that no defect appears in the indictment for which the judgment ought to be arrested. A certificate to this effect must accordingly be sent to the circuit court.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of North Carolina and on the question and point on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion agreeable to the act of Congress in such case made and provided, and was argued by counsel, on consideration whereof it is the opinion of this Court that the indictment in this case sufficiently sets out that the offense had been committed by Straughan, the mail carrier, and that no distinct, substantial, and independent averment of that fact was necessary and that there is no sufficient cause for arresting the judgment. Whereupon it is adjudged and ordered by this Court that it be certified to the said circuit court that the indictment in this case sufficiently sets out that the offense had been committed by Straughan, the mail carrier, and that no distinct, substantial, and independent averment of that fact was necessary, and that there is no sufficient cause for arresting the judgment.