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United States Vs. Behrman

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Court : US Supreme Court

Decided On : Mar-27-1922

Appeal No. : 258 U.S. 280

Appellant : United States

Respondent : Behrman

Judgement :

United States v. Behrman - 258 U.S. 280 (1922)
U.S. Supreme Court United States v. Behrman, 258 U.S. 280 (1922)

United States v. Behrman

No. 582

Argued March 7, 1922

Decided March 27, 1922

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ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. An exception in a statute defining an offense is met in an indictment by alleging facts sufficient to show that the defendant was not within the exception. P. 258 U. S. 287 .

2. An indictment need only describe the crime with sufficient clearness to show the violation of law and to inform the defendant of the nature and cause of the accusation and enable him to plead the judgment, if any, in bar of further prosecution for the same offense. P. 258 U. S. 288 .

3. An indictment for a statutory offense need not charge *scienter* or intent if the statute does not make them elements. P. 258 U. S. 288 .

4. Under the Anti-Narcotic Act of December 17, 1914, c. 1, 2, 38 Stat. 785, making it an offense to sell, barter, exchange or give away certain drugs except in pursuance of a written order of the person to whom such article is to be sold, etc., on an official form, and providing that nothing in the section shall apply to the dispensing or distribution of the drugs to a patient by a registered physician in the course of his professional practice only, or to their sale, dispensing, or distribution by a dealer to a consumer in pursuance of a written prescription issued by a registered physician, such a physician commits the offense if, knowing a person to be habitually addicted to the use of such drugs, and not purposing to treat him for any other disease, he issues him prescriptions

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for quantities sufficient to make a great number of doses, more than enough to satisfy his craving if all consumed at one time, intending that he shall use them by self-administration in divided doses over a period of several days, and thus enables the addict to obtain such excessive quantities, without other order, from a pharmacist, and to have them in his possession and control with no other restraint upon their administration or disposition than his own weakened will. P. 258 U. S. 288 .

Reversed.

Error to a judgment of the district court sustaining a demurrer to an indictment.

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MR. JUSTICE DAY delivered the opinion of the Court.

This case is here under the Criminal Appeals Act. 34 Stat. 1246. The statute involved is the Narcotic Drug Act of December 17, 1914, c. 1, 2a, 38 Stat. 785, 786.

This statute, in 2, subdivision a, makes it an offense to sell, barter, exchange, or give away any of the narcotic drugs named in the act except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. It is further provided that nothing in the section shall apply to the dispensing or distribution of any of the drugs to a patient of a registered physician in the course of his professional practice only, or to the sale, dispensing, or distribution of said drugs by a dealer to a consumer in pursuance of a written prescription issued by a physician registered under the act.

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The indictment charges that the defendant did unlawfully sell, barter, and give to Willie King a compound, manufacture, and derivative of opium, to-wit, 150 grains of heroin and 360 grains of morphine, and a compound, manufacture, and derivative of coca leaves, to-wit, 210 grains of cocaine, not in pursuance of any written order of King on a form issued for that purpose by the Commissioner of Internal Revenue of the United States; that the defendant was a duly licensed physician and registered under the act, and issued three written orders to the said King in the form of prescriptions signed by him, which prescriptions called for the delivery to King of the amount of drugs above described; that the defendant intended that King should obtain the drugs from the druggist upon the said orders;

that King did obtain upon said orders drugs of the amount and kind above described pursuant to the said prescriptions; that King was a person addicted to the habitual use of morphine, heroin, and cocaine, and known by the defendant to be so addicted; that King did not require the administration of either morphine, heroin, or cocaine by reason of any disease other than such addiction; that defendant did not dispense any of the drugs for the purpose of treating any disease or condition other than such addiction; that none of the drugs so dispensed by the defendant was administered to or intended by the defendant to be administered to King by the defendant or any nurse, or person acting under the direction of the defendant, nor were any of the drugs consumed or intended to be consumed by King in the presence of the defendant, but that all of the drugs were put in the possession or control of King, with the intention on the part of the defendant that King would use the same by self-administration in divided doses over a period of several days, the amount of each of said drugs dispensed being more than sufficient or necessary to satisfy the craving of King therefor, if consumed by him all at one

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time; that King was not in any way restrained or prevented from disposing of the drugs in any manner he saw fit, and that the drugs so dispensed by the defendant were in the form in which said drugs are usually consumed by persons addicted to the habitual use thereof to satisfy their craving therefor, and were adapted for such consumption.

The question is: do the acts charged in this indictment constitute an offense within the meaning of the statute. As we have seen, the statute contains an exception to the effect that it shall not apply to the dispensing or distribution of such drugs to a patient by a registered physician in the course of his professional practice only, nor to the sale, dispensing, or distribution of the drugs by a dealer to a consumer under a written prescription by a registered physician. The rule applicable to such statutes is that it is enough to charge facts sufficient to show that the accused is not within the exception. *United States v. Cook,* 17 Wall. 168, 84 U. S. 173 .

The district judge who heard this case was of the opinion that prescriptions in the regular course of practice did not include the indiscriminate doling out of narcotics in such quantity to addicts as charged in the indictment, but out of deference to what he deemed to be the view of a local district judge in another case, announced his willingness to follow such opinion until the question could be passed upon by this Court, and sustained the demurrer. In our opinion, the district judge who heard the case was right in his conclusion, and should have overruled the demurrer.

Former decisions of this Court have held that the purpose of the exception is to confine the distribution of these drugs to the regular and lawful course of professional practice, and that not everything called a prescription is necessarily such. *Webb v. United States,* 249 U. S. 96 ; *Jin Fuey Moy v. United States,* 254 U. S. 189 .

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Of this phase of the act, this Court said in the *Jin Fuey Moy* case, p. 254 U. S. 194 :

"Manifestly the phrases 'to a patient' and 'in the course of his professional practice only' are intended to confine the immunity of a registered physician in dispensing the narcotic drugs mentioned in the act, strictly within the appropriate bounds of a physician's professional practice, and not to extend it to include a sale to a dealer or a distribution intended to cater to the appetite or satisfy he craving of one addicted to the use of the drug. A 'prescription' issued for either of the latter purposes protects neither the physician who issues it nor the dealer who knowingly accepts and fills it. *Webb v. United States,* 249 U. S. 96 ."

It is enough to sustain an indictment that the offense be described with sufficient clearness to show a violation of law, and to enable the accused to know the nature and cause of the accusation and to plead the judgment, if one be rendered, in bar of further prosecution for the same offense. If the offense be a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge

such knowledge or intent. *United States v. Smith,* 2 Mason, 143; *United States v. Miller,* Fed.Cas. No. 15,775; *United States v. Jacoby,* Fed.Cas. No. 15,462; *United States v. Ulrici,* Fed.Cas. No. 16,594 (opinion by Miller, Circuit Justice); *United States v. Bayaud,* 16 F. 376, 383, 374; *United States v. Jackson,* 25 F. 548, 550; *United States v. Guthrie,* 171 F. 528, 531; *United States v. Balint & Randazzo, ante,* 258 U. S. 250 .

It may be admitted that to prescribe a single dose or even a number of doses may not bring a physician within the penalties of the act; but what is here charged is that the defendant physician, by means of prescriptions, has enabled one known by him to be an addict to obtain from a pharmacist the enormous number of doses contained in 150 grains of heroin, 360 grains of morphine,

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and 210 grains of cocaine. As shown by Wood's United States Dispensatory, a standard work in general use, the ordinary does of morphine is one-fifth of a grain, of cocaine one-eighth to one-fourth of a grain, of heroin one-sixteenth to one-eighth of a grain. By these standards, more than 3,000 ordinary doses were placed in the control of King. Undoubtedly doses may be varied to suit different cases as determined by the judgment of a physician. But the quantities named in the indictment are charged to have been entrusted to a person known by the physician to be an addict without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs or result in an unlawful parting with them to others in violation of the act as heretofore interpreted in this Court within the principles laid down in the *Webb* and *Jin Fuey Moy* cases, *supra.*

We hold that the acts charged in the indictment constituted an offense within the terms and meaning of the act. The judgment of the district court to the contrary should be reversed.

Reversed.

MR. JUSTICE HOLMES, dissenting.

If this case raised a question of pleading, I should go far in agreeing to disregard technicalities that were deemed vital a hundred or perhaps even fifty years ago. But we have nothing to do with pleading as such, and as the Judge below held the indictment bad, it can be sustained only upon a construction of the statute different from that adopted below.

The indictment, for the very purpose of raising the issue that divides the Court, alleges in terms that the drugs

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were intended by the defendant to be used by King in divided doses over a period of several days. The defendant was a licensed physician, and his part in the sale was the giving of prescriptions for the drugs. In view of the allegation that I have quoted and the absence of any charge to the contrary, it must be assumed that he gave them in the regular course of his practice and in good faith. Whatever ground for scepticism we may find in the facts, we are bound to accept the position knowingly and deliberately taken by the pleader and evidently accepted by the Court below.

It seems to me impossible to construe the statute as tacitly making such acts, however foolish, crimes, by saying that what is in form a prescription and is given honestly in the course of a doctor's practice, and therefore, so far as the words of the statute go, is allowed in terms, is not within the words, is not a prescription, and is not given in the course of practice if the Court deems the doctor's faith in his patient manifestly unwarranted. It seems to me wrong to construe the statute as creating a crime in this way without a word of warning. Of course, the facts alleged suggest an indictment in a different form, but the government preferred to trust to a strained interpretation of the law, rather than to the finding of a jury upon the facts. I think that the judgment should be affirmed.

MR. JUSTICE Mc REYNOLDS and MR. JUSTICE BRANDEIS concur in this opinion.

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