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Criminal Law -- Obstructing Justice -- Interfering With a Police Officer

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In the *Green* case the Court said that if the waiver extends to the whole offense for which the defendant was indicted, then he is faced with a dilemma.[23] In order to gain a chance to have corrected what he considers an erroneous conviction of a lesser offense, he must run the risk of conviction of an offense which may be punishable by death. This gives him no meaningful choice. Accordingly, those decisions which are in line with the *Green* case limit the extent of the waiver to the offense of which he was convicted. He is deemed acquitted of any greater offense by the first verdict.[24]

From the foregoing it is seen that there are two opposing camps regarding the question presented by the *Green* case. The two are approximately equal in number and can possibly be equally well supported by logical argument. The danger is that well reasoned logic may obscure the point in conflict. Perhaps the answer to this problem is more a matter of policy than of logic. Justice Holmes said that "in this country there is more danger that criminals will escape justice than that they will be subjected to tyranny."[25] Yet, in the orderly administration of justice that balance is likely as equal as laws can devise. It is therefore submitted that the holding of the *Green* case exemplifies the spirit, if not clearly the letter, of the prohibition against double jeopardy.[26]

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Criminal Law—Obstructing Justice—Interfering With a Police Officer

Statutes imposing criminal sanctions for obstructing justice[1] contain such descriptive words as obstruct, resist, oppose, assault, interfere, hinder, prevent, intimidate and impede. The question raised is should

of the cause." Kepner v. United States, 195 U.S. 100, 134 (1904). No cases in support of this theory have been found.

[23] 355 U.S. at 193.

[24] Hearn v. State, 212 Ark. 360, 205 S.W.2d 477 (1947); Commonwealth v. Deitrick, 221 Pa. 7, 70 Atl. 275 (1908).

[25] Kepner v. United States, 195 U.S. 100, 134 (1904) (dissenting opinion).

[26] The holding of the *Green* case will affect only the federal courts, as the double jeopardy prohibition contained in the fifth amendment of the Federal Constitution does not apply to the states. Palko v. Connecticut, 302 U.S. 319 (1937). However, an interesting sidelight of the *Green* case is the fact that the majority opinion was written by Justice Black, who has insisted that the fourteenth amendment due process clause incorporates the entire Bill of Rights so as to make its provisions binding on the states. Adamson v. California, 332 U.S. 46, 68 (1947) (dissenting opinion). The majority of the Court has always refused to accept this idea. For a discussion of the majority view, see Justice Frankfurter's concurring opinions in Malinski v. New York, 324 U.S. 401, 412 (1945), and Adamson v. California, *supra* at 59.

[1] ALA. CODE tit. 14, § 402 (1940); ARIZ. REV. STAT. ANN. § 13-541 (1956); IND. ANN. STAT. § 10-1005 (Burns 1956); ME. REV. STAT. ANN. c. 135, § 21 (1954); MINN. STAT. ANN. § 613.56 (1947); NEB. REV. STAT. § 28-729 (1948); N.C. GEN. STAT. § 14-223 (1953); N.J. REV. STAT. § 2A:99-1 (1953); TENN. CODE ANN. § 39-3104 (1955); W. VA. CODE ANN. § 6015 (1955).

these words be interpreted as including conduct which did not involve the use of force or threats to use force and which could not have incited a riot.

In *Andersen v. United States*[2] a police officer was issuing a double parking ticket to another party when Andersen, a bystander, protested the officer's authority to issue the ticket. The officer, in arresting Andersen for being disorderly, tore Andersen's shirt. Andersen in turn pushed the officer but then submitted to the arrest. Andersen admitted in the trial court that he protested the officer's right to issue the parking ticket but denied being disorderly or interfering with the officer. For the act of pushing the officer, Andersen was convicted of assault.[3] He appealed on the ground that he had not committed the misdemeanor of interfering with or obstructing justice and for that reason he was justified in using reasonable force to resist an unlawful arrest. Although there was no indication in the report that Andersen was indicted for interfering with a police officer, the court said it appeared from the defendant's admissions in the trial for assault that he had committed the misdemeanor of interfering with a police officer[4] as a matter of law; therefore, his arrest was lawful and his resistance unjustified.

Should an orderly protest to a police officer be an obstruction of justice? An annotation[5] and the treatises[6] take the position that remonstrating with an officer on behalf of another or questioning an officer while he is performing his duty does not constitute an obstruction, hindrance or interference.

From a general search of the annotated state statutes on obstructing justice, no other case was found where a court had interpreted its statute so liberally. On the contrary citizens were found not guilty of obstructing justice where they merely questioned, commented to, or remonstrated with police officers concerning arrests.

In *People v. Magnes*[7] the defendant asked why certain persons were placed in custody. A lower New York court found that the inquiries propounded in a gentlemanly manner did not amount to an interference

[2] 132 A.2d 155 (D.C. Mun. Ct. App. 1955).

[3] D.C. CODE ANN. § 22-504 (1951): *"Assault or threatened assault in a menacing manner.* Whoever unlawfully assaults or threatens another in a menacing manner, shall be fined not more than five hundred dollars or be imprisoned not more than twelve months or both."

[4] D.C. CODE ANN. § 22-505(a) (Supp. VI 1958): *"Assault on a member of police force.* (a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than five years or both."

[5] Annot., 48 A.L.R. 753 (1927).

[6] 39 AM. JUR., *Obstructing Justice* § 10 (1942); 67 C.J.S., *Obstructing Justice* § 2 (1950). See also 6 ARK. L. REV. 46 (1951).

[7] 187 N.Y. Supp. 913 (N.Y. County Ct. Gen. Sess. 1921).

with a police officer. The court went on to say that the defendant had a perfect right to make the inquiries of a police officer. In *Chicago v. Brod*[8] the defendant at the scene of another's arrest commented, "Well, he [referring to the arresting officer who had his gun in hand] doesn't have to shoot him."[9] The court, reversing the conviction for interfering with justice, asked: "If this pronouncement of the trial judge is sustainable, where are our boasted liberties? Must the citizen be beholden to the whim and humor of the police for his freedom . . . ?"[10] In *District of Columbia v. Little*[11] the defendant refused to unlock the door of her home for a health officer and remonstrated on constitutional grounds. The defendant's actions were held not to be an interference. The court said that although force or theatened force is not always an indispensable ingredient of the offense of interfering with an officer in the discharge of his duties, mere remonstrances or even criticisms of an officer are not usually held to be the equivalent of unlawful interference. In *People v. Pilkington*,[12] while the police officer was putting prisoners into the patrol car, the defendant advised the prisoners to keep their mouths shut and a lawyer would soon be on the way. The court held this not to be a violation of the city ordinance which states that it is unlawful to harm, obstruct, or resist any officer in the performance of his duties.

Under the court's interpretation in the principal case, a police officer cannot be questioned by an innocent bystander. The statute[13] so interpreted makes orderly protests to a police officer punishable as a matter of law by $5,000 fine or five years imprisonment or both.

NICK J. MILLER

Domestic Relations—Custody—Contests Between Parent and Nonparent

Probably one of the most important and yet most unsettled areas of the law today is that of custody of children, particularly in a contest between a parent and nonparent. As early as 1876[1] the North Carolina Supreme Court held that the trial judge erred when he was of the opinion that in law the mother had a *primary* right (as against the

[8] 141 Ill. App. 500 (1908).
[9] *Id.* at 501.
[10] *Id.* at 502.
[11] 339 U.S. 1 (1950). Although not squarely in point, this case was included because it arose in the same jurisdiction. Also, it should be pointed out that in 1953 D.C. CODE § 22-505(a) (1951) was amended; the phrase, "personal violence upon an officer," was deleted, and the phrase, "assaults, resists, opposes, impedes, intimidates or interferes with any officer," was inserted. D.C. CODE § 22-505(a) (Supp. VI 1958).
[12] 199 Misc. 665, 103 N.Y.S.2d 64 (County Ct. 1951).
[13] D.C. CODE ANN. § 22-505 (Supp. V 1956).

[1] Spears v. Snell, 74 N.C. 210 (1876).