

12585

No. _____

Supreme Court of Illinois

Lincoln, et al,

vs.

People

71641  7

766 7-176

William Lincoln et al

vs

The People

Opinion

~~Jealousy~~

~~John White~~

9 P D

L L L

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12585

Wm Lincoln

Presented

mo. for supd.

Wm Lincoln

I was to a Term of
the Circuit Court begun
and held at Springville within
and for the County of Tazewell
and State of Illinois on
the First Monday of April
in the year of our Lords one
Thousand Eight Hundred
and Fifty Eight. Before
the Hon James Hamilton
Judge of the said Judicial
Circuit of the State of
Illinois. Composed of
the County of ~~Madison~~
Madison Tazewell, Ill.

Be it Remembered that on the
8th day of April in the year a.d.
1858. An Indictment was
filed in said Court in the words
following, to wit:

State of Illinois	Of the April Term
Tazewell County	of the Tazewell Circuit
	in the year of our
	Lord 1858

The Grand
Jury chosen, selected and sworn
in and for the County of Tazewell
in the name and by the authority
of the People of the State of Illinois on
their oaths present that William
Lawson and Joseph L. Lincoln

on the twenty ninth day of September
in the year of our Lord one thousand
eight hundred and fifty
seven, at and within the County
of Fayette and State of Illinois
one iron gunn house of the property
of one John Smith and of the value
of Two hundred dollars then
and there being found, then and
there feloniously did steal, take
and carry away contrary to the
form of the Statute in such cases
made and provided, and against the
Peace and Serenity of the same
People of the State of Illinois
High Solicitor
Jas Attorney

And now afterwards to wit

That at a term of the Circuit
Court begun and held at the
Court House in the City of Effie
within and of the County of Sagwell
and State of Illinois on the
The First Monday of April
in the Year of our Lord one
Thousand Eight Hundred and
Eighty Eight before the Hon James
Hannote Judge of the 2nd Judicial
Circuit of the State of Illinois
composed of the Counties of
Woodford Sagwell &c X

Wm. H. Hannote
+ Judge of the Circuit
Court of the State of Illinois
at the City of Effie
County of Sagwell
State of Illinois
The following persons
were present at the
Court on the first Monday
of April 1888

" The Sheriff of Sagwell County returned
" into a Court a venire from the Board
" of Supervisors of said County from
" which it appears that the following
" named persons were selected ^{by said Board} and all
" were duly summoned by said Sheriff
" to serve as Grand Jurors at the present
" Term of this Court, & a Clerk Barton
" Daniel Reed Rodney & Mitchell William
" J. Caswell J. D. Venter John Summers
" James Schureman Anson Gillmore
" John Kampff James W. Killogg John
" Wilson Peter D. Randolph Wellington
" King Oct. Bullons Marice Mark
" John J. Skates Benjamin G. Fox
" were in attendance. To complete the
" panel the Sheriff summoned Charles
" Bullons O. Haas William H. Brown
" J. S. Miller W. H. Crosby and James J

"Sullers The Court appointed
Waris Mark O Freeman of the
Grand Jury - who with the other Grand
Jurors were duly sworn and empan-
nelled as a Grand Jury of Inquiry
in and for the County of Stazewen
and State of Illinois and being
charged with their duties in the
premises Relined to Consider
of Presentments

"Thursday April 8. 1838
" The Grand Jury came into Court
" and presented the following
" Indictments to wit

" People } Indictment for
" 175. " } Larceny. Endorsed
" William Lincoln } at New Die Waris
" Joseph Lincoln } Mark O Freeman
" of the Grand Jury "

"Wednesday April 14. 1838

" People }
" 175. " } Indictment for Larceny
" Wm Lincoln }
" Joseph Lincoln }
" } And now on this day came
" as well the said Plaintiff by their Attorney

"Hugh Fullerton as the said Defendants
 "in custody attended by their
 "Counsel, James Roberts and
 "A. L. Davison Esq. and
 "the Defendants by their counsel
 "waived a copy of the Indictments
 "and List of Jurors, and being
 "duy arraigned for plea to
 "the Indictments say that they
 "are not guilty. Whereupon
 "came a jury of twelve good
 "and lawful men, to wit: duly
 "elected and sworn who
 "having heard the allegations
 "and proofs of the parties and
 "arguments of counsel thereon
 "by Verdict say We the Jury
 "find that the Defendants are
 "guilty in manner and form
 "as charged in said Indictments
 "that the value of the property
 "so feloniously taken is Two
 "Hundred Dollars, and fix the
 "term of imprisonment in
 "the Penitentiary at three years
 "each - whereupon the
 "Defendants entered their motion
 "for a new trial - and the Court
 "being fully advised in the
 "premises is of opinion
 "that said Motion be overruled.
 "It is therefore ordered and
 "adjudged by the Court that the

William Campbell John A. Davis
 Samuel Edmund Wilson. James Robert
 William Fullerton. James Roberts
 William A. Davis. William A. Davis
 John Davison

"Plaintiffs Recover of the said
"Defendants the costs and charges
"by them about their suits
"Defended as and that
"Issue therefore."

Friday June 16th A.D. 1838

= People

= ⁷ ¹⁷

= William Lincoln

= Joseph Lincoln

= Larceny

"This Day the Defendants
"came into Court and showing no
"cause why sentence should
"not pass upon them. It is ordered
"and adjudged ~~by~~ by the Court
"that the Defendants be removed
"to the Penitentiary there to be confined
"three years each at hard labor
"and that the Sheriff of this County
"remove the said Defendants to
"the Penitentiary within fifteen days
"from the adjournment of the Court
"there to be delivered to the
"Proper officer in charge
"thereof -

And Now afterwards to wit:
on the 17th day of June A.D. 1838
The Defendants by their counsel
filed their Bill of Exceptions in the
words & figures following to wit:

State of Illinois, } of Circuit Court
 Tazewell County, } April Term A.D. 1858.

The People of the state
 of Illinois

vs

Joseph Lincoln

William Lincoln

Bill of Exceptions.

Be it remembered that
 upon the trial of this cause the following
 evidence was introduced, to wit:

John Smith duly sworn.

Said that a large iron grey horse worth
 \$200. was stolen out of my pasture on the
 night of the 29th of September 1857 in Tazewell
 County Illinois about four miles south of
 Groveland in said county, he was a very
 large fine heavy dark iron grey horse with
 a roman nose. It was a 16 acre lot, out of
 which he was taken, there were five or six
 other mares and colts in the same pasture
 at that time, they were all there in the
 evening and next morning they were all
 there except this large iron grey horse. The
 fence had the appearance of having been
 let down, and put up again, we tracked
 the horse to the Springfield and Peoria Road
 as though he was taken south, and then

8
we lost the track, I have never seen the horse since that time. My name is John Smith, the horse so stolen was stolen in this Tazewell County and belonged to me. A. J. Davis, being sworn said.

I am not acquainted with the defendants. I live about a mile from John Smith. I know the horse spoken of, he was a large fine iron grey horse. I went to John Smiths on the morning of the 30th of September 1857. The pasture fence had the appearance of having been taken down and put up again. the tracks of the horse led towards the Springfield road leading south. I had a horse stolen the same night a Strawberry Roan, smaller than Smiths grey horse.

B. G. Roe, sworn said:

I am slightly acquainted with the defendants. I saw them in Groveland in Tazewell County on the 29th of September 1857, that I supposed them to be the defendants. I was not then well acquainted with them. they were there the evening before the horses were stolen Hinman and I were in the street. the two men that I have spoken of came up to Hinman and made some inquiries of

him. I do not know what. I cannot say how they were dressed, they had on dark clothes one had a drab hat, the other a cap they went south on foot. I saw William Lincoln at the examination before the justice. I recognized him at once as the one of the men I had seen in Groveland the evening the horses were stolen. I recognized Joseph Lincoln immediately on seeing him at Court as one of the persons whom I had seen pass through Groveland on the night the horses were stolen. I think they both are the same men, and their actions were rather suspicious. One of them I think had a carpet bag. They were on foot and went south from there.

George Hinman, sworn said:

I think I saw these same defendants in Groveland, the night before the horse was stolen, one of them asked me if I knew of any person that wanted to hire hands, and showed me a paper with the name of Brown upon it. I told them I could show them where Brown lived, but they said it was too late to go there that night. They were dressed in black I think one had whiskers, the other had not. I had no acquaintance with the defendants, and do not know that I ever saw either of

them before I saw them in Groveland. I saw William Lincoln at the Esquire's office when he was examined. I met Joseph on the side walk since I came to Court. I recognized Both of them immediately as the men I had seen in Groveland. Although I had not seen them from the time, I saw them in Groveland the night before the horse of Smith's was stolen I believe the defendants are the very same persons that I saw in Groveland, on the day before the horse was stolen of Smith. Their appearance and conduct were suspicious, and I called the attention of Roc to it at the time. John Griffith, sworn said;

I first saw the defendants at my house in Groveland, the evening before the horse was stolen. They stopped but a few minutes, and called for some whiskey. I next saw William at Esq Greeley and then recognized him as one of the men I had seen in Groveland. I never saw the other man till this Court. One had a carpet bag. They were dressed in dark clothes. I think one had whiskers. When I saw William at Greeley at his examination, I recognized him as one of the men who was at my house in Groveland the night before the horse was stolen. I never knew either of the defendants

before I saw them at Groveland. The Dads horse was a red or strawberry roan 16 hands high five or six years old. I think I told them where Brown lived.

Daniel Hodson, sworn said.

I dont know defendants the first time I saw William was at Big Treeys. James Fuller and myself went in search of the horses, we received such information on the route as to induce us to go on. we went to Back in Mason County to Naples and Beardstown, we heard of horses that we supposed to be the same horses. I knew Smiths horse he was a dark iron grey horse 16 hands high. he was a sampean horse.

Robert Samuel, sworn, said:

I live at Back in Mason county, I dont know the defendants I saw a couple of horses answering the description mentioned by the witnesses pass through Back sometime about the last of September 1887. There ^{are} ~~were~~ a couple of men here answering the description of the persons having the horses the defendants are those persons as I believe I have recognized Joseph as one of them. Since I have been here I think I saw Joseph a year ago. I did not

know his name. I do not know that he is the same man I saw in Havana, he looks like him. one horse was a red or straw berry roan, the other an iron grey horse the iron grey horse was a large fine horse. they had saddles, and the men were on the horses riding past my house in a walk. I had never seen them before except as before stated. The defendant Williams rode the gray horse, and Joseph rode the roan one. one had a drab hat and the other had a dark cap. both had dark clothes. I only saw them as they passed. I think the defendants are the same men, but am not certain, yet I believe they are the same men who had the horses described, in Mason County, they passed me about 2 o'clock in the day. I rode in horses, and noticed them particularly, and there are no such horses in Mason County.

Henry Welch, sworn. Said.

I live in Mason County 7 miles below Bath. I saw two horses ridden by two men about the first of October 1857, one was a large iron grey horse, the other a strawberry roan, the horses bore the description given by the witnesses sworn. they did not ride directly along

the road but turned off about 40 ~~feet~~^{yards} from me and left the travelled road. I do not know the men they were dressed in dark clothes one had a drab hat the other a cap. the defendants look like the same men, can't say whether they are or not. I was not nearer to them than 40 yards. I thought the horses had been stolen at the time and felt disposed to arrest the men the grey horse I don't doubt was the same horse stolen from Smith.

Moses Dooley sworn for defendants. and said:

I live in Mason County, about five miles N.E. of Havana. I know Joseph Lincoln. I saw him first the 26th of September 1857, on the 29th and 30th of September of I hired him to help me cut up corn that I had agreed to cut for Jacob S. Brown. he staid at Brown's from the 26th of September till the 5th of October. He was at my brother's sale with me on the first of October. I know it was the 26th he came there because my brother's sale was on the first of October. I slept with him every night but one while he was there. I have lived in Mason County 13 years. I have never talked with defendants or their counsel

2 weeks ago I was told that I would be summoned. Joseph had been no whiskers then. He brought nothing with him and did not change his clothes while he was there.

Jacob S. Brown, sworn on part of defendants, and said.

I have known the defendants since they were children. Joseph Lincoln came to my house on the 26th of September last and staid there about ten days he was there every day and night. The defendants came to this country about 3 years ago and had visited witness several times between that time and this date. Witness's first wife was a relative of defendants.

William R. Phelps called for the People and said:

I was living at Moscow Mason County the last of September last, about a mile below Moscow on the last of September or first of October last. I saw a couple of men came into the road a head of me, one riding a roan horse and one riding an iron grey horse, the largest man was riding the grey, they turned in their stirrups and looked back at me. The defendants like the same men

one had on a ~~coat~~ hat the other a cap
The horses bore the description of the horses
stolen and described by witnesses.

Amos Smith sworn said:

I do not know
the defendants. I saw William Lincoln in
Jersey County in November he had whiskers
on them. I arrested him and brought him
to Luzewell County, he was very anxious
to get shaved before the examination the
and the foregoing evidence was all the ev-
idence given in the cause.

The jury found the defendants guilty.

The defendants thereupon moved the court
for a new trial of said cause for the reason
that the verdict of the jury was against
the weight of evidence and contrary to law,
which motion the court overruled to which
the defendant at the time excepted, and
now pray this bill of exceptions to be
signed and sealed which is done.

James Fairbairn

And now come the said William & Joseph
Lincoln, dependants below & plaintiffs in
Error in this Court, and say that manifest Er-
ror in the Record, proceedings & judgment of the
said Circuit Court, hath intervened, to their pre-
judice. in this. Term -

1st = Said Court Erred in overruling the Motion
of the said dependants below for a new tri-
al herein -

2nd = Said Court Erred in rendering judgment for costs
against said dependants, and in passing sentence
upon them, upon the verdict of the jury in said
Cause -

3rd = Said Verdict is manifestly against the weight
of Evidence in the case -

4th = Said Verdict is against Law -

5th = The ~~Verdict~~ judgment & sentence of the Court
herein, are against the Law & the Evidence -

Wherefore & for other good & sufficient
Reasons appearing in said Record, said plain-
tiffs in Error pray that the judgment & sentence
of the Court herein, may be set aside, Reversed
and wholly for naught & esteemed -

James Roberts ~~Attorney~~
for plaintiffs in Error =

STATE OF ILLINOIS—SUPREME COURT.

Third Grand Division—April Term, 1858.

DAVID and WILLIAM LINCOLN }
vs.
THE PEOPLE. }

This was an indictment for the larceny of large iron gray horse. The defendants pleaded not guilty.

The testimony in the case was as follows :

Page 7 John Smith testified that a large iron gray horse was stolen out of his pasture in Tazewell county, near Groveland, on the night of the 29th of September last. It was a 16-acre lot out of which the horse was taken. There were five or six other horses in the same pasture, and they were all there in the evening, and all there in the morning but the gray horse. The fence of the pasture had the appearance of having been let down and put up again. The horse was tracked to the Peoria road, going south.

Page 8 A. J. Davis sworn.—Was not acquainted with the defendants. I knew the horse spoken of; he was a large iron gray horse. I was at John Smith's on the morning of the 30th September, 1857. The pasture fence had the appearance of having been taken down and put up again. The tracks of the horse led towards the Springfield road leading south. I had a horse stolen the same night—a strawberry roan.

B. G. Roe—Was slightly acquainted with the defendants. I saw them in Groveland, Tazewell county, on the 29th of September, 1857—that I supposed to be the defendants. I was not then acquainted with them. They were there the evening before the horses were stolen. Hinman and I were in the street; the men I have spoken of came up to Hinman and made some inquiries, I do not know what. I cannot say how they were dressed; think they had on dark clothes; one had a drab hat, the other a cap. They went south, on foot. I saw William Lincoln at the examination, and recognized him as one of the men I had seen at Groveland; I also recognized Joseph Lincoln as one of the same.

George Hinman—I think I saw these defendants in Groveland the night before the horses were stolen. One of them asked me if I knew of any person that wanted to hire hands, and showed me a paper with name of Brown upon it. I told them I could show them where Brown lived, but they said it was too late to go there that night. They were dressed in black, I think; one had whiskers, the other had not. I had no acquaintance with the defendants. I do not know that I ever saw either of

them before I saw them in Groveland. I saw William Lincoln at the examination, and saw Joseph Lincoln on the side walk; I recognized them both as the same men I saw in Groveland the night before the horses were stolen.

John Griffith—I saw the defendants at my house, in Groveland, the evening before the horses were stolen. They stopped but a few minutes. I saw William at Greely's, at the examination, and recognized him as one I had seen at Groveland. I never saw the other man until I saw him at court. They were dressed in dark clothes. I think one had whiskers. I never knew either of the defendants before I saw them at Groveland. The Davis horse was a roan, 16 hands high.

Daniel Hodson sworn—Said he did not know the defendants. He went in search of the horses, and got such information as to induce us to go on to Bath, in Mason county, and to Beardstown and Naples. I knew Smith's horse.

Robert Samuels sworn—Said he resided in Bath, Mason county. Did not know the defendants. Saw a couple of horses, of the description mentioned, pass through Bath some time about the last of September, 1857. There are two persons here answering the description of the persons having the horses. I believe the defendants to be the same persons. I think I saw Joseph, a year ago, in Havana; he looks like the same man. One horse was a strawberry roan, one a lare iron gray. They rode past my house in a walk. I had never seen them before. Both had on dark clothes. I only saw them as they passed. I think they are the same men, but am not certain.

Henry Welch—I live seven miles below Bath. I saw two horses, ridden by two men, about the 1st of October, 1857. One was an iron gray horse, the other a strawberry roan. The horses bore the description given by the witnesses. They did not ride directly along the road, but turned off about forty yards from me. I do not know the men; they were dressed in black. The defendants look like the same men, but I am not certain; was not nearer than forty yards to them.

Moses Dooley, called for defendants—I live in Mason county, about five miles N. E. of Havana. I know Joseph Lincoln; I saw him first the 26th of September, 1857. On the 29th and 30th of September, I hired him to help me cut corn that I had agreed to cut for Jacob S. Brown. He staid at Jacob S. Brown's from the 26th of September till the 5th of October. He was at my brother's sale, with me, on the first day of October. I know it was the 26th he came there, because my brother's sale was on the first of October. I slept with him every night he was there. I have lived in Mason county thirteen years. I have never talked with the defendants or their counsel.

Jacob S. Brown, sworn on the part of the defendants—I have known the defendants since they were children. Joseph Lincoln came to my house on the 26th of September last, and staid there about ten days. He was there every day and night. The defendants came to this state about three years ago. Witness' wife was a relation of defendants.

W. R. Phelps, for the people—I was living at Moscow, in Mason co., in September last. About a mile below that place, about the 1st or 2nd

of October last, I saw two men come into the road ahead of me, one riding a roan horse, the other an iron gray; the largest was riding the gray. The defendants look like the same men.

Amos Smith sworn — I do not know the defendants. I saw William Lincoln in Jersey county in November; he had whiskers on then. I arrested him; he was very anxious to get shaved.

The foregoing was all the evidence.

The jury found the defendants guilty. The defendants moved for a new trial, which was overruled, to which the defendants excepted.

JAMES ROBERTS & A. L. DAVISON,

Att'ys for plaintiffs in error.

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Lincoln et al

vs

The People

JAMES ROBERTS & V. L. DAVISON

vs. The People in case

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The defendants look like the same men.

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John Griffith — I saw the defendants at my house, in Groveland, the evening before the horses were stolen. They stopped but a few minutes. I saw William at Greely's, at the examination, and recognized him as one I had seen at Groveland. I never saw the other man until I saw him at court. They were dressed in dark clothes. I think one had whiskers. I never knew either of the defendants before I saw them at Groveland. The Davis horse was a roan, 16 hands high.

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Jacob S. Brown, sworn on the part of the defendants — I have known the defendants since they were children. Joseph Lincoln came to my house on the 26th of September last, and staid there about ten days. He was there every day and night. The defendants came to this state about three years ago. Witness' wife was a relation of defendants.

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of October last, I saw two men come into the road ahead of me, one riding a roan horse, the other an iron gray; the largest was riding the gray. The defendants look like the same men.

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JAMES ROBERTS & A. L. DAVISON,

Att'ys for plaintiffs in error.

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Lincoln v.oul

123

The People

9 P. D

Filed May 3^d 1838

L. L. L. L. L.

W. L. L. L. L.

The preceding are all the

Amos Smith sworn — I do not know the

The defendants look like the same men
I took power the other an iron box; the judges was signing the box.
of October last, I saw two men coming into the room ahead of me, one riding