Smith, Lewis v. State of MO 1860 Iron 463/4

Old Box 614/42

31
120

counterfeit bank note drawn on Southern Bank of St. Louis

LC = five yrs in prison

O 60
F 60
Ewing
R

forgery

O= note was described specifically in indictment & proof showed it to be different (middle initial of pres's name)

State of Missouri &c. 1.
Iron County } Be it remembered that at the May Term of the Circuit Court for the year 1860 commenced on the twenty first day of May, in said year and held at the Court house in the City of Ironton in the County of Iron & State of Missouri among other proceedings were had, the following viz.
Circuit Court of the County of Iron Missouri May Term 1860 -
Friday May 25. 1860 - Court met pursuant to adjournment present John H. Stone Judge -

Order for Special Grand Jury

Now at this time comes the Circuit Attorney and on his motion it is ordered by the court that a venire issue for a Special Grand Jury returnable forthwith.
And afterwards on the same day the following further proceedings were had - viz
The Sheriff returns into court under the special venire the following Grand Jurors to wit 1. Hiram N. Long who was sworn & charged as foreman. 2. E. G. Clay 3. D. C. Bugg 4. John Condor 5 Joshua Mason 6 Nelson Hawk 7. David Warner 8 John Sutton 9 Adam Hopper 10 Solomon Bill 11 Henry Jones 12 M. S. Wine 13 S. P. Russell 14 T. M. Bell 15 J. M. Bennett fifteen good & qualified Jurors who were sworn & charged touching their duties & retired to deliberate thereon.

Em/pannelling of S. Grand Jury

(2) And afterwards to wit on Saturday May 26th the following further proceedings were had - to wit - The Special Grand Jury empaneled by order of the Court return into Court the following among other indictments

The State of Missouri }
vs } Indictment for
Lewis Smith } Forgery.

Indictment

and the grand jury having no further business are discharged

and afterwards on the same day the following proceedings were had on the aforesaid indictment against Lewis Smith for Forgery & which indictment is in the words & figures following to wit.

State of Missouri } In the Circuit Court
County of Iron } May Term 1865

The Grand Jurors of the State of Missouri, now here in Court duly empannelled sworn and charged to inquire within & for the body of the county of Iron upon their oath present that Lewis Smith late of said County on the twenty fifth day of May eighteen hundred & sixty with force & arms at and in the county of Iron having in his custody and possession a certain falsely made forged & counterfeited paper writing partly written & partly printed, purporting to be a true & genuine promissory note for the payment of money called a Bank Note of the

(3) Southern Bank of St Louis & purporting to be signed by Jas Watson President & by the cashier of the said Bank the tenor of which said mentioned falsely made forged & counterfeited paper writing partly written & partly printed purporting to be a true & genuine promissory note for the payment of money called a bank note of the Southern Bank of St Louis the same purporting to be made by the aforesaid Bank said bank being incorporated under the laws of the State of Missouri & is as follows that is to say:

"Five No 3301 ——— 3301 B 5"

"Countersigned & Registered. C. F. Jackson Comr. "

"To the bearer on demand the Southern Bank"

"of St Louis will pay five dollars at their"

"Bank in St. Charles. St Louis 20 July 1859 "

" Five "

"J. M. Britton Cashr. Jas T. Watson Prest"

" Missouri B.C. "

"Toppan Carpenter & Co Philada. & New York "

falsely illegally knowingly fraudulently felonoiously & deceitfully did utter publish sell and deliver as a true & genuine promissory note for the payment of money called a Bank note of the Southern Bank of St Louis the said falsely made forged & counterfeited paper writing partly written & partly printed purporting to be a true & genuine promissory note for the payment of money called a bank note of the Southern Bank of St Louis he the said Lewis Smith at the time of uttering publishing selling & delivering the same, then & there well knowing the same to be falsely made forged & counterfeited with intent

(4) to defraud one Frank Dinger & did receive a consideration for the same to wit five dollars, against the peace and dignity of the State D. Z. Gale Circuit Atty.
And on the back of which said indictment are the following endorsements to wit - State of Missouri vs Lewis Smith Indictment for forgery. A true bill H. A. Long foreman. Witnesses. Frank Dinger David Taylor Filed May 26. 1860 John F. S. Edwards Clerk = And afterwards on the same day the following further proceedings were had.

State of Missouri }
vs } Indictment for Forgery
Lewis Smith } Now at this time the

Appearance of Parties, Defts Plea

parties by their respective attorneys come and the defendant being arraigned pleads Not Guilty to the indictment

Motion for continuance.

herein & files his motion for a continuance of said cause which being seen and heard by the Court is over-ruled thereupon the said defendant files his motion

Motion for change of venue

for a change of venue herein which being seen & heard by the court is over-ruled & this cause coming on to be tried the defendant for his trial puts himself upon his country and the Circuit Attorney who prosecutes for the State doth the like, thereupon come a

Empannelling of Jury

Jury to wit 1 Charles Collins 2 Everett Matthews 3. John Latham 4 James V. Carty 5. Eliab Dunn 6. John Shelton 7. James McGee 8 Giles Russell 9 John Ake 10 Morgan Mace 11. Benjamin Smith 12 Joseph Sutton

(5)

twelve good & lawful men who were severally sworn & sworn to well & truly try the issue joined between the State of Missouri & the said defendant Lewis Smith, & having heard the evidence offered by the parties respectively & the arguments of Counsel retire from the bar to consider of their verdict & after mature consideration the Jury return into court their verdict as follows viz "We the Jury find the defendant guilty as charged in the indictment and fix his punishment to imprisonment in the State Penitentiary for the term of Five years". Thereupon the Court proceeds to pass sentence upon the said Lewis Smith & orders & adjudges that the Sheriff of this County take the said Lewis Smith forthwith to the Penitentiary of this State there to be confined for the above term of five years, as by the Jury assessed for his punishment it is further ordered & adjudged by the Court that the said Plaintiff have & receive of & from the said defendant, his cost & charges in this suit expended & may have execution therefor. and afterwards on the same day the following further proceedings were had

Verdict of Jury

Sentence

State of Missouri }
vs } Indictment for Forgery
Lewis Smith }

Now again at this day comes the defendant & files his motion in arrest of judgment, which being now heard

Motion in arrest of Jdgt

(6)

Motion for new trial

by the Court is over-ruled. Thereupon the defendant files his motion for a New trial which said motion being heard by the Court is over-ruled, to all of which said rulings of the Court the defendant objects & excepts & tenders his bill of exceptions & prays an appeal to the Supreme Court which is by the Court granted, Thereupon it is ordered by the Court that the Sentence passed upon the defendant herein be suspended until the decision of the Supreme Court is rendered herein & that in default of One thousand dollars bail the Sheriff of Crow County is required to commit the said defendant Lewis Smith to the Custody of the Jailor of Yellowstone County to be confined in the Jail of said County for safe keeping until the decision of this appeal to the Supreme Court shall be had.

application for appeal

suspension of sentence

Which said Bill of Exceptions is in the words & figures following to wit,

Bill of Exceptions

The State of Montana }
against } Indictment for Forgery.
Lewis Smith }

Be it remembered that on the calling of this cause for trial the defendant presented an affidavit for the continuance of this cause as follows,

The defendant makes application to have this cause continued until the next term of this

(7) court for the reason that they cannot at this term of the Court safely proceed to the trial of the said cause on account of the absence of material witnesses, viz James Thomas & John Rogers that if a continuance of said cause is granted them he will endeavor to procure the testimony of said absent witnesses at the next term of this court that there are no persons present by whom he could prove the same facts: that he has had no process issued to compel the attendance of said absent witnesses owing to the short duration of time that has elapsed since the finding of the said indictment Fox Atty for deft.

Lewis Smith being duly sworn says that the foregoing application for a continuance is true to the best of his belief

Sworn to & subscribed before me this 25th day of May 1860 } Lewis Smith

John F. T. Edwards Clerk.

which application was by the court overruled and the defendant excepted & after the application for the continuance was over-ruled the defendant moved the court for a change of venue of this cause & in support thereof read the following affidavit

Exception to overruling motion for continuance

The defendant asks the Court to grant him a change of venue in the above entitled cause because the Judge of the Circuit Court of the said Ninth Judicial Circuit is prejudiced

(8)

against him, he thereupon asks that it may be sent to some other Circuit in this State.

Lewis Smith the above defendant makes oath & says that the foregoing affidavit is true to the best of his knowledge & belief and that he has just cause to believe that he cannot have a fair trial on account of the cause alleged.

Lewis Smith

Sworn to & subscribed before me this 26th day of May 1865

John F. T. Edwards Clerk.

which motion for the change of venue was also overruled and the defendant again excepted

2d- to decision overruling motion for change of venue

That during the progress of empannelling Twenty four competent men from which to select a Jury under the statute A. A. Thompson was sworn & in answer to a question put him by the court, he stated that when he first heard of this cause, he without knowing anything about it, & not having heard anything concerning the facts & circumstances which relate to the guilt or innocence of the Prisoner, & without having formed any opinion on the subject he said to some persons "that he supposed they would send him up." That he had no opinion on the subject and felt no prejudice against the accused & that this remark was made by him idly & without reflection Whereupon the court ruled the said Thompson as competent to serve on the Jury & directed him to take his seat as one of the 24 men to which

3d to decision that A. A Thompson

was competent as one of the panel of Jurors

decision the defendants again excepted.

That after the Jury were sworn the State to sustain the issue on her part gave evidence as follows

Frederick Millet stated that he kept a saloon at Pilot Knob City was summoned by the constable to assist in guarding Johnson the prisoner first taken and in arresting the prisoner Lewis Smith. Went with him to Villars saloon in Pilot Knob found him there & on examination of his person found a five dollar bill on the Southern Bank of St Louis. We brought him to Ironton, while here I told him I had got one of these bills of him he told me in reply that he would pay me five dollars in good money and also $10 to Mr Schultz who had got two of these bills, & we must say nothing about it. He stated further that he had been gambling in St Louis & had got this money in that way. He wanted me to get him a good lawyer to assist to clear him of the charge. I saw the prisoner first on yesterday when I was summoned as a guard by the constable.

Frank Dinger stated that the defendant on Wednesday last came into my house in Ironton got dinner and supper, after supper he handed me a five dollar bill on the Southern Bank of St Louis in pay, which I received and paid him in change $4 in good money. I took the money and put it in my drawer and the next

morning paid it over to David Taylor. I had no other bill on the Southern Bank of St Louis in my drawer and am positive that the note I received from prisoner is the same note I paid to Taylor the following morning. Some time during the same day Taylor returned me the note & I paid him in other money for it, this is the same note referred to in the indictment & I believe from the general appearance that it is the same note I got of the prisoner, but as Taylor had the bill sometime I cannot be positive about it, the prisoner was a stranger in Scranton.

David Taylor - stated that on the same morning I received the bill & within fifteen minutes thereafter I paid it over with several others to a collector of a business house in St Louis, this was the only bill I had on the Southern Bank of St Louis. He took the roll of money & running it over threw out the note referred to in Indictment as a counterfeit I am convinced that the note is a counterfeit from the general appearance & from several other indications named by the witness which cannot be sensibly described here. The vignette in the vignette is coarse, the paper does not feel right & the general appearance of the bill is bad. The note referred to in the indictment & now shown me is the same I got from Snipe - Dont know whether Watson is the President of the Southern Bank of St Louis or not.

(11)

H. N. Long, stated that he was foreman of the Grand Jury that found the bill, the several bills which the witness exhibited are the same I received from the witnesses who were examined before the Grand Jury, there are six $5 bills besides the four attached to the three indictments found by us. I believe them all counterfeit from the general appearance &c. I have been engaged in the Mercantile business since 1844.

Louis Shultz states - saw prisoner a couple of times this week, he is a stranger, he passed in my saloon at Pilot Knob a $5 bill of Missouri money, dont recollect what bank I gave that bill to Constable Huff & another one of the same kind to Repard. would not now know the money.

A. Smith I have seen prisoner one day this week at my saloon in Ironton, he gave me two five dollar bills on the Southern Bank of St Louis & in five or ten minutes thereafter I paid them to Covert. they were out of my sight one night when Covert returned them to me I am positive that the same notes I received from Smith the prisoner I paid to Covert. The bills Smith passed on me are here & they are the identical bills he passed to me. I believe they are the same bills I received from Prisoner & passed to Covert because Covert is an honest man.

(12)

Dost. Court. I got two five dollar bills of Ananias Smith the other day & put them in my safe, this was on Thursday last, they were both on the Southern Bank of St Louis. I am certain I gave Smith back the same notes I received of him when I returned the notes to Smith, Clowdas wrote Smiths name on the back of one of them. Cant be positive whether the bills shown witness are the same, Smiths name is on one and in Clowdas's hand writing

Thomas Clowdas. stated that when Court returned the bills to Smith I wrote Smiths name on the back of one of them, there was only one bill handed Smith by Court that I saw, dont know whether Watson is the President of the St Charles Branch of the Southern Bank or not.

To all evidence of the defendant passing other bills on the Southern Bank of St Louis than the one counted on in the Indictment as having been passed to Frank Dingo the defendant objected but the court admitted the evidence as proper on the question of defendants knowledge of the bill being counterfeit which was passed to Dingo and the defendant again excepted.

Ex. to admission of certain evidence.

Daniel L. Gale being sworn stated that the Southern Bank of St Louis has a branch at St Charles witness has been in the bank at that place.

(13)

Exception to reading in evidence the bill counted on in Indict-

The Note counted on in the indictment was read in evidence in the words & figures following; to the reading this note in evidence the defendants counsel objected for the variance but the Court over-ruled the objection and the defendant excepted -

" Five No 3301 ——— 3301 B 5 "
" Countersigned & Registered. C. F. Jackson Comt. "
" To the bearer on demand the Southern Bank "
" of St Louis will pay five dollars at their "
" Bank in St Charles. St Louis 20 July 1859 "
" Five "
" I. M. Britton Cashr. Jas. I. Watson Prest "
" Missouri A.B.C. "
" Toppan Carpenter & Co Philada. & New York. "

And the plaintiff having closed her testimony the defendant then asked the Court to give the following instructions to the Jury.

Before the Jury can convict in this case the State must prove that the defendant did falsely illegally knowing fraudulently feloniously & deceitfully utter publish sell & deliver a counterfeit five dollar bill upon the Southern Bank of St. Louis Missouri upon one Frank Dinger -

It is incumbent upon the State to prove before she is entitled to a conviction that the Southern Bank of St Louis is incorporated under the laws of the State of Missouri

Before the Jury can convict the prisoner

(14)

they must be satisfied by the evidence beyond a reasonable doubt that he did pass the bill knowingly & wilfully.

Thereupon the court called the State counsels attention to the instruction in reference to the proof of the Southern Bank of St Louis being an incorporated bank & upon his examining the instruction, he asked leave to give in evidence the act of incorporation of said Bank in the printed Statute Book of the State which is here referred to as the Session Acts of 1857 & 1858 to the introduction of this evidence after the time the State Counsel had announced that he had closed his case

Ex to admission of certain evidence

the defendant objected, but the court overruled the objection & permitted it to be read & he again excepted.

Ex - to refusal of instructions

Thereupon the court refused the instructions as asked by the defendant & of its own motion & gave the four following.

The court instructs the jury that if they find that the prisoner in payment of his tavern bill to the witness Dinges did deliver him a five dollar counterfeit bill on the Southern Bank of St Louis receiving an amount of good money from him by way of change, knowing the same to be counterfeit, they will convict him of it & his punishment to imprisonment in the State Penitentiary for any number of years not less than five nor more than ten years.

(15) But if the jury find that the prisoner passed the bill to Dinger ignorantly & not knowing that the same was counterfeit they will acquit him That the Jury cannot convict the defendant on the proof of his having passed other bills to other persons which were counterfeit, they must find that the bill mentioned in the indictment as having been passed to Dinger was in fact passed to him, that the same was counterfeit of which fact the defendant had knowledge at the time

If the jury have a reasonable & substantial doubt of the guilt of the prisoner they will acquit him. To the giving of which the defendant objected but being over-ruled he excepted as well to the refusing of the instructions as asked by him.

Ex. to giving of Instructions

And the Jury having returned their verdict herein the defendant moved in arrest of the Judgement herein & filed his reasons as follows

1. The indictment is bad.
2. The court admitted improper irrelevant and incompetent testimony
3. The court excluded proper & competent testimony
4. The court gave improper instructions on the part of the State.
5. The court refused proper instructions asked for by the defendant. Fox Pipkin & Emerson for Defendant but the court over-ruled the objections and defendant again excepted,

(16)

Thereupon he moved the court to set aside the verdict and grant him a new trial & filed his reasons as follows.

1. The Court erred in over-ruling defendants motion for a continuance.

2. The court erred in over-ruling defendants motion for a change of venue.

3. The court erred in admitting improper & irrelevant testimony

4. The court erred in excluding proper & competent testimony

5. The court erred in allowing one of the Jury to make up the statutory panel who said he had expressed an opinion as to the guilt or innocence of the accused although he also stated that the expression was made at random.

6. The court gave improper & refused proper instructions

7. The court erred in allowing the State to introduce testimony after the case was closed

For Upshaw & Emerson for dft.

but the court overruled the motion & the defendant again excepted

To all which actings doings decisions and opinions the defendant excepts & tenders this his bill of exceptions & prays that the same may be allowed & signed which is now done

John D. Stone Clerk

(17)

State of Missouri } ss
Dent County }

I, John F. T. Edwards Clerk of the Circuit Court in & for the county & State aforesaid do certify the foregoing to be a full true & perfect transcript of the record & proceedings in the case of the State of Missouri versus Lewis Smith as the same remains of record & on file in my said office

In testimony whereof I have hereunto set my hand & affixed the seal of said Court at office at Salem this 19th day of June A. D. 1865

John F. T. Edwards Clerk

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John F. T. Edwards Clerk

(42)

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October Term 1860

State
vs
Lewis Smith
appellant

3 Indictments
respondent
for forgery

Appeal from the
Iron Circuit Court

Transcript

Filed 9th July 1860.
Wm. L. Glanville
Ck.

37

Taken on the record / Reversed 22 Dec. 1860, C. p. 1167.

452

The State of Missouri
v Ezappeal from Iron Circuit Court
Lewis Mitte appellant

On the trial of this cause the circuit attorney read in evidence in support of the charge, a bank bill which differed from that set out in the indictment in the initial letter of the middle name of the President of the Bank; and this is one of the errors assigned.

It was unnecessary for the pleader to have described the bill so minutely in the indictment as he did (Art 6. Sec 31. Pr Cr C RS 1178) but having done so, and ~~the~~ professing as he does to set it out according to its tenor, he will be held to strict proof.

Where the matter of a written instrument is introduced into the pleading so as to imply that a correct recital is intended very slight discrepancies between the instrument set out, and that produced in evidence are fatal: 2 Rus Cr 797. 2 East P C ; And Especially when the variance relates to an allegation descriptive of that which is material, as was the middle name or the initial letter of the middle name of the officer of the Bank King v Clark 7 ✱ Mo Rep 271. Izetters v State 7 Ind. 660.

As for this reason the judgment will be reversed, it is unnecessary to notice other points in the bill of exceptions

judgment reversed the other judges concurring

E B Ewing

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State
v
Mutter

Opinion of the
Court

Ewing

Reversed

Filed 22 Dec. 1860.
W. F. Llamville Clk.

x