

UNITED STATES v. GOURE.

[4 Cranch, C. C. 488.]¹

Circuit Court, District of Columbia. Nov. Term, 1834.

RESISTING OFFICER—ARREST WITHOUT
WARRANT—OFFICIAL DUTY.

A constable is not in the discharge of his official duty when searching for a man, (who is represented to him as, and whom he believes to be, a loose and disorderly person without visible means of livelihood, a night-walker and frequenter of bawdy-houses, and a keeper of false keys,) with intent to arrest him without a warrant and carry him before a justice of the peace to be dealt with according to law; and it is not an indictable offence to threaten to kill the constable if he should attempt to arrest him.

The defendant [John Goure] was convicted upon the following indictment: "District of Columbia, Washington County, to wit: The jurors of the United States for the county aforesaid upon their oath present: That Richard R. Burr and Lambert S. Beck, being constables of the county aforesaid duly appointed and qualified, and acting in their said office as conservators of the peace of said county, upon information duly and lawfully to them made and given, that a certain John Goure, late of Washington county, yeoman, was a loose and disorderly person without any visible means of livelihood, a night-walker and frequenter of bawdy-houses, and a keeper of false keys, and knowing and believing the said information to be true, did thereupon, in the discharge of the duties of their said office, on the 13th of December, 1834, at the county aforesaid, proceed to search for the said John Goure, in order to arrest him by virtue of their said office and take him before a justice of the peace of said county to be dealt with according to law. And the said John Goure, well knowing the premises, and being such loose and disorderly person without any

visible means of livelihood, and a night-walker, and frequenter of bawdy-houses, and a keeper of false keys, as aforesaid, and as such well knowing that he was liable to arrest as aforesaid, to be dealt with according to law; and intending to intimidate the said Burr and Beck, and to prevent them from the discharge of their duty as aforesaid, and to hinder and obstruct them in the discharge of their said duty in searching for and arresting said Goure, on the day and year aforesaid, with force and arms at the county aforesaid, did threaten to kill the said Burr and the said Beck if they should attempt to discharge their said duty in searching for and arresting the said Goure; to the disturbance of the peace, and the obstruction of public justice, and against the peace and government of the United States.”

Mr. Bryce and Mr. Brent, moved in arrest of judgment, and contended that the constables were not in the discharge of their official duty in searching for a supposed offender without a warrant; and cited 2 Hawk. P. C. c. 12, § 18; Id. c. 13, § 7; 4 Bl. Comm. c. 10, § 3; 1 Burn. J. P. 103; 1 Chit. Cr. Law, 14, 20-22, 24.

Mr. Bradley, for the United States, cited the Maryland law of 1715, c. 15, § 1 [1 Dorsey's Laws Md. p. 8], for the oath of a constable; and the by-law of the corporation of Washington (Rothwell, 64).

THE COURT (THRUSTON, Circuit Judge, contra, and CRANCH, Chief Judge, doubting,) arrested the judgment, the officers not appearing to be in the discharge of their official duty in searching for the man to arrest him without a warrant.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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