OPINION AFFECTS PROHIBITION LAW

Supreme Court's Decision In Case From Columbus

NEW TRIAL IS ORDERED

Because Evidence Is Considered Insufficient — Shows That Barrel of Whiskey Was Consigned to Defendant and Receipted For In His Name, No Actual Sale Proved.

Of considerable interest because of its bearing upon the prohibtion law, is the opinion handed down by the Supreme Court the past week in the case of State vs. Watkins, from Columbus county, in which Oscar Watkins was found guilty of "selling intoxicating liquors to persons whose names are unknown."

The defendant asked Judge Ferguson, presiding, to instruct the jury to bring in a verdict of not guilty. The judge refused to so instruct. The decision of the Supreme Court is that the judge should have so instructed the jury, in view of the evidence be-

A dissenting opinion, written by

A dissenting opinion, written by Chief Justice Clark and assigned by Justice Allen, was filed. Justice Brown wrote the majority opinion, which follows:

The Opinion.

The following is all the evidence introduced in the trial of this case.

G. W. Rushing, witness for the State, testified as follows:

"I saw on barrel in the railroad depot at Hallsboro, marked 'O. Watkins.' This barrel had whiskey marked on it. The barrel looked like it would hold about thirty gallons. I do not know what was in the barrel."

H. O. Harrell, witness for the State, testified as follows:

"I am agent for the Atlantic Coast Line Railroad Company at Hallsboro, N. C., on the 5th day of August, 1912, a barrel containing about thirty gallons, marked 'O. Watkins,' and also marked on the barrel 'Whiskey,' was put off the train at Hallsboro, N. C. Some time after the arrival of this barrel, and while I was agent, some one came to the railroad office and receipted for this barrel. I do not know whether Oscar Watkins carried the barrel away or not. I do not know who got the barrel. I only know that some one receipted for it in the name of Oscar Watkins. I do not know where the defendant lives. I did not know Oscar Watkins at the time the barrel was receipted for."

C. L. Benton, witness for the State, testified as follows:

"I saw a barrel of whiskey, containing about thirty gallons, in the railroad warehouse at Chadbourn, N. C., marked 'O. Watkins.' When I saw the barrel of whiskey in the warehouse it was in bad order and the whiskey was leaking out. I saw some parties catching the whiskey as it was leaking out of he barrel, drinking it, and others catching it in buckets and carrying it away.

"The defendant, Watkins, was not there when I saw it. I do not know what became of the barrel of whiskey. Oscar Watkins lives at Pine Log, about five miles from Chadbourn and about eight miles from Hallsboro."

It is to be observed that the defendant is indicted for selling whiskey to some person unknown to the jury. While this form of indictment is recognized, yet it is as such incumbent on the State to offer evidence tending to prove an actual sale to the unknown person as if his name had been inserted in the indictment.

State vs. Cowdy, 145 N. C., 432.
State vs. Dunn, 158 N. C., 564.
State vs. McIntyre, 189 N. C., 608.

There is no evidence that the defendant in this bill ever received the whiskey much less sold it. The evidence wholly fails to identify this Oscar Watkins with the person who received the whiskey.

The receipted book was not in evidence, and there was no attempt to prove the defendant's handwriting as well as no attempt to prove that he ever sold any of it.

This case seems to have been tried as if the act of 1913, chapter 44, had been in effect. That act creates two new offenses in respect to intoxicating liquors as well as a new rule of evidence contained in section 5, but that act went into effect on April 1st, 1913.

This bill was returned in November, 1912, and the trial took place and judgment was pronounced in February, 1913, therefore, the act of 1913 can have no bearing upon this case and it must be determined under the law in force prior to that act.

Now does the act considered by us in State vs. Barrett, 138 N. C., 630 apply. This statute declared that the possession of more than one quart of whiskey should be prima facie evidence that the party in whose possession it was found had it for the purpose of sale.

The act applied only to Union county and there was no such special act in force in Columbus county when this offense is alleged to have been committed. His Honor erred in refusing the instruction.

Dissenting Opinion.

The dissenting opinion follows:

Clark, C. J., dissenting:

There was ample evidence to go to the jury tending to show possession of the barrel of whiskey by the defendant. The agent of the railroad testified that on the 5th of August, 1912, a barrel of whiskey containing about thirty gallons, marked "whiskey," and addressed to C. Watkins, was put off the train at Hallsboro; that soon after some one came to the railroad office, signed the receipt for this barrel, in the name of Oscar Watkins, and carried it off. Another witness testified that he saw a barrel of whiskey containing about thirty gallons in the railroad warehouse at Chadbourn, N. C. marked O. Watkins. It is also in evidence that the defendant Oscar Watkins, lived about five miles from Chadbourn and about eight miles from Hallsboro. There is no evidence that any other Oscar Watkins lived in that section. Nor is there any evidence tending to show that the man who got the barrel of whiskey at Hallsboro was not the consignee nor that his signature on the books of the company receipting for the same was a forgery.

Unless such signature was a forgery, and unless the party who committed the forgery and received the whiskey was guilty also of larceny, then there was evidence to go to the jury that the defendant was in possession of thirty gallons of whiskey and possibly of sixty gallons, for there was one barrel consigned to him at Hallsboro and another at Chadbourn. This evidence was more than a scintilla.

There is no presumption of law that any one committed two felonies, larceny and forgery. The entry was made in due course of business. Receipting for the whiskey on the railroad books in the name of Oscar Watkins and taking it away in the absence of any evidence to the contrary was certainly sufficient to go to the jury on the question of possession. This was all the evidence that the State can reasonably be called on to trace the whiskey to his possession. It was easy for the defendant to negative this fact if he did not receive the whiskey and he would have done so, if he could. There is no evidence to show that there was another O. Watkins in that section. The evidence was sufficient to satisfy the jury and did satisfy the jury and did satisfy them that the defendant was the at one depot, if you find that it was addressed to him and receipted for in his name.

His Honor correctly charged the jury: "The possession of one barrel of whiskey shipped to the defendant at one depot, if you find that it was shipped to him and receipted for by him, and the shipping of another barrel to him at another date, if you so find, are circumstances tending to show that the defendant sold whiskey as charged, but that is for you to say." In S. v. Barrett, 138 N. C. 630, which was an indictment under the Union county statute, which made the possession of more than one quart of whiskey prima facie evidence of an intent to sell, Walker, J., says in his concurring opinion, that independent of the statue (the defendant having in possession two five-gallon kegs, a half gallon jug and one pint bottle) "having with him so large a quantity of liquor in packages of different sizes and covered over with a lap robe, was sufficient of itself to constitute prima facie evidence of the defendants guilty possession. * * * The mere fact that reference was made to the statute did not prejudice the defendant when his possession pendent of the statute (the defendant under the circumstances shown by the evidence, and not disputed, was sufficient to carry the case to the ury."

In this case there was ample evidence to satisfy a jury that the defendant was in the possession of thirty gallons receipted for and carried away in his name, and if the possession in the Barett case of 10 3-4 gallons was sufficient to carry the case to the jury, certainly there was more than suffcient in this case.

In S. v. Barrett, Brown, J., in his dissenting opinion, says: "Irrespective of the provisions of the act, I am of opinion that there was sufficient evidence to be submitted to the jury that the defendant did have in his possession liquor with the intent to sell it." Under our decisions, proof of possession supports the charge of selling as effectively as it does the charge of having possession with the intent to sell, S. v. Dunn 158 N. C. 654.

There was evidence to satisfy the jury that this defendant was receiving whiskey in large quantities, a barrel at a time, and in the absence of any evidence tending to show the character of the possession of so much whiskey, the jury was warranted in finding as they did, that the defendant was engaged in selling whiskey to persons unknown, as charged in the bill of indictment, Hoke, J., S. v. Dowdy, 145 N. C. 432; S. v. McIntyre, 139 N. C. 608. For what other purpose, if unexplained, did he have it?

The court carefully and correctly charged the jury that they "must be satisfied beyond a reasonable doubt that the defendant sold liquor to persons unknown; that the possession of the whiskey if the jury should find that it was shipped to and receipted for by him are circumstances tending to show that the defendant sold whiskey, but that it was for the jury to say what was the weight to be given to those circumstances."

The jury found the defendant guilty. There being no evidence that there was any other O. Watkins in the neighborhood, and not the slightest evidence tending to show that any one committed forgery or larceny to get possession of the whiskey, nor that the railroad company would have delivered the barrel without the identification of the consignee, could the jury find otherwise than that the defendant obtained possession of the whiskey? Under the authority of the concurring opinion of Walker, J., and the dissenting opinion of Brown, J., in S. v. Barrett supra the possession of one barrel was the possession of three times as much as was necessary to constitute sufficient possession to submit the question of having the liquor to sell. If the defendant received both barrels, which he did not deny by any evidence, then the case was six times as strong against the defendant as in Barrett's case.

The public policy of a State is declared by the Legislature, which is the law-making body. The policy of this State in regard to suppressing the traffic in intoxicating liquor was clearly declared by the Legislature of 1907, and ratified on a referendum in 1908 by an overwhelming majority at the ballot box. The province of the courts is to construe the law in accordance with the intent with which it was enacted. Whenever the courts in this State have found a defect that would interfere with the enforcement of this law, the Legislature has promptly corrected it. And the public intent to do this has been declared in the most explicit way, in the "Search and Seizure" law of 1913, chapter 44, whose title is "To secure the enforcement of the laws against the sale and manufacture of intoxicating liquor."

It is doubtful if a jury could be empaneled in this State who would not find upon this uncontradicted evidence that the defendant received this whiskey and that the presumption which, under the opinions in S. v. Barrett above cited, was raised from the possession of this quantity of liquor, was not rebutted. Indeed, there was no evidence whatever tending to rebut either the possession of the whiskey by the defendant or that he sold it. Certainly this "jury of the vicinage" "had "no reasonable doubt," and the defendant sought to get the court to hold him not guilty as a matter of law and not of fact.

His Honor did not charge as he might have done, under the authority of the opinions in S. v. Barrett above cited that the possession of so large a quantity of whiskey raised a presumption that he had the whiskey for sale, nor that the whiskey being consigned to the name of the defendant and receipted for it in his name, raised a presumption that he received it. The court merely charged that the jury should consider these as evidence, and unless they were satisfied beyond a reasonable doubt that the defendant sold whiskey, to find his not guilty. The court might well have charged that the delivery of the barrel to the person who receipted for it in the name of the defendant and he did not do so and left the evidence on both points to the jury not as presumption, but merely as circumstances to be weighed by them.

HENDERSON FIRE ALARMS PEOPLE

Corbitt Storage and McLaughlin's Stable Burned—Automobile Factory Ignited Several Times But Flames Extinguished

Henderson, Oct. 25.—Fire bells alarmed the city tonight. The Corbitt gasoline and storage house, and the McLaughlin stables were burned. The Corbitt automobile factory caught several times, but the flames were put out. Great excitement prevailed among those who witnessed the fire.

The Great Essential.

A twelve-year-old boy went into a shoe store.

"What can I do for you?" asked the salesman.

"I want to buy a pair of slippers, size 9, to give to my Pa on his birthday."

"What price slippers do you want?"

"I don't mind the price," said the boy, "but please have the soles thin and soft."

HEROIC STORIES OF LATEST TRAGEDY

Reading Details of Horror We Learn World Has Many True-Hearted Folk.

As the stories come in, day after day from the latest tragedy of the sea, there is the same beautiful thread of heroism running all through that always characterizes such disasters and softens the horror—at least, for those who sit on the outskirts, says Frances Shaffer, in the Washington Herald.

Nothing in this world so inspires one's faith in the great heart of mankind as the certainty that when perils are pressing close and hard there always are some who magnificently rise to the occasion, whatever the price they pay.

And perhaps one looks rather more admiringly at those heroic figures and listens more intently to the recital of their splendid calmness and resourcefulness because she wonders what might happen to herself and her courage out there where the fire and the sea were conspiring to do their worst. Do you ever try to answer the question?

Nobody knows exactly, because those depths never are stirred, except in the sorriest happenings, when, in the words of one of the sailors: "Your money is no good now; what you need is courage."

And it inspires one, through and through, to read of the men, all the way from stoker to captain, who were heroes, every inch of them, big, stern, and brave one minute, tender and ministering the next. For, much as one must admire the trained officers who stood over all, commanding, counselling, ever couraging, and faithful to the last, the bravery was nowise measured by rank or station. With the call for volunteers, men came tumbling out from the steamer's depths, oilers, stokers, scullery men and the like, no less than the ever-ready officers. If there were a few who forgot or who never knew the way to be brave and lion-hearted, they were overshadowed by the many, who, whatever else they did, helped to strengthen one's faith in the valor of men.

Have Their Troubles.

And one is minded to send her thoughts drifting to the families of these men, the women whose husbands and sons, fathers and brothers, follow the sea and all its perils. They have their troubles, for they never can forget that "they that go down to the sea in ships" may never come back again.

But when tragedies come close as they can to men they love without quite stealing their lives away, and when the aftermath is all aglow with thrilling stories of courage undaunted and of leading supreme—well, those women must be proud of their menfolk. And they must feel recompensed for the long periods when they sit at home, waiting and fearful.

Indeed, one never quite knows the manner of man or woman until the hard test comes, and yet, as one thinks of those she knows and their way of going about their daily duties, it is instinctive to guess who would be the unassuming heroes and ready helpers, who the ones to slip away to the first haven offered.

Hard to Call Them Cowards.

In times of pressing danger when life is dear to all, it seems a bit hard to call men cowards if they think of themselves, first of all, particularly when the surging, fear-stricken folk around them are nothing more than strangers, brought close by the sudden calamity. And if they look out for themselves, without brushing others aside, they only respond to "the first law of nature." But when they do more than that, when they deliberately put up their lives against the might of the flames and the sea—well, isn't it good once in a while to see what a man may do when he is a man clear through?

It is all very well to say that a ship's officers and crew are expected to remember their duty, are expected to be brave and true in the wildest of times. But they are men before they are officers and sailors and stokers, the first and the last on board; and the courage of some of them is sublime.

It is hard enough to remain firm oneself in the face of the worst of dangers, but the heights are reached when men are found following their manifest duties, then going about a burning ship, heartening, calming and saving the weakest—and some of the stokers did that.

As for us, it is well to read the details, because in the reading we learn afresh what we sometimes forget—that the world has its full quota of true-hearted folk.

Stingiest Man.

The Jamestown Optimist says the stingiest man in that town loafs around the drug-store in the hope that the odor of the drugs will cure his cold.—Atlanta Constitution.