Donnegan, William v The State of Missouri 1863 506/7

630/23

34/67

J Jecko v Hevine (A)

Se Voullaire (K)

W.D. (A) (D)

v

MO (P) (K)

- Stole horse - $200

one mare - $200

buggy - $200

harness - $30

Charles - Willoughby

Other Criminal

1863 - March

March 62

Larceny

Affirmed - Bates By Dryden

Saint Louis Criminal Court.
November Term 1861.

The State of Missouri. }c.

At a Term of the Saint Louis Criminal Court begun and held at the City of Saint Louis, within and for the County of Saint Louis, on the first Monday in November, being the fourth day of said Month, in the year of our Lord, one thousand eight hundred and Sixty one, were present the Hon Henry A. Clover Judge. Seymour Voullaire Esq. Circuit Attorney. Joseph P. Vastine Esq. Assistant Circuit attorney. Peter Wegman Esq. Marshal of St Louis County. and Frederick Kretschmar 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, to wit:

Grand Jury. Rufus J. Lockland, who is by the Court appointed foreman. John Sutter. James Ramsey. John Boyd. Peter D. Parada. John T. Rumbly. Lynde Rushnell. John D. Dowdall. John Reaky. Derrick A. January. T. D. Davenport. Samuel C. Davis. John H. Ahlshusen. Bernard Platte, and John McCausland, 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.

Thursday November 7. 1861.

The Grand Jurors, return to the bar, and deliver

the following indictment as a true bill. to wit:

Indictment

State of Missouri } Saint Louis Criminal Court.
County of St Louis. } November Term 1861.

The Grand Jurors of the State of Missouri, within and for the body of the County of St Louis, now here in Court, duly empannelled, sworn and charged, upon their oath present, that William Donnegan, late of St. Louis, in St. Louis County, on the tenth day of September in the year of our Lord, one thousand eight hundred and Sixty one, at Saint Louis, in Saint Louis County, One horse of the value of two hundred dollars, One mare of the value of two hundred dollars, one buggy of the value of two hundred dollars, one set of harness of the value of thirty dollars, all of the property of Charles D. Willoughby then and there being found, feloniously did then and there steal, take and carry away, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

J. P. Vastine
Asst. Circuit Attorney.

Saturday November 9. 1861.

The State of Missouri } On Indictment for
vs. } Grand Larceny
William Donnegan. } (Horse Stealing.)

Issue.

Now 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 November 15. 1861.

The State of Missouri. vs. William Donnegan. — On Indictment for Grand Larceny. (Horse Stealing)

Continued on affidavit of the defendant filed herein.

Saturday January 11. 1862

The State of Missouri. vs. William Donnegan. — On Indictment for Grand Larceny Horse Stealing.

Nolle Prosequi as to Buggy & Harness.

Now Comes the Circuit attorney who prosecutes for the State, and by leave of Court says, that he will not further prosecute the said indictment against the defendant so far as the same relates to the charge of the larceny of the buggy and set of harness, set forth in the said indictment.

Wednesday January 16 1862.

The State of Missouri. vs. William Donnegan. — On Indictment for Grand Larceny (Horse Stealing.)

Now Comes the Circuit attorney who prosecutes for the State, and the said defendant being brought into Court, thereupon Come a Jury. to wit: D. H. Copp, Joshua Fine, Charles Hume, James H. Link, Christopher Shear, Henry Strautman, James Ray, E. C. Quimby, Henry Schaeffer, A. H. Menkens, I. Maxwell and M. W. Warne,

Jury.

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 this Cause is begun, and the evidence in the Cause on behalf of the State is heard and concluded, and upon such evidence there appeared to the Court to be a variance between the name and description stated in the indictment, describing the nature or character of the animal or property alleged to be stolen, namely a horse, and the evidence offered in proof thereof, and which evidence showed the animal and property to be a Gelding, and not a horse. and the defendant by his attorney moved the Court to direct the Jury to acquit the prisoner by reason of such variance as aforesaid: but the Court found and declared that such variance was not material to the merits of the Case or prejudicial to the defence of the defendant and refused so to direct the Jury for this reason: and the trial of the Cause being now fully Concluded, the Jurors aforesaid upon their oath aforesaid say they find the said defendant guilty of Grand Larceny, as Charged in the said indictment, but Cannot agree among themselves what punishment to assess in the premises: and the Jurors aforesaid recommend the defendant to executive clemency: Whereupon the defendant is remanded to jail

Friday Jany 17. 1862.

The State of Missouri. vs. William Donnegan. } On Indictment for Grand Larceny (Horse Stealing.)

Motion for a new trial and motion in arrest of judgment filed by defendants Counsel.

Saturday January 25. 1862.

The State of Missouri vs. William Donnegan. — On Indictment for Grand Larceny (Horse Larceny).

Now again Comes the Circuit attorney who prosecutes for the state, and the said defendant being brought into Court, and thereupon the defendant's motion for a new trial, and also the motion in arrest of judgment herein being submitted to the Court, and by the Court here fully understood: therefore it is Considered by the Court that the said motions be severally overruled: and the Jury heretofore Sworn in this Cause having assessed no punishment herein, the Court here doth thereupon assess the same at Ten (10) years imprisonment in the Penitentiary: therefore it is Considered by the Court that the said defendant for his offence of Grand Larceny aforesaid, and in pursuance of the verdict of Guilty 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.

Judgment.

Friday Jany 31. 1862.

The State of Missouri vs. William Donnegan. — On Indictment for Grand Larceny Horse Stealing.

Bill of Exceptions filed by defendants Counsel.

Wednesday February 5. 1862.

The State of missouri. vs. William Donnegan. | On Indictment for Grand Larceny (Horse Stealing.)

Now Comes the defendant and prays an appeal to the Supreme Court from the judgment of this Court rendered against him, and the Court here being of opinion that there is probable cause for said appeal doth grant the same and doth order and direct that the said appeal operate as a stay of proceedings in the judgment herein.

Bill of Exceptions.

State of missouri. vs. William Donnegan. | St Louis Criminal Court: Indictment for Grand Larceny.

Be it remembered that on the 16th. day of January 1862. this Cause Came on for trial, and before a Jury was called and empannelled, the attorney for the defendant moved the Court to quash and dismiss the indictment upon the grounds, that said indictment was insufficient to authorize and sustain a judgment as presented, and also that the same had been rendered nugatory by the action of the Circuit attorney in entering an order of Nolle Prosequi as to part thereof; which motion being overruled, and to which overruling defendant by his attorney excepted, a Jury was empannelled and Sworn and the Cause proceeded to trial.

The State to sustain the issue on its behalf introduced

Testimony of C.D. Willoughby.

as a witness. first.

Charles D. Willoughby. who being duly sworn testified. as follows:

I reside in Collinsville. Illinois, where I keep a Hotel and livery Stable; On the 10th or 11th of.. 1861. the defendant Donnegan. Came to Collinsville in the Stage from St Louis. and stopped at my hotel for supper; he reached there in the evening; he inquired of me about getting a horse or other Conveyance to go out to Troy. six miles beyond; I told him I Could furnish him a Conveyance. and finally give him a horse and buggy with the necessary harness. whip &c. to go to Troy; Donnegan promising to return the property the next evening twenty four hours hence. We had Considerable Conversation about folks at Troy; where Donnegan seemed to be well acquainted; The next day the property was not returned; and on the succeeding day becoming alarmed about it; I started to Troy in the morning to make inquiries. finding that the defendant had not been at Troy; I started to St Louis, and there on that evening found my horse and other property at Arnotts Stable on Chesnut street. where it had been placed by the police; I also found that the defendant had been arrested and was in prison, where I saw him; I asked him if he knew me; he said he did not; I told him that I knew him to my sorrow; the animal obtained from me by Donnegan was worth one hundred dollars.

Upon Cross-examination. by defendants Counsel. witness. further testified.

The Animal obtained from me by defendant

was not a Stallion - it was a Gelding.

Testimony of Off. Haley.

Haley who being duly sworn testified as follows:

I am a policeman; about the 13th day of — 1861. I was directed to go to the office of the American express Company on Main street, St Louis, St Louis County, Missouri, and arrest the defendant, I did so, finding him there with a horse, buggy, and a box in the buggy; I brought the horse to Arnotts stable and left him there; the defendant I put in Jail.

Upon Cross-examination by defendants attorney, Witness upon being asked, if at the time of the arrest defendant did not tell him to take good care of the horse as he was a hired animal, testified that he recollected of something being said about taking good Care of the horse.

Here the State rested.

Instructions asked.

Whereupon defendants Counsel asked the Court to instruct the Jury; That as the indictment had charged the defendant with stealing a "Horse" and the evidence intended to show that the animal alluded to was a "Gelding." if satisfied from the evidence that the animal referred to in the evidence was a "Gelding" and not a "horse" they should acquit the defendant on the ground of variance between the indictment and the proof, which instructions the Court refused to give, and to which refusal defendant by his attorney then and there excepted,

The defendants attorney further asked the Court to instruct the Jury as follows:

Instructions Refused.

" If the Jury find from the evidence that the defendant obtained the animal referred to in the Indictment and obtained him with a felonious intent but did so obtain him in the State of Illinois, and afterwards brought him into the State of missouri, he Cannot be Convicted, and Sentenced under the Sixth Section of the Act of the General Assembly of the State of missouri, entitled "An act amendatory of an act entitled. An act Concerning Crimes and their punishments, approved December 8th 1855. approved March 28th 1861.

If the property is found to have been Stolen in the State of Illinois, and afterwards brought into Missouri, he Cannot be Convicted and punished under the indictment in this Case.

All of which instructions the Court refused to give to which refusal defendant by his Counsel then & there excepted, And the Court proceeded to give the following instructions to the Jury:

Instructions Given.

Larceny is the wrongful or fraudulent taking and Carrying away. by any person, of the mere personal property of another, from any place, with a felonious intent to Convert the Same to his (the takers) own use, and make it his own property, without the Consent of the owner.

Larceny may be Committed of goods obtained from the owner by delivery, if it be done with the intent to steal them, where a party unlawfully acquired possession with an intent to steal them, the owner still retaining his property in them, such person will be guilty of Larceny. Hiring a horse on pretence of

taking a journey, and converting it to the takers own use at once, and the hiring having been done for the purpose of obtaining possession of it, and with the intention of appropriating it, is felonious and Larceny, This by way of illustration.

If the Jury believe, and find from the evidence, that the defendant, at St Louis County, and at any time within the period of three years antecedent to the time of the finding of the indictment, did feloniously steal, take and Carry away the property, mentioned and described in the indictment of the value of ten dollars and upwards, and the property of Charles D. Willoughby, as therein Charged, you will find him guilty of the offence of Grand Larceny, and assess his punishment by imprison=ment in the penitentiary, for a term not less than ten years.

If you have a reasonable doubt of the guilt of the Defendant, you should give him the benefit thereof and acquit him for this reason.

The Court instructs as a matter of law that a Gelding is properly enough described as a horse in this indictment."

To the giving of which instructions defendant by his Counsel then and there excepted.

Whereupon the Jury retired to Consider upon the evidence and instructions of the Court, and returned into Court with a verdict of Guilty, as follows:

Verdict.

"We the Jury find the Prisoner Guilty of Grand Larceny, as charged in the said indictment. Believing the extenuating Circumstances to be such, that we would

recommend him to executive clemency.

M. W. Warne, foreman

And afterwards, to wit: on the 17th day of January 1862. defendant by his Counsel Submitted to the Court a motion in arrest of Judgment, upon the said verdict as follows;

And now Comes the defendant by his attorney and moves the Court to set aside the verdict in this Case rendered and arrest judgment thereon for the reasons following.

Motion in arrest.

First: The indictment as found was defective and void in as much as it embraced in the same Count, charges of Crime Calling for different punishments and which Cannot be properly joined

Second: Said indictment became void by reason of a Nolle Prosequi, being entered by the Circuit attorney as to part of the only Count therein.

Which motion the Court overruled, and to which ruling defendant by his Counsel then and there excepted.

And afterwards, to wit on the 17th day of January 1862. defendant by his Counsel Submitted to the Court the following motion for a new trial, to wit:

And now Comes the defendant by his attorney and moves the Court to set aside the verdict in this Case rendered and grant a new trial therein, for the reasons following:

Motion for a New Trial.

First: The Court erred in refusing instructions asked for by the defendant.

Second: The Court erred in giving ~~to the Jury~~ instructions as given to the Jury.

Third: The Jury erred in finding a verdict of Guilty, when according to the evidence, they should have found a verdict of acquittal.

Jecko & Hume attys for Deft.

And thereupon the Court proceeded to pass sentence upon the defendant, as follows:

"....It is Coneidered by the Court that the said defendant for his offence of Grand Larceny aforesaid, and in pursuance of the verdict of Guilty rendered against him, be imprisoned in the penitentiary of this state for the space of Ten years, ... ".

To all which rulings and overrulings of the Court, the defendant by his Counsel at the time excepted, and now prays the Court to sign and seal this his Bill of exceptions which is accordingly done.

H. A. Clover (Seal)

State of Missouri }
County of St. Louis } S.S. I Frederick Kutschmar, clerk of the Saint Louis Criminal Court in and for said County. Certify the foregoing to be a true and Complete Copy of the record and proceedings had in the Case of the State of Missouri vs. William Donnegan, 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 25th day of February A. D. 1862

Fred Kutschmar Clerk

Index.

Bill of Exceptions . . . Page. 6.
Indictment . . . . . 2.
Issue . . . . . 2.
Jury Grand . . . . . 1.
Jury Petit 3
Instructions Refused . . . . . 8.9.
Instructions Given . . . . . 9.
Judgment . . . . . 5.
Nolle Prosequi. as to Larceny of Harness & Buggy. 3.
Testimony of C. D. Willoughby . . . . 7.
" " Officer Healy . . . . . 8.
Motion in arrest & motion for New trial . . 11.
Verdict 10

362 ~~[illegible]~~ 104. From the

St Louis Criminal Court.

158 March Term 1863

Appeal.

William Donnegan.

Appellant.

M S

The State of Missouri.

Respondent.

Messrs J. Jecko & J. F. Hume.

for Appellant.

Seymour Voullaire Esq.

for Respondent.

Filed March 1. 1862

A W Mead

Fee $4.25.

1863 April 10. submitted on Brief. Respondents brief filed
1863 April 27. Affirmed Opn filed Dp 165

State of Missouri } Supreme Court
vs
William Donnegan }

Respondent's Brief

1st. Evidence of stealing a gelding, will support an indictment for stealing a horse. ~~[illegible]~~ vide. ~~Whatton Crim.~~

2 Ld. Ray. 1209 Gravely v Ford
2 Mo Rev. Stat. 1855. p 1175 S. 22 - 1176. S. 27
4 Ohio (Hammond) 348 Hooker v State
1 Ills (Scam) 304 Baldwin v People

2d. It is lawful for a Circuit Attorney, to enter a Nolle prosequi to a part of a Count in an indictment. vide —

1 Chitty Crim law 480 Note "A"
20 Pick. 356 - 364 &c Com v Tuck
7 Pick 177 Com v Briggs et al
1 Mass 516 Com v McMangle
1 Mass 517 Com v Lewis
1 British Crown Cases (Russ & Ry) 520 Rex v Butterworth Moss et al
1 British Crown Cases. (Russ & Ry) 343 Rex v Hempstead
31 Main 592 Anonymous

Seymour Foullaire
Cirt. Atty for State

Supreme Court.

State of Ills

vs

Wm Donnegan

Respds Brief

S. Gullaire
Cir't Atty for State

Filed April 10, 1863
Aumead
Clk

S. Fullain for Respt
Jecko & Horne for Appt

The State of Missouri Respt
vs
William Donnegan Appt

Appeal from St Louis Criminal Court

The defendant was indicted for stealing a horse, mare, buggy and set of harness.
Before the trial the Circuit Attorney announced that he would not further prosecute the indictment against the defendant so far as the same relates to the charge of the larceny of the buggy and set of harness.
We cannot see that there was any error in this prejudicial to the defendant.
At the trial evidence was given of the larceny of a gelding & objection was made that it did not support the indictment for stealing a horse. There is no force in the objection.

Judgment affirmed

Boston Bates

Judges Bay & Dryden concur.

158

The State
vs
Donnegan

Opinion

Affirmed
Bates

Filed April 27. 1863
A.W. Mead
Clerk