STATE OF MISSOURI v BRAUNSCHWEIG, HENRY OCTOBER 1866 COUNTY OF ST. LOUIS 560/11

OLD
651/11

AFFIRMED

INVOLVED:
STOLEN GOODS

St Louis Criminal Court

November Term 1864

State of Missouri }ss:

At a term of the St Louis Criminal Court, begun and held at the City of St Louis, within and for the County of St Louis, on the First Monday of November being the Seventh day of said Month, in the year of our Lord, one thousand eight hundred and sixty four, were present:

The Hon. Wilson Primm, Judge
Seymour Voullaire Esq Circuit Attorney
Joseph P. Vastine Esq Assistant Circuit Attorney
James Coff Esq Marshal of Saint Louis County and
Frederick Kretschmar, Clerk of said Court

Thursday November 10th 1864.

The Marshal of St Louis County 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.

John H. Andrews, who is by the Court appointed foreman, Carlos S. Greeley, William P. Penn, John B. Ghio, Romanzo A. Bayley, William D'Cench, Denis Marks, James Blackman, Rufus A. Lewis, Russell Scarritt, Ferdinand Rozier, Junior, Charles Boswell Benyamin O'Fallon, Conrad

R. Stinde and Joshua Houston: 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 November 15th 1864.

Grand Juror

Stephen Smith, whose name appears on the Venire facias, appears in Court, he being one of the panel of Grand Jurors, said Stephen Smith is duly sworn as such Grand Juror

Thursday November 17. 1864.

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 } November Term 1864.

Indictment

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 Henry Braunschweig late of St Louis, in St Louis County, on the twenty seventh day of September in the year of our Lord one thousand eight hundred and sixty four at Saint Louis, in St Louis County one horse of the value of one hundred and fifty dollars one mare of the value of one hundred and fifty dollars, one gelding of the value of one hundred and fifty dollars, one set of harness of the value of sixteen dollars, one bridle of the value of two dollars and one halter of the value of one dollar all of the property of Anton Nager 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

And the Grand Jurors aforesaid upon their oath aforesaid, do further present, that Henry Braunschweig late of St Louis, in St Louis County, on the twenty seventh day of September in the year of our Lord one thousand eight hundred and sixty four at Saint Louis, County aforesaid, with force and arms one horse of the value of one hundred and fifty dollars one mare of the value of one hundred and fifty dollars one gelding of the value of one hundred and fifty dollars one set of harness of the value of sixteen dollars one bridle of the value of two dollars and one halter of the value of one dollar of the property, goods and chattels of Anton Nager before then feloniously stolen, taken and carried away from another, feloniously did receive, and have he the said Henry Braunschweig then and there well knowing the said property, goods and chattels, to have been so feloniously stolen, taken and carried away, as aforesaid, against the peace and dignity of the State.

J. P. Vastine

Ass't Circuit Attorney.

Endorsed:

A. True bill, John H. Andrews, foreman.

Wits: Anton Nager, John H. Roben, Off Hull, Off Shelly.

Filed November 17th 1864.

Fred Kretschmar, Clerk.

Saturday November 19th 1864.

Recognizance

Henry Braunschweig as principal and Albert Schulhers as security, here in open Court, jointly and severally acknowledge themselves to owe the State of Missouri the sum of One thousand dollars, to be levied of their respective goods and chattels lands and tenements, Yet upon Condition that if the said

Henry Braunschweig shall personally appear before the Court, from day to day hereafter during the present term thereof and on the first day of any future term thereof to which this cause may be continued to answer to an indictment against said Henry Braunschweig for Grand Larceny and shall not depart the Court without leave thereof, then this recognizance to be void else of full force and effect.

Friday January 13. 1865

No 8. The State of Missouri vs Henry Braunschweig } On Indictment for Grand Larceny

Continued for the defendant on his affidavit filed on account of the absence of witnesses.

Friday March 17. 1865

No 8 The State of Missouri vs Henry Braunschweig } On Indictment for Grand Larceny

This cause is continued for the defendant on his affidavit filed on account of the absence of witnesses.

Saturday May 20. 1865.

No 8 The State of Missouri vs Henry Braunschweig } On Indictment for Grand Larceny

Now comes the Circuit Attorney who prosecutes for the State, and said defendant also comes in his own proper person and by Counsel learned in the law, thereupon the defend-

5.

Trial

Petit Jury

ant waives reading of said indictment and says he is not guilty as therein charged, and for trial puts himself upon the Country, and the Circuit Attorney doth the like. Whereupon come a Jury, to wit: James Shannon, Denis Shaub, Frank L. Ridgeley Jr, Louis P. Peters, Edward A. Meyers, James McDonald, Henry Morrison, Edward A. Matthx, Oscar F. Lowe, John Dorf, R. C. Dorsheimer, and John H. Blanke: twelve good and lawful men who being duly elected, tried and sworn, the taverse between the parties aforesaid well and truly to try and a true verdict render according to the law and the evidence; thereupon the trial of the cause progressed and being now finished, the cause is argued as well by the counsel for the defendant as the counsel for the state, and the cause is submitted to the Jury, who retire to consider of their verdict in the premises.

Monday May 22d 1865

No 8.

The State of Missouri
vs
Henry Braunschweig

On Indictment for Grand Larceny

Now again at this day, comes the Circuit Attorney, who prosecutes for the State, also come the jurors aforesaid sworn in this cause, but the defendant although duly called comes not, and the jurors aforesaid being now agreed among themselves on a verdict in the premises, upon their oath aforesaid, say they find said defendant Henry Braunschweig guilty of Receiving stolen property knowing the same to have been stolen, as charged in the second Count of said indictment and assess his punishment at Three years imprisonment in the penitentiary: And said Henry Braunschweig and Albert Schulher having on the Nineteenth day of November last past entered into a

Conviction

recognizance in the sum of One thousand dollars, before the St Louis Criminal Court, then in session: Conditioned that the said Henry Braunschweig should personally appear before this Court from day to day thereafter during the then November Term thereof, and on the first day of any future term thereof to which this cause should be continued to answer to an indictment preferred against him by the Grand Jurors of St Louis County for Grand Larceny and should not depart the Court without leave thereof, And the said Henry Braunschweig being this day solemnly demanded to come into Court, and save his recognizance comes not but makes default therein and the said Albert Schulherr being demanded to bring here into Court the body of the said Braunschweig comes not but makes default and fails therein, therefore it is considered by the Court that the recognizance as well of the said Albert Schulherr as of the said Henry Braunschweig be forfeitted, and it is ordered by the Court that a writ of Scire facias issue against them, and that capias issue for said Braunschweig.

Monday July 24. 1865

No 8. The State of Missouri vs Henry Braunschweig } On Indictment for Receiving stolen Property Knowing the same to have been stolen

Now again at this day comes the Circuit Attorney, who prosecutes for State, and the said defendant also comes in his own proper person and by Counsel learned in the law, and the Court here having fully considered the motion for a new trial and in arrest of Judgment herein and being thereof fully advised doth overrule the same. It is therefore considered by the Court that said defendant for his offense of Receiving stolen

Sentence

property knowing the same to have been stolen and of the value of Ten dollars and upwards as aforesaid, be imprisoned in the penitentiary of this State for the space of Three (3) years, that he pay the costs of this prosecution and stand committed until this sentence be complied with, Whereupon the defendant

Appeal.

prays an appeal to the Supreme Court of this State from the said judgment here rendered against him and the Court here doth grant the same. thereupon the defendant moves the Court for an order directing that the appeal herein taken shall operate as a stay of proceedings on the judgment, and the Court refusing to grant such an order, nevertheless, suspends the execution of the judgment for the space of Twenty days, to allow the defendant time to make application to the said Supreme Court or to a judge thereof for such order.

Tuesday January 9. 1866.

No 8.

The State of Missouri vs Henry Braunschweig } On Indictment for Receiving stolen Property knowing the same to have been stolen.

Mandate of Supreme Court filed.

Mandate of the Supreme Court filed whereby the judgment of this Court is reversed and the cause remanded

Wednesday January 24. 1866.

Second Trial

The State of Missouri vs Henry Braunschweig } On Indictment for Receiving stolen Property knowing the same to have been stolen.

Now again at this day come the Circuit Attorney, who prosecutes for the state and the said defendant also

Petit Jury

comes in his own proper person and by his attorney, thereupon come a Jury to wit:- James O Alter, C. A Smith, John H. Sanders, Robert W. Powell, Ernst Pfaff, Russell Mather, James Laing, Andrew Heartry, John Gerhard, William Barnes, Peter Bourceli, & Robert Fuchs, twelve good and lawful men who being duly ~~sworn~~ 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, and being now concluded and being now concluded and the cause is submitted to the Jury who being now agreed on a verdict in the premises on their oath aforesaid say they find the defendant guilty of Feloniously receiving stolen property knowing the same to have been stolen as charged in the 2d Count of said indictment, and assess his punishment by imprisonment in the penitentiary for the term of Three (3) years, whereupon defendant is committed to Jail.

Conviction

Saturday January 27th 1866.

No 8

The State of Missouri vs Henry Braunschweig } On Indictment for Receiving stolen Property knowing the same to have been stolen.

Motion for New Trial filed.-

Saturday February 17. 1866.

The State of Missouri vs Henry Braunschweig } On Indictment for Receiving Stolen Property knowing the same to have been stolen.

Now again at this day come the Circuit Attorney who prosecutes for the State and said

defendant also comes in his own proper person and by Counsel learned in the law, thereupon the motion for a New Trial herein is by them argued and submitted to the Court and by the Court here fully understood; Whereupon it is ordered by the Court that said Motion be overruled: It is therefore considered by the Court that said defendant, for his offense of feloniously receiving stolen property knowing the same to have been stolen as charged in the second Count of said indictment and in pursuance of the verdict rendered against him, be imprisoned in the penitentiary of this state for the term of Three (3) years, that he pay the costs of this prosecution and stand Committed until this sentence be complied with.

Sentence

Saturday March 3d 1866.

No 8

The State of Missouri
vs
Henry Braunschweig

On Indictment for Receiving Stolen Property knowing the same to have been stolen

Now at this day comes the defendant by his Attorney and prays an appeal to the Supreme Court from the Judgment herein rendered against him, and the Court here doth grant the same: Whereupon the defendant moves the Court for an order directing that said appeal operate as a stay of proceedings on said Judgment, which motion being considered by the Court, and by the Court fully understood, doth overrule the same; thereupon the defendant files his Bill of Exceptions herein.

Appeal

Which Bill of Exceptions is in the words and figures following to wit:—

The State of Missouri
vs
Henry Braunschweig } St Louis Criminal Court.

Bill of Exceptions

Be it remembered that on the twenty fourth day of January 1866 the said cause coming up for trial, and both parties being ready, and it appearing to the Court that this cause had heretofore been tried upon both Counts of the indictment, that the defendant had been convicted upon the second Count, that upon an appeal to the Supreme Court the judgment on said second Count had been set aside and said cause remanded for a new trial; therefore the Court ordered and directed that the defendant should be tried upon said second Count alone, the defendant, in the opinion of the Court having been acquitted on the first Count of the indictment at the former trial.

The State to maintain the issue introduced the following witnesses:-

Testimony of Anton Nager

Anton Nager, who after being sworn, testifies as follows:

I live 1/2 miles from Marine hospital, in September 1864. I lost a horse, harness and bridle and halter, the horse was worth $150. dollars the harness sixteen dollars and the bridle 2 dollars the halter one half dollar, I lost them in the night of the 27th - 28th September they were all taken from my stable in which I kept them, the stable had been closed in the evening of the 27th day of September with a latch. I never saw the horse again, but recovered the harness, I went with witness Beckman to John H. Roeben's blacksmith shop and found the harness there, this was on the nineteenth day of October 1864. described the harness to Roeben, and then he gave the harness to me, know it is mine, have no

doubt of it, know it by patchwork on it. From Roeben I learned that defendant had brought harness there, had not known defendant before, then went to City and got captain of Police, and two policemen, then went with them to defendants place, near Belle-Fontaine cemetary to look for my horse, saw defendant there, I wanted to go in his stable, he resisted called me a son of a bitch, and took a hatchet, asked him for my horse, he said, what do I care for your horse, asked him where he had got my harness, he said what do I care for your harness, I had him arrested, he resisted very much, he called for his wife to come out with an axe; after he was arrested, the police and I went into his stable and house, but we did not find anything of my things there. This all happened in the City and County of St Louis. Mo.

Cross-Examination:-

I had no warrant sued out, when we went to his place, do not know whether policemen had, I asked defendant twice — where he got my harness, he said, what did he care for the harness it belonged to another man. The way it came, I went to Roebens, was, that I had heard Beckman had lost a wagon, the same night I lost my horse and harness and I went to Beckman to enquire, and he took me to Roeben.

Testimony of John H. Roeben

John H. Roeben, who being duly sworn testified as follows: who stated he lived on Salisbury street, near Grand avenue, kept a blacksmith shop, On the evening of the 29th day of September 1864 while it was dark, defendant and another man came into my yard, with a horse harness and a wagon. Defendant told me, he wanted to leave

the wagon there, to have a two horse wagon made out of it and to have it repainted. This was the same wagon, Beckman afterwards got, and the same harness which Nager claimed and got. Defendant did not say where he got the wagon, he said if it was finished he would come and take the harness along with it. Defendant took the harness off from the horse. The other man spoke once but very little. I asked him whether he was a brother, he said No, he was his partner in some money, that was to arrive from Germany. The other man then got upon the horse and rode off. Braunschweig also went off then. Denfendant had been at my shop before, to have things repaired and fixed, but never at dark. Defendants business is that of a farmer. I did not fix the wagon, because I saw advertisement in paper describing the wagon and saying it was stolen, saw defendant again on the third of October 1864 then I told him, wagon was stolen and he should take it away. I showed him the advertisement, he read it and said - yes, that must be the wagon, he then said I should not say anything about it, he wanted no trouble about it, he would come and take it away. I asked him about the horse, he said the horse had been sold in camp. but did not say who sold the horse. The next day after this he came with Beckman, and Beckman identified the wagon, and he got it and took it away

Question: What kind of a box had the wagon on at the time it was brought to your shop by defendant" to which question defendant by his counsel objected, for the reason, that it was irrelevant and immaterial, which objection was overruled by the court, to which ruling defendant.

then and there excepted.

Answer: It was a one horse spring wagon, like a milkman's wagon, and with such a box on.

Question: Did the wagon require painting when it was brought? To which question defendant objects for the reason that it is irrellevant, which objection the Court overrules, to which ruling defendant then and there excepts.

Answer: The wagon was a good wagon, and did not require any fixing or painting. The harness remained with me, until the nineteenth day of October 1864, when Beckman and A. Nager came, and A. Nager identified the harness and described it and then I gave it to him, I told him who had brought the harness.

Question: what was the wagon worth when it was left with you? to which question defendant objects which objection is sustained by the Court. All this was in the County of St Louis

Cross-Examination:

I know the date of the day, when defendant brought the wagon and harness, because I put it down on a piece of paper, did not see defendant, before he came into my yard, did not know who the other man was - defendant called me out of my house, - spoke to me, told me, he had the wagon here to be repaired and painted yellow. I asked him, whether he had bought the wagon, he said No, that it belonged to a soldier, who was going into the Army, that he had got the wagon from him, and if he did not come back, he might keep the wagon. When I saw the advertisement in the paper, about the wagon being stolen. I did not go after Beckman, When defendant came, I told him, wagon was stolen, and he should take all

away, that I would have nothing to do with it. It was so dark that I could not identify the horse referred to or the man with Braunschweig.

Testimony of Frederick Beckman

Frederick Beckman, who after being sworn says:-

I live on Gravois road, in the night of to 27th to 28th day of September 1864. I lost a one horse spring wagon, missed it next morning, I went to the City and hunted it, went to the police office also put an advertisement in the paper, english and german, describing the wagon and stating my name and residence and offering ten dollars reward, on the following Monday, defendant came to my store, about six miles from Roeben's blacksmith shop and told me, he would show me my wagon, but he wanted twenty dollars reward, I said I would not give him more than ten, he said he had bought the wagon and had paid fifty dollars for it, and it would be hard enough for him to lose thirty, and I might lose twenty, I would not do it, and then he went along and took me to Roeben's place and showed me the wagon. The wagon was mine. This was on the third of October 1864.

Cross-Examination:-

I had no suspicion that defendant had stole the wagon, when he came to me, I paid him the ten dollars. About two weeks afterwards Nager came to me, I had not known him before, and asked me, where I got my wagon back. Then I went with him to the blacksmith Roeben, and he there got his harness, from there we went and got the police, and then went to defendant's farm and had him arrested. I got my

wagon back, because defendant shewed me where it was and I showed Nager the place and that is the way, he got his harness back

Testimony of H. Shelley

H. Shelley, who after being duly sworn testified as follows:—

I am a police officer, assisted in the arrest of defendant at his place, his place is outside of the City limits, we had no warrant, as far as I know, Captain Hack was along, defendant did not want to let us go into the stable, he resisted, but we went in and searched, then searched the house, but found nothing, I spoke with defendant, asked him about the horse, he said it had been sold in camp, and said he did not know anything about the harness.

Cross-Examination:—

I did not see any hatchet in defendants hands, did not hear him call for his wife to bring axe, would have been likely to hear it, if he had done so— I spoke to defendant in english, he speaks only broken english.—

Testimony of Michael K. McGrath

Michael K. McGrath, who being duly sworn, testified as follows:—

I am deputy Clerk of the St Louis Criminal Court, was present when defendant was tried the last time, it was on Saturday. The jury came back on Saturday evening. Defendant objects to the testimony of the witness, for the reason, it is irrevelant, and a matter of record, which objection is overruled by the Court, to which ruling defendant then and there excepted

Question: State whether defendant was present, when the jury returned to render their verdict? to which question defendant objects for the reason, that the same is inadmissible, irrevelant and a matter of record) which objection is overruled by the court, to which ruling then and there excepts) – Defendant was not present, he was called, but did not answer – then the case was continued until next Monday, defendant was called then again and not appearing the verdict was opened. To all of which testimony defendant objects, as before but objection overruled, and which ruling excepted to by defendant.

Testimony of Andrew Hack

Andrew Hack, who after being duly sworn testified as follows:–

I am Captain of the Police, Know defendant, Know where he lives, Know when the last trial took place, was not present when defendant was arrested again this was done by the Missouri Militia, but the Militia delivered him to me and I conveyed him to jail. –

Testimony of Henry Hull

Officer Henry Hull, who being duly sworn, testified as follows:–

Defendant said he bought the horse and wagon from a soldier – I asked him the soldier's name and he refused to tell it. I asked him to whom he sold the horse and he would not tell. I asked him if he sold him to the Government and he said he did not Know – He said he gave $125 for the horse and wagon – I asked him whose the harness and he said he did not Know

Upon which testimony the State rests the case

The defendant thereupon to maintain the issue on his side introduced the following witnesses:—

Testimony of Herman Bodeman

Herman Bodeman, as a witness, who after being sworn, says:—

I live on Main street, near North Missouri Rail Road, know defendant, saw him in the latter part of September 1864., at a beer house, it was in the afternoon, he had a two horse wagon along, another man dressed in soldiers clothes was also there, he had a horse and a spring wagon, before the door; this man offered the wagon to deft — defendant looked at it and bought it. that is he paid fifty dollars for it — the next morning they made the contract that evening and defendant was to pay fifty dollars next morning then defendant drove off with the man in the one horse wagon, next morning saw defendant again at some bar-room, he paid fifty dollars for it to the other man.

Cross-Examination:—

I have been a witness for defendant before in the same case, Do not get anything paid for swearing, was not present during the whole time, defendant and that other man traded. Do not know anything about horse or harness.—

Defendant then further introduced the Record of the proceedings of the St Louis Criminal Court, in relation to the larceny of the wagon of F. Beckman

and also the record of his acquittal of said charge

Defendant then closes his case.

Whereupon the defendant prayed for and the Court gave the following instructions on the part of defendant:-

Instructions given for Defendant

"Before the jury can convict the defendant on circumstantial testimony alone, the circumstances themselves, should be clearly proven, and when so proven, they should point so conclusively to the guilt of the defendant, as not to admit of any other reasonable hypothesis, but that of the guilt of the defendant."

And also prayed for the following instructions which the Court then and there refused, to which refusal defendant then and there excepted:

Instructions Refused

"Before the jury can convict the defendant, they should be satisfied by the evidence in this cause, that the property specified in the indictment or some part thereof, was stolen by some other person, than the defendant; and that the defendant received the same or some part thereof, and that, at the time he so received it, he knew that the same had been stolen."

Thereupon the Court, of its own motion gave the following instructions, to the giving of which defendant then and there excepted:-

Instructions given for State

"If you believe from the evidence, that at any time within three years prior to the time of the finding of the indictment, at St Louis County, the property mentioned and described in the indictment was feloniously taken, stolen and carried away by a

person other than the defendant, and that the same was the property of Anton Nager; and that after said property had been so feloniously stolen, taken and carried away, the defendant did feloniously receive and have said property or any part thereof, of the value of ten dollars and upwards, knowing the same to have been so feloniously stolen taken and carried away; you will find him guilty of receiving stolen property, knowing the same to have been stolen, and assess the punishment by imprisonment in the Penitentiary for a term of not less than two, nor exceeding five years.—

The first count of the indictment is not before you for consideration.—

If from a review and examination of all the evidence in the case, you entertain a reasonable doubt of the defendant's guilt, you should give him the benefit of the doubt and acquit him."

After which the case, after being fully argued, was submitted to the jury, who on the same day returned into Court with the following verdict:—

Verdict

"We the Jury find the defendant guilty as charged in the second Count of the indictment and assess his punishment at three years in the penitentiary.

James C. Alter,
foreman."

And afterwards, in due time, defendant filed his motion for a new trial, which is in the words and figures following, to wit:—

Motion for a New Trial

"Defendant moves this Hon. Court to set aside

the verdict of the Jury and for a new trial of his cause for the following reasons, to wit:—

1. Because this defendant had once before been tried for the same offense.

2. Because this defendant was put upon trial on the first count of the indictment, upon which he had been acquitted, and the State did not relinquish said count until all the evidence for the State was heard.

3d Because the verdict of the jury is against the evidence.

4th Because, during the trial of said cause, the court admitted illegal, and irrelevant testimony against the objection of defendant.

5th Because the Court refused proper instructions.

6th Because the Court gave improper instructions.

Mauro & Gottschalk

Attys for Defendant."

Which after being heard by the Court, on the 16th day of February 1866. is overruled by the Court, to which ruling defendant then and there excepts, whereupon the Court on the 17th day of February 1866 sentences said defendant in accordance with the verdict, to which defendant excepts and prays for an appeal to the Supreme Court, and tender this his bill of exceptions, and prays that the same may be made a part of the record, which is accordingly done

Wilson Primm (Seal)

State of Missouri }
County of St Louis } s.s. I, John McNeil, Clerk of the St Louis Criminal Court, within and for said County, Certify the above and fore going to be a full, true and complete transcript of the Record, and the Proceedings had in the above entitled cause of the State of Missouri vs. Henry Braunschweig as fully as the same remains of record and on file in my office

Witness, my hand and the seal of the St Louis Criminal Court hereto affixed at office in the City of St Louis this Seventh day of March A. D. eighteen hundred and sixty six.

John McNeil
Clerk.

Index next page

Index

	page
Grand Jury	1.
Indictment	2.
Recognizance	3.
Trial, Petit Jury and Conviction	5.
Sentence and Appeal	7.
Mandate of the Supreme Court, filed	"
Trial	"
Petit Jury and Conviction	8.
Sentence	9.
Appeal to the Supreme Court	"
Bill of Exceptions	10.
Testimony of Anton Sager	"
" " John H. Roeben	11.
" " Frederick Beckman	14.
" " H. Shelley	15
" " Michael K. McGrath	15.
" " Andrew Hack	16.
" " Henry Hull	16.
" " Herman Bodeman	17.
Instructions Given for Defendant	18.
Instructions Refused	"
" Given for State	"
Verdict	19.
Motion for New trial	19.

39 (11)

October Term 1866

Appeal

The State of Missouri

Respondent

vs Transcript &c

Henry Braunschweig

Appellant

J. P. Vastine Esq

for Respondent

Messrs Gottschalk and Mauro

for Appellant

Filed Mch. 31. 1866.
C. T. Fishback,
Clk.

1866. Oct 15th Sr + Br of Ap filed
" " 23d Stat & Br of Ap & Br of Ap filed Sub on Br
" " 29 Appointed

Brief & Argument of Appellant.

State of Missouri
vs.
Hig Braunschweig.

In The Supreme Court of Mo.

Refers principally to:
State
vs.
Goetz et al
Mo. Rep
Vol 34 p 89

Appellant respectfully submits; that his conviction is clearly wrong, according to the plain law, as laid down by the Supreme court of Mo. in former cases, and that his conviction was the result of illegal and highly improper evidence. Defendant stood charged, with the feloniously receiving of a horse, harness, bridle and halter, knowing the same to have been feloniously stolen — and evidence was admitted, against the objection of defdt, that he was found in possession of a waggon, the property of another man and stolen from a different place, & the subject of a different and disposed of accusation and charge, and all circumstances of the stealing of this waggon was fully entered into, and the state was permitted not only to show, that the waggon had been stolen, and recently thereafter had been found in possession of defendant, but also, that he had ordered the waggon to be changed and painted, without any necessity therefor & for what purpose? to prove, that defdt had feloniously received the horse &c. What connection has the evidence, as to whether the waggon the subject of a different charge, required to be painted or not, and whether defdt ordered it to be painted or not, with the charge as to whether defdt received a horse &c feloniously? This evidence was clearly illegal and totally inadmissible and highly prejudicial to defendant. It goes much

further, than any other case ever went. Even the fact, that ~~other~~ stolen property other than that, charged in the indictment, is held inadmissible, but here, in this case, this was not only admitted, but ~~the~~ also where and when it was stolen, from who, at what time, from what place, where it was taken to, how it looked, what was said about it, whether it required fixing up or not and so forth - disconnected entirely from the charge. How could defendant prepare himself against such evidence in relation to the waggon, when he was upon trial for a horse? He had been tried for the waggon, and had been acquitted, because at that time, he knew what he was charged with and prepared & could prepare to defend - Here he stood charged with one larceny & another, was proven against which he could not defend, because he did not know, nor could he know that this would be brought against him - he not having been indicted therefor, nor charged therewith -

The Supreme court of Mo say: State or Goetz et al Vol 34. p 89 As a general rule, evidence of matters, other than those charged in the indictment are inadmissible, and the reason of the rule is obvious enough, for when a party is charged with a particular offence, he has notice to be prepared to defend himself; but he cannot be prepared against a charge of which he has had no notice and which is exhibited against him for the first time while on trial for another and distinct offence." and page 90 - we have been unable to find any reported case, in which, upon a trial for larceny, evidence of another and distinct larceny

was admitted, to establish the one charged in the indictment."
"In Regina vs Oddy. 6 Brit. Crim. Cases 466, it was held,
that on the trial of an indictment, containing counts for
stealing and for receiving the property of A. knowing it to be
stolen, evidence of the possession by the prisoner of other
property stolen from other persons at other times, was not
admissible, either to prove the stealing or the receiving."
"In the case at bar the state had the benefit of the usual
presumption, arising from the recent possession of the stolen
property, and was therefore not driven to the necessity of
proving intent by proving other felonies, committed about the
same time" — "The offences proved were separate and
distinct, and the defendants might have been indicted for
each and every one of them" —
In the case at bar, the defendant was shd been separately
indicted and tried and acquitted for the offence which was a second
time investigated during the trial below. It is unnecessary
to make any further quotations, there was no logic, and
less justice in the admission of the testimony before the jury, as to whether
the waggon, with which the jury then sitting, had nothing
to do/required painting or fixing or not — If it was a
circumstance, going to show felonious intent, it could only
show such intent, as to the waggon and nothing more.
~~The~~ But it is most evidently calculated to make a bad impression
for the defendant, upon the jury, unexplained as it came before
them, and explain it, as he had done in the trial for the waggon,
he was not prepared to, at that particular time, as he had
not been charged with it, and had had no notice to prepare
himself to defend against such evidence.

II The evidence of Mr. Mc Greth was also illegal, irrelevant and prejudicial to defendant. When the ~~two~~ last trial took place, whether deft was present at the time the jury returned, whether the case was continued all these were matters of record, and if admissible at all, had to be proved in the only legal way, by the production of the record. The objection was made for that reason, yet overruled, although the record ~~was~~ could certainly have been produced in a minute. The question is, whether the Supreme court will in criminal cases, allow such proceeding, when even in civil cases, it would not be permitted! — But what had all this evidence to do, with the present trial — Appellant contends that it was entirely irrelevant & ought not to have been permitted.

III. Appellant ~~contends~~ that the refusal of the court to give to the jury the second instruction asked for by him was error. The instruction was good law and unexceptionable, while the instruction which the court gave, was erroneous. Deft's instruction contends, that at the time of his receiving the property he must have known that it was stolen, — ~~the court~~ which is the law — the court's instruction leaves this entirely out of view, so that a knowledge of its being stolen, acquired after the receiving of the property would be sufficient — which plainly is not law. Appellant prays for a reversal.

Louis Gottschalk
atty for Appellant

State of Missouri
vs.
Henry Brauschweig

In the Supreme court of Missouri
Statement of case.

At the November term 1864 of the St Louis Criminal Court, the defendant was indicted on two indictments, one being for the larceny of a waggon, the property of F. Beckmann, and the other for the larceny of a horse and harness, the property of Anton Nager. At the March term 1865 of said court, defendant was tried on the first indictment (stealing of a waggon) and acquitted. At the May term 1865 of said court, defendant was tried upon the second indictment (larceny of horse & harness) and the jury rendered a verdict, in the absence of defendant, finding defendant guilty of receiving stolen property, as charged in the second count of the indictment and affixing his punishment at three years penitentiary. After judgment rendered, in accordance with this verdict, the defendant appealed, and the judgment was reversed and the cause remanded. The case is reported in 36 Vol. Mo. Rep. page 397. In the January term 1866, defendant was again put upon his trial, upon the 2d count of the indictment, and evidence introduced tending to show that Anton Nager had a horse stolen from him, together with harness & bridle and a halter, on the 27th of September 1864, and discovered the ~~same~~ harness again on the 19th of October at John H. Roeber's blacksmith's shop, that Beckmann's waggon had been brought

to that shop by defendant who was in company with another man, who was riding the horse, and who rode off on it. that defendant's place was searched but nothing found. that defendant speaks very broken english. The evidence being reported in full in the Bill of Exceptions, to which reference is made. The court gave one instruction for defendant and refused another, and gave some of its own motion. ~~The jury~~ Exceptions were properly taken to the admissibility of the testimony in relation to the shealing of Beckmann's waggon, + to other testimony, + to the refusal of the instruction. The jury found the defendant guilty and assessed his punishment at 3 years penitentiary, where defendant has been confined since. after the motion for new trial had been overruled, and sentence passed in accordance with the verdict. Defendant then sued out his writ of error.

57

Supreme Court
No. 57. Octob T. 1866

State of Mo.
Resp.
vs.
Wm Brannon Sheriff
Appell.

State ment of case
and
Brief of Appellant

Filed Oct 13 1866
J. Tolleback
Clk

L. Gottschalk
for Appell.

Supreme Court Mo
Oct 5. 1866

State of Missouri }
vs } Appeal from
Henry Braunschweig } St Louis Crim Ct.

Opinion of the court.

There is no foundation for the position assumed by the appellants counsel that the evidence offered for the State and admitted by the court was illegal, because it went to establish that the prisoner was guilty of a crime other than that charged in the indictment.

The whole matter was so completely blended, that the entire evidence was necessary to obtain a history of the particular transaction, and as such was perfectly admissible within the principle of the case of the State vs Harrold decided at this term.

The instructions are

unexceptionable and no error being perceived the judgment is affirmed

The other judges concur

David Hagner

C

State of Mo
v
Henry Braunschweig

Opinion of the
Court
Wagner

Filed Oct. 29th. 1866.
O. T. Fisteback
CCK
Affirmed

State, Respondent
vs
Henry Braunschweig
Appellant

Receiving stolen property feloniously,

Brief for Respondent –

Appellant was indicted & tried for having on the 27th Sept 1864, feloniously received a horse, harness and bridle, property of Anton Nager, knowing it to have been stolen –

On the trial Frederick Beckman testified to the loss of a wagon on the 27th Sept 64, the possession of which was traced to Appellant –

No exception made to Beckman's testimony –

John H Roben testified to receiving the harness bridle & wagon from Apptt & Appo excepted to questions in regard to condition of wagon &c on the ground of irrelevancy & immateriality

No injury was then done to Appt –

The questions appertained to matters occurring at and connected with the reception of harness &c and the answers were a part of the res gesta –

Appt fails to raise upon the testimony, the first question he argues in his brief –

In opposition to Appts view I refer to Wharton Crim Law p 677

R v Dunn R & M CCR p 146

R v Davis 6, C & P p 177

2 Russ on Crimes 251 & 777 –

State v Goetz not a case in point - charge one of larceny - Intent not knowledge an element in this case -

Bay Judge incidentally observes, "evidence may be given of all the receipts for the purpose of proving guilty knowledge" -

In R v Oddy, deft was tried upon two charges - No election required of prosecution - Evidence of different receptions inadmissible in similar circumstances -

A presumption of guilty of receiving stolen property does not arise from a recent possession thereof, as such possession is not evidence of knowledge.

Other points contended for by Appelt are frivolous -

J P Vastine
for Resp't.

C

State, Resp't
vs
Henry Braunschweig
Appt't –

Brief for
Respt

W. Vartine