

No. 14513

Supreme Court of Illinois

Mullen

vs.

People

1877
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 3

PEOPLE'S CAUSES.

Reported 31 Vol.

1868

*Meeklen
vs
People*

14513

Patrick Sullivan -

Plff in Error -

vs -

The People of State of N.Y. -

Def in Error

In the Supreme Court of the Capital
Term 1862 -

At Albany -

Recd in the 14th of May 1862 - from
the Clerk of the said Court the argument of the Plaintiff in Error
to be returned tomorrow morning

Wm. J. Sullivan
Att'y for Plaintiff

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Mr. Justice Walker delivered the opinion of the Court.

~~Walker~~ It is insisted, that the Court erred in its instruction to the jury. On behalf of the prosecution, the Court gave an instruction, that if the jury found the defendant guilty, they should fix the term of his confinement, in the penitentiary, at ~~not~~ a period of not less than one year, and might extend it to the period of his life. It is insisted, that the instruction is erroneous, because the act of 1845, R S 156, authorizes the confinement of persons convicted of manslaughter, for a term less than one year. It is urged, that the act of 1859, (Sess. Laws 125) does not repeal this provision of the former act. The latter act provides, that upon conviction, the jury shall, in their verdict, fix the time which the party shall be confined in the penitentiary, which shall be for his natural life, or any number of years.

This act contains no express repealing clause. But the latter act is comprehensive, and embraces

all that is embraced by the 29th section of the Criminal Code. The provisions of the act of 1859, are repugnant to the provisions of the former act, inasmuch as it requires the term to be for life, or a number of years, whilst the former act authorized it to be fixed for any period ~~of~~ not exceeding eight years. Under the original act, the jury ~~was~~ had the right to fix the time at less than one year, but under the act of 1859, ~~to say the~~ it at least must be for one year. In so far as the acts are repugnant, the last expression of the will of the general assembly must prevail. Instead of this instruction being prejudicial to plaintiff in error, it was certainly as favorable as he could ask, and it may be more than he had a right to demand under the statute. The judgment of the court below is affirmed.

Judgment affirmed

3
Patricia Mullin

3 Pd. us 152.

The People

Opinion by
Walker J.

Q. 18.
Compared

Recorded 12, 183

Cont.

27
243
112
1029

Supreme Court of the State of Illinois
April Term A.D. 1862

Patrick Sullivan }
vs } Error to Cook
The People &c } 3

Points & Authorities for the People

It is unnecessary in this case
to enquire whether the instruction
given by the Court is erroneous.
The defendant did not except
to the giving of the instruction
& it is now too late for him to
object to it

3 Scam 17 - 12 Ill. 89 - 13 ib. 88
1 Scam. 281 - 3 ib. 564 - 13 Ill 342 - 2 ib. 293
12 Ill 76 - 13 Ill 702 - 11 Ill 84 & 587

D. Jones
States Atty

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Patrick Muller
vs
The People

Prints & Antiquities
for People

Gilel May 15, 1842
J. Leland
MR

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

PATRICK MULLEN, Plff. in Error.	} <i>Error from Cook County Circuit Court.</i>
<i>vs.</i>	
THE PEOPLE OF THE STATE OF ILL.,	
Deft. in Error.	

ABSTRACT OF CASE.

- 1,2 Indictment of plaintiff in error for manslaughter, in said county of Cook.
- 4 The jury find the plaintiff in error guilty, and fix his punishment at one year in the penitentiary, whereupon plaintiff in error moved the Court for a new trial of said cause, and in arrest of judgment.
- 5 Motion for a new trial and in arrest of judgment overruled by the Court at the same term, and on the 20th day of September, A. D. 1861.
- 6 On same day and year last aforesaid, said defendant, by his attorney, filed in the said Cook County Circuit Court his certain bill of exceptions, in words and figures following, to wit:

PEOPLE
vs.
PATRICK MULLEN. } Be it remembered, that on this 20th day of September, A. D. 1861, it being one of the days of the September Term of said Court, and on the trial of said cause, after all the evidence was in and the instructions given to the jury, at the request of Carlos Haven, Esq., State's Attorney, the Hon. George Manierre, Judge of said Court, then and there presiding, instructed the jury before whom said cause was tried, that if they should find the defendant guilty as charged in the indictment, they should fix his term of imprisonment in the penitentiary not less than one year, and might fix it for his natural life, and thereupon said jury retired to consider their verdict.

GEORGE MANIERRE, [SEAL.]
Judge of 7th Judicial Circuit, Ills.

THE ERRORS ASSIGNED.

1st. That the said Judge of the Circuit Court, before whom said cause was tried, erred in instructing the jury in said cause, that if they found the defendant below (here plaintiff in error) guilty, they should fix his term in the penitentiary at not less than one year.

2d. That the said Judge erred in overruling the motion for a new trial and in arrest of judgment.

ARGUMENT OF PLAINTIFF IN ERROR.

The validity of the errors assigned depends upon the construction of the statute of 1845, ^{as amended} and the amendatory statute of 1859. Under the former, a convict could be sent for a shorter term than one year; then, if that statute is not repealed, the exception is ^{well} taken. It has not been expressly repealed; the statute of 1859 ^{of 1859} contains no repealing clause.

Is it repealed by implication? We think not, because each is so far consistent with the other, that they may be construed to form a whole; and being a criminal statute, the Court will infer nothing that adds to punishment, but will give that construction most consistent with mildness. Again, they will give the statutes that construction that will keep both statutes alive, if in doubt as to whether it was the intent of the Legislature to repeal the one by the enactment of the latter. Taking both enactments, we insist that a convict may be sentenced for any period extending to natural life. If this be a correct view, the judgment should be reversed.

EDWARD G. ASAY,
Attorney for Plaintiff in Error.

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Patrick Mullan
As
The People

Abstract

Filed May 15. 1882
J. Leland
CVR

Supreme Court of the State of Illinois
April Term 1862 at St. Louis

Patrick Muller
Off. in error

People of Illinois
Defendants in error

And at this term of the
said Supreme Court of the State of Illinois
concerning the said Patrick Muller Plaintiff
in error by Edward G. May his attorney
and says that in the record and proceedings
aforesaid and also in giving judgment
as aforesaid there is manifest error
in this to wit that the said judge of the
said court before whom said cause
was tried erred in instructing the jury
in said cause that if they found the
defendant (below Plaintiff in error) guilty they
should fix his term in the penitentiary
at not less than one year - and that
there is error in this that the said judge
annulled the motion for a new trial
and in giving judgment. Therefore
the said Patrick Muller prays that the
said judgment for the error aforesaid
and for the ^{other} error apparent on the record
may be reversed annulled and altogether
held for naught and that he may be

reversed all things which he had to look
by occasion of the said judgment &

E. G. May
att'y for Plaintiff in error

In the Supreme Court
April Term 1862
at Ottawa

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manierre Judge of the Seventh
Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of
Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House
in the City of Chicago, in said County, on the first Monday, (being the
1 day) of September in the year
of our Lord One Thousand Eight Hundred and sixty one and of the
Independence of the said United States the eighty fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit
of the State of Illinois. }

Charles Warren States Attorney.

A. G. Waring Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that herefore
to-wit: on the fourth day of September in the year of our
Lord One thousand Eight hundred and sixty one. there
was filed in said Court a Certain Indictment, in word
and figures following To-wit—
"State of Illinois }
Cook County }

Of the September Term of the Cook
Circuit Court, in said State and County, in the
year of our Lord One thousand eight hundred and
sixty one. The Grand Jurors, Chosen selected
and sworn in and for the County of Cook and in the
State of Illinois, in the name and by the Authority
of the People of the State of Illinois, upon their oaths
present that Patrick Bullen late of said County
on the Eighth day of February in the year of our Lord

one thousand Eight-hundred and fifty-one at
Bridgport in the County and State aforesaid, in and
upon one Mary Ann Mullen alias Mary Mullen
in the presence of the said people then and there being
unlawfully and feloniously did make an assault
and that the said Patrick Mullen then and there
with the fists and with both the feet of him the said
Patrick Mullen her the said Mary Ann Mullen
alias Mary Mullen in and upon and against the
head, neck, back, breasts, chest, sides, limbs and
other parts of the body of her the said Mary Ann
Mullen alias Mary Mullen unlawfully and
feloniously did then and there strike, kick
pound and bruise giving then and there to the
said Mary Ann Mullen alias Mary Mullen
in and upon the head, neck, back, breasts, chest,
sides, limbs and other parts of the body of her
the said Mary Ann Mullen alias Mary Mullen
by the striking, kicking, pounding and bruising
with the fists and feet of him the said Patrick
Mullen as aforesaid, several mortal Contusions
bruises and wounds, of which said several
mortal Contusions, bruises and wounds she the
said Mary Ann Mullen alias Mary Mullen
then and there died, And so the Grand Jurors
upon their oaths aforesaid do say that he the said
Patrick Mullen by the said Mary Ann Mullen
alias Mary Mullen then and there in manner and
form aforesaid unlawfully and feloniously did then

3^r

and then sell and play contrary to the statute
and against the peace and dignity of the same people
of the State of Illinois, —

Carlos Warren

States Attorney

On the back of said Indictment appears the following
Endorsements. To-wit: —

"The People of the State of Illinois

Patrick Mullen —, Indictment for Manslaughter,
A True Bill. Sam Ward

Witnesses

O. S. Wough. Dr J. R. G. J. M. James
Wm. Stevens Thos Ball

and afterwards. To-wit: at the September Term of
said Court. To-wit: on the 20th day of September
in the year aforesaid, the following proceedings, among
others, were had and entered of record. To-wit: —

The People of the
State of Illinois

Indictment for manslaughter

Patrick Mullen

This day again come the said
Peoples by Carlos Warren Esqr States Attorney
as the said defendant in his own proper person
and by Edward S. Hea, of Counsel, and the
Duro of the Jury aforesaid having returned to the

4. bar of this Court, and they having now heard all the evidence adduced by the parties, and the arguments of Counsel as well on the part of the said People ^{as} of the said defendant and instructions from the Court, retire to their room under the charge of a prison officer of the Court to consider of their verdict, and afterwards return to the bar of this Court in like charge. And having agreed upon a verdict - say "We the Jury find the defendant guilty. And fix his punishment at one year in the Penitentiary." Whereupon the said defendant by his Counsel moves the Court for a new trial of said cause and in arrest of Judgment. And the said defendant is thereupon remanded by the Court into the Custody of the Sheriff of Cook County.

And afterwards, To-wit: at the same Term of said Court, to-wit: on the 21st day of September in the year aforesaid, the following proceedings, among others, were had and Entered of record. To-wit:

The People of the
State of Illinois

Patrick Mullen

} Indictment for manslaughter

This day again came as well

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the said People by Carlos Warren Esq, State
Attorney, as the said defendant in his own proper
person and by Edward H. Asay of Counsel, and
the Court having heard counsel as well in support
of the motion of the defendant heretofore entered
for a new trial of said cause and in arrest of
Judgment, as in opposition thereto, and being now
fully advised of and concerning the premises doth
order that said motions be and they each are
hereby overruled, to which ruling of the Court
in overruling said motions and each of them
the defendant by his Counsel now here excepts,
And now neither the said defendant nor his
Counsel for him saying anything further why
the judgment of the Court should not be
pronounced against him on the verdict of guilty
heretofore rendered by the jury in said cause

Therefore it is ordered and
adjudged by the Court that the said defendant
Patrick Mullen be taken from the bar of
this Court to the Common Jail of Cook County
from whence he came, and from thence by the Sheriff of said
County of Cook, within ten days, to the Penitentiary of this
State at Joliet and delivered to the warden or Keeper
of said Penitentiary; and the said warden or Keeper is
hereby required and commanded to take the body of
the said defendant Patrick Mullen and confine him in
said Penitentiary in a safe and secure custody for and

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during the term of one year from and after the delivery
thereof ten days of paid term in solitary Confinement,
and the residue thereof at hard labor, and that he
be thereafter discharged, and it is further ordered
that said defendant pay and satisfy the costs of this
prosecution, and that Execution issue against him
therefor.

And afterwards to-wit: on the
same day and year last aforesaid, said defendant by his
Attorney filed in said Court his Certain Bill of Exceptions
in words and figures following To-wit:

People
Patrick Meullen

I { Be it remembered that on this 20th day of
September A D 1861 it being one of the days of the September
term of said Court; and on the trial of said Cause
after all the evidence was in and the instructions given
to the jury, at the request of Carlos Warren Esq. State Attorney
the Hon George Manierre Judge of said Court then and
there presiding ^{instructed} ~~expressed~~ the jury before whom said Cause
was tried that if they should find the defendant guilty
as charged in the Indictment they should fix his term
of imprisonment in the penitentiary not less than one year
and might fix it for his natural life, and thereupon
said jury retired to consider their verdict.

George Manierre
Judge of 7th Judicial Circuit Ill. Seal

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of the Indictment - the finding of the Jury & the Judgment of the Court & Bill of Exceptions in a certain cause lately pending in said Court, of the Common Law side thereof, wherein The People of the State of Illinois were plaintiffs and Patrick Muller Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Seventh day of May A. D. 1867.

Wm L Church Clerk.



State of Illinois
County of Cook

George Manierre
Judge of the
Seventh Judicial Circuit

I George Manierre Judge of the
Seventh Judicial Circuit do hereby
certify that the foregoing record con-
tains a full and true history of the proceed-
ings in said cause (with the exception
of the evidence in the cause which are
not set out) in which the said People of
the State of Illinois were Plaintiffs and
Patrick Mahan was defendant

In Witness Whereof I have hereunto set
my hand and seal at Chicago
this 8th day of May A.D. 1862
George Manierre (Seal)
Judge of 7th Judicial Circuit
Illinois.

Assignment of Error

The court erred in instructing the jury
if they should find the defendant guilty
they should fix his term at a period
not less than one year -

Rev. Statutes (Vol. 3) Sec 378 Sec 29
Criminal Code
Law 1859 (Vol. 3) Sec 122

Supreme Court of the State of Illinois
April Term A.D. 1862
Patrick Mahan vs
The People &c

And whereas the said People of
the State of Illinois allege that
in the said proceedings a prejudicial
error was committed by the jury
there is no error therefrom they pray
that the same be reversed

1862 #2 L.D. 3

Supreme Court
State of Illinois
Mahan vs
The People
April 1862

Patrick Mahan
vs
The People &c

Filed May 9, 1862
L. Deland
Clerk

W. G. C. May for
Patrick Mahan