

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN  
DISTRICT OF MISSOURI  
UNITED STATES, PLAINTIFF

-VS-

MATTHEW S. MURRAY, DEFENDANT

No. 14652

In considering the evidence in this case, it is the duty of the Court to bear in mind certain long established and well recognized fundamental principles of law to guide in arriving at a verdict or verdicts.

The first principle to be briefly noted is that the indictment is without probative force. It is merely a formal charge and should not and will not be considered as evidence in the case.

It is also a familiar rule that the law presumes the innocence and not the guilt of the accused. This presumption attends and protects him throughout the trial and until the government has overcome such presumption with facts in evidence which establish his guilt or satisfies the trier of the facts of his guilt beyond a reasonable doubt. The meaning of a reasonable doubt is well known. It does not mean a mere fanciful, flimsy or fictitious notion that the accused might be innocent, but it means, as the word itself implies, a doubt founded in reason and for which a reason could be given. It is such a doubt as would cause a reasonable person to halt before acting in the more serious matters of his own affairs. Therefore, if upon the whole testimony, or from lack of testimony, there should arise in the mind of the trier of the facts a reasonable doubt as to the guilt of the accused on any or all counts, he is entitled to the benefit of that doubt and should be acquitted on those counts where such doubt exists.

The trier of the fact must be the judge of the credibility of the witnesses and the weight that should be accorded to the testimony of each witness in the case. In weighing the evidence and judging such credibility, the conduct and demeanor of the witness on the stand and his interest, if any, in the case, or the results of the case, should be considered. Liberty may be exercised in disregarding the whole or any part of the witness' testimony, if it may be believed that a witness has deliberately sworn falsely to any material fact in issue and on trial in the case.

The evidence of the good character or reputation of the defendant as a law abiding citizen is both competent and material and should be considered by the Court as the trier of the facts, along with the other evidence in the case. If this evidence should, in connection with all the evidence in the case, raise a reasonable doubt as to the guilt of the defendant, then he should have the benefit of such doubt and the Court should declare him not guilty.

With these guiding principles, it seems proper, before discussing the evidence, to state what appears to be the main issue of the case. To me, such issue is whether certain admitted transfers of personal property, i.e. Money and (in one Instance) Bonds, to the accused "by parties mentioned in the testimony, were gifts within the meaning of the law governing and defining such transfers, or whether such transfers were in fact compensation or consideration for services or for favors.

As has been repeated many times in the trial, the accused is charged with having wilfully attempted to evade and defeat his income tax, that is the payment of a tax on income received by him during the taxable years, 1934 to 1938 inclusive. Each of those years is covered by a separate count. If such transfers were gifts, then they did not constitute taxable income and the defendant should be acquitted. If, on the other hand, they were received by him as a

consideration, compensation or reward, such receipts were a taxable income and it was his duty to report them in his income tax returns for the years mentioned. If it should further appear from the evidence, beyond a reasonable doubt, that the defendant knew and understood such transfers were not gratuities, nevertheless he wilfully concealed the fact and omitted from his returns such items and attempted to evade and defeat the tax, it would become the duty of the trier of the fact to declare him guilty on each count of the indictment, for the reason that such transfers were made in each year covered by the indictment.

A gift may be defined as a voluntary transfer of property by one to another without any consideration or compensation therefor. A gift repels the idea of a consideration. It must appear in the light of all facts and circumstances as a mere gratuity.

It is contended by the defendant that the transfers admittedly made in this case were all gratuities and, in the classic language of the law, constituted gifts inter vivos. It is the law that the question as to whether transactions, such as these, are really gifts or not is determined or resolved by the intention or quo animo of the parties, that is, the donor and donee. This intention must be gathered from all the facts and circumstances attending the transfer of the property, including the relations of the parties. An inquiry is therefore permitted into all the facts surrounding and attending the acts, to see what was really intended by the giver or transferer and whether at the time there was a donative intent on the part of the one whose bounty is in question. This inquiry warrants a consideration of the acts, declarations and relations of the parties and particularly the acts and declarations of the alleged donors. It justifies an exception to the hearsay doctrine, because necessarily unsworn relevant statements of the donor may be admitted in evidence, whether made in or out of the presence of the accused.

Whether the government relies alone upon circumstantial evidence for the conviction of the accused will not be discussed, for the reason that the rule of circumstantial evidence will be followed and applied. This rule requires, before conviction in any case, that the facts and circumstances not only must be clear and convincing, consistent with guilt, inconsistent with innocence, and must exclude by their force every and all reasonable hypotheses of the innocence of the accused and point with a moral certainty to his guilt.

Now, if the Court, sitting as a jury, shall find and believe from the evidence, beyond a reasonable doubt, that the money and bonds admittedly received by the defendant were not gifts, and he knew that fact but nevertheless failed and neglected to report such income in his income tax returns, but wilfully attempted to evade and defeat the income tax thereon, then and under such circumstances it becomes the duty of the court to find him guilty as charged in each count of the indictment. If, on the other hand, as the trier of the facts the court should find and believe from the evidence that such transfers were gifts, or if there arises a reasonable doubt on that question, then it would be the duty of the court, as a trier of the facts so to say by its verdicts and declare the accused not guilty on each count.

In considering and weighing the evidence in the case, the relationship existing between the defendant on the one side, and John J. Pryor, E.L. Schneider and T. J. Pendergast on the other, and the acts and declarations of the last named should be studied in connection with the several admitted transfers of cash and bonds to the defendant.

It should be first determined with what mind these claimed donors made the transfers. While there was a single transfer and manual delivery of United States Bonds in the amount of

\$5,000 made by John J. Pryor to the defendant, yet the other transfers, being wholly of cash or currency, were scattered with more or less uniformity over the entire period under observation. The aggregate was more than \$50,000. In addition there were several transfers of cash made in like manner immediately antedating the period of the inquiry.

It should be considered that the defendant occupied an important and responsible office in Kansas City as Director of Public Works during the entire period and even before. Toward the middle of the year 1935, he became State Director of the Works Progress Administration of the National Government. Both these offices gave the defendant a large and lucrative income, probably a larger official income than received by any other State official. It was enough to make him reasonably independent of gratuities and the parties named undoubtedly knew this. Moreover the defendant was in a position to grant favors of a kind wanted and sought by such parties. In the discharge of his official duties he needed both the materials and machinery and the construction contracts in keeping with the business of said parties. According to the testimony purchases were made in large amounts of Ready Mixed Concrete from E.L. Schneider, and T. J. Pendergast or the company controlled by them. Such purchases were made on behalf of Kansas City, Missouri, and according to the undisputed evidence, in such way as to evade the provisions of the City's fundamental law. Orders for large quantities of concrete were split up so that the price for each would fall below \$2500 and thereby avoid the necessity of an approved contract. The aggregate of such purchases amounted to many hundreds of thousands of dollars. In like manner the machinery and equipment owned by J. J. Pryor or the firm of Boyle & Pryor were rented for the use of the City at a heavy cost. Other agencies or entities owned and controlled by T. J. Pendergast, were awarded contracts for the City. The aggregate of such contracts was several millions of dollars and necessarily gave to these parties vast amounts of business. The circumstances by which the transfers were made should be considered. The claimed gratuities coming from T. J. Pendergast were not delivered to the defendant by him but were given to the defendant in the nature of instalments by E. L. Schneider, who was Secretary and Treasurer of the corporations doing business with the City through the favor of the defendant, that is to say, they were supplying material and doing work under his requisitions.

It is natural to inquire whether the claimed donors were actuated by a desire to give of their bounty to the defendant, who during part of the time held two offices, with a lucrative salary from each. The question should further be asked whether the alleged gratuities have the usual indicia of bounties. One giving of his bounty ordinarily bestows his benefits in a single transaction. Indeed it would be rare to offer such gifts to a person, not in need, in installments, over so long a time. The defendant was not in need and was in a condition of affluence from his salaries. Neither was he engaged in a charitable enterprise or enterprises which called for the aid of the charitable minded. In law he was a stranger to the alleged donors. If the transfers were gratuities then said parties could have but one purpose and that was to help the defendant, who did not stand in need of aid. The transfers were personal gratuities and designed, according to the contention of the defendant, for his sole benefit and that of his wife and children. In conversation concerning the defendant, John J. Pryor on one occasion said that defendant had been good to the firm of Boyle & Pryor and therefore should be cut in for a part of the profits to accrue on an important contract with the State. This statement was made near the time when several transactions or transfers were being consummated and was competent as bearing on the attitude of mind of the said Pryor. The relationship of the parties, the manner

in which deliveries were made, as well as the declarations of the alleged donors repel the idea that the transfers were made as mere gratuities. It cannot be supposed that if T. J. Pendergast or any other person was indulging a philanthropic and charitable spirit he would have exercised it through the agency of E. L. Schneider, the Secretary and Treasurer of the several corporations controlled by him, or any other third party.

Upon the evidence on this phase of the case I find as a fact that the transfers of property were not made with a donative mind but on the contrary, such transfers were made for the consideration of favors obtained from the defendant in his official capacity and that such transfers were intended as compensation and rewards to the defendant for his favors.

The next phase of the case is an ascertainment from the evidence whether the defendant reasonably believed that such transfers were intended as gratuities and that he was justified in treating them as such.

It cannot be controverted but that he so performed his official duties as to enable the alleged donors to obtain profitable contracts from the City of Kansas City and to sell and rent to the City large amounts of supplies or material and machinery. Presumably these were profitable arrangements so far as the alleged donors were concerned.

Quite early in the transactions defendant manifested an interest on behalf of the contracting firm of Boyle & Pryor, of which Mr. Pryor was a member, by soliciting the State officials of the Highway Department for the award of profitable contracts to them in Barry and McDonald Counties. Furthermore according to the undisputed evidence he was solicitous for participation in the profits of a contract obtained by Boyle & Pryor in connection with the construction of public buildings for the State of Missouri. Although the defendant is an engineer, well educated, and has enjoyed a successful career, nevertheless he accepted the deliveries in cash and for the most part, if not wholly, carried his gifts or awards to his Safe Deposit Box in the vaults of the Commerce Trust Company. By this means it was practically impossible to trace the cash received by him. The question naturally arises why the deposit of his claimed gifts were not made in the regular course of business in the Bank or Trust Company wherein he kept an account. This would have been the regular and normal course to pursue.

On September 1st, 1939 the defendant under oath was requested to give information concerning his income to representatives of the Income Tax Department of the Government. Specific inquiries were made of him concerning receipts of money or property within the period covered by the indictment. He then denied that he had received anything other than as reported in his income tax returns. It does not seem reasonable that such transactions, involving so large an amount in cash and bonds, could have been overlooked by him.

While the defendant on the witness stand in this trial testified that he believed the deliveries made to him were gratuities, such testimony is incredible. It challenges belief to assert that one as successful as defendant and enjoying an extraordinary income from his official salaries and not engaged in philanthropies would accept as gratuities for himself and family the large amounts delivered to him by the parties mentioned in the evidence. On this phase of the case, the Court finds from the evidence that the money and bonds delivered to the defendant were not received by him as gratuities but on the contrary as a reward or rewards and so understood by him, for favors granted and services rendered to the deliverors and transferrers. The Court further finds from the evidence that, in relation to said deliveries so made to him, the defendant attempted to evade and defeat his income tax thereon as charged

in the indictment and each count thereof, and it is therefore the verdict of the Court, sitting as a jury, that the defendant is guilty as charged in each of the several counts of the indictment.

FILED MAR 13 1940

A. L. ARNOLD, Clerk.

By HC Spaulding Deputy