Journal of Criminal Law and Criminology

Volume 13 | Issue 3 Article 11

1923

Judicial Decisions on Criminal Law and Procedure

Chester G. Vernier

JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER

CONSTITUTIONAL LAW.

Ex parte Carey, Calif. D. C. A., 207 Pac. 271. *Validity of statute directing committment of fallen women to industrial farm.*

The detention provided by St. 1919, p. 246, creating California Industrial Farm for Women, is not, within purview of the Constitution, punishment at all, but is for purposes of reformation, and does not constitute cruel and unusual punishment.

St. 1919, p. 246, creating a home for and confining fallen women for purposes of reformation, is not invalid as denying privileges and immunities under Const. U. S. Amend. 14, even though the act is directed only to women as a class.

HOMICIDE.

Commonwealth v. *Lessner,* Pa., 118 Atl. 24. *Accidental killing after attempt to commit a robbery.*

Accused, with a drawn revolver, attempted to rob a store proprietor and, being frustrated by the entrance of others, put the revolver away and started to leave the store, and, being intercepted again, drew the revolver and forced his way out, threatening to kill any one who got in his way. Outside the door he was surrounded by a crowd, and the revolver was discharged, killing deceased. Held, that the homicide was committed in the attempt to perpetrate a robbery, and a defense of accidental shooting was of no avail.

PARENT AND CHILD.

Waddell v. *State,* Ga., 113 S. E. 94. *Power of parent to punish child.*

The court's charge that "parents have a right to whip their children, provided they do not beat them unmercifully, they are not allowed to beat them unmercifully," was not error for any reason assigned.

SELF-DEFENSE.

Fortune v. *Commonwealth,* Va., 112 S. E. 861. *Duty to retreat.*

A man attacked on his own premises is under no duty to retreat, and may resist the aggressor with such force as seems reasonably necessary to him as a prudent man to repeal the attack, but may not use further force to subdue him or to compel him to leave the premises.

One within his own curtilage, who is free from fault, when attacked by another, has the same right to stand at bay and resist assault, even to the taking of life, that one has when within his own home.

SENTENCE.

People v. *Sama,* Calif., 207 Pac. 893. *Application and validity of indeterminate sentence law.*

Under Pen. Code, Secs. 213, 671, the maximum penalty for robbery is imprisonment for life, and under Sec. 664, a person convicted of attempted robbery

may be sentenced for half the minmum sentence permitted for the completed offense, so that the maximum sentence for attempt to rob would be half of defendant's natural life, and an indeterminate sentence imposed under Pen. Code, Sec. 1168, as added by St. 1917, p. 665, can be sustained only as a sentence for the maximum punishment permitted.

Where the maximum sentence that could be imposed is half of the sentence for life, which is obviously impossible of ascertainment, the Indeterminate Sentence Law, which can be sustained only as an imposition of the maximum sentence, cannot apply.

Where the Indeterminate Sentence Law cannot apply because the maximum sentence would be half of a defendant's life and unenforceble, but the imposition of the maximum sentence is not required, the court has authority, under Pen. Code, Secs. 264, 664, 671, to sentence the defendant for a definite term of years.

In so far as Pen. Code, Sec. 1168, as added by St. 1917, p. 665, authorizing indeterminate sentences, purports to vest in the state board of prison directors the power to fix the sentence, it is invalid as an invasion of the judicial powers, contrary to Const. Art 3, Sec. 1.

TRIAL.

Parham v. *State,* Ga., 112 S. E. 289. *Effect of receipt of verdict in defendant's absence and before time set for end of recess.*

Where, after the close of the evidence, the arguments, and the charge of the court, and after the retirement of the jury, the court announced a recess until a certain time, and before the time thus fixed the verdict was received in the absence of the defendant, although counsel for the defendant was present and interposed no objection, the announcement of the court was notice that nothing would be done in the case during the recess, and the defendant had the right to act upon this and absent himself, and, there being no waiver on the part of the defendant of his constitutional right to be present at every stage of his trial, the judgment overruling the motion for a new trial, which contained a special ground setting out the above stated facts and complaining that the court erred in receiving the verdict in the absence of the defendant, must be reversed. *Brown* v. *State,* 151 Ga. 497, 107 S. E. 536; *Bryant* v. *Simmons,* 74 Ga. 405.

State v. *Graham,* S. Car., 112 S. E. 923. *Effect of belittling defense of self-defense.*

In a prosecution for assault with intent to kill, a charge relating an incident within the judge's knowledge where a negro charged with hog stealing and pleaded self defense because he had been accustomed to the idea that, if he pleaded self-defense, he was bound to get off, which was pretty near the case, was erroneous as belittling the defense, and tending to reduce it to an absurdity.

State v. *Mahoney,* Wash., 208 Pac. 37. *Effect of improper remarks by trial court concerning circumstantial evidence.*

In a prosecution for murder, in which, during impaneling of the jury, in reply to a juror's expression of sentiments against conviction on circumstantial evidence, a statement of the court, "Lips may lie, but circumstances never lied in the world," while improper, in view of the fact that only a few jurors had been chosen, and that the panel from which the balance were selected had not

yet been brought into the courtroom, was not sufficient error to justify a reversal.

VERDICT.

Dudley v. *State,* Ga., 113 S. E. 24. *Is reluctant verdict free and voluntary?*

There is no merit in the ground of the motion for a new trial which alleges that the verdict was not agreed to freely and voluntarily by two of the jurors. The ground shows that after the verdict of guilty was returned the jury were polled, and that, while two of the jurors stated that they could not say that their verdict had been freely and voluntarily made, they stated also that no influence by any of the jurors nor any outside influence had been used to obtain their consent to the verdict; that they were, however, in sympathy with the defendant and had reluctantly consented to the verdict, believing that under the law they could make no other verdict. These facts show merely that the jurors in question reluctantly agreed to the verdict, and that they were wrong in their conclusion that they had not freely and voluntarily agreed to it. See, in this connection, *Parker* v. *State,* 81 Ga. 332 (5), 6 S. E. 600. The facts of the case at bar easily distinguish it from *Ponder* v. *State,* 11 Ga. App. 60, 74 S. E. 715

WEAPONS.

James v. *State,* Ga., 112 S. E. 899. *Conviction for carrying concealed weapons in a county into which offender taken after arrest on another charge.*

Where one having a pistol concealed about his person in one county was legally arrested by an officer in that county and by the latter carried into another county, where the concealed weapon was discovered, the person thus having the concealed weapon, and who was arrested and carried into another county, could not be prosecuted and convicted in the latter county for the offense of carrying a concealed weapon.