

3. Criminal Law §406(3)

That defendant had been "entrapped" into conversation (overheard by government officer hidden in trunk of automobile), in which defendant admitted connection with crime that had already been committed, would not require reversal of conviction for illicit distilling in violation of Internal Revenue Laws.

John H. Williams, Aiken, S. C. (Williams & Busbee, Aiken, S. C., on brief), for appellants.

George E. Lewis, Asst. U. S. Atty., Conway, S. C. (N. Welch Morrisette, Jr., U. S. Atty., Columbia, S. C., on brief), for appellee.

Before PARKER, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

PER CURIAM.

[1-3] This is an appeal in a criminal case wherein appellants were convicted of illicit distilling in violation of the internal revenue laws. The appellants were indicted with one Dicks, who pleaded guilty and testified against them. There was ample evidence that a still was being operated by appellant Reese in a vacant tenant house belonging to Dicks and that appellant Laird was assisting in the operation. In addition to questioning the sufficiency of the evidence to sustain the conviction, the principal contentions of appellants are that Dicks and a government officer were allowed to remain in the court room when a separation of witnesses was ordered; that Reese had been "entrapped" into entering into a conversation with Dicks, in which he admitted his connection with the still, when a government officer by arrangement with Dicks was hidden in the trunk of the automobile in which the conversation occurred for the purpose of listening to it; and that appellant Reese was unduly questioned by the presiding judge. These contentions are entirely without merit. The verdict was amply supported by the

evidence. Who should be allowed to remain in the court room when a separation of witnesses was ordered was a matter resting in the sound discretion of the trial judge. There was no evidence or even contention that Reese was "entrapped" into the commission of a crime, but merely into a conversation in which he admitted connection with a crime that had already been committed. While the questioning of Reese by the judge was searching and extended and might present a serious question if the case were a close one, we do not think that, under the circumstances here, it could have affected the result or calls for the granting of a new trial.

Affirmed.

**NEW ORLEANS CITY PARK IMPROVEMENT ASSOCIATION, Appellant,**

v.

Mandeville DETIEGE, Individually and on behalf of others similarly situated, et al., Appellees.

No. 16864.

United States Court of Appeals,
Fifth Circuit.

Feb. 13, 1958.

Rehearing Denied March 28, 1958.

Action for the declaration of rights of the parties and permanently enjoining a municipality from denying Negroes on account of their race or color, the use of park facilities. Judgment for plaintiffs in the United States District Court for the Eastern District of Louisiana, J. Skelly Wright, J., and the municipality appealed. The United States Court of Appeals, Per Curiam, held that a substantial issue of fact precluding summary judgment was not presented.

Judgment affirmed.

1. Federal Civil Procedure Ⓒ-2481

In suit to enjoin municipality from denying Negroes solely on account of their race or color, the use of park facilities, substantial issue of fact precluding summary judgment for the plaintiff was not disclosed on ground that court should ignore the decision of the Supreme Court in cited cases because they were posited on ratio decidendi of that court in school segregation cases which allegedly were based on psychological considerations not now applicable, where the Supreme Court decisions were decided on identical issues and were binding on the Court of Appeals.

2. Constitutional Law Ⓒ-215

The refusal of a city to make publicly supported facilities available on a non-segregated basis to Negro citizens deprived them of equal protection of the law.

Louis B. Porterie, New Orleans, La.,
for appellant.

A. P. Tureaud, New Orleans, La., for
appellees.

Before HUTCHESON, Chief Judge,
and TUTTLE and JONES, Circuit
Judges.

PER CURIAM.

[1, 2] This appeal from a summary judgment declaring the rights of the parties, and permanently enjoining the defendant, New Orleans City Park Improvement Association, a municipal corporation, from denying plaintiffs and other Negroes, solely on account of their race or color, the use of the facilities of the New Orleans City Park, calls for affirmance on the authority of *Holmes v. City of Atlanta*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 776, and *Mayor and Council*

of *Baltimore City v. Dawson*, 350 U.S. 877, 76 S.Ct. 133, 100 L.Ed. 774. Arising from a complaint in which the Negro plaintiffs, suing for themselves and others similarly situated, seek to have declared unconstitutional all state laws which prevent their use on the same basis as white persons of the golf course and other facilities of City Park, the suit presents no disputed factual issues and no new principles. Attempting to assert that there was a substantial issue of fact which should have prevented the trial court from acting on motion for summary judgment, appellant takes the completely untenable position that we should ignore the decision of the Supreme Court in the two cited cases because, so it states, they were posited on the ratio decidendi of that court in the school segregation cases of *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, which, appellant contends, were based on psychological considerations not here applicable. Appellant seeks to present this as a fact issue, contending that the trial court should have heard evidence to determine whether such psychological considerations are present in the denial of access on a non-segregated basis to the City Park. Whatever may have been the basis of the Supreme Court's decision in the *Atlanta* and *Baltimore* cases, they were nevertheless decided on identical issues that are presented here, and they are, of course, binding on us. The Courts have decided that the refusal of city and state officials to make publicly supported facilities available on a non-segregated basis to Negro citizens deprives them of equal protection under the laws in too many cases for us to take seriously a contention that such decisions are erroneous and should be reversed.

The appeal is without merit and the judgment is

Affirmed.