Stubblefield, Young L; vs. State of Missouri 1861 Christian Co. 14th Cir 259/9
Edwards, Martin

Old 92/29

Affirmed disturbing public worship

S & E disturbed congregation & threatened people; said indictment contained 2 separate charges & moved to quash

Court held both charges fell under same offence of disturbing worship

The State of Missouri, ss.

The State of Missouri, *To the Judge of the* fourteenth *Judicial Circuit* *in said State, Greeting:*

Whereas, *In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Christian County, in the Judicial Circuit aforesaid wherein* The State of Missouri was plaintiff and H. L. Stubblefield and Martin Edwards were defendants

in an action of *manifest error hath intervened to the great damage of the said* defendants *as by their 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, and have then there this writ.*

Witness, WILLIAM E. DUNSCOMB. *Clerk of our said Supreme Court, at office, in the City of Jefferson, the* twenty second *day of* July *in the year of our Lord one thousand eight hundred and* sixty one.

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

The State of Missouri
vs
G L Stubblefield &
Martin Edwards

1st.

Be it remembered that at a regular Term of the Christian Circuit Court begun and held at the Court House in the Town of Ozark in Christian County State of Missouri. on the Second Monday in September AD 1860 at which Court were present the Hon P. H. Edwards judge of the 14th judicial circuit. Julian Frazier circuit attorney J R Gibson Sheriff and J M Pettijohn Clerk of said Court When and where the following proceedings were had (to wit) Now at this day comes J R Gibson Sheriff who after being duly sworn according to law returns into Court a writ of venire for a Grand jury with the following names. viz; Calvin D Bray who was by the court appointed foreman John W Walker W P Smith R W P Mooney Richmond - Johnson W C Smart James Mitchell J D Sharp D G Morrow J R P Russell J J Vaughan Mathew Chapman William Gideon James Galloway John W Bayew W F Milton W L Cunningham. Sixteen good and lawful men who after being impanelled sworn and charged

retired to consider of their presentments and on the fourth day of said September term the following proceedings were had (to wit)

Now at this day comes into court the Grand jury and by the hand of their foreman returns into in court the following Bill of Indictment—

State of Missouri
County of Christian

In the Christian Circuit court September term 1860 The Grand jurors for the State of Missouri impanelled sworn and charged to inquire within and for the body of the County of Christian upon their oath presents that Young Stubblefield and Martin Edwards both late of the County aforesaid on the first day of January in the year 1860 with force and arms in the county aforesaid did then and there wrongfully maliciously and contemptuously disquiet and disturb a certain Congregation and assembly of people met for religious worship by making a noise by rude

3, behaveous by indecent behaviour and by profane discourse within their place of worship and so near to the same as to disturb the order and solemnity of the meeting and did then and there willfully maliciously and contemteously menace threaten and assault divers persons then and there being contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State:

Julion Frazier Circuit Attorney

And on the Back of said Indictment are the following Endorsement

State
vs
Y L Stubblefield & Martin Edwards } Indictment for disturbing the order & solemnity of a religious meeting.

This is a true Bill
Calvin D Bray foreman of the Jury
Witnesses William Tennis D. A Dryden
John Tennis & Robert White.
Filed September the 14th 1860
J. McPettyjohn Clerk

(4)

Said Bill of Indictment was by the Court ordered to be filed and that Capias Issue thereon.

And at the ensuing term of the Christian Circuit Court begun and held on the Second in March AD 1861 the following proceedings were had, (to wit)

The defendants appeared to answer the aforesaid Bill of Indictment and filed the following motion to Quash Indictment in words and figures as follows (to wit)

State of Missouri vs Y L Stubblefield & Martin Edwards } Indictment for disturbing religious Congregation

Defendants moves the court to quash the Indictment in this cause, because it is double. Because two distinct offences are Charged in the same Count in said Indictment

Boyd & Foster attys for defendants

And on a Subsequent day of the said term said motion was by

the court overruled to the opinion of the court in so overruling said motion defendants objected and excepted at the time. afterwards and during said term the cause coming on to be tried the defendants pleaded not guilty. A jury came and the following was all the testimony adduced on the trial

John Pennis produced and examined on the part of the prosecution stated. that in August 1860 he was attending A Methodist campmeeting in said County of Christian and on one afternoon whilst he and others was going from the camp ground to A grove where they met for secret prayer and when within about fifty yards of the place where they were to meet and where same had already met for prayer he (Witness) heard A noise in the bushes off from the road he was traveling he looked in that direction and saw defendant Edwards and same others siting down in the woods about ~~twenty~~ twenty five yards distant. he heard said Edwards say let them go on

to their God damned secret prayer
and I will drink my whiskey
he then raised a small demijohn
and took a drink Witness had
not then reached the place of meeting
for prayer But was on his way there
the bushes was very thick where
defendant Edwards was he could not
be seen by those who had met for
prayer. That on the next morning
and after the said Campmeeting
had adjourned and Broken up but
before the Campers had all left
defendant Edwards rode around
through and about the said Camp
Ground and had the little demijohn
which he had seen him with the
day previous tied to the horn of
his saddle. that the evening after
witness saw Edwards in the bushes
as aforesaid. there was a revival
at the said Camp Ground and
during the services thereof Witness
saw defendant Stubblefield in the
alter of said meeting Intoxicated
as the witness believed the Congregation
was standing up in said alter and
was as thick as they could well be

(7)

to Stand witness saw defendant Stubblefield bow over against some young Ladies and then Straighten up again and look significantly at some of his Comrades. saw him do so several times. when witness went to him and told him he had best leave there and defendant Stubblefield immediately left
The Court then at the instance of the State gave the following Instructions which was objected to by defendants at the time.
The Court Instructs the jury that unless they believe from the evidence that defendant Martin Edwards disturbed or disquieted a Congregation or assembly of people who had met for religious worship either by making a noise or by rude or indecent behaviour or by profane discourse, to find the defendant Edwards not guilty. The Court instructs the jury that although they may believe that defendant Edwards made use of profane discourse or was guilty of rude or indecent behaviour yet unless they further

believe that a congregation or assembly of persons who had met for religious worship either heard him or saw him, and the order or solemnity of the meeting was disturbed by such acts or words they aught to find him not guilty. The Court instructs the jury that unless they believe from the evidence that defendant Stubblefield did disturb or disquiet an assembly of people who had met for religious worship either by rude or indecent behaviour yet unless they believe the order or solemnity of the meeting was disturbed thereby they ought to find him not guilty.

afterwards the jury returned the following verdict

State
vs
G L Stubblefield

Now comes Circuit attorney as well as defendants and severally announce ready for trial whereupon comes the following jury (to wit) S P Warren A Shipman

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James Dennis W Crumpty L B Ruffin
A J McLemore W Tatum Thomas Pelton
A Shipman H Buckhart W Park &
William James twelve good and
lawful men tried Sworn and
impanelled to try the issue joined
after hearing the evidence instructions
of Court and argument of Counsel
retire to consider of their verdict
and afterwards return into court
the following verdict
We the jury find defendant Stubblefield
guilty in manner and form as
charged in the Indictment and
assess the fine at ten dollars
L B Ruffin foreman
Whereupon the court considered and
adjudged that the State of Missouri
have and recover of and from said
defendant her said fine of ten
dollars as well as her costs laid out
and expended, and that execution
Issue therefor.

State of Missouri
vs
Martin Edwards } Now comes defendant
as well as circuit attorney and
Severally announced ready for trial

Whereupon comes the following jury
S F Warren N Shipman James Dennis
W Crumply L B Ruffin A J McLemore
W Tatum Thomas Felton A Shipman
H Buckhart W Park & William Jones
Twelve good and lawful men, tried
Sworn and impanelled to try the
Issue joined and after hearing the
Evidence Instructions of the Court
and argument of Counsel retired
to consider of their verdict and
afterwards returned into Court the
following verdict We the jury
find the defendant Edwards guilty
in manner and form as charged
in the Indictment and assess
the fine at one dollar.

L B Ruffin foreman

It is therefore considered and
adjudged by the Court that the State
of Missouri have and recover from
said defendant her fine of one
dollar as well as her costs and charges
laid out and expended in this
behalf and that execution issue
therefor.

The defendants then filed
the following motion to set aside

(11)

Said verdict.

State of Missouri vs J L Stubblefield & Martin Edwards } Indictment for disturbing religious assembly —

Defendants moves the court to set aside the verdict of the jury in this cause for the following reasons

1st Because the Court erred in giving instructions to the jury

2nd, Because instructions are contradictory

3rd, Because the jury without authority took and consulted law Books after they had retired to make out their verdict, and was guarded by the reading of said Books

4th, Because the verdict is against the law and the Evidence.

Boyd & Foster attys for defendants.

On the next day said motion was called up and defendants offered the following testimony in support of it.

The deputy Sheriff testified that when he conducted the jury in a room for the purpose of considering

of their verdict they asked him for the first volume of the Statute which he got and delivered to them he then retired to the clerks office which was adjoining said jury room and after he had retired there awhile one of the said jury came in with the said Statute left it and took out the second volume of said Statute which they kept until they left the room to deliver their verdict He did not know whether they consulted the Books or not as he did not remain in the room with the jury.

the court overruled the motion for new trial and to the ruling of the court the defendants objected and excepted.

afterwards the defendants filed the following motion in assest of judgment.

The State of Missouri
vs
Y L Stubblefield &
Martin Edwards } Defendants moves the court to assest the judgment in this cause for the following -

(B) reasons

1st Because the charge in the Indictment is to general

2nd, Because the Indictment does not charge that any particular Congregation or assembly was disturbed. and because it does not name or specify the place at which a Congregation or assembly had met

3rd, Because the Indictment is double

4th, Because it charges two distinct offences in one count.

Boyd & Foster attys
for defenants

Which was by the Court overruled and to said ruling defendants also objected and excepted and prays that this their Bill of exceptions may be signed sealed and made a part of the record which is accordingly done.

P. H. Edwards
Circuit Judge

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The State of Missouri } S.S.
County of Christian

I, J. M. Pettyjohn Clerk of the circuit Court within and for the county of Christian do hereby certify that the within and foregoing Transcript contains a full and complete Transcript of the Record and proceedings in the aforesaid cause, as above stated

In Testimony Whereof I have hereunto subscribed my

name and affixed the seal of the said circuit court at office in Ozark on the 24th day of June AD 1861

J. M. Pettijohn circuit
court clerk
By T. D. Pettijohn DC

57. ~~87~~

State of Missouri

v

Y. L Stubblefield

and Martin Edwards pa

filed July 2nd 1861

Wm E Dunscomb

Clerk

Christian

14th

In the Supreme Court.
July term A. D. 1862.

State of Missouri
vs
Young Stubblefield & Martin Edwards } Indictment for disturbing religious worship. Appeal from Christian County.

The defendants were indicted at the September term 1860 of the Christian Circuit Court, under the 30th section of the 8th article of the act in regard to Crimes and their Punishments (R. S. 1855 1. 630) for disturbing religious worship.

At the March term of said Court for the year 1861, the Defendant filed his motion to quash the indictment, alledging as a reason that it is double and that two distinct ~~charges~~ offenses are contained in the same count.

This motion was overruled by the court, whereupon a trial was had and defendants found guilty.

The Court gave the following instructions on the part of the State

1 The Court instructs the Jury that unless they beleive from the evidence that defendant Martin Edwards disturbed or disquieted a congregation or assembly of people, who had met for religious worship, either by making a noise or by rude

or indecent behavior or by profane discourse, to find the defendant Edwards not guilty.

2. The Court instructs the Jury that although they may beleive that defendant Edwards made use of profane discourse or was guilty of rude or indecent behavior, yet unless they further beleive that a congregation or assembly of persons who had met for religious worship either heard him or saw him and the order or solemnity of the meeting was disturbed by such acts or words, they ought to find him not guilty.

3. The Court instructs the Jury that unless they beleive from the evidence that defendant Stubblefield did disturb or disquiet an assembly of people, who had met for religious worship, either by rude or indecent behaviour, yet unless they beleive the order or solemnity of the meeting was disturbed thereby, they ought to find him not guilty.

The defendants objected and excepted to the giving of said instructions

After rendition of the verdict, the defendants filed a motion for a new trial, which, in addition to the causes usually assigned in such motion, was the following

"3rd Because the Jury, without authority, took and consulted law books after they had re=

tired to make out their verdict and was guarded (guided) by the reading of said Books."

Upon this cause alledged, for setting aside the verdict, evidence was introduced by the defendant, conducing to show that the Jury took with them into their room, the first volume of the Revised Statutes, which was shortly returned and the second volume taken.

The Court overruled defendants motion for a new trial, to which ruling defendant excepted, whereupon Defendants filed their motion in arrest of judgment, and assigned the following causes

1st Because the charge in the indictment is too general,

2nd Because the indictment does not charge that any particular congregation or assembly was disturbed and because it does not name or specify the place, at which, a congregation or assembly had met.

3rd Because the indictment is double.

4th Because it charges two distinct offenses in one count.

This motion was overruled by the Court and the defendants bring the case into this Court by appeal.

To sustain the rulings of the Court

below, the State relies upon the following points and authorities.

1. The Court did not err in overruling defendants motion to quash. The indictment is not bad for duplicity, for the offenses charged are not repugnant, but will admit of the same judgment. State vs Porter 26 Mo Rep 206.

Charging several overt acts in a single count for disturbing religious worship, ~~is~~ will not constitute duplicity in the indictment, because the charge consists in the disturbance of religious services and the different acts committed are only the means to that end and evidences of it. Where the time and place of the commission of various acts of disturbance are the same, the indictment charging such acts will not be held bad for duplicity, although all included in one count, for but one offense has been committed and but one charged, and it is ~~very~~ questionable ~~in this case~~, whether the defendants could be indicted for each act of disturbance, since the several acts are charged to have been committed at the same time and place. The defendants might have been charged with only one act of disturbance and convicted, but he could not be also indicted in a

separate indictment for any other act, committed at the same time and place.

Arch. Crim. Prac. 1. 95-2 and 96 and note; R vs Fuller 1 B & P. 181; R vs Jenner 7 Modern 400; 2 Burr 983. State vs Porter 26 Mo Rep 206.

II. The instructions given by the Court below ~~as~~ at the instance of the State, were too favorable for the defendant and furnish no ground for the reversal of the judgment.

III The Court below committed no error in overruling the motion of Defendant to set aside the verdict and also the motion ~~the motion~~ in arrest of judgment. Although it has sometimes been held improper to allow juries to take law books with them in their retirement, yet in this case, the act of the jury in taking the Revised Statutes to the jury room produced no injury to the defendant, since in the first volume there is no law applicable to the case except the section defining and punishing the offence charged and in the second volume, there is no law applying to

to the case, except the general statute regulating the practice and proceedings in criminal cases, neither of which could have influenced the jury to the prejudice of the Defendants. This court in the case of Hardy v The State 7 Mo Rep 707, whilst condemning the practice of allowing juries to have law books "to find law to suit the case", yet they declared that there was no impropriety in allowing a jury to have the benefit of a mere statutory provision, where such provision was marked. The testimony taken on the motion to set aside the verdict, does not disclose whether the jury in this case, did or did not consult the statutes which they had taken with them, ~~and in the absence of such proof~~ neither does such testimony show whether some particular "paragraph applying to the case", was "separately marked", and in the absence of such proof, this court is not warranted in making both presumptions in favor of the defendants. Unless such presumptions are made, no error can be shown and no cause appears from this ~~cause~~ fact, to reverse the judgment of the Circuit Court in overruling the Motion of Defendants.

The Court did not err in the giving or refusing instructions or in overruling Defendants motion to quash, for a new trial or in arrest.

Sikman Welch
Attorney General.

State of Missouri

vs

Stubblefield & Edwards

Brief for State.

Aikman Welch
Attorney General

Filed June 19th 1862
Smallwood, Clerk

The State of Missouri

vs

Stubblefield & Edwards

The indictment is sufficient; it follows the language of the Statute, and the different acts charged to have been committed by the defendants constitute but the one offence of disturbing religious worship.

The record shows that it was testified to the Court that the jury had with them in their retirement a copy of the Revised Statutes, but the record does not show whether the Court believed the testimony so given or what was the truth as to the matter.

The instructions were very favorable to the defendants. Judgment affirmed

Barton & Bates

Judges Bay & Dryden concur.

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The State of Missouri
vs
Stubblefield & Edwards

Opinion Bates

Affirmed.

Filed July 29/62