Herman Treadgill v. State

No. 27,061

Court of Criminal Appeals of Texas

160 Tex. Crim. 658; 275 S.W.2d 658

January 12, 1955

SUBSEQUENT HISTORY: Reported at *160 Tex. Crim. 658 at 663*.

PRIOR HISTORY: Original Opinion of October 6, 1954, Reported at *160 Tex. Crim. 658*.

CASE SUMMARY:

PROCEDURAL POSTURE: The State of Texas filed a motion for rehearing after it was determined that a city did not have jurisdiction to try defendant for the violation of an ordinance that made it unlawful to sell fireworks beyond the city limits, but within 5000 feet of the city limits.

OVERVIEW: The State's motion for rehearing was granted after the court held that the city did not have jurisdiction to try defendant for the violation of a city ordinance that prohibited the sale of fireworks beyond the city limits, but within 5000 of said limits. The court determined that the city, in the exercise of its police power, had the authority to prohibit the sale of fireworks and to declare them a nuisance because of the danger to the public health and safety. Under Tex. Rev. Civ. Stat. art. 1175, § 19, the city was expressly authorized to define all nuisances and prohibit nuisances within the city and outside the city limits for a distance of 5000 feet. The court concluded that the corporation court of the city was the proper court for the prosecution of defendant for the violation of the nuisance ordinance. However, the court held that defendant's conviction could not stand because the fine assessed was not authorized by the ordinance since it was less than the fixed amount of punishment assessable.

OUTCOME: The court granted the State's motion for rehearing in part, overruled in part, reversed defendant's conviction, and remanded the case.

JUDGES: Davidson, Judge. Woodley, Judge, dissenting.

OPINION BY: DAVIDSON

OPINION

[*663] [662]** ON STATE'S MOTION FOR REHEARING

Our original disposition of this case was based upon the proposition that the corporation court of the city of Houston was without jurisdiction to try appellant for a violation of the ordinance making it unlawful to sell fireworks beyond the city limits of the city of Houston but within 5,000 feet of said limits.

In reaching that conclusion, we expressly refrained from approving the validity of such an ordinance or the power of the city of Houston to enact and promulgate the same.

Appellee recognizes that under such holding and in order for a different conclusion to be reached by us, it must establish the validity of the ordinance and, in addition, the corporation court as a proper forum in which the ordinance might be enforced and violations thereof punished.

Under Sec. 19, Art. 1175, V.A.C.S., the city of Houston was expressly authorized to "define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet."

[*664] It appears that it is now definitely settled by the courts of this and other jurisdictions that fireworks constitute such danger to the public health and safety as to constitute them a nuisance, and the sale thereof may be prohib-

ited by municipalities in the exercise of their police power. Ex parte Clark, 139 Texas Cr. Rep. 385, *140 S.W. 2d 854*; *Cannon v. City of Dallas, et al, 263 S.W. 2d 288*, and authorities there cited.

It is apparent, therefore, that the city of Houston had the power to prohibit the sale of fireworks within its corporate limits.

The next question arising is whether the legislature was authorized to confer upon the city of Houston the power to prohibit such sale and the maintenance of the nuisance beyond its corporate limits for a distance of 5,000 feet.

Here, again, Sec. 19 of Art. 1175, V.A.C.S., furnishes the authority for such power.

It would be idle to say that, in the exercise of its police power, a city may prohibit the operation of a nuisance within the corporate limits but could not do so if the nuisance was beyond the limits of the city but so situated as to constitute the same nuisance or hazard to the public health and safety as if within the city limits. To so limit and circumscribe the power of the city in such an instance could defeat the power of the city to prohibit the maintenance of the nuisance.

The conclusion is expressed that the legislature was authorized to confer upon the **[**663]** city of Houston the right to prohibit the maintenance of the nuisance beyond the city limits as a necessary attribute of the power, in the first instance, to prohibit nuisances dangerous to the public health and safety of the city.

This conclusion appears to be authorized, in principle at least, by 62 C.J.S., Municipal Corporations, Sec. 141, p. 283; *O'Brien v. Amerman, et al, 247 S.W. 270*; *City of Rockford v. Hey, 9 N.E. 2d 317*; *City Transportation Company, Inc., v. Pharr, et al, 209 S.W. 2d 15.*

In so far as it prohibited the sale of fireworks beyond the limits of the city of Houston but within 5,000 feet thereof, the ordinance is valid and warranted by express authority delegated by the legislature of this state.

[*665] The question remaining, then, is whether the corporation court of the city of Houston was a forum in which violations of that ordinance might be prosecuted.

We disposed of this question, originally, in the negative, because of our conclusion of a lack of jurisdiction in said corporation court.

Appellee earnestly challenges the correctness of that conclusion.

We now conclude that we were in error in so holding, basing such conclusion upon the proposition that the question as to the power of the corporation court to act was not one of jurisdiction but, rather, of venue.

The corporation court of the city of Houston possesses jurisdiction "within the territorial limits" of that city in all criminal cases arising under the ordinances of that city and concurrent jurisdiction with the justice of the peace in all criminal cases arising under the criminal laws of this state in which punishment is by fine only and where the maximum fine may not exceed two hundred dollars. Art. 1195, R.C.S.; Art. 12000c, V.A. C.S.; and Art. 62, V.A.C.C.P.

The right to prosecute for violations of the laws in a county other than that in which the crime was committed is not new in this state. Chapter Two of Title 4 of the Code of Criminal Procedure, Arts. 186-211, is especially devoted to that subject. Special attention is called to Art. 187, C.C.P., where prosecutions of land titles is expressly authorized to be maintained in Travis County, without regard to the county where the offense is committed. So, also, may one be tried for the crime of rape in various counties other than that in which the offense was committed, Art. 207, C.C.P. Indeed, by Art. 190, C.C.P., any offense may be prosecuted in a county other than that in which the crime was committed if within four hundred yards of the boundary.

The validity of these venue statutes has never been seriously questioned, nor has the right of the legislature to promulgate the same been denied. In this connection, attention should be called to the fact that in this state we have no constitutional inhibition against trying an accused outside the county where the offense is committed or outside the county of his residence. The only inhibition we have is statutory. Art. 211, C.C.P.

[*666] There is no escape, then, from the conclusion that the legislature of this state possessed the power to authorize one to be tried in a county or a jurisdiction other than that in which the offense is committed.

Such being true, it would follow that the legislature was also authorized to confer upon corporation courts like power and authority to try cases coming within its jurisdiction but where the offense was committed outside the corporate limits.

The question, then, is whether the legislature has so provided.

While it is true that the legislature of this state has not expressly so provided, no other conclusion but that it has done so may be drawn from that part of Sec. 19 of Art. 1175, V.A. C.S., by which the city of Houston is expressly authorized to prohibit nuisances outside the city limits for a distance of five thousand feet.

[664]** The right to prohibit such nuisances carries with it the right to do all things necessary to that end, which extends to prosecution and punishment in the courts having jurisdiction of such offense.

The ordinance making it unlawful to sell fireworks within five thousand feet of the boundary line of the city of Houston being valid, the corporation court of the city of Houston was a proper court in which a prosecution for a violation of that ordinance might be maintained.

From what has been said, it is apparent that the ordinance here involved is valid and the corporation court of the city of Houston is a proper forum in which violations of that ordinance might be determined.

To the extent expressed, the state's motion for rehearing is granted.

It appearing, however, that the ordinance fixed no graduated punishment for a violation thereof but fixed a fine of $ 200 as the only punishment assessible thereunder, the punishment of a fine of $ 105, as here fixed, was not authorized by the ordinance, as suggested in our original opinion.

For this reason, the judgment of conviction cannot stand.

[*667] The state's motion for rehearing is granted in part, and in part overruled; and the judgment of conviction is reversed and the cause is remanded.

DISSENT BY: WOODLEY

DISSENT

WOODLEY, Judge, dissenting.

My brethren have reached the conclusion that the ordinance is valid; that the corporation court had the authority to hear and decide the case, and that it should be remanded for another trial rather than be dismissed.

I am unable to agree with the majority opinion on rehearing and believe that the case was properly disposed of on original submission.

The distinguished and capable city attorney of Houston and his able assistants submit as the controlling point in this appeal: "Whether the Corporation Court of a Home Rule City has jurisdiction of offenses created by ordinance enacted under the authority of Art. 1175, Subd. 19, R.C.S., when the offense occurs outside of but within 5,000 feet of the corporate limits of such city." The theory that the question is one of venue is not advanced by counsel for either side, and does not appeal to the writer as sound.

Upon original submission it was urged with much force and logic that Subdivision 19 of Art. 1175, R.C.S., "extends the corporate limits of each Home Rule City for a distance of 5,000 feet for the limited purposes named in the statute." It was pointed out that "no other forum is available to try such cases" and contended that "if the statute in question does not so extend the corporate limits so as to vest jurisdiction in the corporation court to try persons maintaining nuisances in violation of an ordinance prohibiting nuisances in the adjacent area the statute is rendered meaningless."

This contention was overruled in our original opinion, and I do not understand the opinion on rehearing as holding otherwise. The corporate limits then were not extended by Art. 1175, Subd. 19, R.C.S., or by the ordinance.

Upon rehearing, as well as on original submission, it was further reasoned and urged by able counsel for the city of Houston that by Art. 1175, Subd. 19, R.C.S., enacted in 1913, jurisdiction **[*668]** has been given Home Rule Cities over the 5,000 foot adjacent area, though outside the corporate limits, and that said statute authorized the passage of the ordinance defining the offense here charged, and extended the jurisdiction of the corporation court to try the offender.

Art. 62 C.C.P. was enacted in 1899; Art. 1195 R.C.S. the same year. Each provides that the corporation court shall have jurisdiction within the territorial or corporate limits in all criminal cases arising **[**665]** under the ordinances of

the said city, town or village. (Jurisdiction of state cases concurrent with justice of the peace courts is not here involved, the act charged not being prohibited by state law.)

Arts. 62 C.C.P. and 1195 R.C.S. are general laws and apply to all corporation courts, whether the municipality be a Home Rule City or a city, town or village incorporated under the general laws.

Art. 1175 R.C.S. was enacted long after the foregoing statutes, Arts. 62 C.C.P. and 1195 R.C.S. It enumerates certain powers which are to be exercised by Home Rule Cities, but has no application to other cities, towns or villages. It contains no specific provision as to jurisdiction of corporation courts.

As stated, the jurisdiction of corporation courts under the general laws as to cases involving violation of the penal ordinances of the city is confined to the territorial or corporate limits of the city. See Arts. 62 C.C.P. and 1195 R.C.S.

Art. 1200(c) V.A.C.S., enacted in 1949, provides in terms that the corporation courts therein mentioned (admittedly the corporation courts of the city of Houston are included in the act) shall have the same jurisdiction as conferred by general laws on all corporation courts. Laws in conflict are specifically repealed. This excludes the theory that the jurisdiction of such corporation courts extends beyond that of cities or towns incorporated under the general laws, to which Art. 1175 R.C.S. has no application.

I concur in the reversal but respectfully dissent from that part of the opinion on rehearing which holds that the question is one of venue rather than jurisdiction, and upholds the validity of the ordinance and the power of the corporation court to hear and determine the case. The act charged was not committed within the territorial or corporate limits of Houston and was not a violation of state law. The corporation court had no jurisdiction to try appellant for the act charged and the prosecution should be dismissed.