State of MO vs. Sutton, William; 1856 Newton Co. #13 Cir. 213/11

74/5

· gambling charge
· reversed, indictment is good
· using half dollars and cracks in the floor to play betting game

State of Missouri } Indictment for gaming
vs. } In the Newton Circuit
William Sutton } Court July 1856

Mr William Sutton

You are hereby notified I will apply to the Clerk of the Supreme Court of the State of Missouri for writ of error in above entitled, which will be for trial at Jefferson City at the next Term of the Supreme Court which will be begun and holden on the 2d Monday in January 1856, When and where you can attend if you think proper

E B Boone Circuit
atty for 13th Judicial
circuit for Mo

I hereby certify that I served the within notice by reading the same in the hearing and presence of the within named William Sutton in Newton County on the 18th day of July AD 1836

H Jennings Shff
of Newton County
Mo.

State
vs Notice
Sutton
July 18th 1836

Be it remembered that at a circuit Court begun and held at the Court house in the County of Newton and State of Missouri on the 29th day of October AD 1855, Present the Hon. C S Yancy Judge E B Boone Circuit atty, Jno D Templeton Clerk and H Jennings, Sheriff Among other proceedings of said Court the following appears of Record Viz. Now at this came H Jennings Shff and present his panel of the Grand Jury Viz

Empanneling of the Grand Jury

Elisha Testaman 1 Wm Bryson 2. Wiley Johnson 3 John Sperrin 4, Abner Cloud 5 Jno Biggs 6. Moses Hudson 7 Jno Davis 8. B A Russel 9. Thomas D Hutchison 10. B A Woods 11 Wm Hutchison 12 N J Phillips 13 A H Brown 14 Thomas Mosely 15. Anthony Bledso 16 and Elijah Lorance, Seventeen Good and lawful Men of the County of Newton who were elected sworn and charged. Thomas Mosely as foreman, who retired to consider of their duties. And the 5th day of said Term being the second day of November 1855, the following proceedings were had to wit "Now at this day came the Grand Jury who were empannelled on the first day of this Term and through their foreman and in their presence present the following as true bills viz

State of Missouri

vs Indictment for Gaming

William Sutton

Which was ordered to be filed & Capias issue

Which said Indictment is in the words and figures following to wit,

State of Missouri } In the Newton Circuit Court
County of Newton } October Term AD 1855.

The Grand Jurors for the State of Missouri empanneled Sworn and Charged to enquire within and for the body of the County of Newton upon their Oath present that One William Sutton late of said County heretofore to wit on the ~~the~~ tenth day of June AD 1855, at the County of Newton and State of Missouri with force and arms did then and there unlawfully bet a sum of money to wit fifty cents at and upon a game of chance played with and by means of half dollars and cracks in the floor of a house, which said half dollars and cracks was then and there a Gambling device, a device and designed for the purpose of playing Games of chance for money and property Contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State.

Indictment

E. B. Brown, Cir Atty.

Which said Indictment is indorsed in the words & figures following, to wit "This is a true bill. Thomas Mosby Jr. Foreman of the Grand Jury." And be it further remembered that at the July Adjourned Term 1856 of the Court aforesaid continued and held at the Court house aforesaid, on the 8th day of July AD 1856. Among other proceedings the following were had, to wit,

"State of Missouri
vs } Indictment for Gaming
William Sutton

Now at this day came the deft by his attorney and filed his Motion to quash the bill of Indictment in this cause, which Motion being seen and by the court fully understood by the court, it is ordered by the court that said Motion be sustained and said defendant be discharged and go hence with out day. and that he have his costs laid out and expended. To which opinion of the Court in sustaining said Motion the said State by her circuit atty excepts."

Motion to quash the Indictment.

And that on the 9th day of July AD 1856, the following proceedings among others were had to wit.
"State of Missouri vs William Sutton indictment for Gaming. Now at this day came the Circuit attorney and files his bill of exception to the opinion of the court in the above cause."
Which bill of exception is in the words & figures following to wit,
"State of Missouri }
County of Newton } Be it remembered that at an adjourned Term of the Newton Circuit court at a court begun and held at the court house in the Town of Neosho on the 9th day of July 1856, in a case where in the State of Missouri is plaintiff and William Sutton is defendant on an indictment for Gaming. the defendant filed a Motion to quash the indictment, which Motion is in the words &

"Bill of Exception

figures following to wit. "State of Missouri vs William Sutton Ind. for Gaming defendant comes and moves the court to quash the and-ictment in this case. Because the defendant is not charged with betting upon a Gambling device as contemplated by law.

Hamm & Hendrick for Deft.

which was by the court sustained to which the plaintiff by her circuit attorney excepted and files herein his bill of exception and prays that the same may be signed sealed and made a part of the Record which is accordingly done

C S Yancy Ct Judge (Seal)

State of Missouri } ss
County of Newton } I Jno D Templeton Clerk of the Newton County Circuit Court do, Certify that the above and foregoing is a full, true and perfect Transcript of all the Record and proceedings had in the above entitled cause as the same appears of Record in my Office,

In testimony where of I have set my hand and affixed the seal of said Court at Office in Neosho on the 26th day of November AD 1856.

Jno D Templeton Clerk
By Saml P Cloud D.C.

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Thirteenth Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Newton County in the Judicial Circuit aforesaid wherein The State of Missouri was plaintiff, and William Sutton was defendant

in an ~~action of~~ indictment for gaming manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain 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, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the seventh day of August in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

51. Jan 7/57 77

State of Missouri

vs

William Sutton

filed Dec. 9 1856

Wm E Dunscomb

Clerk

J. Nelson

Atty

State of Missouri
vs
William Sutton } Error to the Newton Circuit Court.

This case is in all respects like that of the State vs Hugh Flack decided at this term. In accordance with the opinion therein delivered this judgment will be reversed & the cause remanded; with the concurrence of the other judges

William Scott

The State
vs.
Wm Sutton

Opinion

filed Febr. 25 1857
Wm E Duncomb
Clerk

In the Supreme Court
January Term 1857

The State plaintiff in error
vs } Error to Newton
William Sutton defendant in error

Defendant was indicted for betting "a sum of money, to wit fifty cents, at and upon a game of chance, played with, and by means of half dollars and cracks, in the floor of a house, which said half dollars and cracks, were thrn and there, a gambling device, adapted, devised and designed, for the purpose of playing games of chance, for money and property, contrary, &c."

Defendant moved to quash the indictment, Because, he (defendant) ~~is not~~ charged with betting upon a gambling device, as contemplated by law:- Which motion was sustained and ~~plaintiff~~ excepted and brings the case into this Court, by writ of error.

There are three cases. State v Sutton. State v Flack, State v Charles.

Ewing for the State
1. R S 1855. 8 art. 16 & 17 secs. p 626-7

No. 77. 78. & 79

State of Missouri
vs }
Wm Sutton

Statement & Brief
for the State.

In the Supreme Court
Error to Newton Circuit Court

The State of Missouri Plff
vs
William Sutton Respondent.

This was prosecution by Indictment found upon the 14th Sec 8th Art. of the Act concerning Crimes and punishments, R. C. 1855 for gambling. The Indictment was quashed on Defts. motion. And the circuit atty excepted & brings this cause by writ of Error.

The Respondent relies on the following points. The Statute is not broad enough to strike at the immoral practice of gambling in all its various forms. but is limited by restrictive terms to certain modes & means of gambling.

First, It prohibits betting upon any gambling table, bank, or device, adapted, devised, & designed for the purpose of playing games of chance for money or property. by referring to the preceding Sec. (16).

Second, It prohibits betting at or upon any other gambling device.

Third, It prohibits betting

upon any game played at or by means of any such gambling table or other gambling device.

The Indictment in this case is found upon the latter branch of this last mentioned clause which embraces all gambling gambling devices whatsoever having reference to the apparatus or means by which the game is played

The Indictment in this case is insufficient. Because the apparatus or means by which the game is alledged to have been played, is not a gambling device, for as all devices are characterized by the purposes to which they are obviously & designedly adapted, it is essential to a gambling device that its adaptation to gambling purposes be obviously designed

The apparatus or means by which the game specified in this Indictment was played are a half dollar & crack in a floor, neither of which or both together constitute a gambling device. They want the ingredient of adaptation to gambling purposes by obvious design-

nation -

For this reason the circuit court did right in quashing the Indictment - And its judgement in this case ought to be affirmed

L. Hendrick Atty
for Deft. in Error

77.

State of Missouri

vs Brief

Wm Sutton

The ~~[illegible]~~ atty accepted
notice in time
L Kincaid atty
for Deft.