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No. _____

Supreme Court of Illinois

Wilson

vs.

People

IN THE SUPREME COURT.

FRANCIS M. WILSON,
Plaintiff in Error,
ads.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Errors.

POINTS OF PLAINTIFF IN ERROR.

1st. The court erred in allowing The People, in re-examination, to permit the prosecuting witness to detail new instances of intercourse with the defendant.

“On the primary examination of the witness, or, as it is generally called, his examination in chief, you are bound at your peril to ask all material questions in the first instance; and if you omit this, it cannot be done in reply. No new question can be put in reply unconnected with the subject of the cross-examination, and which does not tend to explain it:

Second Ed. Philips' Evidence, page 711.

Note 500, Cowen & Hills Notes.

1 Starkie's Evidence, 150.

4th Ed. 2nd vol. Page 878 Note 570

This rule is adhered to with the greatest strictness in criminal cases.

Rex vs. Beezley, 4 Car. & Payne, 218. 570

Rex vs. Stimpson, 2 Car. & Payne, 415.

1 Peters' Cir. Court Rep., 85, 89.

3 Washington Cir. Court Rep., 85, S. C.

2nd. The court erred in making the giving of the bond part of the judgment of the court.

The Bastardy Statute, Sec. 5, provides that the court, if the defendant be found guilty, may give judgment against him for not exceeding fifty dollars a year, and for the costs. The bond is a separate matter.

3rd. The verdict is against the evidence. The prosecutrix not only contradicted herself from beginning to end, but has sworn to two affidavits diametrically opposed to each other.

4th. The jury were unlawfully tampered with by messages from the court.

Affidavits of a juror are allowable where they show a misdirection by the court. It was so understood in *Sargent vs. —*, 5 Cowen, 122, and *ex parte Caykendall*, 6 Cowen, 53.

The affidavit of the juror Lawrence, shows that they were misled by a message from the court sent to them, which is vastly more reprehensible than a misdirection in court could be.

In *Guykowski vs. The People*, 1 Scam., 476, the affidavit of the juror was admitted to prove himself an alien. It could never be known in a majority of instances that a jury were tampered with, if they were not allowed to state the fact.

But aside from the affidavit of the juror, the affidavit of the officer Westbrook, shows clearly that the thing was done, and it is morally certain that the jury never would have convicted the defendant had they not been wrongly instructed out of court in violation of law.

If the Judge, who sits on a trial, can send word to the jury what they must do, then no man is safe.

Crabtree vs. Hagerbough, 23 Ill., 349.

Fisher vs. The People, 23 Ill., 295.

Kinght vs. Inceport 13 Mass. 218
Sargent vs. Roberts 1 Pick. 337

5th. The affidavit of the defendant for a new trial brings him within the law, and a new trial should have been granted.

Mulford vs. Shepard, 1 Scammon, 533.

Schlencker vs. Risley, 3 Scam., 486.

Crozier vs. Cooper, 14 Ill., 141.

6th. The fourth instruction for The People is bad, because it requires the defendant to prove a negative absolutely, whereas he is only required to raise a reasonable doubt of his guilt by the evidence.

7th. The fourth instruction for the defendant should have been given. If it be probable, upon the evidence, that some other person was the real father of the child, the defendant ought not to have been convicted. And that that fact *was not* probable the jury ought to have been satisfied beyond a reasonable doubt, and hence the instruction was wrongly refused.

Sth. The facts made out in this case, and the exceeding suspicious character of the testimony of the prosecutrix falling little short of downright perjury, and the fact that the time and place were pointed out where these interviews took place, which can be shown to have been false on another trial, all serve to bring us within the principle of the case of *The People vs. Lincoln*, 20 Ill., 365, and ought to induce the court to hesitate before pronouncing this youth of sixteen guilty of a charge which is the most easy to prove and the most difficult to disprove of any in the law.

CHARLES H. WOOD,
for Plaintiff in Error.

9th
Francis M. Wilson

vs

The People

Points of
Pltff. in Error

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Filed Apr. 16th 1860

L. Leland

Clerk

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