

Bennett Vs. United States

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Court : US Supreme Court

Decided On : Feb-24-1913

Appeal No. : 227 U.S. 333

Appellant : Bennett

Respondent : United States

Judgement :

Bennett v. United States - 227 U.S. 333 (1913)

U.S. Supreme Court Bennett v. United States, 227 U.S. 333 (1913)

Bennett v. United States

No. 603

Argued January 8, 1913

Decided February 24, 1913

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SYLLABUS

Hoke v. United States, ante, p. [227 U. S. 308](#) , followed to effect that the White Slave Traffic Act of June 25, 1910, is constitutional.

A variance in names cannot prejudice defendant if the allegation in the indictment and the proof so correspond that the defendant is informed of the charge and protected against another prosecution for the same offense.

Variances as to the name of the woman transported or in the place where the tickets were procured or as to the number transported, between the indictment and proof of offense under the White Slave Traffic Act *held* not to have prejudiced the defendants, and not to be reversible error.

Instructions to the jury that there is testimony tending to corroborate the testimony of a witness charged with being an accomplice and that it is for the jury to consider the force and value of the testimony and the weight to be given to it is sufficient to properly leave the matter with the jury.

194 F. 630 affirmed.

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The facts, which involve the constitutionality and construction of the White Slave Act and the validity of an indictment and conviction thereunder, are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Plaintiff in error and petitioner was indicted in the District Court for the Southern District of Ohio for the violation of the Act of June 25, 1910. She filed a motion to quash and a demurrer to the indictment, which were overruled, and upon a plea of not guilty she was tried, convicted, and sentenced to eleven months' imprisonment

in the county jail in Miami County, Ohio, and to pay the costs of the prosecution.

She made motions for a new trial and in arrest of judgment, which were overruled, and she then prosecuted error to the circuit court of appeals, where the judgment against her was affirmed. 194 F. 630.

The demurrer and the motion in arrest of judgment raised the question of the constitutionality of the statute, and the decision of the circuit court of appeals sustaining the ruling of the district court, is assigned as error. The constitutionality of the law was decided in No. 381 *Hoke v. United States, ante*, p. [227 U. S. 308](#), and the reasons there given need not be repeated.

Rulings of the district court and the decision of the circuit court of appeals upon them are also assigned as error.

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(1) Defendant was indicted for having caused the transportation of Opal Clarke, and, it is said, the testimony showed that her correct name was Jeanette, but that she had gone by the names of Opal and Nellie, her real name, however, being Jeanette Laplante. A variance is hence asserted between the allegation and the proof. The court of appeals rightly disposed of the contention. As the court said, the essential thing in the requirement of correspondence between the allegation of the name of the woman transported and the proof is that the record be in such shape as to inform the defendant of the charge against her and to protect her against another prosecution for the same offense. The record is sufficient for both purposes. As the court of appeals said:

"This leaves no possible ground for prejudice resulting from the double variance between the name used in the indictment and the name known to the respondent and the real name."

(2) The defendant, at the conclusion of the testimony, moved the court to instruct the jury to return a verdict of not guilty on the second count of the indictment for the reason that the indictment alleged that the tickets were procured at Chicago,

Illinois, whereas the testimony showed that they were procured in Cincinnati, Ohio. The circuit court of appeals did not pass on that assignment. It was either not made or it was considered to have no substantial support by the testimony. The only testimony referred to is that the tickets were purchased in Cincinnati and sent to the depot at Chicago, where the women transported got them and used them for transportation from there. It is not possible to imagine that the variance caused any prejudice, and the assignment may be passed without further comment.

(3) Another variance is asserted in that the indictment charged the transportation of two women and the proof established the transportation of one. This again is a contention which has more of technicality than substance.

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How what the defendant did not do can be considered material description of what she did do is not easy to imagine.

(4) There are errors assigned on instructions requested and instructions refused. The contention of defendant apparently is that both women charged to have been transported should have been objects of her intention and purpose. That aspect of the contention we have disposed of. So far as the instructions refused directed the attention of the jury to the intent and purpose alleged, they were covered by the general charge of the court.

(5) The basis of this contention is that Opal Clarke was the accomplice of defendant as to Ella Parks, and that hence the court erred in its instructions to the jury in regard to the extent of the corroboration Opal Clarke's testimony had received.

The instruction complained of submitted to the jury the fact, and warned against a conviction upon the uncorroborated testimony of an accomplice, and said:

"Necessarily, if you find that she was an accomplice with respect to these charges or any of them, you will then necessarily have to inquire into the facts as to whether or not there is corroborating testimony. There is evidence tending to

corroborate her testimony, and it is for you to consider its force and value and the weight to give to it."

The contention is that this was error,

"as the court instructed the jury that there was corroborating evidence, when the court should have charged the jury that it was for them to ascertain from the testimony whether or not there was corroborating testimony."

The objection is hypercritical. The court did not instruct the jury that there was corroborating testimony, but testimony of that tendency, and added that the force and weight of its corroborating power was for the jury to determine.

The record presents no error, and the judgment is

Affirmed.

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