U.S. Supreme Court

Reynolds v. United States, 98 U.S. 145 (1878)

Reynolds v. United States

98 U.S. 145

*ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH*

# Syllabus

1. Sect. 808 of the Revised Statutes, providing for impaneling grand juries and prescribing the number of which they shall consist, applies only to the Circuit and the District Courts of the United States. An indictment for bigamy under sect. 5352 may, therefore, be found in a district court of Utah, by a grand jury of fifteen persons, impaneled pursuant to the laws of that Territory.

2. A petit juror in a criminal case testified on his *voire dire* that he believed that he had formed an opinion, although not upon evidence produced in court, as to the guilt or innocence of the prisoner, but that he had not expressed it, and did not think that it would influence his verdict. He was thereupon challenged by the prisoner for cause. The court overruled the challenge. *Held,* that its action was not erroneous.

3. Where it is apparent from the record that the challenge of a petit juror, if it had been made by the United States for favor, should have been sustained, the judgment against the prisoner will not be reversed simply because the challenge was in form for cause.

4. Although the Constitution declares that, in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him, yet, if they are absent by his procurement, or when enough has been proved to cast upon him the burden of showing, and he, having full opportunity therefor, fails to show that he has not been instrumental in concealing them or in keeping them away, he is in no condition to assert that his constitutional right has been violated by allowing competent evidence of the testimony which they gave on a previous trial between the United States and him upon the same issue. Such evidence is admissible.

5. Said sect. 5352 is in all respects constitutional and valid.

6. The scope and meaning of the first article of the amendments to the Constitution discussed.

7. A party's religious belief cannot be accepted as a justification for his committing an overt act, made criminal by the law of the land. Where, therefore, the prisoner, knowing that his wife was living, married again in Utah, and, when indicted and tried therefor, set up that the church whereto he belonged enjoined upon its male members to practise polygamy, and that he, with the sanction of the recognized authorities of the church, and by a ceremony performed pursuant to its doctrines, did marry again -- *held,* that the court properly refused to charge the jury that he was entitled to an acquittal although they should find that he had contracted such second marriage pursuant to, and in conformity with, what he believed at the time to be a religious duty.

8. The court told the jury to

"consider what are to be the consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children -- innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land."

*Held,* that the charge was not improper. **[p. 14**6] This is an indictment found in the District Court for the third judicial district of the Territory of Utah, charging George Reynolds with bigamy, in violation of sect. 5352 of the Revised Statutes, which, omitting its exceptions, is as follows:

"Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years."

The prisoner pleaded in abatement that the indictment was not found by a legal grand jury, because fifteen persons, and no more, were impaneled and sworn to serve as a grand jury at the term of the court during which the indictment was found, whereas sect. 808 of the Revised Statutes of the United States enacts that every grand jury impaneled before any District or Circuit Court shall consist of not less than sixteen persons.

An act of the legislature of Utah of Feb. 18, 1870, provides that the court shall impanel fifteen men to serve as a grand jury. Compiled Laws of Utah, ed. of 1876, p. 357, sect. 4.

The court overruled the plea, on the ground that the territorial enactment governed.

The prisoner then pleaded not guilty. Several jurors were examined on their *voire dire* by the district attorney. Among them was Eli Ransohoff, who, in answer to the question, "Have you formed or expressed an opinion as to the guilt or innocence of the prisoner at the bar?" said, "I have expressed an opinion by reading the papers with the reports of the trial."

Q. "Would that opinion influence your verdict in hearing the evidence?"

A. "I don't think it would."

By the defendant: "You stated that you had formed some opinion by reading the reports of the previous trial?"

"Yes."

Q. "Is that an impression which still remains upon your mind?" **[p. 14**7] A. "No; I don't think it does; I only glanced over it, as everybody else does."

Q. "Do you think you could try the case wholly uninfluenced by anything?"

A. "Yes."

Charles Read, called as a juror, was asked by the district attorney, "Have you formed or expressed any opinion as to the guilt or innocence of this charge?"

A. "I believe I have formed an opinion."

By the court: "Have you formed and expressed an opinion?"

A. "No, sir; I believe not."

Q. "You say you have formed an opinion?"

A. "I have."

Q. "Is that based upon evidence?"

A. "Nothing produced in court."

Q. "Would that opinion influence your verdict?"

A. "I don't think it would."

By defendant: "I understood you to say that you had formed an opinion, but not expressed it."

A. "I don't know that I have expressed an opinion; I have formed one."

Q. "Do you now entertain that opinion?"

A. "I do."

The defendant challenged each of these jurors for cause. The court overruled the challenge, and permitted them to be sworn. The defendant excepted.

The court also, when Homer Brown was called as a juror, allowed the district attorney to ask him the following questions: Q. "Are you living in polygamy?" A. "I would rather not answer that." The court instructed the witness that he must answer the question, unless it would criminate him. By the district attorney: "You understand the conditions upon which you refuse?" A. "Yes, sir." Q. "Have you such an opinion that you could not find a verdict for the commission of that crime?" A. "I have no opinion on it in this particular case. I think, under the evidence and the law, I could render a verdict accordingly." Whereupon the United States challenged the said Brown for favor, which challenge was sustained by the court, and the defendant excepted. **[p. 14**8] John W. Snell, also a juror, was asked by the district attorney on *voire dire*: Q. "Are you living in polygamy?" A. "I decline to answer that question." Q. "On what ground?" A. "It might criminate myself; but I am only a fornicator." Whereupon Snell was challenged by the United States for cause, which challenge was sustained, and the defendant excepted.

After the trial commenced, the district attorney, after proving that the defendant had been married on a certain day to Mary Ann Tuddenham, offered to prove his subsequent marriage to one Amelia Jane Schofield during the lifetime of said Mary. He thereupon called one Pratt, the deputy marshal, and showed him a subpoena for witnesses in this case, and among other names thereon was the name of Mary Jane Schobold, but no such name as Amelia Jane Schofield. He testified that this subpoena was placed in his hands to be served.

Q. "Did you see Mr. Reynolds when you went to see Miss Schofield?"

A. "Yes, sir."

Q. "Who did you inquire for?"

A. "I inquired for Mary Jane Schofield, to the best of my knowledge. I will state this, that I inserted the name in the subpoena, and intended it for the name of the woman examined in this case at the former term of the court, and inquired for Mary Jane Schofield, or Mrs. Reynolds, I do not recollect certainly which."

Q. "State the reply."

A. "He said she was not at home."

Q. "Did he say anything further."

A. "I asked him then where I could find her. I said, "Where is she? And he said, "You will have to find out."

Q. "Did he know you to be a deputy marshal?"

A. "Yes, sir."

Q. "Did you tell him what your business was as deputy marshal?"

A. "I don't remember now; I don't think I did."

Q. "What else did he say?" **[p. 14**9] A. "He said, just as I was leaving, as I understood it, that she did not appear in this case."

The court then ordered a subpoena to issue for Amelia Jane Schofield, returnable instanter.

Upon the following day, at ten o'clock A.M., the said subpoena for the said witness having issued about nine o'clock P.M. of the day before, the said Arthur Pratt was again called upon, and testified as follows:

Q. (By district attorney.) "State whether you are the officer that had subpoena in your hands." (Exhibiting subpoena last issued, as above set forth.)

A. "Yes, sir."

Q. "State to the court what efforts you have made to serve it."

A. "I went to the residence of Mr. Reynolds, and a lady was there, his first wife, and she told me that this woman was not there; that that was the only home that she had, but that she hadn't been there for two or three weeks. I went again this morning, and she was not there."

Q. "Do you know anything about her home -- where she resides?"

A. "I know where I found her before."

Q. "Where?"

A. "At the same place."

Q. "You are the deputy marshal that executed the process of the court?"

A. "Yes, sir."

Q. "Repeat what Mr. Reynolds said to you when you went with the former subpoena introduced last evening."

A. "I will state that I put her name on the subpoena myself. I know the party, and am well acquainted with her, and I intended it for the same party that I subpoenaed before in this case. He said that she was not in, and that I could get a search warrant if I wanted to search the house. I said, "Will you tell me where she is?" He said, "No; that will be for you to find out." He said, just as I was leaving the house -- I don't remember exactly what it was, but my best recollection is that he said she would not appear in this case." **[p. 15**0] Q. "Can't you state that more particularly?"

A. "I can't give you the exact words, but I can say that was the purport of them."

Q. "Give the words as nearly as you can."

A. "Just as I said, I think those were his words."

The district attorney then offered to prove what Amelia Jane Schofield had testified to on a trial of another indictment charging the prisoner with bigamy in marrying her, to which the prisoner objected on the ground that a sufficient foundation had not been laid for the introduction of the evidence.

A. S. Patterson, having been sworn, read, and other witnesses stated, said Amelia's testimony on the former trial tending to show her marriage with the defendant. The defendant excepted to the admission of the evidence.

The court, in summing up to the jury, declined to instruct them, as requested by the prisoner, that if they found that he had married in pursuance of and conformity with what he believed at the time to be a religious duty, their verdict should be "not guilty," but instructed them that if he, under the influence of a religious belief that it was right, had

"deliberately married a second time, having a first wife living, the want of consciousness of evil intent -- the want of understanding on his part that he was committing crime -- did not excuse him, but the law inexorably, in such cases, implies criminal intent."

The court also said:

"I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children -- innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory, just so do these victims multiply and spread themselves over the land."

To the refusal of the court to charge as requested, and to the charge as given, the prisoner excepted. The jury found him guilty, as charged in the indictment, and the judgment that he be imprisoned at hard labor for a term of two years, and pay **[p. 15**1] a fine of $500, rendered by the District Court, having been affirmed by the Supreme Court of the Territory, he sued out this writ of error.

The assignments of error are set out in the opinion of the court. **[p. 15**3]