South Carolina Law Review

Volume 7 | Issue 1 Article 11

Fall 1954

Criminal Law and Procedure

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CRIMINAL LAW AND PROCEDURE

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SUBSTANTIVE CRIMINAL LAW

There have been few cases involving substantive criminal law during the period covered by this analysis.

In the case of *State v. Grantham*,[1] the Court held that the defendant, who shot his wife in their home while she was advancing upon him with a butcher knife, was under no duty to retreat and could support his plea of self-defense as he had not provoked the difficulty.

State v. Keller[2] reaffirmed the doctrine of knowing right from wrong as a test of criminal responsibility under a plea of insanity as a defense to the commission of a crime. Our Court has expressly repudiated the irresistible impulse theory as a defense.

CRIMINAL PROCEDURE

In *State v. Waitus*,[3] the defendant, a negro, was convicted of murder. There was evidence that, in the county in which he was tried, ten percent of the qualified electors were negroes and that for at least twelve years no negro had sat either on the grand or petit jury in that county. The Court, on appeal, held that the facts made out a *prima facie* case of racial discrimination in the selection of the jury before which the defendant was tried. The judgment was reversed.[4]

The case of *State v. Gantt*[5] involved a jurisdictional question. The defendant was indicted and tried for murder. The Court held that the county in which the fatal blow was struck was the proper venue for the homicide prosecution even though the deceased may have died outside the state.

In the case of *State v. Sessions*,[6] the Court held that the crime of assault and battery with intent to kill is a misde-

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1. 224 S.C. 41, 77 S.E. 2d 291 (1953).
2. 224 S.C. 257, 78 S.E. 2d 373 (1953).
3. 224 S.C. 12, 77 S.E. 2d 257 (1953).
4. U. S. CONST., Amend. XIV; S. C. CONST., Art. II, § 1 *et seq.*, Art. V, § 22.
5. 223 S.C. 431, 76 S.E. 2d 674 (1953).
6. 81 S.E. 2d 287 (S.C. 1954).

meanor. As a result, the defendant could be tried in his absence.

The question of after-discovered evidence was passed upon by the Court in the case of *State v. Clamp*.[7] The defendant was convicted of burglary. He moved for a new trial on the grounds of after-discovered evidence. His motion was denied by the lower court. The Supreme Court upheld the judgment of the lower court. It laid down the rule that in order to grant a new trial on the ground of after-discovered evidence, it must appear that the evidence is such as will probably change the result if a new trial is granted; that it has been discovered since trial; that it could not have been discovered before trial by the exercise of due diligence; that it is material to the issue and that it is not merely cumulative or impeaching.

State v. Miller[8] is a case of interest. The defendant had been acquitted under an indictment that charged him with breaking into and larceny of the goods of a store "and others." Another indictment charged him with housebreaking and entering an enclosed United States Post Office located in the store and larceny of money belonging to the United States. When brought to trial upon the second indictment, he entered a plea of former jeopardy and *autrefois acquit*. The lower court overruled both pleas and he was convicted.

Upon appeal the Court held that the acquittal for housebreaking into the store did not bar the prosecution for housebreaking and entering the Post Office, but that acquittal under the charge of larceny of the goods of the store "and others" barred the prosecution for larceny of money of the United States in the Post Office.

7. 80 S.E. 2d 918 (S.C. 1954).
8. 225 S.C. 21, 80 S.E. 2d 354 (1954).