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No. 957

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

JAMES FRED BAXA and **CLYDE CHURCH**,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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But it has never before been suggested that a defendant bears vicarious responsibility for the *confessions* of an alleged co-conspirator.

Thus, the doctrine of conspiracy takes another giant step forward, and we are given a chilling view of its ultimate goal.

For now, responsibility for vicarious confessions finds precedent. That precedent is the opinion below. It is a typical first stride in the field. It does not expressly state that confessions will henceforth be deemed admissible against alleged co-conspirators. It simply holds that the admission of such evidence "was no error", without discussing the point. It is merely one of the "other points [which] . . . do not . . . merit further discussion."

Just as surely as lawyers read case reports, and just as soon as the opinion can be embellished with the notation *"cert. den."*, will commence the indiscriminate proliferation of that "rule". Yet another safeguard will fall.

In many ways, it is the most disquieting aspect of the opinion. The other rules therein announced, are misapplications of precedent. But this one is brand new.

And it will prove popular, in those quarters where popularity is effective.

* * *

We do not ask that your Honors find any inherent flaw in the conspiracy statute. Our complaint is directed only to the manner in which that statute has been interpreted and applied, in this and in innumerable other cases, more frequently and more extensively with each passing day.

In 1934, Clarence Darrow rendered a memorable admonition:

> "If there are still any citizens interested in protecting human liberty, let them study the conspiracy laws of the United States." (*The Story of My Life*, 64)

Today, one short generation later, no lawyer could ask for a more singular advantage, in defending a conspiracy charge, than to be permitted to practice in accordance with the rules of construction which Darrow found onerous.

The trend will not reverse itself. We pray, fervently, that your Honors will deem this case worthy of review.

II.

As to the failure of proof

Petitioners obtained a quantity of goods from an ostensibly legitimate retail outlet. In the course of the acquisition they made no slightest effort to conceal what they were doing. After a few highly public conversations with the seller conducted some ten feet from an available place of impenetrable concealment, the purchase was arranged. The goods, stolen months earlier, were brought from hiding to the garishly lighted busy public sales outlet operated by sellers. Petitioners arrived to consummate their purchase, armed with funds adequate to buy the goods many times over on the retail market. There was delivered to them an odd admixture of legitimate goods and stolen merchandise; in fact, the stolen merchandise was the only such contraband that the seller had available, in the midst of a large quantity of legitimate goods (A. 29). When the final details had been arranged, the seller called a co-conspirator on the loud speaker and, when he reported, instructed him, in typical underworld jargon, "Hurry up and help the gentlemen, help load." (A. 47).

Every inference in the case supports the view that petitioners had no knowledge of the stolen character of the goods. If the seller had such knowledge, that fact cannot logically be imputed to the petitioners.