

Supreme Court of the State of Illinois
April Term 1864

Charles Auger
vs. } Error to Sugwell
The People &c. }

Points & Authorities for Defs in
Error

The first point made by the
plaintiff in error is that the
indictment charges that the
letter was directed to Asa S. Smith
and sent by def. to him while
the proof shows that it was
directed to A. C. Smith

The indictment in fact charges
that the defendant "wickedly and
maliciously intending and design-
ing" &c &c said Asa Smith mali-
ciously violently & wickedly to
kill & murder and be the said
Auger his said ~~instructions~~
intentions and designs the same
to complete, perfect and put in
practice did unlawfully and
wickedly provoke and excite

the said Asa S. Smith to fight a
duel against him the said Charles
Aulger" &c "and that the said Charles
Aulger a certain challenge in the
name of the said Charles Aulger
in the form of a letter, to the said
Asa S. Smith directed, did then
and there wickedly and diabolically
write & cause to be written" - setting
out the letter in habe verba,
It further charges that "said
challenge so as aforesaid
written & directed be the said
Charles Aulger afterwards" &c,
"maliciously & wickedly to the
said Asa S. Smith did send
& deliver" &c,

There is no variance in names
between the letter set out in the
indictment & that in evidence

It would perhaps be more
formal to explain by immenda,
who is meant by "Mr. Smith" &
"A C Smith" the names appearing
at the commencement & close
of the letter, but the charge
that the defendant intended

and designed to kill & murder
the said Smith & that to carry out
such intention & design he provoked
and excited him to fight a duel,
& that the letter was sent to Asa S.
Smith, renders it unnecessary

The offense consists in challenging
not in sending a challenge
Crim. Code Sec. 44

The challenge may be oral or
in writing and no particular
form is necessary, nor is a
mistake in the name of a person
to whom it was sent, or the effect
which it had or was likely to have
upon the party challenged, material,
provided it was the intention of
the person sending it to challenge
the other to fight a duel

It was alleged and proved
that the letter was sent & delivered
to "Asa S. Smith" & the evidence
showed beyond doubt that it was
intended by the defendant for him

The defendant's orthography does not correspond with Webster's, but he has evidently adopted the phonetic system and spells Asa thus "ac"

It appears very probable from an inspection of the transcript of the letter that the original is very blindly written & I apprehend that the variance in the words fears or frars, if there is any has been occasioned by the clerk in copying

It is claimed that the evidence does not show that the defendant proposed to fight with a deadly weapon, or that the probable consequences would have been the death of either party, or that a challenge was seriously intended

The jury properly inferred all this from the tenor of the letter & the fact that the defendant had recently been stabbed by Smith & was very much excited in momentarily provoked and excited

The People vs.
vs.

Chas. Sulger

Peoples Point

Gilead April 30. 1864
J. L. Goodwin

consequence at the time of
writing the letter

J. P. Jones
State Attorney