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TABLE OF CASES

STATUTES

Numbers 24 and 49

In the Supreme Court of the United States

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

CONSOLIDATED BRIEF FOR APPELLEE

STATEMENT OF THE CASE

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1500 to 3800 (we think 2000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol building a short distance from the Parish Courthouse. Shortly before noon Cox led these demonstrators in an orderly fashion to the vicinity of the Parish Courthouse, where the Sheriff, Chief of Police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negroes had been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the Parish

Jail located in the uppor floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the Sheriff and Chief of Police and was asked what his intentions were. He answered to them that the marchers were demonstrating against segregation and the activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The Sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakenly established the fact that the marchers completely occupied the entire sidewalk for the greater portion of a block across from the courthouse in such a manner that no passage was possible thereon. All the entrances to many offices facing that sidewalk were blocked, the occupants were unable to leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakenly, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to re-route traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs which the demonstrators had kept hidden in their clothing. These signs being identical to the ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to instructions he issued during each phase of the demonstration.

Cox then made a speech which was in effect "a protest against illegal arrest of some of their members". He admonished the multitude of demonstrators to remain peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jail and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were about to have a riot. Several witnesses testified that in their life time no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling". In the large crowd "tension was running high". Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were hollering,

screaming, beating on walls trying to attract the attention of the demonstrators across the street.

The Sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loud speaker so that all present could hear to "move on" and "break it up," that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the Sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

The police then dispersed the crowd with tear gas and Cox was arrested the next day. (See finding of facts in opinion of Supreme Court of Louisiana 244 La. 1087, 156 So.2d at Pages 451 and 452.)

These findings of facts are respectfully submitted and are supported by the transcript herein.

ARGUMENT

Peaceful demonstration is not protected under the Fourteenth and First Amendments to the United States Constitution without regard to place of demonstration.

"The priceless character of the First Amendment freedoms cannot be gainsaid but it does not follow that they are absolutes, immune from necessary state action, reasonably designed for the protection of society." *Edwards v. South Carolina* 372 US 239, 83 S.Ct. 680, 9 Law Ed.2d 678. With reference to these First Amendment rights such factors as time, place and manner are of considerable importance. A consideration of these factors is essential as they have a direct bearing affecting the rights of others. It has been said

by this court that "where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the state to prevent or punish is obvious." *Cantwell v. Connecticut* 310 US 308, 60 S.Ct. 905.

This Honorable Court has also said "Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not bridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrians to travel who did not accept a tendered leaflet; nor does the guarantee of the freedom of speech or the press deprive a municipality of power to enact regulations against throwing literature or broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State* 308 US 147, 160, 60 S. Ct. 146, 84 Law Ed. 155 (1939).

This court has likewise said that freedom of speech does not give one the right to talk in any manner at any time at any place that he may choose. *Kovax v. Cooper* 336 U.S. 77, 69 S.Ct. 448, 93 Law Ed. 513 (1949). Also this Honorable Court has said that freedom of speech does not give one the right to say whatever he wishes. ***Feiner v. New York,*** 340 US 315, 71 S.Ct. 303, 95 Law Ed. 267. The South Carolina demonstration cases, *Edward v. South Carolina,* 372 US 229; *Fields v. South Carolina* 375 US 44; *Henry v. City of Rock Hill,* cited by appellant in his brief are distinguishable from the case at bar in two significant aspects. First, in Edwards, this Honorable Court said "these petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, "not susceptible of exact definition." 372 US at Page 236, 83 S.Ct. at Page 684; and secondly, in Edwards, this Honorable Court said "There was no obstruction of pedestrian or vehicular traffic within the state house grounds. No vehicle was prevented from entering or leaving the horseshoe area . . . and there was no impediment of pedestrian traffic." 372 US at Pages 231, 232. Again in *Henry v. City of Rock Hill,* one of the South Carolina demonstration cases relied upon by appellant, this Honorable Court said "Here, as in Edwards and Fields, petitioners "were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition'." 84 S.Ct. at Page 1043. Again this court said in *Henry v. City of Rock Hill* "Although

white onlookers assembled, no violence or threat of violence occurred and traffic was not disturbed." 84 S.Ct. at Page 1043.

The Louisiana statutes LSA-R.S. 14:100.1 Obstructing Public passages and LSA-R.S. 14:103.1 Disturbing the Peace by Crowding or Congregating with Others with the Intent to Provoke a Breach of the Peace or Under Circumstances Such That a Breach of the Peace May Be Occasioned Thereby In or Upon Public Streets, or Upon Public Side Walks . . . And Who Fail or Refuse To Disperse and Move On When Ordered To Do So By Any Law Enforcement Officer were Acts obviously passed by the Louisiana Legislature with the view of regulating demonstrations as to place so that the rights of others in society would not be enfringed upon. The other statute involved LSA-R.S. 14:401, Demonstrations In or Near Building Housing a Court or Occupied as Residence by Judge, Juror, Witness or Court Officer has its birth in the assurance to all citizens, including these demonstrators, of a free and impartial judiciary.

In order to further sustain his contention herein, appellant relies upon the case of *Terminiello v. City of Chicago*, 337 US 1, 69 S.Ct. 894. The Terminiello case is readily distinguishable from the case at bar in that it involved a breach of the peace resulting from an obnoxious speech made by Terminiello. The question therein was whether or not the language used by Terminiello was composed of derisive fighting words which carried outside the scope of the consti-

tutional guarantees. Whereas the question in this case involves the place or site of the demonstration. In *Edwards v. South Carolina* this court announced that no infringement upon constitutional guarantees would be involved "if for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the period during which the state house grounds were open to the public. . . ." This is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved by this Honorable Court. *Schneider v. State*, 308 US 147, 160, 60 S.Ct. 146, 84 Law Ed. 155 (1939). The activity of appellant herein bears no necessary relationship to the freedom to speak or assembly. These demonstrators, like other citizens, must confine their exercise of constitutional freedoms within lawfully regulated limits of those freedoms. Public streets and public sidewalks were not designed nor built nor are they maintained and perpetuated for the purpose of accommodating public demonstrations and gatherings which have the known and willful result of completely defeating the purposes for which they were designed, built and are maintained.

These Louisiana statutes involved herein are designed to maintain good order in society and to insure a free and impartial judiciary. The contention that their respective applications might incidentally infringe upon the First Amendment freedoms of speech and assembly does nothing more than to bespeak the

truth that these First Amendment freedoms are not absolute. The contention by appellant that he was punished for peaceful participation in demonstrations protected under the Fourteenth and First Amendments to the United States Constitution if sustained by this court would obliterate the factor of place as to where assembly may meet or a demonstration held. The simple answer to appellant's contention is that the Fourteenth and First Amendments do not protect a demonstration, even peaceful, held on the public streets and public sidewalks whereby pedestrain and vehicular traffic is obstructed. *Edwards v. South Carolina* 372 US 229; *Henry v. City of Rock Hill* 376 US 776; *Schneider v. State,* 308 US 147, 160, 60 S.Ct. 146, 84 Law Ed. 155.

LSA-R.S. 14:103.1 punishing breach of the peace is not unconstitutional on its face under the due process clause of the Fourteenth Amendment.

LSA-R.S. 14:103.1 provides:

"Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby. . . commits certain acts shall be guilty of disturbing the peace." The Louisiana Supreme Court herein found that the words "breach of the peace" had the identical meaning with the words "disturbing the peace" and that in Louisiana this meant "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." *Town of Ponchatoula v. Bates,* 173 La. 824, 138 So. 851. The Louisiana Supreme Court

found that because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court that they were not ambiguous nor was it objectionable that the statute seeks to prescribe conduct which will result in a disturbance of the peace. That the statute may lawfully have the prevention of a disturbance as its object as well as punishing an actual disturbance and therefore the accused had adequate notice of the proscribed conduct. Since the state court has held that petitioner's conduct constituted breach of the peace under the state law, this Honorable Court may accept their decision as binding upon it to that extent. *Edwards v. South Carolina*, 83 S.Ct. 683, 372 U.S. 235.

Obstructing Public Passages—LSA-R.S. 14:100.1 it is submitted, is a narrowly drawn regulatory statute within the meaning of *Edwards v. South Carolina.* The bill of information tracted the language of this precisely and narrowly drawn statute. The Louisiana Supreme Court found that the accusation herein informed the accused of the charges against him so that he may properly defend himself; that the trial judge was properly informed by the bill of information of what the case involved so that he as he presided and called upon to make rulings therein was able to intelligently do so and that the bill of information was sufficient to sustain the plea of former or double jeopardy which are the requirements necessary to constitute the constitutional sufficiency of a bill of information. *State v. Scheler*, 243 La. 443, 144 So.2d

389 (1962). With reference to the lack of evidence showing willful obstruction, the Louisiana Supreme Court found that there was ample evidence to sustain his conviction. The Louisiana Supreme Court also pointed out that it is limited in the scope of its review in criminal matters by Article 7, Section 10 of the Constitution to questions of law only which in effect means that although the court can look into the record to determine the lack of some evidence to sustain the conviction, no matter how little, it cannot pass upon the sufficiency thereof, for this comes within the exclusive providence in criminal cases of the trial court judge or jury. *State v. Copeland* 242 La. 199, 135 So.2d 271, (1961).

Further appellant relies upon the case of *Smith v. California*, 361 U.S. 147 (1959) wherein the defendant was convicted under a statute which punished solely the possession of obscene books without requiring knowledge of their contents. This court, it is true, reversed, holding that the statute lacked an element of intent, acted as a restraint of the free circulation of books. Appellant contends that the improper definition of willful "permits the authorities to prevent all street demonstrations, and thus act as a damper on such street demonstrations." The simple answer to this is that the statute and the bill of information charges that this accused did, "willfully obstruct the free, convenience and normal use of a public sidewalk. . . ." Willful, of course, means knowingly which readily distinguishes this case from the Smith case where knowledge was lacking.

Demonstration Near a Courthouse—LSA-R.S. 14:-401 provides:

> "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any soundtruck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than five thousand dollars or imprisoned not more than one year, or both."
>
> Nothing in this section shall interfere with or prevent the exercise by any court of the State of Louisiana of its power to punish for contempt."

This act was passed in 1950 by the Louisiana Legislature and is almost a duplicate of a similar act passed by Congress in 1949. See 18 U.S.C.A. 1507. As pointed out in the opinion of the Louisiana Supreme Court this act was passed as a result of the disgraceful picketing and demonstrations in and around Federal buildings housing Federal courtrooms and particularly with reference to the trial being presided over by Judge Harold R. Medena in the year of 1949 involving the trial of ten of the top leaders of the Communist party in the United States wherein picketing in and around the Federal building housing the Federal courtroom was carried on. This state act was

passed prior to the 1954 school segregation case of *Topeka v. Brown* and was not passed for the specific purpose and intent to implement and further the state's policy of enforced segregation of races as contended by appellant herein. This act, of course, applies indiscriminatly regardless of the membership of the group picketing or demonstrating. Although there is no jurisprudence relating to this particular statute or similar statutes, appellant contends that the jurisprudence concerning the sanction of contempt for protest against actions taken by courts in cases pending before them should be applicable herein and that the criterion of the clear and present danger to the administration of justice should apply herein. *Wood v. Georgia* 37 US 375; *Craig v. Horny* 331 US 367; *Penacamp v. Florida* 328 US 331; *Bridges v. California* 314 US 252. It is further contended by appellant that the Louisiana Supreme Court did not apply the foregoing test or standard of clear and present danger required by this court under the Fourteenth Amendment and that the Louisiana Supreme Court was content to decide the case simply by striking a balance between the two competing interests, that is, freedom of speech and a fair and impartial administration of justice in favor of the latter with little regard to the actual effect of the protest upon the administration of justice. 158 So.2d 175.

First of all, it may be said that the cases relied upon by appellant all dealt with publications. Freedom of speech and freedom of the press per se were involved. While the courts have recognized that picket-

ing is an exercise of a form of free speech and is protected by constitutional rights. This sweeping analogy as first enunciated by the United States Supreme Court in the case of *Thornhill v. State of Alabama*, 310 US 88, 60 S.Ct. 736, 84 Law Ed. 1093, has since been greatly refined and restricted. For example, this court in *Hughes v. Superior Court of the State of California*, 339 US 460, 70 S.Ct. 718, 721, 94 Law Ed. 985, pointed out that ". . . while picketing is a mode of communication, it is inseparately something more and different . . .since it involves patrol of a particular locality and since the very presence of a picket line made this action of one kind or another, quite irrespective of the nature of the ideas which are being diseminated. . .The very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. . . .It has been aptly recognized that picketing, not being the equivalent, as a matter of fact, is not its inevitable legal equivalent." Regardless of what appellant contends, one of the announced purposes in congregating "en masse" right across the street from the courthouse which housed the District Courts of East Baton Rouge Parish was to protest against the "illegal arrest" of some of their members. Transcript Page 37, 39, 46. Appellant himself told the authorities, when questioned as to his purpose for the demonstration, that it was to protest the illegal arrest of some of their people who were being held in jail. At that time he was informed the court should determine the legality of the arrest. Transcript Page 253. The question of the legality of an arrest is for the

courts. Appellant by his own declaration, had taken it upon himself to determine that these arrests were illegal and his demonstration was brought to the courthouse building where the District Courts are housed, to the forum where he knew this question would be presented. During this demonstration the Sheriff, sensing the seriousness of this explosive situation, by means of a loudspeaker, ordered the demonstrators to move on. However, Cox, and, on his instructions, the group openly defied this command and continued the "fiery" and "frenzied" demonstration, in which they were still being joined by the twenty-three people incarcerated in the building, despite a second admonition by the Sheriff. It was only by the use of tear gas that the Sheriff, his deputies and other law enforcement officers (about eighty in all) were able to disperse the group. The trial judge who presided over these proceedings against Cox and who, with one or more of the other three judges having chambers in this building in which they had been holding court since early in September, would eventually be required to determine in a proper trial whether the incarcerated people had been "illegally" arrested—stated in his reasons for judgment that he was "so fearful" and apprehensive of the outcome of this demonstration by such a large mass of people in the area of the courtrooms, he was, in fact, intimidated, and upon learning the demonstration was eminent, closed his office and left the building.

With reference to the above recitation, the Louisiana Supreme Court stated "These facts belie de-

fense argument that by his conviction Cox and his followers were denied the right to "peacefully assemble as guaranteed by the First and Fourteenth Amendments to the Federal Constitution." The Louisiana statute with which we are concerned is very narrowly and precisely drawn, in that it requires more in order to constitute its violation than the requirements to constitute the usual contempt of court cases cited by appellant. For example, besides the requirement that one intend to interfere with, obstruct or impede the administration of justice or intend to influence judge, juror, witness or court official in the discharge of their duties, the statute requires additionally that this be done through the mode of picketing or parading and also additionally that it be done in or near a building housing a court of the State of Louisiana or in or near a building or residence occupied or used by such judge, juror, witness or court official. It would seem that the requirements of a clear and present danger doctrine as set forth in the contempt of court cases cited by appellant are included in the definition of LSA-R.S. 14:401. The physical presence en masse of those who wish to impart their views to another is much more effective and the result of having it heard so that persuasion or influence results directly therefrom is much greater than would be of the views of one not present which appears in some publication of general circulation. Greater effectiveness in persuasion and influence arises from the prescriptions as set out in the Louisiana statute than would be from an incident in a general publication. Therein lies the differ-

ence in the statute with which we are concerned and in the contempt of court cases involving discourses in publications of general circulation.

Mr. Justice Holmes wrote; "The theory of our (judicial) system is that the conclusion to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether a private talk or public print." *Addison v. Colorado* 205 U.S. 454, 462, 27 S.Ct. 556, 558, 51 Law Ed. 879; *Wood v. Georgia* 370 U.S. 396, 82 S. Ct. 1376. "The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper. . . .We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantial evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify some punishment." *Bridges v. California* 314 US 271, 62 S.Ct. 197; 37 US 396, 82 S.Ct. 1376.

"In order to show intent, evidence is admissible of similar acts, independent of the act charged as a crime in the indictment, for although intent is a question of fact, it need not be proven as a fact, it may be inferred from the circumstances of the transaction." LSA-R.S. 15:445.

Appellant contends further that his conviction under R.S. 14:401 deprived him of due process of law

because there was no evidence upon which the conviction could be based and particularly that there was a total absence of evidence to prove an intent to obstruct justice or to influence a court official which is required under the Louisiana statute. Intent is generally inferred from the commission of the act. *State v. Howard*, 1927, 162 La. 719, 111 So. 72. Intent may be inferred from facts and circumstances surrounding the act. *State v. Leonard*, 1927, 162 La. 357, 110 So. 557; *State v. Garner*, 1961, 241 La. 275, 128 So.2d 655. In *State v. Daniels*, 236 La. 998, 109 So.2d 896 (1959) relied upon by appellant, defendant, a convict, who had struck a prison guard, was charged with the crime of "Public Intimidation", using force upon a public officer "with the intent to influence his conduct in relation to his position, employment or duty." LSA-R.S. 14:122. It is true that the Louisiana Supreme Court reversed the conviction on the ground that merely to have struck the guard was enough to show the required intent. The court noted that "this prosecuting witness on cross-examination candidly admitted that the defendant did not strike him to induce him to do or not to do anything." 109 So.2d 899. The Court found the defendant's actions in the Daniels case to be one of a compulsory nature without any specific intent or specific desire to influence the conduct of the official he struck as was required by the statute. The Louisiana Supreme Court said "The instantaneous and angered blow by defendant herein responsive to the guard's shove, does not by itself reliably indicate the requisite specific intent to commit

the serious crime with which defendant is charged." 109 So.2d 900. The court further stated that "the color of the act determines the complexion of the intent only in those situations where common experience has found a reliable correlation between a particular act and a corresponding intent." 109 So.2d 900. An illustration of the foregoing rule was presented in *State v. Garner*, 1961, 241 La. 275, 128 So. 2d 655, wherein Louisiana Supreme Court found that evidence establishing that the defendant had tried to climb over a bar in a tavern with a drawn knife to get at the bartender was sufficient to establish his intent to commit manslaughter.

It is submitted that the congregating and demonstrating en masse of approximately fifteen hundred people right across the street from the courthouse who came there with the avowed purpose of protesting the "illegal arrest" of some twenty-three of their members the previous day where these twenty-three members were housed in the Parish Jail in the courthouse and where all of the judges, courts and court officials were housed and therein have a shouting and yelling communication with the prisoners up in the jail are acts and circumstances from which the trier of the facts could infer the intent therein to interfere with, obstruct or impede the administration of justice and with the intent of influencing any judge, juror, witness or court official in the discharge of their duties.

The purpose of speech is to persuade or influence, when done through picketing or demonstrating in large groups it is made more emphatic with the hope of a

more effective resulting persuasion and influencing. Common experiences dictates that there is a reliable correlation between the facts of this case and the necessary intent set forth in the statute. Section 9 of Article 19 of the Louisiana Constitution declares "The jury in all criminal cases shall be the judges of the law and of the facts on the question of guilt or innocence, having been charged as to the law applicable to the case by the presiding judge," Under Article 7, Section 10 of the Louisiana Constitution in criminal cases the appellate courts are without jurisdiction over the sufficiency of evidence although that court does have jurisdiction as a matter of law, should there be a total absence of proof as to any essential element of the crime charged. *State v. LaBorde* 234 La. 28, 99 So. 2d 11. The Louisiana Supreme Court, in the case at bar, found that there was some evidence upon which the trial court could sustain the finding of the necessary intent in this case.

There is no evidence of discriminatory administration of the Louisiana statutes involved herein which would deprive appellant of due process of law and equal protection of the laws under the Fourteenth Amendment.

There is no evidence in this record to support the contention that the statutes herein involved were discriminatorial administered by the Louisiana officials resulting in the deprivation of appellant's rights to due process of law and equal protection of the laws under the Fourteenth Amendment. Appellant and his demonstrators were not invited to appear

as they did in this particular case. As a matter of fact no one had authority to permit any group to hold a mass meeting upon the public sidewalks and public streets. It is true that after appellant and his group arrived across the street from the courthouse, they had a conversation with the authorities whereby they would be given a limited time within which to demonstrate. After this time elapsed and upon orders by the Sheriff over a loudspeaker to move on this group openly defied this command and continued this fiery and frenzied demonstration while being joined in by the twenty-three people who were incarcerated in the Parish Jail. It was only after a second admonition by the Sheriff to move on, the law enforcement officials broke up the demonstration. This demonstration the record will reflect was dispersed, not because the views of a speaker may have been incompatible with the views of the Sheriff or other local officials, but rather, because the situation was getting out of hand. There is no evidence at all in this record which would show that these Louisiana statutes in this case were discriminatorially administered by its officials.

A trial in a courtroom segregated by imposition of the state does not constitute a denial of equal protection of the laws and due process of law.

Based upon the case of *Johnson v. Virginia*, 373 U.S. 61 (1963), appellant urges that because of a segregated condition in the courtroom that an urgent Federal question, effecting the administration of justice as to him and a right to a public trial is presented. In effect, he urges that the segregated condition in

the courtroom would probably influence the trial judge in his deliberations in the cause and would probably have an effect on the credibility of witnesses. Recently, this contention was made in the petition for writs of certiorari to this Honorable Court which were denied. See *Ronnie M. Moore, Petitioner v. State of Louisiana, Respondent*, men., October Term, 1963, No. 734, 84 S.Ct. 668. In the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case at bar, there is no charge against this defendant for having violated any court imposed seating arrangement and none of the parties upon whom the asserted alleged segregation was imposed is before this court in this case. Hence, the Johnson case is no authority for the reversal of this conviction. LSA-R.S. 15:557 provides:

> "No judgment shall be set aside, or a new trial granted by any appellate court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right."

Thus it has not been made to appear in this

record that the segregation resulted in a miscarriage of justice to this defendant.

Respectfully submitted,

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