State of Missouri v. Gardner, William May 1828 3rd D. St. Louis 149/1

26 Misconduct in office: Aff'd., As J.O.P., G. did not knowingly, corruptly or willfully intend to commit misdo'r

Judicial Proc.

State
vs.
William Gardner

Indict for Misdemeanour in office as justice of the peace. In the St. Louis Circuit Court.

The defendant in the above cause is hereby notified that a writ of Error has been sued out in the above cause, returnable to the next term of the Supreme Court for the 3d. judicial District, which will be on the first mon-day of May next.

R. P. Farris
Cir. Atty.

Jan. 14th. 1828.

A copy of the within notice was delivered to Wm Gardner
February 4. 1828

R Simpson Sh'ff

Since $ - 50

State
vs.
Wm. Gardner.
Notice of Writ
of Error.

State of Missouri
County of St Louis } Be it Remembered that heretofore to wit at the November Term of the Circuit Court for the County of St Louis begun and held at the City of St Louis within and for the County of St Louis on the Fourth Monday of November being the twenty sixth day of said month in the Year of Our Lord One Thousand Eight Hundred and twenty Seven before the Honorable William C. Carr Judge of said Court - The Grand Inquest of the State of Missouri for the body of the County aforesaid sworn and charged to enquire for the body of the County of St Louis return into Court an Indictment against William Gardner for Misdemeanor in Office; which said Indictment is endorsed by the Forsman of the Grand Jury aforesaid "A True bill" which said Indictment is in the words and figures following to wit: State of Missouri. St Louis County Nov Term 1827 The Grand Jurors for the State of Missouri, empannelled sworn and charged to enquire for the body of the County of St Louis upon their oath present that William Gardner late of the County of St Louis aforesaid labourer on the first day of December in the year One thousand Eight Hundred and twenty six and long before, was and still is, one of the Justices of the peace of the Township of St Ferdinand and County aforesaid, and that the said William Gardner on the day and year aforesaid as such Justice of the peace did wilfully issue his summons directed and delivered to the constable of the said township of St Ferdinand in the County aforesaid commanding the said constable to summon one John Spencer to appear before him the said William Gardner on a certain day in the said summons specified to answer to a pretended demand in favour of one Black Locker a negro man slave which said summons the said Constable afterwards on the day and year aforesaid at the Township and County aforesaid duly executed and served on the said John Spencer, the said William Gardner at the said time of the Issuing of the said summons there well knowing that the said Black Locker was then and there a slave and the property of him the said William Gardner to the great perversion of publick Justice, contrary to the form of the Statute in that case made and provided, and against the peace and dignity of the State R. P. Farris Cir Atty. and afterwards to wit; at the same term of the said Circuit Court on the third day of January in the year Eighteen hundred and twenty eight the said William Gardner filed his demurrer to said Indictment in the words and figures following to wit: "State of Missouri vs William Gardner Indictment

for Misdemeanor in Office – And the said William in proper person comes and defends the charge aforesaid and says that the said State ought not to have or maintain their Indictment against him because he says that the said indictment and the matters therein alleged in manner and form as the same are above stated and set forth are not sufficient in law to have or maintain their aforesaid indictment against him and this he is ready to verify wherefore he prays Judgement & C Wm Gardner – Joinder in Demurrer Farris Cir Atty and afterwards to wit on the said third day of January in the Year Eighteen hundred and twenty Eight come as well the Circuit Attorney who prosecutes for the State in this behalf as the said William Gardner in his own proper person whereupon all and singular the premises are by them submitted to the Court which being seen and heard and by the court here fully understood and mature deliberation being thereupon had for that it appears to the Court that the said Indictment and the matters therein alleged in manner and form as the same are above stated and set forth are not sufficient in law for the said State of Missouri to have or Maintain her aforesaid Indictment against the said defendant nor is he bound by the law of the land to answer the same therefore it is considered by the Court that the said William Gardner be acquitted and go thereof without day –

State of Missouri
County of St Louis } ss I Archibald Gamble Clerk of the Circuit Court for the County of St Louis do certify the above and foregoing to be a Correct transcript of the Record and proceedings in the case of the State of Missouri vs. William Gardner for Misdemeanor in Office as the same now remains in my Office

Given under my hand and seal of Office at St Louis this Twenty Ninth day of February in the Year of Our Lord One Thousand Eight Hundred and twenty Eight

Archibald Gamble Clerk

The State
vs
William Gardner

Transcript —	$0.76
Certificate —	0.50
Fazon Seal —	1.00
	$2.26

STATE OF MISSOURI, }
Third Judicial District. } SS.

The State of Missouri, to the Honorable the Circuit Court of St. Louis County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of St. Louis *before our Judge thereof, between* The State of Missouri *Plaintiff, and* William Gardner a Justice of the Peace for St. Louis County *Defendant in a plea of* Wilfull Misdemeanor in office *as it is said, manifest error hath happened, to the great damage of the said* State of Missouri *as by* her *complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* first Monday *of* May *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

WITNESS, *THOMPSON DOUGLASS, Clerk of our Supreme Court for the Third Judicial District.*

IN TESTIMONY WHEREOF, *I have hereunto set my hand and seal of Office, at Office, this* Eighth *day of* January *in the year of our Lord one thousand eight hundred and twenty* eight *and of the Independence of the United States of America, the* fifty second

T. Douglass Clk

No 4
May Term 1828
State of Missouri
vs Writ of Error
Wm Gardner J.P.

Filed 3 May 1828
H Douglass Clk

76a

State of Missouri }
County of St Louis } In obedience to the commands of the within writ I transmit herewith a transcript of the Record and proceedings in the case of the State of Missouri vs William Gardner for misdemeanor in office — St Louis first March 1828

Archibald Gamble Clerk St Louis
Circuit Court

State of Missouri
vs.
William Gardner } In Error.

And now at this term, to wit, before the Supreme Court of the State of Missouri, at the City of St. Louis in the third Judicial District in the said State, comes the said plaintiff, by R. P. Farris, Cir. Attorney, and says that in the said record and proceedings, and also in the giving the judgment aforesaid, there is manifest error, in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given was given for the said William Gardner against the said State, whereas by the law of the land the said judgment ought to have been given for the said State against the said William Gardner. And the said State prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said State may be restored to all things which she has lost by reason of the said judgment &c.

Farris, Cir. Atty.

State
vs.
William Gardner.

Assignment of
Errors.

Filed May 5. 1828

The State vs Gardner

Error from St Louis Circuit Court

This was an Indictment of a Justice of the peace for a supposed Misdemanor in office, The Indictment was demurred to and the demurrer sustained. To reverse this Judgment the State brings the cause to this Court by Writ of error.

The first section of the Act of 4th January 1825 (Revised Code 469) provides for the appointment of Justices of the peace and the act in part defines their duties The 5th Section of which provides "That the said Justices of the peace shall continue in office during the term of four years from the date of their commissions — unless sooner removed therefrom on conviction for bribery perjury or other infamous crime; or on conviction for any Wilful misdemeanor in office, by — Indictment in the Circuit Court

The Indictment charges that gardner was a Justice of the peace & that as such Justice of the peace, did on a certain day Wilfully issue his summons directed and delivered to the Constable of Ferdinand Township, commanding the said Constable to summon one John Spencer to appear before before him the said Gardner on a certain day to answer to a pretended demand in favor of one Black Locker a negroe man slave, which summons was served The said Gardner at the time issuing said summons knowing that Locker was a slave and the property of

him the said Gardner To the great perversion of Public Justice & Contrary to the form of the Statut in such case made and provided &c

The point made in this case is whether the Indictment charges any Misdemeanor the words of the law are an conviction for any wilful Misdemean-or The words of the Indictment are that the defendant wilfully ignored a summons &c and the Circuit Attorney insists that it being clearly a void Summons, Is a Misdemeanor, and it having been alleged to be wilful, the Statute is satisfied and the indictment good. I am of a contrary Opinion ~~that in~~ this case two things are required. First that the indictment should shew such facts as would amount to a misdemeanor Independant of the word wilful, and to make this out the Indictment should charge the act to have been done knowingly & corruptly and secondly that the fact should be alleged to be wilful, It may be that the legislature intended to use this word to draw a distinction between intentional and corrupt violations of official duty and those that are only instances of gross Ignorance or negligence. If the word will not bear this meaning I know of none else it can have, for without this word the law would define every misdemeanor to to be wilful except in case where a particular

It is declared by express enactment to be such —

The Judgment of the Circuit Court is affirmed with costs —

Mathias McGirk
George Tompkins
R Wash

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Gardner
vs
The State

Opinion

filed May 21st 1828
A Gamble Clerk
P. T.

589

The State
vs
Wm Gardner

This was an indictment against Gardner as a Justice of the peace of St Louis County for a misdemeanour in office. The offence charged is that Gardner on the 1st December 1826 wilfully issued his summons directed and delivered to the constable of St Ferdinand Township commanding him to summon one John Spencer to appear before him the said Justice to answer to a pretended demand of one Black Locker a negro man slave the said Justice at the time of issuing the summons well knowing that the said Black Locker was a slave and the property of the Justice. To this indictment there was a demurrer on which judgment was rendered for the defendant to reverse which this writ of Error is brought

For the Defendant in Error it is insisted that the indictment is bad for the following among other reasons

1st It is not charged that the process issued by the Justice even purported to be process issued in an action commenced before him

2d It does not appear that the process was issued in such manner as to evidence an intention on the part of the Justice of taking jurisdiction of a cause

3d It does not appear that the Justice issued the process knowing it to be against law or from malice against the defendant.

The indictment is framed under the statute providing for the removal from office of Justices of the peace convicted of a wilful misdemeanour in office. To constitute a misdemeanour in office

it is necessary that the act done, should be done under and by virtue of the office and should be done knowingly in violation of its duties except in those cases where by positive law certain acts and neglects are made misdemeanours in office as in the cases of clerks &c under the revenue laws and the Secretary of State under the law regulating his office –

In this case there is nothing done by the justice by which he even claimed jurisdiction of a cause

The summons is either to be set out in the indictment or is to be described by its legal effect

Now it does not appear that the Justice even stated that any demand existed on the part of Locker against Spencer but on the contrary it appears that the summons on its face negatived that idea because it was for a "pretended demand" If the process had stated that Locker claimed ten acres of land in the moon surely it could not be pretended that the Justice was guilty of a misdemeanour in office although he might be guilty of a very poor jest –

We say there should have been an averment in this case that the Justice issued the process knowing it to be against the law and from improper motives

The Justice is a judicial officer – The process was issued by him in that character although the mere drawing and signing the summons was a ministerial act –

1 Day 1 East 555

A judicial officer is not liable to an action for improper acts in his office unless there has been a wilful violation of the duties of his office from malice to a party before him

If such be the law as to civil actions brought

against the officer upon much stronger reasons is it the law in criminal proceedings against him This indictment contains no higher or more criminal charge than if it had alledged that the Justice had wilfully issued his summons to the constable commanding him to summon Spencer to appear before the justice to answer to a pretended demand of a married woman; the Justice at the time of issuing the summons well knowing she was a married woman" Nor for the purpose of maintaining an action in her own name alone the rights of the woman are merged by the marriage and when the Justice is charged with knowing the fact of the marriage he would be just as criminal in issuing a summons in her name as in the name of a slave. It is no answer to our objection that Locker was the Justice's slave for that ~~only~~ makes his knowledge of the fact that ~~the~~ was a slave more evident but it does not effect his knowledge of the slaves rights

A R G Amble

The State
vs
Wm Gardner

Defendants Brief

State
vs.
William Gardner

Error from the St. Louis Cir. Court.

This was an indictment found at the last Nov. Term of the Circuit Court of said County, ~~to~~ against William Gardner, for misdemeanour in office as a justice of the peace. The indictment was founded on the Statute relating to justices of the peace, Laws of Missouri, page 470, Section 5, which states that they shall hold the offices, &c. unless sooner removed on conviction of perjury &c. "or on conviction for any wilful misdemeanour in office", by indictment &c. The indictment states that the said Justice wilfully issued and delivered to the constable of his township, a summons in favour of one Black Locker, a slave, against one John Spencer, on some pretended demand, which was afterwards served, "the said Justice then and there well knowing the said plaintiff was a slave, and the property of the justice himself. To the indictment there was a demurrer which was sustained by the Court, for the reason that the indictment does not aver that the Justice knew that such proceeding was illegal.

On the part of the State it is contended

that it was not necessary to allege in the indictment that the magistrate knew that a slave could not own property, or be plaintiff in a suit of this description, for the following reasons:

1st. For the trite, but true, saying that all persons are bound to know the law.

2d. If it be a material allegation it would have to be proved, which would be impossible; no witness being able to state how much, or how little, the defendant knows of the laws of his country.

3d. That the decision of the circuit Court makes that particular clause in the statute a mere nullity, by making it an impossibility, — contrary to the established rules of construction.

4th. That the indictment pursues the language of the statute, and states the offence to have been done "wilfully" which, in any event is sufficient.

2d. Taun. Rep. page

Another objection made to the indictment was that the summons ought to have been set out. This point was not decided by the Circuit Court. But in answer to it, it may well be urged,

1st. That being in his possession, there would be difficulty in obtaining it. — in form

2d. If it were not a good and legal one, it was his own fault, and he cannot be allowed to take advantage of it.

3d. There is neither authority nor reason for setting it out, but the contrary.

See 2d. Chit. Crim. Law. page 238.

Lanis, Cir. Atty.

State
vs.
William Gardner

Statement of Case
for the State.

Ferris, Cir. Atty.

Authorities.
2d. Taunton's Rep.
2d. Chit. Crim. Law.