27/17

July 1844 #27
Aaron Manning
vs
State of MO
Cole County

Selling lottery tickets

Franklin Rail Road Lottery

Selling lottery ticket to Charles D. Gillespie

State of Missouri,
County of St. Louis, } Be it remembered, that at a term of the St. Louis Criminal Court, begun and held at the city of Saint Louis, within and for the County of Saint Louis, on the first Monday of May, being the first day of said month, and in the year of our Lord one thousand eight hundred and forty three, were present the Honorable Alonzo W. Manning, Judge, William M.ᶜ Pherson Esquire, Acting Circuit Attorney, George H. Kennerly Esquire, Marshall of the County of St. Louis, and Julius D. Johnston, Clerk of said Court.

And the Grand Jurors empannelled at said term having retired to consider of their presentments, on Thursday the eleventh day of May returned to the bar, and among other indictments returned one of which the following is a copy, to wit:

State of Missouri,
County of St. Louis, } St. Louis Criminal Court, May Term, 1843.

The Grand Jurors of the State of Missouri, duly empannelled, Sworn and Charged, to enquire within and for the body of the County of Saint Louis, upon their oath present: That Aaron Manning, late of the County aforesaid, on the first day of April in the year of our Lord eighteen hundred and forty three, in the County aforesaid, did sell to one Charles D. Gillespie, a lottery ticket in a certain Lottery called the Franklin Rail Road Lottery, a lottery to be drawn in this State, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said Aaron Manning, on the day and year aforesaid, in the County aforesaid, did unlawfully sell to one Charles D. Gillespie a certain other lottery ticket in a certain Lottery called the New Franklin Rail Road Lottery, a lottery to be drawn in this State, which last

said Lottery Ticket was then and there taken and kept by the said Charles D. Gillespie, so that the Jurors aforesaid cannot set forth the tenor or substance thereof, such Sale being contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

Wm M. McPherson,
Circuit Attorney, pro tem.

Endorsed: "A true bill.
Edwd Brooks, Foreman."

County of St. Louis, Ss:

The State of Missouri, To the Marshall of the County of St Louis, Greeting: We Command you to take Aaron Manning, if he be found in your bailewick, and him safely keep, so that you have his body before the Honorable Judge of the St. Louis Criminal Court, now in Session at the City of Saint Louis, within and for the County of Saint Louis, forthwith to answer an indictment found against him by the Grand Inquest of the State of Missouri, for the body of said County, for Selling Lottery tickets, contrary to the form of the Statute in such Cases made and provided, and against the Peace and dignity of the State; and have you then there this writ, with your return thereon how you execute the same. Seal Witness, Julius D Johnston, Clerk of our said Court, with the Seal thereof hereto affixed, at office, in the City of Saint Louis, this 12th day of May in the year of our Lord eighteen hundred and forty three.

J D Johnston, Clerk

Executed this writ by having the body of Aron Manning before the Hon. St. Louis Criminal Court, at the County of St. Louis, this 15th day of May, 1843.

G. H Kennerly, Marshal,
By R. Dowling, Deputy.

Monday, 15th May, 1843.

Aaron Manning as principal, and Noah M. Law as his security acknowledge themselves each to owe the State of Missouri the sum of eight hundred dollars, to be levied of their respective goods and chattels, lands and tenements, yet upon condition that if said Manning shall appear before this court from day to day to answer to an indictment found against him for selling Lottery tickets, and shall not the court without leave thereof, then this recognizance to be void, else of full force.

Monday, 22d. May, 1843.

The State of Missouri, vs Aaron Manning, Continued on the affidavit of defendant.

Aron Manning principal, and Nathan W. Law as his security, acknowledge themselves each to owe the State of Missouri the sum of eight hundred dollars, to be levied of their respective goods and chattels, lands and tenements, yet upon condition that if said Manning shall appear before this Court on the first day of the next term thereof, to be begun and held at the City of St. Louis on the first Monday of July next, then and there to answer an indictment found against him for selling Lottery tickets, and shall not depart the Court without leave thereof, then this recognizance to be void, else of full force & virtue.

July Term 1843.

Saturday, 22d. July, 1843.

The State of Missouri,
vs
Aaron Manning, } Selling Lottery Tickets.

Now comes as well the attorney who prosecutes for the State, as the said defendant by his attorney, and thereupon the said petition of said defendant for a change of venue being submitted to the Court, and the same being seen and inspected, it is considered by the Court that said petition be refused.

Thursday, 27th July, 1843.

Now comes as well the attorney who prosecutes for the State, as

the said defendant by his attorney, and thereupon the said motion of the said defendant to grant him a continuance is by them submitted to the Court, which being seen and heard, and by the Court here fully understood, it is considered that the same be overruled: whereupon the said defendant for plea to said indictment, saith he is not guilty in manner and form as charged upon him in said indictment, and for his trial puts himself upon the country; And the said Attorney for the State doth the like: thereupon come also a jury, to wit, James T. Langley, John C. Dinnies, Samuel Fife, John Hildreth, Samuel Maxwell, Louis LeDeu, George H. Callender, William Lawler, Jerome B. Washburn, John Park, Risdon M. Charles, Charles Pettit, twelve good and lawful men, who being duly elected, tried and sworn, the traverse between the parties well and truly to try, upon their oaths aforesaid say, as to the issue within joined, that the said defendant is guilty in manner and form as charged upon him in the Second Count of said indictment, and they assess his punishment at a fine of one thousand dollars, and six months confinement in the County jail— therefor it is considered by the Court that the said defendant for his offence aforesaid, pay to the State of Missouri for the use of the County of St. Louis, the fine aforesaid, in form aforesaid by the Jury assessed, that he be confined in the County jail for six months, pay the costs of this prosecution, and stand committed until this sentence be complied with. This judgment not to take effect until a a Motion to be filed by defendant within four days, for a new trial shall be disposed of, provided the said defendant shall find sufficient Security in the sum of two thousand dollars for his appearance from day to day to abide the judgment of the Court upon said motion.

Saturday, 12th August, 1843.

The State of Missouri, vs. Aaron Manning. Larceny. Now

Comes as well the attorney who prosecutes, for the State, as the said defendant by his attorney, and thereupon the said Motion of the said defendant in arrest of jeidgment is by them submitted to the Court, which being seen and heard, and the Court here not being sufficiently advised what judgment to render, take time to consider thereof.

Monday, 14th August, 1843.

The State of Missouri, } Lattery.
Aaron vs Manning. }

Now again come the said parties as aforesaid, and the Court here being sufficiently advised of and concerning the premises, doth consider that said Motion of the said defendant in arrest of jeidgment be overruled.

Wednesday, 16th August, 1843.

The State of Missouri, }
Aaron vs Manning, } Now again come the said parties as aforesaid, and thereupon the said Motion of the said defendant for a new trial is by them Submitted to the Court, which being Seen and heard, and by the Court here fully understood, it is considered that the Same be overruled. Judgment as to the imprisonment Suspended for four weeks for defendant to apply for Supersedeas.

Bill of Exceptions.

The State, vs Aaron Manning. Indictment for Selling Lottery Tickets.

Be it remembered, that after the finding of the bill of indictment in this case, to wit, at the July term of the Criminal Court, to wit, on the 18th day of July A.D. 1843, the defendant, Aaron Manning petitioned the Court for a change of venue, Supporting his prayer for a change of venue by his own oath, and also by the affidavit of Joseph R. Wendover & Samuel D. Dodge, as required by the

Statute,) that they verily believed that all the Matters Sworn to by said Aaron Manning in his petition & affidavit were true— which petition and affidavit are in the words and figures following:

*Petition & affidavit for change of venue.*

State of Missouri, County and City of St. Louis, In the Criminal Court, July Term, 1843.

The State,
vs
Aaron Manning, } Indictment for Selling Lottery Tickets.

The defendant in this cause being duly Sworn, upon his oath States that the people of the County of St. Louis are so prejudiced against him that he cannot obtain a fair trial in said County, and that this fact has first come to this Knowledge of this defendant since the last term of this Court— This defendant therefor prays the Court to grant him a change of venue in said cause, to some county where the prejudice as aforesaid does not exist, &c.

Aaron Manning.

Sworn to and Subscribed in open Court July 18th, 1843.

J. D. Johnston, Clerk

State of Missouri, County of St. Louis ss:-

This day personally appears before the undersigned Joseph R. Wendover & Samuel D. Dodge, who being Severally Sworn, do each depose & say, that they do verily believe that all the Matters Sworn to by Aaron Manning, in his foregoing petition & affidavit, are true. J. R. Wendover.

Sam'l D. Dodge

Sworn to and Subscribed in open Court, July 18th, 1843

J. D. Johnston, Clerk

The Court called the said Wendover & Dodge, caused them to be sworn & examined them orally touching their means of Knowledge, and the grounds on which they be-

lieved as stated in their affidavits, and then refused to award a change of venue, on the ground that it did not appear that said Wendover and Dodge were respectable persons, as required by law. To which the defendant excepted.

And afterwards, at the same term, towit, on the twenty sixth day of July, the cause being called for trial, the defendant prayed the Court to grant him a continuance, and grounded his motion on the following affidavit:

State of Missouri
vs
Aaron Manning } St. Louis Criminal Court, July Term, 1843.

Affidavit for Continuance

Aaron Manning being duly sworn on his oath says that David Workman is a material Witness for defendant on the trial of this cause, without whose testimony the said defendant cannot safely proceed to trial — that there is no other witness in attendance upon whom the defendant can rely to prove the particular facts which he expects to prove by said absent Witness — That the said witness is not absent by the consent, connivance, or procurement of this affiant, that the place of residence of said witness, as this affiant has learned, is at New Franklin in this State, but that said Witness, since the last term of this Court, has been absent in the South, so that a subpoena could not be served on him, or his deposition taken at his said place of residence; but this affiant has had letters written to the City of New Orleans, whether he had learned said Witness had gone, for the purpose of taking his deposition at New Orleans, or at whatever point said Witness might be at, but he has been unable to learn where said witness was at, and for that reason has been unable to procure the deposition of said Witness, or to procure his attendance at this Court, but he hopes to be able to procure his attendance at the next term of this Court, as this affiant is informed by said Workman's neighbors that he will return this Summer — that no subpoena has been issued for said Witness, because he has not been within the jurisdiction

of this Court. This application for a continuance is not made for veration or delay, but to the ends of substantial justice. This affeant expects to prove by said absent Witness, that on the 13th day of September, 1836, the Board of Trustees, of which said Workman was one, of the Town of New Franklin, who were thereto duly authorized, entered into an agreement with Wm T. Philips, whereby for good and valuable consideration in nature of work &c, to be done and performed on the part of said Philips, they sold and conveyed to said Philips the Lottery privilege secured by the act of the General Assembly of the State of Missouri, approved 16th of Jan, 1833, with full power to dispose of said Lottery privilege without limitation, and to the best advantage, and to use, manage, and work said Lottery by the selling of tickets, and at the same time constituted said Philips their attorney in fact, with full powers and authority to manage, draw, or sell the Lottery privilege aforesaid, and said Philips at the same time gave bond and security for the faithful performance by him on his part, of the obligations of his contract, in the sum of ten thousand dollars— that after making his arrangements, the said Philips being then ready and willing to perform his part of the contract with said Corporation of the town of New Franklin, on the 11th of September, 1837, notified said Corporation of the fact of his being then ready and willing, and then offered to go on and perform his part of his contract with said Corporation, if they would not prohibit, and in pursuance of said intention and offer, the said Philips on the 30th of May 1838 did pay on his said contract to said Corporation five hundred dollars in money, and two hundred and thirty dollars in notes— that said Philips on the 7th of August 1837 sold, by virtue of the powers and authority vested in him as aforesaid, the Lottery privilege aforesaid to one E. B. Pratt, and that having again gotten the same back from said Pratt, he

afterwards, and on the 27th day of February 1841, for valuable consideration did sell and transfer said Lottery privilege to Granville B. Marshall, Joseph G. Smith and that the sum of fifteen thousand dollars has not yet been realized from the sale of tickets in said Lottery.

Aaron Manning.

Sworn to and subscribed in open Court, 26th July, 1843.

J. D. Johnston, Clerk

But the Court refused to grant the continuance as prayed, to which the defendant excepted.

And afterwards, at the trial of the said cause before a Jury, the prosecution introduced as a witness one Charles D. Gillespie, who testified, in substance, that the defendant said to him, in the city and County of St. Louis, about the ____ day of April, 1843, a quarter of a ticket in the New Franklin Rail Road Lottery, and retired.

No other testimony was given on either side. And thereupon the Jury found by their verdict, the party guilty, as charged in the second count of the indictment, (saying nothing as to the first count,) and assessed the fine at one thousand dollars, and the punishment at six months confinement in the county jail.

And afterwards, and within four days, the defendant filed his motion, with written reasons, in arrest of judgment: and also, his motion with written reasons, for a new trial, which motions are respectively in the words and figures following:

Motion for New trial

State of Missouri— County of St. Louis— In the Criminal Court— July Term, 1843.

The State of Missouri, vs Aaron Manning, } Indictment for Selling Lottery Tickets.

The defendant moves the Court to grant a new trial in said cause for the following reasons:

1st. The Court erred in overruling the defendant's Motion for a change of venue.

2nd. The Court erred in overruling the defendants Motion for a continuance at the present term of said Court. Lamborn, for dept.

Additional reasons filed by leave of Court, Aug 15, 1843.

3. The verdict is against evidence.

4. It is without sufficient evidence.

State of Missouri, County of St. Louis, ss: In the Criminal Court, July Term, 1843.

Motion in arrest of judgment.

The State of Missouri, vs Aaron Manning, } Indictment for Selling Lottery Tickets.

The defendant moves the Court to arrest the judgment in this cause, for the following reasons, to-wit:

1st. The indictment upon which the defendant was convicted, is insufficient in law.

2nd. The indictment aforesaid is defective in charging two distinct and separate offences, in the two different counts thereof. Lamborn, for Deft.

But the Court overruled both said motions, respectively, and proceeded to render final judgment against the defendant on the aforesaid verdict. To which refusal, proceedings and judgment of the Court, the said defendant excepts, and tenders this his bill of exceptions, and prays that the same may be signed &c.

A. W. Manning, Esq
Judge of the St. Louis Criminal Court.

State of Missouri
County of St Louis } ss. I, Julius D. Johnston clerk of the St Louis criminal court, certify the above and foregoing to be a full and true transcript of the record and proceedings of said court in the case of the State of Missouri against Aaron Manning as the same now remain of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said

Court at the City of St Louis this seventh day of December in the year of our Lord one thousand eight hundred and forty three.

J. D. Johnston Clerk

Aaron Manning

vs.

State of Missouri

Clerk's fees for this transcript (274 words) ... $2.74
Certificate & seal ..... .50
Return to writ of error ..... .50
$3.74

State of Missouri } ss
County of Cole } The State of Missouri.

To the Judge of the Criminal Court within and for the County of Saint Louis in said State: Greeting.

Whereas in the record and proceedings in a certain cause lately pending before you in said Court, wherein The State of Missouri was plaintiff and Aaron Manning was defendant, manifest error hath intervened to the great damage of the said defendant, as by his complaint we are informed, Now we being willing that the error if any there be, should be corrected, and full & speedy justice done to the parties aforesaid, do Command you that you send to us Certified under your seal, the record and proceedings, in the Cause aforesaid, as fully as the same remains of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the County of Cole in said State, on the second monday in January next, so that our Judges of our Supreme Court on inspecting the record and proceedings aforesaid, may cause to be further done therein for correcting the error, what of right and according to law ought to be done.

Witness Hampton L Boon Clerk of our Supreme Court at Office, with his private seal, having no Official seal provided the twenty eighth day of August in the year one thousand eight hundred and forty three.

H. L. Boon.

The execution of this writ will appear by the transcript of the record hereto attached. J. J. Johnston Clerk St Louis Crim: court

(25)

Supreme Court.
Jany Term 1844.

Aaron Manning
vs } Writ of error
The State of Mo.

Received September 4th 1843.
J. Johnston Clerk

Filed Dec 11. 1843
H. L. Boon clk

"Aaron Manning
vs
The State of Missouri } Error to St Louis Criminal Court.

Now at this day comes the said Aaron Manning by his agent and presents to the Court here a certified transcript of the record in the above entitled cause, and moves the Court to make an order directing that the writ of error sued out in said cause, shall operate as a stay of proceedings on the judgment rendered against him the said Manning.—

And the Court here having seen and fully considered the said motion, as well as inspected the record aforesaid of the said Criminal Court, and being of opinion after said inspection, that there is probable cause for such writ of error, do order and direct that the said writ of error operate as a stay of proceedings on the judgment aforesaid, according to the prayer of the said plaintiff." —

Order of the Supreme Court made Aug. 29. 1843.

H. L. Boon Clk

State of Missouri
ad
Mo. S. Freleigh

The State of Missouri
ad
Aaron Manning

The Plaintiff by his attorney, moves the Court to grant a rehearing in the above cases

Edwd. Bates

Manning — and
Pretleigh
vs
The State.

Motion

filed July 19. 1844
H. L Bourock

Manning v. The State

Error to Phrus Cr. Court.

Per curiam - This case is not materially different from the case of Freleigh v. The State and the same disposition is made of it - Judgment reversed & the cause remanded.

Manning vs The State

Completed

Spencer

15.

H. B. Naylor

July Term
1844

Filed Oct. 7th
1844
H. L Bowden

State of Missouri /
vs
Aaron Manning
Same
vs
John S Freleigh
} Selling Lottery Tickets

Objection is made to the Indictment that it does not set out, or describe the ticket this is not necessary - No more than it would be to describe a Bank note ~~that has been stolen~~ or ~~to describe~~ the Colour of the horse that may be stolen. On a trial for larceny it is not necessary to produce the Bank note or other property stolen in evidence: so with Lottery tickets. The fact of selling is the offence Charged in the indictment — and the offence provided against in the Statute and the particular discription of the ticket sold cannot be important after the fact of selling has been established. There would be as much ~~propriety~~ reason to require a description of the Kind of Spiritous liquors sold without license or a discription of the Game of Faro or Roulette upon an indictment for betting on those Games and if the tickets must be set out or Specially discribed - then a discription of the Scheme of drawing might with as much plausibility be demanded

The Indictments in these cases were taken from the form adopted in Massachusetts conformable to the law passed in that State in 1825 prohibiting Lotteries and which by reference will be found very similar in language to the law of this State

State (for form of Indictment see Davis' Precedents page 162)

In the case of the Commonwealth vs Clapp dept was Indicted for advertising Lottery tickets and after conviction a motion was made in arrest because the indictment did not allege that the tickets were advertised for sale within the Commonwealth and because it did not allege that the lottery was within the State and was unauthorized by law But these objections were overruled 5th Pickerings Rep 41

In the cases under consideration the Indictments show upon their face a sufficient reason for not describing them if it could under any circumstances be necessary (to wit) that the tickets were taken & kept by the purchaser and therefore the true name or substance could not be given If the Doctrine is to be established that the ticket sold must be particularly described in the Indictment. All vendors in St Louis may continue to do a good business taking care only to sell to the traveling community who are soon beyond the Jurisdiction of the Court. or to such persons as would secrete the evidence of their Guilt and if the doctrine should be sustained it would be an easy matter to take a certificate of the Numbers of the ticket and then destroy the evidence of Guilt and although witness might testify to their daily iniquities still for want of the little strip of paper the law might be violated with impunity. Such doctrine is not supported by the authorities — It is not in accordance with the decisions of this Court. but is at variance with both precedent & practice — The above cases were tried while I was prosecuting in St Louis County under a Pro Tem appointment

- I have in Justice to myself made these hasty suggestions in support of the Indictment but as I am no longer connected with the Prosecutions in that Court - I have no disposition to persue the other branches of the case

Wm M McPherson
Attny

Aaron Manning
vs
State of Missouri
~~John S~~

John S Freleigh
vs
Same

Brief for appellee
McPherson
attny

The State v A. Manning
" v J. S. Fadigh.

In reply to Mr. McPherson's brief in support of his indictment — I remark

1. (As to setting out the tenor, if not the tenor, at least the purport i.e. an accurate description of the contents of the ticket.)

In larceny of bank notes — the instances put by Mr. McP. — it is not necessary to set out the notes, or produce them — That is an exception to a general rule applicable to written instruments, and for an obvious reason — the thief gets possession by the larceny, neither has them or has disposed of them, so that the prosecutor cannot control them. But he who sells a lottery ticket, parts with the possession, by the act of sale, & cannot conceal it from the prosecution — Note here — the alleged purchaser, Gillaspie, was the only witness, & probably the real prosecutor.

The sale of a ticket is not like the case of larceny, but very analogous to the uttering of a false instrument — it is in fact then, an uttering — and no one will deny that an indictment for uttering a counterfeit note, must set forth the note.

It is very important to the accused that the ticket should be set out, or at least, so described as to be known by the description. Else, how shall the accused, when indicted a 2d time, defend himself by pleading & proving a former acquittal or conviction?

2. The case cited from 5th Pickering's reports is wide of the point. That was an indictment, under the Statute of Mass:, for advertising lottery tickets for sale. The offence charged was advertising — no matter what tickets, nor in what lottery, nor where to be sold: The advertising was in the right county.

3. As to the excuse set up for not describing the bitterly, perhaps that is sufficiently answered in the above note. Yet let it be observed that if — as seems conceded — the law require the setting forth of either the tenor or the purport, in order to a conviction, no excuse can dispense with the requirement nor take away the defendant's right to acquittal.

Edw. Bates

The State v Manning
" " v Freligh

For the court —
Notes in answer to Mr. Mc Pherson's brief

E Bates