State of Mo vs Turley, Victor M 1854 Clay Co / 5th Cir. 209/5

dd 69/4

Neglect of duty as a road overseer

Failure to place a sign naming the next town

Affirmed indictment too vague
regarding the fork in the road

Be it remembered that at a circuit court begun and held at the court house in the city of Liberty County of Clay in the State of Missouri on the 23rd day of October AD 1854 the Honorable George W Dunn Judge of the fifth Judicial Circuit in said State presiding. among others were the following—

Be it remembered that heretofore to wit at the April Term of the Circuit Court within and for the County of Clay & State of Missouri the following Bill of Indictment was found to Wit

State of Missouri
Fifth Judicial Circuit
Clay County to Wit } In the Circuit Court of Clay County in the State of Missouri of April Term AD 1854

The Grand Jurors for the State of Missouri for the body of the County of Clay aforesaid upon their oath present that Victor M Culey late of said County of Clay on the first day of April in the Year of our Lord One thousand eight hundred and fifty four with force and arms at the County of Clay aforesaid was and ever since that time has been and still is the Road Overseer of that part of a certain public road in the county of Clay aforesaid known as Road District Number thirty three to wit commencing at the forks of the road where the one goes to Turnhams landing and the Other to Meek's Ferry thence to Richfield and that the said Victor M Culey Road Overseer as aforesaid on the said first day of April in the Year of Our Lord One thousand eight hundred and fifty four at the County of Clay aforesaid unlawfully wilfully failed and neglected and ever since that time has wilfully failed and neglected and he still does wilfully fail and neglect to erect and keep a post at the forks of the road in the Road district aforesaid where a certain public Road leading to Richfield in said County of Clay leaves the said road to wit the road district aforesaid and to affix a finger board thereto containing a legible inscription directing the way and noting the distance to the next remarkable place on the road or to affix to a suitable tree at the proper place to wit at the forks of the road aforesaid a finger board containing a legible inscription directing the way and noting the distance to next remarkable place on the road against the form of the statute in such case made and provided against the peace and dignity of the State

C W Garner
Circuit Attorney

and on the second day of said October term AD 1854 is the following

State of Missouri
vs
Victor M Tuly } Now at this day comes the defendant by his attorney and files his demurrer in the above entitled cause

"

Which Demurrer recites as follows "

State of Missouri
vs
Victor M Tuley } In Clay Circuit Court October term 1854

The defendant by his attorney comes and demurs to the Indictment against him and for cause of demurrer says That said Indictment does not specify any forks in the road mentioned in the Indictment at which defendant is charged with failing to put up finger board It does not show that any public road left the road mentioned so as to form any fork with such road It shows that the road charged with leaving the road so as to make the fork in fact was the same road starting from and going to the same place It does not show that defendant was overseer of any road division The road of which defendant is charged as overseer in so uncertainly described that it cannot be ascertained wherefore defendant says that said Indictment is insufficient and he is not bound by law to answer further to the same and he prays that the same be set aside and he be discharged

Roull & Wither for Dft

" "

And on the same day to wit the second day of said term is the following

The State
vs
Victor M Tuley } failing as road overseer to put up finger board

Now at this day comes the circuit Attorney who prosecutes for the State in this behalf as also the defendant by his counsel and the demurrer filed in this cause by consent of parties being taken up and heard by the court the same is sustained It the opinion of the court in sustaining

said demurrer the circuit attorney excepts and here tenders his bill of exceptions

Which Bill of Exceptions recites as follows

State of Missouri
vs } failing to put up finger board } In the Circuit Court Clay County
Victor M Tuley } October Term AD 1854

" "

Be it remembered that at the October term of the circuit court within and for the County aforesaid held at the court house and on the 2nd day of said term It being the 24th day of October The Defendant appeared by his Attorney and files his demurrer to the indictment against him in the above cause which said demurrer is in words and figures following

State of Missouri
vs } In clay Circuit Court October Term AD 1854
Victor M Tuley } The defendant by his attorney comes and demurs to the indictment against him and for cause of demurrer says That said Indictment does not specify any forks in the road mentioned in the Indictment at which defendant is charged with failing to put up finger board It does not show that any public road left the road mentioned so as to form any fork with such road It shows that the road charged with leaving the road so as to make the fork in fact was the same road starting from and going to the same place It does not show that defendant was overseer of any road division the road of which defendant is charged as overseer is so uncertainly described that It cannot be ascertained Wherefore defendant says that said Indictment is insufficient and he is not bound by law to answer further to the same and he prays that the same may be set aside and he be discharged Reall & Whitehead for Deft

And whereas and afterwards and on the same day the said demurrer was by the consent of the parties the circuit attorney who prosecutes for the State and the said defendant taken up and submitted to the Court and by the court sustained To the opinion of the court in sustaining the demurrer to the indictment aforesaid the Circuit attorney at the excepted and here tenders his bill of Exceptions and

I pray that the same may be signed sealed and made a part of the Record which is done accordingly

George W Dunn Judge (Seal)

"

and afterwards to wit on the 28th day of October is the following

State of Missouri
vs
Victor M Daley

Now at this day comes the circuit attorney who prosecutes for the State in this behalf and the hee of exceptions to the opinion of the court in sustaining the demurrer in this cause having been signed sealed and made a part of the Record thereupon the circuit attorney prays an appeal to the Supreme court which is Granted and the clerk is ordered to make out a transcript of the record and proceedings had in this cause and transmit the same to the Supreme Court

State of Missouri
County of Clay

I Alexander Gleacher clerk of the circuit Court within and for the County aforesaid do certify that the above and foregoing pages contain a true and correct copy of the Record and proceeding had in the Cause therein set forth as the same remains of Record and on file in my office

In Witness whereof I hereunto set my name as clerk and affix the seal of said court at office in the city of Liberty this 27th day of October AD 1852

Alexander Gleacher (clerk)

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The State of Missouri appt.
vs } Transcript
Victor M Tuley

filed December 2 1854
Wm E Dunscomb
Clerk

Clay 52th

postage 10 cents

State vs Juley—

The defendant Juley was indicted by the Grand Jury at the April Term of the Circuit Court within and for the County of Clay, in the year 1854, for neglect of Duty as a road overseer—

The defendant demurred to the indictment— The Court sustained the demurrer and the State brings the case here by appeal—

The sufficiency of the indictment is the only matter for the consideration of this Court—

The Indictment is as follows—

State of Missouri
Fifth Judicial Circuit } In the Circuit Court of Clay
Clay County, Sowit } County, in the State of Missouri
of April Term A.D. 1854

The Grand Jurors for the State of Missouri for the body of the County of Clay aforesaid, upon their oath present, that Victor M Juley late of said County of Clay On &c in the year of our Lord One thousand eight hundred and fifty four at the County of Clay aforesaid was and ever since that time has been and still is the road overseer of that part of a certain public road in the County of Clay aforesaid, known as road district, Number thirty three, Court, Commencing at the forks of the road where the one goes to Farnham's landing, and the other to Meeks Ferry, thence to Richfield, and that the said Victor M Juley road overseer as aforesaid, on &c at &c, unlawfully, wilfully failed and neglected and he still does wil

fully fail and neglect to erect and keep a post at the fork of the road in the road district aforesaid where a certain public road leading to Richfield in said County of Clay, leaves the said road to suit the road district aforesaid and to affix a finger board thereto containing a legible inscription directing the way and noting the distance to the next remarkable place on the road, or to affix to a suitable tree at the proper place to suit at the forks of the road aforesaid a finger board containing a legible inscription directing the way and noting the distance to the next remarkable place on the road, against the form &c—

This indictment is for an alleged violation of 57 Sec. I. Art. of the Statute Concerning Roads and Highways Digest 1845— which is as follows— "Sec. 57— Every overseer shall erect and keep a post at "every fork of the road, or cross road, in his road "district, unless a suitable tree be found at the proper "place, to which shall be affixed a finger board "containing a legible inscription, directing the way "and noting the distance to the next remarkable place "on the road" —

The indictment is insufficient— It does not directly charge that there is a fork in the road over which the defendant is overseen. This is left entirely to implication— The indictment avers that Tuley is overseer of that part of a certain public road known as road district number Thirty three to suit Commencing at the forks of the road where one goes to Farnhams landing and the other to Mats Ferry, thence to Richfield; it then avers that Tuley wilfully failed and neglected to erect and keep

a post at the fork of the road in the road district aforesaid where a certain public road leading to Richfield, leaves the said road towt the road district aforesaid— ~~[illegible] indictment, it is impossible to ascertain which fork is meant, whether the fork at the commencement of the road district No 33, or some other fork where between that and Richfield~~

From the indictment, we are lead to suppose that the road district No. 33 over which the defendant is road overseer, begins at the fork where one road leads to Turnham's landing and the other goes to Meek's Ferry thence on to Richfield; and that the said district No 33 consists of that road which goes to Richfield by Meek's Ferry; if this be correct, then the objection taken as one cause of the defendant's demurrer is a good one; viz. "That the road charged with leaving the road so as to make the fork in fact was the same road starting from and going to the same place"—

In indictments the principal facts in which the offence consists must be positively or directly charged: must not be left to be implied by the Court—

The indictment in this case is not drawn so as to charge the offence directly: it is too uncertain; it requires implication, (which is not permitted,) before we can say, that there has been an offence— Judge Scott concurring, the judgment below is affirmed—

John F Rysland

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State
v
Daley

Opinion

Ryland

filed Febr. 1 1855

Wm E Drumond
Clerk

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Gardenhire, for the State

Rev. Stat. 968, Sec. 57

The State

vs } app. from Clay

Victor M Tuley

Brief for the State