

Heard v. Rizzo, 281 F. Supp. 720 (E.D. Pa. 1968)

U.S. District Court for the Eastern District of Pennsylvania - 281 F. Supp. 720 (E.D. Pa. 1968)

This practice adopted by the Pennsylvania courts, of defining common-law terms not otherwise defined in a statute by referring to an established meaning at common-law, not only imparts to these terms an acceptable precision, it is a method of statutory construction that has been fully accepted by the United States Supreme Court. In *United States v. Turley*, 352 U.S. 407, 411, 77 S. Ct. 397, 399, 1 L. Ed. 2d 430 (1957).

V. BREACH OF THE PEACE (18 P.S. § 5101):

It is conceded that Pennsylvania has no statutory offense known as breach of the peace. But the Pennsylvania Penal Code contains a provision whereby all common law offenses, in the absence of statutory provisions abolishing them, are still crimes in Pennsylvania and may be prosecuted as a common law offense, notwithstanding the fact that there is no express reference to such an offense in the Penal Code itself.[A] If the offense charged was indictable under that portion of the common law of England which has been adopted in Pennsylvania, in the absence of a statutory provision abrogating the offense, it is preserved by that section described by the codifiers as "a saving section". *Commonwealth v. Mohn*, 52 Pa. 243, 246 (1866); *Commonwealth v. McHale*, 97 Pa. 397, 407 (1881); *Commonwealth v. DeGeorge*, 97 Pa. Super. 181, 185 (1929).

The offense known as breach of the peace is of common law origin and embraces a great variety of conduct disturbing or menacing the public order or tranquility. It includes not only an actual breach of the peace, but also acts or conduct which tends to incite others to disturb the peace. 4 Blackstone Commentaries *142; *Commonwealth v. Taylor*, 5 Bin. 277, 281 (1812). It is not the name of any single charge or crime, but includes all violations of the public peace or order or decorum.[B]

*743 Breach of the peace has been defined as "acts injurious to private persons, which tend to excite violent resentment, and thus produce fighting and disturbance of the peace of society." *Commonwealth v. Taylor*, supra, 5 Bin. at 281. In *United States v. Kessler*, 213 F.2d 53, 56 (3rd Cir. 1954), Senior Judge Biggs (then Chief Judge) used this language defining this crime: "A breach of the peace is `a disturbance of public order by an act of violence, or by an act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community.'" "

We are well aware that vague criminal laws suffer a constitutional infirmity and cannot be tolerated. Where a conviction is "based on a common law concept of the most general and undefined nature" there is left to the "executive and judicial branches too wide a discretion in its application." *Cantwell v. State of Connecticut*, 310 U.S. 296, 308, 60 S. Ct. 900, 905, 84 L. Ed. 1213 (1940). However, this court respects, as it must, the interest of the State in maintaining peace and order. Pursuant to this interest, it is constitutionally permissible for a State to preserve the common law offense of breach of the peace in general terms where it relates "the offense to the already developed body of common law defining that crime." *Garner v. State of Louisiana*, 368 U.S. 157, at 202, 82 S. Ct. 248, at 272, 7 L. Ed. 2d 207 (1961), concurring opinion of Harlan, J. In so relating the offense of breach of the peace, the Pennsylvania courts have given an otherwise vague prohibition adequate constitutional definition as construed above by the U. S. Court of Appeals for the Third Circuit in *United States v. Kessler*, supra, and by the Pennsylvania appellate courts in the above decisions. See, also, cases cited at pages 2 and 3 of the District Attorney's Memorandum of January 23, 1968 (Dec. 45).

[A] 18 P.S. § 5101. "Common law and other offenses preserved. Every offense now punishable either by the statute or common law of this Commonwealth and not specifically provided for by this act, shall continue to be an offense punishable as heretofore. 1939, June 24, P.L. 872, § 1101."

[B] Plaintiffs argue that Article IV of the Pennsylvania Penal Code, 18 P.S. §§ 4401-4419, dealing with offenses against the public peace, is so comprehensive that common law breach of the peace has been abrogated in Pennsylvania. 18 P.S. § 5104; *Commonwealth v. Bausewine*, 156 Pa.Super. 535, 541, 40 A.2d 919 (1944). Specifically, they contend that in addition to the specific acts contained in Article IV, the Penal Code also provides for a "catchall" crime under the name of "disorderly conduct", 18 P.S. § 4406, to punish all types of conduct tending to a breach of the peace not otherwise specified. However, the common law is not to be considered abrogated by statute unless the legislative intent to do so is plainly or clearly manifested, and any such abrogation will not be considered effected to a greater extent than the unmistakable import of the language used. 18 P.S. § 5104. Plaintiffs have not produced any Pennsylvania cases, nor has our independent research disclosed any, which indicate that the common law offense of breach of the peace has been abrogated in Pennsylvania. Indeed, the Pennsylvania cases, and our own Third Circuit, appear to indicate to the contrary. *Commonwealth v. Taylor*, 5 Bin. 277; *United States v. Kessler*, 213 F.2d 53, 56 (3rd Cir. 1954).