

Case No. 15,493. UNITED STATES v. JONES.

{Brunner, Col. Cas. 462;¹ 2 Wheeler, Cr. Cas. 451.}

Circuit Court, D. New York.

April, 1824.

WITNESS—PARDONED FELON.

A person who has served out a sentence on conviction of felony may be restored by pardon to competency as a witness, but the jury is the sole judge of the credit to be given to his testimony.

{Cited in Stetler's Case, Case No. 13,380; Logan v. U. S., 144 U. S. 263, 12 Sup. Ct. 630.}

{Cited in Curtis v. Cochran, 50 N. H. 244; State v. Blaisdell, 33 N. H. 393.}

²{Mr. Tillotson opened the case on the part of the United States, and presented to the jury the outlines of the evidence which would be adduced. He said the murder was committed on the high seas, in 1818. The brig Holkar sailed from the port of N. Y. in Oct, 1818, under Captain Brown, and a coloured crew, with the exception of one man. The brig sailed for Curacoa, and reached the port of her destination. She took in a return cargo; and while on the high seas, the crew arose, mutinied, and murdered Captain Brown, the mate of the vessel, and a Captain Humphries, who was a passenger on board. The district attorney stated the difficulties in procuring testimony, after a lapse of six years, but said that he should present everything that could be reached.

{Evidence on the Part of the State.

{He then called Thomas M'Creedy, who is a clerk in the custom house. Witness produced the register of the Holkar, which has never been surrendered, dated March 5, 1818. The vessel cleared for Curacoa, October 18, 1818. She was an American vessel, owned by Richard Cole, and Samuel Brown was the master. The list of the crew was produced and read, an objection to the reading having been overruled by the court. The name of the prisoner at the bar was entered John Robinson.

{John G. Bogart proved the notarial list, which corresponded with the entry in his register. He shipped the crew, but could not identify the prisoner at the bar, although he had some recollection of his face.

{Joseph Lyon had some property coming home in the Holkar when she left Curacoa, but he had never been on board of her. The property was insured by the Mercantile Insurance Company, who paid the amount insured, to Mills, Minton, & Co., to whom it had been made over a few months after the loss of the Holkar. There was no suit against the company.

{James Flynn, one of the branch pilots, knew Capt Brown before he commanded the Holkar. He was a stout, square man, about 5 feet 9, with large black whiskers. Two of his front upper teeth projected beyond his lip, which gave him a very peculiar appearance. Has never seen him since he left in the Holkar, on Sunday morning, October 18, 1818.

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He has no recollection of the prisoner. All the crew were black excepting the mate. If there was any other, he was of a copper or dark colour.

{Diana Valentine: Witness remembers the brig Holkar. Her husband shipped part of the crew. Does not know exactly when, but thinks it was about five years ago. Her husband kept a sailors' boarding house at 63 Bancker street. It was in the fall of the year, and the Holkar sailed on Sunday morning. Does not know the name of the captain. He was a stout man, with large, heavy whiskers. One of his teeth projected out, but does not know whether it was his upper or lower tooth. Remembers that her husband shipped the prisoner at the bar, and a man by the name of Harry Cook. The prisoner went by the name of Tom Jones. He did not board there, but was at the house a great deal. The brig lay at the time at the left hand side of Dover street wharf. Was on the wharf at the time she sailed, and saw Mr. Conklin and Mr. Spence. Did not see the prisoner again for three years. (Witness went up to the prisoner to see him. Has no doubt that he is the man shipped by her husband.) Captain Coles commanded the brig before Captain Brown.

{Cross-examined by counsel for prisoner: Has lived in Bancker street for six years. Does not know Oliver Bang. Saw the prisoner two or three days before Johnson was hanged, in the street, and was well acquainted with him. The day before Johnson was hung, Mr. Conklin came for witness to come and see if it was the man. Did not remember that he was on board the Holkar till reminded of it by the cook. Her first husband's name was John Thompson. Knows that one of Captain Brown's teeth was out. Remembered that it was on Sunday the Holkar sailed. Harry Cook called him Tom Jones, on board the Holkar. Saw him three or four times since. Can't say Oliver King shipped on board Holkar. Four years since she saw Oliver King. About three years ago saw Jones, and spoke to him. Had heard that the Holkar was lost but he did not strike her as being one of the men on board. Harry Cook was a large, stout man.

{Mr. Bogart called again: A man by the name of John Thompson shipped the prisoner. Recollects that Thompson became security for prisoner, 16th October, 1818, and received his advance, as appears by his register. The crew were all coloured. Knew Captain Brown. Does not recollect anything about his person, only that he was a large man.

{Azul Conklin, one of the city constables,

was on the wharf on Sunday morning, when the Holkar sailed, and remembers that the crew consisted of coloured people. Does not know Captain Brown. He was a stout, portly man. He was pointed out to the witness as being the captain. Black hair and large whiskers. Knew John Thompson, and has often seen Diana. Thinks she was on the wharf at the time. Knows that Thompson shipped some of the crew. Was told so by him. Happened to be passing at the time and remembers remarking, "I should not like to go to sea with that crew."

{Cross-examined: Bancker street was of a very bad character. Has very often to go to that street to look for rogues, &c, but had never heard anything against the house of Thompson.

{Peter Willis knows that the prisoner shipped on board the Holkar. He got Mr. Thompson to ship him. Saw him on board when the brig sailed, and believes it was Sunday. Was at the wharf when the brig sailed. Saw prisoner and Oliver King on board. Remembers it. Did not know Captain Brown.

{Cross-examined: Lives in Leonard street, and lived at the time in Catharine street. Went up to Mr. Thompson and got three dollars; and he then went with him and prisoner to the brig. Is sure he is the man. Has been acquainted with him ten years. He used to board with Henry Parsons. Witness goes to sea off and on. Arrived from France, August 29th last. About four or five weeks ago witness saw prisoner in Bancker street Knew him as soon as he saw him. Called him Tom Jones, and shook hands with him. Had heard of the Holkar being lost. Said nothing to him about it. As soon as he saw him he remembered it Saw King the same day, and next day heard he was taken up. Never had any quarrel with the man. When he was living in the house with the prisoner he missed seven dollars, and thought hard of the prisoner, but had no quarrel about it. Witness was never taken up for anything but assault and battery, and buying a fiddle. Was acquitted. Has been in Bridewell two or three times. Saw prisoner two or three days before he was taken, and knew him. The prisoner first knew him. Shook hands. Called him Tom Jones. Asked him where he came from. He answered, "From the southward."

{Julia Freeman: Had known the prisoner five or six years ago. Three or four weeks ago, Jones called on her and asked her if she did not recollect him, as having staid with her sister. He called himself Thomas Jones. Her sister's name is Mary Adams, who lived in Bancker street. He has not staid with her sister since his return.

{Cross-examined: She knew nothing of the Holkar. At first she did not recollect the prisoner, he has altered so much; but she knew him very well when he lived at her sister's.

{Conklin, called again: Was present at the police when the prisoner was asked if he knew the woman called Diana. He answered yes,—said he boarded at Mrs. Parson's in James street, with her.

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{Diana was called again, and stated that she boarded with the prisoner at Henry Parson's.

{Oliver King, a mulatto man, and the principal witness, was next called. (Mr. Haines objected to the competency of the witness, on the ground that he had been in the state prison. It appeared that he had been indicted for grand larceny, and convicted on the 7th of October, 1819, when he was sentenced to the state prison for three years, and had served his time out. The counsel for the prosecution replied, and produced a pardon from the governor, dated the 9th of April, 1824. See the judge's charge. The objection was overruled by THE COURT, and the examination proceeded.) Witness shipped on board the brig Holkar, in 1818, commanded by Samuel Brown. He shipped with Alexander Cheevers (or Shivers), Charles Moutiza, Patrick Butler (his right name was Harry Cook, called Cook or Doctor), James Irving, John Robinson (the prisoner), John Williams (white man), and himself and mate. They were all colored people except John Williams. Sailed on the morning of Sunday for Curacoa, where they arrived and discharged, and took in a return cargo, and started for New York. At Curacoa, Shivers had a dispute with the captain. Captain Humphries, a passenger, took charge of the vessel; the captain and mate being sick, the men refused to work under him, when they were put in prison, except Robinson, Jones, and the cook, but Robinson was afterwards taken up for stealing part of a barrel of beef from the vessel, and remained in prison till the brig sailed. The night before, Alexander Cheevers and Charles and James ran away, but were taken up and carried on board, the morning she sailed. John Williams was left at Curacoa, where he went in a Dutch man of war. Capt. Humphries came passenger in the brig, but used to do captain's duty sometimes. When they had been out seven or eight days, the captain sent them up to bend another topsail about dusk; John, James, Charles, Alexander, and witness. They had some dispute aloft, and being reprov'd, they made some answer which induced the captain to go down and load his pistols. James and Charles pretended to be sick, and went below and staid in their berths. The captain made tea and coffee, and sent to them from the cabin. Charles was sick at this time. Charles and James and, witness were in the captain's watch. The prisoner and Alexander Shivers were in the mate's watch. The witness was in his berth and nearly asleep, when Alexander came down, and asked Charles whether he was ready, Charles said, "Yes." Witness asked what they were going to do? Charles answered, "None of your business." Robinson said he was going to call the mate forward and tell him there was something wrong

there. Charles then told witness that they were going to kill the captain, the mate and passenger. Robinson (the prisoner) went and called the mate forward. He came forward, and Charles and James jumped out of the forecandle; Charles and James with a crowbar, and James with a hand-spike. Witness then heard somebody strike, and heard the mate cry "Murder!" and stamp on the deck. Witness was below. When witness got upon deck, the mate was fallen. Witness cried out, "For God's sake, what are you doing!" Charles then answered, "You son of a bitch, if you say a word, I will knock your brains out." Alexander took his (the mate's) watch out of his pocket, and Charles, Alexander and James hove him overboard. They then went aft, and witness followed them. The prisoner said he would call Captain Humphries up, for he used to do captain's duty. He went down, but Captain H. would not get up. He then went down and told Captain Brown the mate wanted him forward. Captain B got up, and went forward as far as the windlass, when he started back, and all at once began to walk-aft. Charles ran out from behind the camboose, and struck at him with a crowbar, which the captain caught in his hand, exclaiming, "Charles is that you?" Charles said "Yes." Alexander Cheevers now ran around the long-boat, and struck him twice on the head with a hatchet. James then took the handspike and struck him over the face. The prisoner then came with a harpoon, struck the captain in the left side. His head was lying towards the starboard. The captain put his band upon his breast, and then they picked him up and threw him overboard, and told witness to take the helm. At the time the mate was killed, the prisoner had the helm; and while they were killing the captain, the witness had the helm, but part of the time left it to see the fray. This done, Charles said, "Let us go down now and kill that damned privateer son of a bitch Captain Humphries;" upon which all went down in the cabin, and told witness to keep the helm. Witness heard Captain Humphries crying murder for some time, and then all four came up from the cabin, bringing Captain H. with them, and laid him down; and they hove him overboard. The cook came up after they had thrown Captain Humphries overboard. They told him to go down and clear up the blood in the cabin; he went and got a bucket of water, and did it. They said Captain Humphries was getting the captain's pistols out, when they struck at him, and broke one of them in his hand. Alexander Shivers took charge of the brig. They then ran near Porto Rico, to the Mona Passage, and from thence to St. Domingo. Prisoner then bored holes in the brig to scuttle her, and they intended to go ashore in the boat. About two o'clock in the afternoon, a vessel was near them, and they were frightened, and took out the boat, and put aboard some provisions and clothing, and they all got in, except the witness, who at first refused to go, until Charles took a pistol and threatened to shoot him if he did not. They went ashore about Jacquemel. After the murder, they found on board a box of gold, buckles, &c: they also found 115 dollars, and a Masonic apron, which was thrown overboard.

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{Cross-examined: Witness was born in Orange county. His mother belonged to Benj. Sears. Dived with his father at Staten Island until he was ten years old. This was his second voyage in the same vessel. Never saw prisoner before. He went by the name of John Robinson. Never heard him called Jones. Came back in schooner, called the American, of Kennebeck. When they landed at St. Domingo, they went to Bennet, a town inhabited by blacks. Witness said nothing to anybody about the murder, as he was afraid. They got one hundred and fifteen dollars, of which they gave witness 12 or 15. From Bennet they went to Jacquemel, where he walked. Alexander went up first, when they were all sent for by the commandant, but did not go then. Witness got on board the barque America, of Kennebeck, and went to the Havana. Said nothing of it to the captain, as he was afraid of being tried in Havana. Saw the mate of the George Washington (whom he had seen at Curacoa), and told him all about it. Wanted witness to go to Africa with them for slaves. Came from Havana in the sloop Flag of Truce to New Orleans, from thence to New York in the brig Dolphin. Had irons put on him while on board of the brig G. Washington. Does not know the name of the captain and mate. He was brought in irons to New Orleans, where he was put in jail. Mr. Orr assisted him, and he got him out of prison, with whom he then lived for some time. This was some time in April. Witness came in the brig Dolphin, Captain Kent, as a hand, but he said nothing of this affair to anybody on board. Arrived about the first of May, 1819. Does not know how many days passage. Went to the police in two or three days after he arrived in New York, and told all the particulars. About the latter part of August was taken up for stealing. He then lived with his mother in William-st. Did not do much of anything. Worked at the steam-boats, carrying wood. Did not steal at all after he came ashore. Confessed that he stole, before the police. Did not break open the door of Doctor Drake's house, and did not go up stairs in the house at all for the things.

{Oliver Stevens, clerk of the police, knows Oliver King. He has been brought up at that office two or three times.

{King called again: Had but one pistol in the boat. Was at the time 18 or 19 years old. Captain Brown was a large, stout man.

{Mary Adams: Knows the prisoner. Five years ago lived in Bancker-st. at Maria Sales.' Does not know whether he sailed in the brig Holkar. He went to sea about that time. Don't know what vessel. Saw him in prison

for the first time since his return. He knew witness immediately.

{Cross-examined: Never told witness that he was going to sail in the Holkar; never heard him called Robinson, but Tom Jones.

{The counsel for the prosecution here rested the case; and THE COURT directed a recess for an hour, that the jury might obtain some refreshments. At a few minutes before 5 o'clock the court re-assembled, and the defence was opened by Mr. Haines.

{Evidence for the Prisoner.

{John Edwards: Knows the prisoner. He sailed in the brig Commodore Porter, Captain Doane, in 1818, to bring timber from St. Mary's. Witness knew him in Baltimore, more than fifteen years ago. Saw him when he came home in the Maria, since 1818, whence he shipped immediately in a vessel lying at Pine-street He was always called Tom Jones. Shipped him by that name about 18 months since. His character is very good, as given by Captain Downes. Has heard lately that he was on board the Holkar. The first voyage was about three months. Witness went four voyages to St. Mary's. The prisoner went the 1st and 2d voyage. The third voyage he returned a little before Christmas. Knows Oliver King. "Witness stood his bail twice, and his girl's. Don't know his character as to truth and veracity. He has the character of a thief. Witness never heard anything against Diana Valentine, nor against Peter Willis.

{Evidence for the People.

{Oliver Stevens again: Has seen King often. Thinks he would speak the truth, and would believe him under oath.

{John Edwards again: Saw King the next day after the prisoner was taken up. Went up to see him. Asked what Tom had been doing. He would not tell. Saw him again in the evening, when he told witness. Did not tell King if he was in his (King's) place, he would not have him taken up. {Azal Conklin called again: The character of the last witness does not stand very fair. From the knowledge he (witness) has, he should not be willing to place confidence in him, where he was prejudiced either way. Witness has known Oliver King four years, and would put twice the confidence in him that he would in the last witness.

{James Hopson, police justice: The examination of Oliver King, of the 3d of June, 1819, was read. Witness said King came voluntarily, and underwent this examination. Never saw him before he made this deposition, nor since, till he came and gave information that prisoner was in town. He never had reference, nor had any other person, to this examination, as it was filed in the police office. (We have compared the examination with the testimony, and it agrees exactly.)

{Jarvis Lockwood: Knows Diana Valentine. She lived in his family. Knew her in 1810 to 12; 14 or 15 years. Her character is good for truth and veracity. Has seen her six or seven times since she was married. Keeps a very decent sailor boarding house.

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{Zebulon Homans, a marshal: Does not know much of John Edwards. He is an immoral man. Diana Valentine's character good every way. Has known her for 4 years. Was a regular woman in going to church. Never saw anything improper in her house. She sustained a very good character among her white neighbours. Oliver King's general character is not very good.

{Julia Wills: Knows the prisoner at the bar. The 2d year after the peace, lived at Henry Parson's. Her husband shipped him. Found him a pretty steady, clever man. Her husband shipped him the year after the peace. Witness knows King's family. He is not as clever as he might be. Has been a bad boy from his childhood up. When he went to school he used to pick up things not his own.²

Mr. Tillotson, for the United States.

Haines & Van Wyck, for the prisoner.

THOMPSON, Circuit Justice (charging jury). The question for you to decide is one involving the life of the prisoner. It is for you to say whether he is guilty or not guilty. The material point in this case is, whether the prisoner at the bar is the person who shipped on board the Holkar, in 1818, as sworn to by David Valentine, Oliver King, Peter Willis, and Mr. Bogart. The offense as charged in the indictment, if committed at all, is an aggravated piratical murder. It took place upon the high seas, and is therefore within the jurisdiction of this court. It satisfactorily appears by the evidence, that the Holkar cleared for Curacoa in October, 1818. There can be, no doubt of this fact; indeed, it is not denied. It appears also that the vessel was commanded by Captain Brown; that her crew, with the exception of one person, was composed of colored people. This appears by the testimony of Diana, King, Willis, Mr. Bogart, and Mr. Conklin. It appears by the register of the ship and notarial list of Mr. Bogart (which agree with each other), that Alexander Cheevers, Charles Montiza, Patrick Butler (called Cook), James Irving, Charles Robinson (the prisoner), King, the witness, and the mate were the crew of the vessel. The vessel sailed for Curacoa, since which time nothing has been heard of her. The insurances upon the Holkar and her cargo have long since been paid. There is no doubt, therefore, the vessel has been lost, whether in the manner related by King or not remains for you to determine.

Before "his honor recapitulated King's testimony, he called the attention of the jury to the infamy of his character. It appears (said he) by the record of the general sessions

that King has been convicted of a larceny, and has been sentenced to the state prison, has served out his time, and has received a pardon from the executive of the state, for the purpose of making him a witness against the prisoner, all since the commission of the alleged murder. His honor observed, he had no doubt of the efficacy of the pardon, and that he was now a competent witness; his credibility, however, was still a subject for the consideration of the jury. The law has made him a competent witness; but the jury were not compelled to believe him, and he should advise the jury to give no weight to his testimony where he was not corroborated by others. He adverted to the examination of King, made on the 3d of June, 1819, immediately on his arrival in this country. The objection then to his credibility did not exist. That examination, and his testimony here to-day, appear to agree in all essential particulars; and it appears by Justice Hopson, that it was not possible for him to have had access to that paper.

His honor instructed the jury, that the testimony of King ought to have no weight in their minds, unless corroborated by others, or by the circumstances of the case, and proceeded to detail the principal facts of the loss of the vessel, and the murder of Captain Brown, the mate, and Captain Humphries, as related by King (see his testimony). He remarked upon the consistency of King's story, the minute history of the circumstances he had given, the difficulty, riot to say impossibility, of King's framing such a connected chain of facts.

It could not have escaped the jury (said his honor) that the case depended materially upon the circumstances. Before he enumerated them, he remarked upon the nature of circumstantial evidence. A number of cases have been cited and read, to show you the dangerous tendency of this kind of proof. It is possible an innocent person may have suffered, but such cases (if any such there were) could be no objection to this kind of evidence; if jurors were to disregard it, there would be an end to the administration of law, and to government. It was (be observed) the duty of the jury to weigh all the evidence for and against the prisoner, and that fair and legal inferences were to be made from facts and circumstances proved, they were often more satisfactory and conclusive than the testimony of witnesses.

Then as to the identity of the prisoner. Notwithstanding he shipped on board the Holkar by the name of Charles Robinson, and was known only by the name of Tom Jones, yet it appeared by the testimony of a number of witnesses he was the same person. Diana Valentine swears positively that she was well acquainted with the prisoner; that she had boarded in the same house with him before the Holkar sailed. Peter Willis has known the prisoner for ten years, and testifies he shipped on board the Holkar; he knew him in this city by the name of Tom Jones. Julia Freeman, Mary Adams (see the testimony) swear they know the prisoner; he was called Jones. There was no doubt, continued his honor, that the prisoner at the bar was the same person who shipped on board the

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Holkar by the name of Charles Robinson, and that he is the same person known by the witnesses by the name of Tom Jones.

His honor then proceeded to recapitulate the circumstances of the case, the sailing of the Holkar, no information, having since been received of her, King's examination, his connected story, the recognition and arrest of the prisoner, King's testimony, etc., and concluded that the case depended almost entirely upon his testimony, as he was proved to be a convicted felon; although restored to competency by the clemency of the executive, it was the duty of the jury to sift his testimony; that where he was not corroborated on the main points, by testimony of witnesses, or by the circumstances, they ought to pay no regard to it; and that if after a full and impartial view of the case, they were satisfied the evidence did not support the indictment, or if they had a fair and reasonable doubt, it was their duty to acquit; but if they were satisfied, that King was corroborated by the testimony of other witnesses and by the circumstances of the case, and they had no reasonable doubt of the prisoner's guilt, it was their duty to say so.

He was found guilty, and sentenced to be executed on the 11th June, 1824.

A pardon has the effect to restore a felon to competency as a witness. See [State v. Foley](#), 15 Nev. 68, citing above case.

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]

² [From 2 Wheeler, Cr. Cas. 451.]