The State of Missouri v. Thomas Shannon 1863 505/1

628 33/596

Voullaire (R)

MO R
V

Shreve & Sanders (A)

Shannon A

Criminal
March 63
April 63
Stlouis

Thomas Reed was assaute
by Shannon
& stole 1200 of goods & chattels

- No endorsement influence
Affirmed [illegible]

State of Mississippi
vs
Thomas Shannon

Now comes the defendant and moves the Court to extend the time for obtaining the opinion of the Hon Supreme Court, because the Bill of Exceptions were not prepared until the time allowed by the Criminal Court to wit ten days has elapsed — Because the Circuit atty. was unable to examine and agree upon the Bill of exceptions submitted to him sooner by reason of sickness in his family and other engagements — Because said Bill of exceptions is lengthy and will require several days to prepare the same, wherefore defendant asks for further time to be heard upon his application to stay the execution in this case, that he may be heard before this court

Shrewd Sanders
Atty. Defdt.

State of Mo

v

Thos Shannon

Motion for additional time to obtain opinion of Court upon application to stay Execution

Filed April 10. 1863
A W Mead
Cl

In the Saint Louis Criminal Court.
January Term. 1863.

The State of Missouri. }ct.

At a term of the Saint Louis Criminal Court, begun and held at the City of Saint Louis, within and for the County of St Louis, on the first Monday of January, being the fifth day of said month in the year of our Lord one thousand eight hundred and sixty three, were present the Hon Henry a. Clover Judge; Seymour Voullaire Esq Circuit attorney; Joseph P. Vastine Esq. Assistant Circuit attorney; James Coff marshal of St Louis County and Frederick Ketzchmar Clerk of said Court,

The Marshal returns here into Court the Venire facias to him directed with a panel of Grand Jurors endorsed thereon, who being called come as follows:

Grand Jury.

George Partridge, who is by the Court appointed foreman, Joseph C. Brand, Charles Tillman, James Porter, Ernest Neuer, E. W Fox, William Dean; Charles D. Dana; D. T. Card, Christopher Crone, Graham L. Hughes; William M. Harlow, Oliver A Hart; J. C Navens, and Saml. C. Davis. – fifteen good and lawful men, who being duly empannelled and sworn and having received their charge from the Court, retire to consider of their presentments,

Tuesday January 13. 1863.

The Grand Jurors return to the bar and deliver the following indictment as a true bill. to wit:

State of Missouri. } S.S. St Louis Criminal Court
County of St Louis. } January Term. 1863

Indictment.

The Grand Jurors of the State of Missouri, within and for the body of the County of Saint Louis. now here in Court, duly empannelled, sworn and charged, upon their oath present, That Thomas Shannon late of Saint Louis, in the County of Saint Louis aforesaid, on the tenth day of December in the year of our Lord, one thousand eight hundred and sixty three, at Saint Louis, in the County of saint Louis aforesaid, in and upon one Thomas Reed there being feloniously did make an assault and him the said Thomas Reed in bodily fear and danger of his life, then and there feloniously did put, and money of the value of twelve hundred dollars of the goods and chattels of the said Thomas Reed from the person and against the will of the said Thomas Reed then and there feloniously and violently did steal, take and carry away against the peace and dignity of the State.

J. P. Vastine
Ass't Cir atty.

Endorsed: - A true Bill
George Partridge Foreman.

Wits: Tho Reed; Off Norrigan; Off Eagen.
Mr Matthews.

Filed January 13. 1863. Fred Kretschmar Clerk

Thursday. January 15th 1863.

No. 14. The State of Missouri vs Thomas Shannon. } On Indictment for Robbery.

Issue.

Now at this day Comes the Circuit Attorney who prosecutes for the state, and the said defendant being brought into Court and having had hearing of the said indictment, says, he is Not Guilty as charged therein and for trial puts himself upon the Country and the Circuit attorney doth the like.

Friday January 23rd 1863.

No. 14. The State of Missouri vs. Thomas Shannon. } On Indictment for Robbery.

Continued for state for absence of witness.

Tuesday March 17. 1863.

No. 14. The State of Missouri vs. Thomas Shannon. } On Indictment for Robbery.

Trial

Now again Comes the Circuit Attorney, who prosecutes for the state and the said defendant being brought into Court: thereupon Come a Jury, to wit: ~. ~. ~. ~

Jury.

Henry Neiman, W. D. Henry; Charles J. Flugger, Wm. Fohltmann, George Auerbacher; William P. Brown. Uriah P.

Rennett, Christian Schumacher, Jacob Follett, C. W. Irwin, G. Koenig and Andrew Brumgard. – twelve good and lawful men who being duly elected tried and sworn the traverse between the parties aforesaid well and truly to try and a true verdict render according to the law and the evidence, the trial of the Cause progressed, but the same not being Concluded at the usual hour of adjournment, it is ordered by the Court that further proceedings herein be deferred until the meeting of the Court tomorrow morning.

Wednesday March 18. 1863.

No. 14 The State of Missouri vs. Thomas Shannon. } on Indictment for Robbery.

Now again Come as well the Circuit attorney who prosecutes for the State as the said defendant in his own proper person, and the Jurors heretofore sworn in this Cause also Come, whereupon the trial of the cause progressed and being now fully Concluded, the Jurors aforesaid upon their oath aforesaid say they find the said defendant guilty of Robbery in the first degree, as charged in the said indictment and assess his punishment at Ten years imprisonment in the penitentiary

Verdict.

Friday March 20. 1863.

No. 14. The State of Missouri vs. Thomas Shannon. } on Indictment for Robbery 1st deg.

Motion for a new trial filed by defendants Counsel —

Thursday March 26. 1863.

no. 14. The State of Missouri vs Thomas Shannon. } On Indictment for Robbery in the 1st degree.

Motion for new trial overruled.

Now again Come as well the Circuit attorney who prosecutes for the State as the said defendant in his own proper person and by Counsel learned in the law: and thereupon the defendants motion for a new trial herein being by them submitted to the Court, and by the Court here fully understood; therefore it is Considered by the Court that the said motion for a new trial be overruled: and it is Considered by the Court that the said defendant for his offence of Robbery in the first degree aforesaid, and in pursuance of the verdict rendered against him, be imprisoned in the penitentiary of this State for the space of ten years, that he pay the Costs of this prosecution and stand committed until this sentence be complied with. Whereupon the defendant prays an appeal to the Supreme Court from the judgment of this Court herein rendered, and the Court here doth grant the same: thereupon the said defendant makes an application to the Court for an order directing that the appeal herein taken shall operate as a stay of proceedings on the judgment herein: and the Court here doth refuse such application but nevertheless suspends the execution of the judgment for the space of ten day to allow the defendant time to make application to the Supreme Court or a Judge thereof for such order, whereupon the defendant files his bill of exceptions herein.

Judgment.

Appeal Granted.

Stay of Ex.

Bill of Exceptions

The State of Missouri
vs
Thomas Shannon

In the Saint Louis Criminal Court.

Be it Remembered that on the trial of this Cause the following proceedings were had: The State offered the following witnesses, who being duly sworn, upon their oath deposed, as follows:

Testimony of Thos Reed.

Thomas Reed. — I reside in Palmyra Missouri; on Friday about 5th December 1862 I was on Broadway in this City and was passing by a saloon; I heard some music in the saloon; I stopped and saw the defendant was standing at the door; this was the first time I ever saw him; he asked me in; I went in; stood there by the door a few minutes; he asked me to drink, and I did so; I then treated him; afterwards I treated the musicians, the defendant, and others in the house; I pulled out my money and paid for the drinks; I remained there some time and talked with those in the house; afterwards I started towards the door, and defendant asked me if I intended buying any goods before I went home; told me that he kept a store on Broadway and would like to sell me some; I said yes; said that he had to go to Benton Barracks, and that he had a fine horse and buggy already hitched up, and if I would not like to come and take a ride; I said yes, and he started to go and get the horse and buggy; he was gone a few minutes and soon returned with them; we started; after driving some distance, he asked me to get out and take a drink; we drank; we got in the buggy and drove off on beyond the barracks; I said I thought you would stop at the Barracks; he said

he wanted to see a friend, and he drove on with me to a little grove of timber at a house beyond the barracks; he stopped there; we got out; he wanted me to drink, but I declined, and he stopped in a room of this house, where a man was plastering, talking with this man, I remaining in the front room of the house; I think the man, as we came in, was also plastering or fixing up some-thing in this front room; we then got in the buggy and started back, as I thought; after going along a piece he slacked up, and said he wanted to see another friend; I told him I was anxious to get back, as I wanted to do some business; he drove his horse up to a plank fence and got out, saying he wanted to ease himself, and asked me if I wouldnt do likewise; I got out, and we both got over the fence - he first and I following him; he went some twenty or thirty yards from the fence in a little ravine in the woods, so he was about twenty or thirty feet further on from me; I sat down; I saw him getting up; he appeared to be buttoning up his clothes; he came towards me, and as I was getting up, he struck me over the head several times, saying "you son of a bitch"; he struck me and knocked me over; he struck me some five or six times over the head; I was helpless after that; I felt him rummaging about my coat breast pocket as plain as could be; next I saw him on the fence; he looked back at me; I raised up and hallooed to him "I guess you had better come back and finish me"; he jumped over the fence, got in his buggy and left; I got up and walked to the fence as quick as I

Could; I put my hand in my breast Coat pocket in which I had twelve hundred dollars in an envelope in Treasury notes; there were some six or seven of them $100 notes and the balance were fifties of the same kind of money, and I found all of it gone; I made my way over the fence, and walked on till I came to a house where there were some persons, Germans, as I thought; they appeared to be frightened at my appearance; I was bleeding freely from the head; a lady there gave me a large cloth to wrap my head up, which I wrapped around my head; I then walked to the City, and went into the City Hotel on Third street; told them what had happened, and had my head dressed by a Doctor; when he knocked me over the head I had the twelve hundred dollars in my breast Coat pocket; I felt him rummaging over my pockets, and before I got to the fence, after I had been struck, I found the twelve hundred dollars were gone; I dont know how he knew I had the money; I had four hundred dollars besides in my fob pocket, which was not taken; I can't say with what defendant struck me; it appeared to be some hard, heavy instrument; it was not his fist; my right ear was cut in two; the first blow I received was on the left side of the forehead; that blow knocked me down; I was sitting down; it tumbled me over; I here recognize, beyond all doubt, the defendant as the man who struck me and robbed me; when the defendant was brought to me at the City hotel, two or three days after this occurrence, I recognized him as the man with whom I rode out, although he

had shaved his moustache off and changed his Clothes, and had a black felt hat on instead of a Cap; he at first denied having gone out riding with me, but afterwards acknowledged the fact, but denied having robbed me; I have never spoken to defendant since; of my own knowledge, I do not know that defendant has sent any one to me to compromise this matter, but Walsh, a witness in this case, and two or three others have spoken to me about compromising this matter; I think it was between two and three o'clock in the afternoon, when I went into the saloon on Broadway; I can't tell; I don't know how much money I pulled out when I paid for the drinks at the saloon on Broadway; I know I had the twelve hundred dollars before I got in the buggy and before I was struck by defendant; I saw the witness Walsh behind the bar in this saloon on Broadway. All this occurred in St Louis County.

Cross examination by Defendants Attorney.

I arrived here on Tuesday the second of December 1862.; I had been keeping the military prison for six months in Palmyra and was appointed by Gen McNeil; and I had brought down to Saint Louis some ten or twelve prisoners; I am to be paid out of the funds collected on forfeited bonds; I have received nothing as yet; before that I was in the grocery business, and had a farm opposite the town, eight miles from Palmyra; I rented it since the war. for

four years for $100 per year; I had a family gro. cery before the war, and fifty dollars could have been made out of me at any time; I never borrowed money from Jim Bates; I got six hundred dollars from Sawers but paid him; after I got here I walked around town and finally went into Albrights who keeps an eating ~~house~~ and boarding house on Broadway, and staid there all day; I had been drinking too much coming down on the boat; I did not go out the first night I was here; I staid at Albrights; kept up drinking; kept it up Wednesday and Thursday; liquor affects me; Thursday night drank several times, and at about ten o'clock I went to a gambling house; I lived here years ago, and have been coming here ever since; on Thursday night Col Strong and Capt. Hatcher asked me to go to a gambling house; we went to one on Fourth street, above the Planter's House and played Faro; stayed about an hour; a man took some of my cheques, and we had a controversy; I lost some money there; went into another gambling house where there was not such a great crowd as in the first place; did not stay there long; left there and went to another place to get even; I dont know if this house was on Fourth street; think it was though; I played Faro there also; got supper and drank once; I took the money out of my fob pocket; I won $130 on one turn which made me winner over my losses at the other two houses; I played some short time befor supper; Slept at the Planter's House, and next morning got breakfast at Albright's; walked around town; left one of

my Companions at Eliza Haycrafts; next day I eat my breakfast and dinner together between eleven and twelve oclock; after which I went to Haycrafts, where I was some time; after which I started up Broadway to Mrs Eddy's; the Saloon was Called Head Quarters; I was in there about a half hour; I did not sit down; I drank twice and treated the Crowd; I drank Spirits; did not sit at the stove; I pulled my money there out of my side pocket, not out of a pocket Book; had no pocket book with a clasp on it; in fact I have not had a pocket book for many years; I did not pull out any money and put it on the Counter and say that this was the last, and that the balance I had lost; I did not drink with any one before defendant Came in; I did not slap the proprietor on the back and tell him to treat; whilst riding with defendant I did not sit down at the first grocery we stopped at, but did at the second one; did not nod or sleep while riding; after we left the first grocery, we drove past the barracks, going west as though the barracks were on our right side, some distance off; it was a dirt road; we drove to a grocery on our right, some three or four hundred yards beyond the barracks; we stopped at this grocery and got in the buggy again; turned around towards the barracks on our left; defendant drove three or four hundred yards up to a fence; after all the occurrence I walked to the town, as before stated, and did not speak to witness Dillon; did not drink as I came in; did not swear as before the Recorder.

(Examination before the Recorder read, in which witness

says he did drink at the head of Broadway;) the defendant drove a Cream Colored horse with white mane and tail and top buggy.

Testimony of Geo. W. Cline

George W. Cline — I saw Thomas Reed about the early part of December of last year, on Broadway, near Cherry Street; he was wounded about the head, and his right ear cut in two; he had a large handkerchief or cloth over his head; I spoke with him and he asked me where was the police office, or policeman; it was getting dark; Reed was the man I saw and spoke with as just stated; I am an attorney at law

Officer Horrigan.

Officer Horrigan. — I know defendant; I arrested him on Sunday evening seventh December 1862. at a house on Eighth Street between Wash and Carr; I had been looking for him all day, and had gone to the Mansion House, Harlem House, toll gates and also at Casey's saloon on Broadway where defendant had been working; I first heard of the robbery on Saturday night; after arresting defendant we took him to Reed at City Hotel and Reed identified him; Reed had given us before defendant's description, also of the horse and buggy; defendant had no moustache on, and does not, as far as I know, wear a moustache; defendant at first denied going out riding with Reed, but afterwards admitted it; I am a police officer.

Question. — Did you search defendant, and if so, what did you find on his person?

(Objection made by defendants attorney, objection overruled and exception taken.)

Before this question was answered defendants attorney, informed the Court, apart from the Jury, that the witness would answer a pair of outsiders, and the question was not answered under defendants objection.

Off Eagen

Officer John Eagen,- I assisted to arrest defendant; on the road after his arrest, he gave me, (here defendant again objected but the witness proceeded with the statement.) a pair of outsiders, saying not to bring them against him, for it would go hard with him; we took defendant to Reed, who identified him; he denied having gone out riding with Reed at first, but afterwards acknowledged it, but denied having knocked Reed down or taken his money; Reed said he did and he was the man;

(The defendant, by his attorney, objected to the witness stating anything about his having given him the outsiders, and called upon the Court to exclude the testimony, which the Court refused to do, and to which refusal defendant excepted.)

as we were taking the defendant to Matthews' stable on Franklin avenue, near fourth street, he denied having gone out riding at all on Friday 5th December 1862, but as we got near to the stable he admitted it.

Cross-examination.

Defendant told me when he gave me the outsiders, that Trevis had handed them to him to keep for him.

(The State here closed the case, and defendant introduced the following witnesses who were sworn on oath testified as follows.)

Testimony for Defendant.

Frank Davis - In december last I kept the headquarters saloon on the east side of Broadway between Biddle and Carr; I have known defendant for two years; he is barkeeper for Casey on Broadway; defendant was not at the Headquarters when Reed came in; Reed treated three times or more; I was attending lunch table, and could see every one in the room; defendant could not have been in before or when Reed came in; about a half an hour after Reed came in defendant came in; I saw defendant and Reed drink together; Reed first asked defendant to drink; Reed left the house about eleven o'clock with defendant and some other person; I noticed no money with Reed except to pay for drinks; Reed sat down at the stove, and drank at the stove and counter; defendants character is good for honesty; Pierce C. Walsh was my partner at Headquarters and attended bar while I was in the lunch table.

Cross examination

Reed came in I think about fifteen minutes past ten o'clock; I cannot say to a minute; this was on Friday; I did not swear before the Recorder that Reed came in about nine o'clock in the morning;

(Witness here shown his testimony, before the Recorder, signed by him, wherein he testified as follows on

this point..)

" He (Reed) came in about nine o'clock in the "morning; we set a public table, at that hour; we set "lunch from nine A.M till dinner time; we were "just setting lunch when Mr Reed came in" —

The witness here further adds: —

It has been a long time since this happened, and I cant speak more accurately of the time; it must be a mistake somewhere; I swear defendant and Reed did not come in the bar together; I did not swear before the Recorder, that I did not see defendant at the saloon before Nine a.m;

(Witness here again shown his testimony before the Recorder, wherein he states as follows:)

" I did not see defendant at the house before " Nine o'clock a.m"

I do swear that I was attending the lunch table, which I always do; it was at the side and back part of the room away from the bar, and I could see every one that came in, although of course, defendant might have been in the saloon and I not have seen him, still I dont think it so happened; I did not swear before the Recorder that I was standing behind the bar;

(Witness here again shown his examination before the Recorder, where he swears that he was standing behind the bar.)

Shannon had nothing to do at the house, but would come in to eat lunch, for there was none at Casey's saloon; Defendant has no store on Broadway

or elsewhere; I noticed Reed when he came in, he was "tight"; I swear to that; I did not swear before the Recorder that when Reed came in he considered him perfectly sober;

(Witness here again shown his testimony before the Recorder, wherein he testified as follows.)

"I noticed Reed when he came in; I considered "him perfectly sober when he came in".

(Witness adds.) "that he cannot account for the discrepancy between his examination before the Recorder and his testimony now; presumes there must be a mistake somewhere, probably before the Recorder"

Reed sat down as others did, and spent his time in listening to the music; he drank three times, to my knowledge; dont know exactly what he drank; I did not swear before the Recorder, that I thought he drank whiskey, and that I had poured it out myself; —

(Testimony of witness before the Recorder shown wherein he swears as follows.)

"I think he (Reed) drank whiskey; I poured "it out for him myself"

Defendant used to take lunch there repeatedly; Defendt and Reed drank together, at the instance of Reed, and the two left together with a Dutchman; I think I did state in my examination before the Recorder, that Reed and defendant left together in Company with a Dutchman; —

(Testimony of witness before the Recorder here shown to witness, wherein he does not state, that defendant and

Reed left together in Company with a Dutchman.) I dont think defendant was at the door, when Reed Came in; I got none of the money said to be stolen from Reed; I am no longer partner with Peice C. Walsh.

Testimony of J.a. Marsh

James A. Marsh.— I know defendant; he got on Friday the fifth of December 1862, a buggy and horse from our stable, 27. Franklin avenue, near fourth street, at Eleven o'clock in the morning; I put down the time; defendant is in the habit of hiring from the stable; it was a yellow or Cream Colored horse with white mane and tail, and defendant returned it personally at about twenty five minutes past three P.M.; I put down the time in a book at half past three P.M.; I dont know where defendant went; the stable is kept by Lowry Matthews and is about three squares from headquarters Saloon; Benton Barracks is near Grand avenue, and Grand avenue, at the northern part of the City Comes into Bellefontaine road at some distance from said Barracks; Bellefontaine road is a Continuation of Broadway; in fact Grand avenue runs in the shape of the half of an oblong Circle, beginning north, as it were, at the river, and ending south as it were at the river.

S.A. Schenck

Mrs Sarah A. Schenck: — I am the wife of mr Schenck who keeps the Harlem House in this County; it is on the Bellefontaine road; I know the defendant; I saw him on Friday the 5th. day of

December 1862. at our house, it was between twelve and one o'clock, he had dinner; I prepared it for him, he waited there about an hour or so; he came alone in a buggy, with a Cream Colored horse; after dinner he went north up Bellefontaine road, in the buggy, by himself.

Cross-examination

I expect twas near one when he came to our place; defendant's manner and behaviour were the same as any other person asking for dinner; I never saw Reed at my house; the Harlam House is about six miles from the Court House.

Mr. Cahill.

Mr Cahill:- I dont Know defendant; never saw him before; Cant say If I ever saw Reed before; I know Patrick Dillon; I saw him, he was on his way home with a stove pipe in his wagon; I did not speak to him, or him to me; I cant say exactly when it was.

Cross-examination.

It was not in December, I think It was in November.

P. C. Walsh.

Pierce C. Walsh.- I have Known defendant three or four years; he was barkeeper principally; I was partner of Frank Davis, at Headquarters Broadway, but am not now; I was there when Reed Came in; it was on Friday 5th. December, he came in, treated, sat at the stove, asked for music and treated again; when he came in he slapped me on the back and said

he liked to drink at an Irish house; it was about ten when Reed Came in; defendant was not there until after Reed Came in; Some five or ten minutes after Reed Came in, defendant Came in; defendant sat down by the stove, and I think Called for a drink; but drank it at the bar; Reed and a Dutchman had a drink before defendant Came in; Reed was good humored and tight, and paid for what he got; I saw him have, I think, between 500 and 600 dollars in greenbacks + 100 and fifty bills; he piled them one on the other on the Counter when he was paying for the drinks; I told him to give me a small bill from his vest; I think; he said this is all I have left of $1200 dollars I had last night; when he took the money up he put it in his pocket; he said nothing about gambling the night before; defendant was dressed as now; defendant had no moustache; I never saw him wear one; Defendants Character is as good as any person in St Louis; Shannon gave me a parcel and told me that he was going out riding, and requesting me to Keep it till he returned; think it was a pair of pants and a shirt; Reed, defendant and the Dutchman went out together.

Cross examination.

Defendant Could have Come in with Reed without my Knowing it; Reed walked up to the Counter, and took a drink; I dont Know If I heard Reed tell Frank Davis to get him a chair; I dont think that I testified before the Recorder, that Reed told Frank to get him a chair;

(The testimony of witness before the Recorder here produced and shown to witness, wherein he states that Reed wanted to sit down, and told Frank to get him a chair.)

The witness then here adds:

That he cannot account for the variance between his testimony here and before the Recorder; presumes there must be a mistake somewhere; reckons it is in the person who wrote down his testimony, although he can't remember now so well; I saw Frank bring Reed a chair; defendant used to come in frequently; he was barkeeper at Casey's saloon; Reed said this is the last of twelve hundred dollars, I had last night; don't remember his saying, how much he had left; I do swear that I saw Reed have a chamois pocket book with steel clasp; I never saw any of Shannon's money; I got none of the money said to be stolen from Reed; I was arrested as a party concerned in this robbery, but was discharged at the Calaboose; I talked with defendant at the Calaboose and have since this occurrence; did not talk about this case; I did not try to get Reed to compromise this case; I have not tried to keep Reed drunk to prevent his testifying in this case; Defendants upper lip has a very heavy beard, which, though shaved looks blueblack from the heaviness of beard,

(The following is the testimony of the witness Walsh, before the Recorder, which was, by consent made part of the evidence in the case and read to the jury, having first been read to Walsh, and he, in some instances, stating that the diffence occurring between his testimony now

and before Recorder must be by mistake of the person taking down the testimony.)

"My place of business is no 309 and 311. Broad-"way; I keep headquarters saloon; was there the day "Mr Reed came in; I attended bar; he came in between "nine and ten o'clock; he came in and treated all the "musicians; the treat came to about half a dollar each "time, - about ten or fifteen times; Mr Reed wanted to "sit down; told Frank to get him a chair; he sat "down by the stove; Frank Davis my partner, was at-"tending the lunch table; I waited on the bar; Mr Reed "treated a second time; Shannon came in, he drank "with the party; dont know if they knew each other; "Shannon was not in the house before that day; Shannon "treated after that; they sat down by the stove together; "When Reed pulled out money to pay for the drinks "on one occasion, he pulled out a little leather pocket "book; before Shannon came in a Soldier and a "Dutchman were drinking with (Reed), the Dutchman "was quite familiar with him; Reed says there is "the rest of twelve hundred dollars; the balance I spent "last night, at the same time spreading the money on "the counter, a number of greenbacks; he repeated the ex-"pression "this is the last of twelve hundred dollars", say-"ing he had some five or six hundred dollars left, at "the same time telling me to treat the crowd, coming behind "the counter, slapping me on the back, and saying he "would like to spend it in an Irish house; thinks he "drank whiskey punches and one "plain whiskey"; "Reed gave me a parcel and told me to keep it till

"he returned; said he was going out riding; think "it was a pair of pants and a shirt; they then "went together; think it was between ten and eleven "oclock. a.m.; that was the last I saw of them

Cross-examination (before Recorder.)

"I am positive Reed had a pocket-book; it "was of chamois leather with a ~~shiny~~ steel clasp; "saw him take the money out; saw a hundred dollar "bill on top; said he had five or six hundred dollars "and some odd left; I am as sure he had the pocket-"book as of any other matter to which I have testified; "did not see any horse and buggy when they went "out; it was not later than eleven o'clock when "they left."

P. Dillon
~" ~" ~"

"P. Patrick Dillon:- I lived on Bellefontaine Road north of toll gate, on Friday last year; I kept a barroom there about a half a mile beyond the toll gate; I know Reed by sight; It was on Friday the 5th of December that I saw him; it was about twelve o'clock; I had brought a stove pipe from Bremen, where I had met Mr Cahill; Mr Cahill and I spoke together passing; I got home and Reed drove up in a buggy alone; I was busy at the time; I went out and hitched up his horse; he came in shivering with cold and drunk - half drunk; I gave him a chair; he sat by the stove; he twice called for whiskey punches and drank them; I dont remember seeing any one with him; It may be some one was with him and had gone in the yard; after giving

him the drink, I went again to Bremen about the stove pipe; Reed was sitting about the stove and appeared stupid and drinking; it was pretty cold; I left in about twenty five minutes after Reed came; I was gone about an hour and a half, and as I was returning home with the pipe, I met Reed again in Lowell; he was walking towards St Louis; I stopped the wagon and asked him, what became of his buggy; he said his buggy ran away from him; he looked a great deal better than when he came to my house - sober; he was not injured in any way; he had no cloth or rag about his head.

Cross-examination

I had been moving that day from my other place in Bellefontaine road to this new place where Reed came; I am still living at the same place, north of the toll gate, and a block from the Harlem House; it was about twelve or one o'clock when Reed came; I saw him through the window, driving up in the buggy; there was nobody with him; I immediately went out and hitched the horse, which was a kind of sorrel or yellow horse; I waited on Reed myself to the punches, that is my recollection now; no matter what I swore before the Recorder; I will swear that defendant was not with Reed when he was at my house; I have known defendant for some years; I was fixing the stove pipe, when Reed drove up; Reed wanted some hot punches and I gave them to him immediately; I had no fire in the stove, but was lighting it as he came in, and had boiling water right off; I had no

barkeeper; Mr Dugan is the owner of the property; Dugan wan't in the house at all, while Reed was there; he was in the yard attending to some Cows. I presume; I know it was Friday because I was moving that day, and an Irishman generally moves on Friday; I expect it was the 5th December 1862; I had been drinking a little; might have been a little tight; an Irishman generally drinks when he moves; the first time I went for stove pipe to Bremen, it was for the barroom; the next time, I went, leaving Reed in my saloon, I went for stove pipe for the Kitchen; I did not get any of the stolen money, nor am I paid for my testimony; I nor no one else was plastering in the back room or barroom while Reed was there; I swear that when I met Reed walking towards the City he was not injured in the least about the head or any place else, neither had he anything on his head except his Cap.

The following is the testimony of the witness Dillon, before the Recorder, which was, by Consent, read to the Jury, having been first read to Dillon, and he in some instances stating that the difference occurring between his testimony now and before the Recorder must be by mistake of the person taking down his testimony there, if there was any difference. : ....

" I live half a mile beyond the toll gate on the "Bellefontaine road, this side the Harlem House about "a quarter of a mile; did not see defendant at my "house on last Friday week; Mr Reed Came to our "house in a buggy on that day; I recognize him as

"the man; it was between one and two P.M; he was
"alone; I came in to Bremen to get a piece of stove
"pipe; as I was returning met him walking to-
"wards the City; it was about two hours after I
"had left him at my house; could not have been
"more than that; saw Reed when he drove up to
"my house; he was pretty drunk and cold-shivering;
"he took a chair and drew it up to the stove; I went
"out and hitched his horse to a post; the horse a
"kind of sorrel-buggy light; did not notice the horse
"particularly; while Reed sat at the stove he had a
"couple of drinks; left him in the barroom and came
"into Bremen; on my return home met Reed near
"Lowell, not more than two hours afterwards, he was
"on foot; I stopped my wagon, asked him where
"he had left his buggy; he said it had run away
"from him; I replied "that was too bad", and he walked
"on towards the City; I drove home; was moving
"that day,

Cross-examination, before Recorder.

"The barkeeper waited on Mr Reed, his
"name is Dugan; he is in the Country; he is the owner
"of the property where I now live; he helps me when I
"am in a hurry; on my return home I met Mr Reed
"about a mile this side of my house; he was not
"hurt at that time; he was just walking along; know
"it was on Friday that Mr Reed was at my house,
"because it was on that day that I moved;

Examination in chief resumed, (before the Recorder.)

"I have no doubt the man Reed I see here "is the man who stopped at my house last Fri= "day week; think he had on soldier Cap and "black pants; did not notice his dress particularly; "I spoke with him at my house; I swear positively "that the man I left at my house, sitting in the "house, and the man I met on the road, as I was "going home, are the same person; did not see any "one at my house with mr Reed; before I left I "gave mr Reed, two drinks myself, and left Dugan "in charge of the bar; I cant say whether his pants "were black or blue; can't exactly tell color of "his overcoat, to the best of my opinion it was black.

(Defendants attorney in the arguing of the case, admitted that, beyond all doubt, Shannon and Reed had been together at Dillon's house on that Friday.)

Mary Fitzgerald

Mary Fitzgerald.- I know defendant about a year; saw him at my house Fri= day 5th Dec 1862 in a buggy; did not notice the horse, he came in between two and half past two, to take my daughter out riding; stayed there half an hour; my daughter was not at home; he left and took the buggy, as he said to the stable; I reside on Eighth between Wash and Carr Streets.

Cross-Examination.

I am no relation to the defendant; Deft. was in the habit of visiting my house; he slept there

with my son about five or six weeks, before he was arrested; he didnt sleep with my daughter; she is a decent girl; and I am a decent woman; my daughter is a beer girl; she attends to dealing out beer in one of those saloons on Broadway; I permit her to do that; she generally comes home very late at night, about twelve or one o'clock; he left my house about half past two to go to the stable, as he said; I am sure he was at my house between two and half past two; defendant slept at my house the night before; he came back Friday night; slept in his usual place; he did not sleep there Saturday night; he came in Sunday evening and Mr Horrigan caught him; it was after night; defendant was there Saturday morning; he might have been there from a half an hour to an hour; he works for Carey as a barkeeper; he came back Saturday evening; staid about an hour; did not see him again until he was arrested on Sunday evening; I saw off Horrigan at my house on Sunday the 7th of December 1862; dont remember whether I saw Horrigan at my house on Sunday morning between ten and eleven o'clock; Cant tell whether I was asleep or awake when the officers knocked at the door; perhaps I told Horrigan on Sunday morning between ten and eleven o'clock, that I had not seen Shannon for a week; I know I told him that I had not seen defendant for some time, dont know whether I said a week or not, the reason I told him I had not seen defendant for a week, was, because I heard the officers

were after him; I saw officer Eagen at my house on Sunday morning between ten and eleven o'clock; told officer Eagen that I was told Shannon had gone to Memphis; I was told by three or four that they were told that Shannon had gone to Memphis; I was told by three or four that they were told that Shannon had gone to Memphis; they were women; dont recollect their names; this was on Saturday evening after night; when defendant left my house Saturday evening; perhaps I told Eagen he had left town; I got none of the stolen money; the saloon where my daughter carried beer was the saloon of Casey; I told the officers, defendant had not been at my house for a week, nor had I seen him for a week; it was a lie

Testimony as to Character.

Officer Hennessy. – I do not know defendants general character for honesty.

Mr Gorla. – dont know anything wrong of defendants character for honesty; never heard any thing wrong of it; I keep a barroom

Wm Curran. – I keep a barroom; I know defendant for five years, his character is good. X I refused to go on his bail bond

Mr Dixon. I know defendant his general character for honesty is good.

The Defendant here closed, and the State introduced in rebuttal the following witness who being duly sworn upon his oath stated as follows:

Thos Reed.

Thos Reed - I had on a dark cap not glazed; I saw Dillon I think at the last place or grocery where defendant and I stopped; it was at the place where the house was kind of being plastered; defendant left me in the front room and went in the back room with Dillon and talked with him as I thought, and afterwards returned to the front room where I was; I had no talk whatever with Dillon after I left him at his grocery; on my return to the City I did not see Dillon in Bremen or elsewhere; did not meet him on the road; did not have any Conversation with him in regard to my buggy running away and leaving me; had no Conversation with him; did not see him at all; my head was bandaged up as heretofore stated; I had no pocket book with a shiny clasp nor a Chamois pocket book, nor anything else like a pocket at the headquarters saloon, have not had anything like a pocket book for several years; I did not say at headquarters saloon that "this is all I have left of $1200," nor anything like it,

And afterwards the Court gave the following instructions to the Jury

Instructions Given.

"If the Jury find from the evidence that at any time, within three years prior to the finding of the indictment in St Louis County, defendant feloniously and violently did steal take and carry away, the property described in the indictment and belonging to Thomas Reed from the person of said Reed, against his will and by violence to his person, you will find defendant guilty as charged in said indictment of robbery in the first degree and assess the punishment by imprisonment in the penitentiary for a term not less than ten years.

If the Jury find from the evidence that any witness or witnesses have feloniously wilfully and corruptly sworn falsely to any material matter in the case, you are at liberty to discard the whole testimony of such witness or witnesses.

If the Jury entertain a reasonable doubt of the guilt of the defendant, he is entitled to the benefit of such doubt and ought to be acquitted.

And the Court refused the following instructions asked by defendant.

Instructions Refused.

Before the Jury can convict the defendant, they must be satisfied from the proofs that the defendant did feloniously and violently steal take and carry away the property described in the indictment and belonging to Thomas Reed from the person of said Reed against his will and by violence to his person, — and although the Jury may be satisfied that the defendant assaulted and struck the witness

Reed on the head and greatly injured him, yet unless you further find, that he also stole, took and carried away the property described you ought to acquit the defendant.

And the Jury on the same day returned the following verdict:

verdict.

The Jury in the Case of the State against Thomas Shannon find him guilty as charged in the indictment of Robbery in the first degree, and assess the punishment to imprisonment in the Penitentiary for a term of ten years.

March 18. 1863. U. P. Bennett. Foreman

And afterwards within four days the defendant by his attorney, moved the Court for a new trial, which motion follows:

Motion for New trial.

The defendant Comes and moves the Court for a new trial;

1st. – Because the verdict is against the law.

2d. – It is against the evidence in the Case

3d. – The Court erred in declaring the law.

4th. – The Court erred in refusing the instructions asked by defendant

5th. – The Court erred in the admission of illegal evidence, which prejudiced the minds of the Jury

6th. – The Court excluded proper testimony offerred by defendant

7th. – The Jury disregarded the instructions of the Court and the evidence of the defendant.

Shreve & Sanders atty for Deft.

And afterwards the Court having overruled said motion, defendant excepts and asks the Court to sign this his bill of exceptions which is done

H. A. Clover (Seal)

State of Missouri
County of St Louis } ss. I Fred Kretschmar clerk of the Saint Louis Criminal Court, in and for said County, certify the foregoing to be a true and complete transcript of the record and proceedings had in the Case of the State vs Thomas Shannon, as fully as the same remains of record and on file in my office. Witness, my hand and the seal of said Court hereto affixed at office in the City of St Louis this 14th day of April 1863.

Fred Kretschmar Clerk.

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(9) March Term 1863

116. From the 332

St. Louis Criminal Court.

Appeal.

The State of Missouri.

Respondent.

vs. Transcript.

Thomas Shannon.

Appellant.

E. M.

Circuit Atty Voutlaire.

for Respondent.

Messrs. Shreve & Sanders.

for Appellant.

Filed April 27. 1863

A W Mead Clk

10.000 words $10.00. Cert seal 50¢ = $10.50.

1863 May 15. Argued and submitted

1863 June 3. Affirmed Opinion filed 8/5 1821

State of Missouri
vs.
Thomas Shannon

Appeal for Opinion of Court to Stay Execution

The Deft. was indicted at January Term 1863 of Robbery from the person of Thomas Reed — on the 10th December previous —

A few days after the occurrence two police officers Harrigan and Eagan arrested the Deft. took him before Reed who identified him as he stated to be the person who robbed him — officers Harrigan & Eagan say that Deft. denied at first that he was out riding with Reed but afterwards admitted he was, but then, and at the time he was brought before Reed denied having assaulted him or taking his money — When Harrigan was testifying the Circuit atty asked the witness What he found on the person of Deft. at his arrest several days after the occurrence, the Deft. objected and informed the Court that the object of the Circuit atty was to prove that the Deft. had a pair of outsiders, to create a prejudice against Deft. upon the minds of the Jury — The Court at that time excluded the answer, but immediately after John Eagan was sworn and said (in answer to the Circuit atty to state What he knew about the case) "He (meaning Defendant)

on the road when arrested) gave me a pair of outsiders saying not to bring them against him for it would go hard with him" — As soon as the witness commenced this statement and before he had said any thing except "He gave me" the deft. objected to his proceeding further with the statement before the jury, the Court permitted the statement and refused although thrice requested to exclude this testimony —

The witness Reed states that he resides in Palmyra that he came to St Louis on business, was here drinking and gambling for two or three days When on this day he went about 3 o'clock in the ~~morning~~ afternoon to a saloon on 3d street (Broadway) and at the invitation of Deft. went out riding with him, that he was well acquainted here, used to live here and frequently since visited here, that they went out to the Benton Barracks passed the Fair grounds leaving the Fair grounds on the right some hundred yards, went beyond the Barracks from a quarter to a half mile When defendant turned round drove back a few hundred yards, drove up to a fence along some woods, got out as he said to ease himself and witness also did, While doing so in a stooping position, Deft struck

him a blow which rendered him insensible then struck him several other blows which he exhibited to the jury, and then left him after first taking his money $1200 - from his side pocket - coat pocket, Witness says he had six or seven hundred dollars besides in his fob pocket of his pantaloons which was not taken, and that he returned to the city on foot about time of lighting the gass. — Welch and Davis who kept the saloon swear that Reed came to the saloon at 10 Oc or half past ten, drank several times with deft. and others pulled out his money showed it on the counter (which Reed swears positively he did not) and stated that he had $600, left, that it was all he had left of $1200 he had last night —

Witness Patrick Dillon proves that on the day of this occurrence Reed came to his grocery on the Bellefontain road in a Buggey with cream colored horse, (he does not remember seeing Deft with him) somewhat intoxicated about 12 or 1 O'clock. drank several times and he left him sitting at the stove, to go to Bremen some three miles distant for some stove pipe, was gone about an hour and a half and when returning met Reed walking on the road and stoped him, talked with him, he was more sober,

asked him where his buggy was, and Reed said his Buggy had run away from him, at the time Reed was not injured in any way, but was walking along into the city — and Reed says in his testimony before the examining officer he took a drink as he was coming back at the head of Broadway, although he denies it in his examination on the trial — Mrs Schneck who keeps the Harlem house swears she prepared dinner that day at 1 O^c for Deft. that he remained about an hour at the house, that he came in a buggy driving a cream colored horse and went North up the road when he left and alone — Marsh who keeps the stable or hired the horse and buggy swears the horse & buggy was hired by Deft at 11 O^c A.M. and was returned at 3 O^c and twenty minutes — and Mrs Fitzgerald testifies that Deft. was at her house under an invitation to take her daughter riding with that horse & Buggy at half after 2 O'clock and her daughter not being in deft started to take the horse and buggy back — Several witnesses testify to Defendants universally good character for honesty — — The Court instructed the Jury what constituted robbery but refused to instruct at the instance of Deft. that though they might

believe from the proofs that the Defendant assaulted the witness Reed, yet if they did not further find that he took his money as charged they ought to acquit him – The case is presented to this Court under the provision of the Statute asking a Stay of Execution to take the opinion of this Court as to "probable cause" for the appeal See 3. p. 1202. Rev. Statutes –

Shreve & Sanders
Attys for Deft

It is respectfully submitted that the "probable Cause" for taking the appeal may well exist and authorize the Supreme Court to stay the Execution of the Sentence, although the Court should not afterwards reverse the case on the trial.

Deft. by his attys submits that such probable cause exists in this case –

First Because the verdict is against the evidence

2d The Court admitted illegal testimony, the admission of which so prejudiced the minds of the jury that he could not have a fair trial, and which he avers not only Contributed to produce, but actually produced his conviction –

Third – Because the Court refused to instruct the jury, that unless certain facts were proven they ought to acquit, although certain other facts were established by the proofs —

The State of Missouri

V.S.

Thomas Shannon

Statement & Brief.

Filed May 15. 1863

A. W. Mead

Clk

[8]

Appeal from Criminal Court

State of Mississippi, Respondent } S. Voullaire

vs

Thomas Shannon, Appellant } Shreve & Sanders

The only question presented by the record in this case relates to the refusal of the court to exclude from the consideration of the jury that portion of the testimony of John Eagan in which he states that after the arrest of the defendant, he (defendant) gave him a pair of outsiders. The fact that the defendant at the time of his arrest had in his possession an instrument commonly used by Burglars was certainly irrelevant. but the record shows that when the prisoner handed the bitrop the outsiders he requested ~~he requested~~ bitrop not to bring them against him, stating that if he did it would go hard with him. This admission, voluntarily made by the prisoner, was, for some purposes, competent evidence against him, and the court could not have excluded the evidence relating to the outsiders without leaving such admission wholly unintelligible.

But admitting that the evidence was inadmissible for any purpose, we see no fact or circumstance in the

case which would warrant the conclusion that it materially prejudiced the prisoner - The only witness on the part of the State who testified to any material fact was Reed the party alleged to have been robbed. If the jury credited his testimony, as they undoubtedly did, they could not have done otherwise than render a verdict of guilty - If they discredited him then there was no evidence in the case upon which to predicate such a verdict and we will not presume that any jury would find a man guilty of highway robbery upon the sole fact that a burglarious instrument was found in his possession - In the case of the State vs Houser 28 Mo 233 which was an indictment for homicide, the State was permitted to prove that the prisoner, while passing from the jail on a former trial, was found in possession of a slung shot and a majority of this court held that it was competent evidence, ~~the~~ Judge Scott however thought differently, but concurred

in refusing to stay execution upon the ground that he was unable to say that under all the circumstances the prisoner was prejudiced by the admission of the evidence —

The tendency of such evidence is no doubt to prejudice the minds of the jury, and if there were any facts or circumstances in this case which rendered the evidence of Reed improbable, and which would have justified the jury in disregarding it then it is readily perceived how the evidence respecting the outsiders might have influenced the deliberations of the jury, but we see no such fact or circumstance in the case and therefore cannot say that the prisoner was prejudiced by the admission of the evidence —

With the concurrence of the other Judges the judgment of the criminal Court is affirmed —

W. T. W. Gray

State

v

Shannon

Opinion

W. V. N. Bay

Filed June 3rd 1863
A. W. Mead
Clerk

Affirmed

[6]