

14605

No. _____

Supreme Court of Illinois

Conkwright

vs.

People

STATE OF ILLINOIS
SUPREME COURT,
THIRD GRAND DIVISION.

People's Causes.

No. 8.

J. W. Middleton & Co., Stationers, 126 Lake St.

April 7, 1866

(Proprietor)

14605

*Copyright
to
People*

Supreme Court of the State of Illinois
April Term 1864

Conkright

vs.

The People & }
 }

Points & Authorities for Defts. in Error

II

The jury were told in the people's first instruction, that possession of property recently stolen is, of itself, prima facie evidence of guilt. Only unexplained possession could have been understood from this, and thus interpreted, the law was correctly stated in this and the ~~2nd~~ instructions also.

III

There was no such irregularity in the conduct of the jury as to vitiate their verdict.

State v. Silghman 11 Fedell R 513

Smith v. Thompson 1 Cow. R. 221

Beebe v. the people 5 Hill R 32

State v. Babcock 1 Cow. R 40

The abstract does not show (I have not had an opportunity to examine the record on this point) that the alleged irregularities occurred while the case was before the jury, or that the separation was without the consent of the prisoner, but is silent as to this.

The law presumes, until the contrary appears, that the court below performed its duty. It then by no means follows, because the record is silent as to the disposition of the jury, that they were allowed to separate without the consent of the prisoner.

McKinney v. the people 2 Gil. 553

III

The Courts definition of a reasonable doubt and instruction as to the amount of evidence required to convict, are concise, but correct. The prosecution were not bound to exclude every caption or possible doubt, ~~if~~ if the jury were "satisfied" of the prisoners guilt, that was sufficient, for to satisfy is to free from doubt, to set

the mind at rest, to convince
Horcesters Dic

IV

There was evidence that the property was brought to the prisoners store by one Myers and it was therefore proper for the court to instruct the jury to enquire from the evidence whether Myers, in good faith, brought the property to the prisoners store without his knowledge or ~~consent~~ encouragement, in order that they might determine whether the prisoner was an accessory

D. P. Jones
States Atty.

P. 28 - 100

Con. Wright

no.

The People &c

Def.

Proles Pints

Y. S. June 1, 1864

L. L. D. R.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

WILLIAM G. CONKWRIGHT, }
 Plff in Error, }
 vs. } *Error from the Recorder's Court of*
PEOPLE OF THE STATE OF } *the City of Chicago.*
ILLINOIS, *Def'ts in Error.* }

ABSTRACT OF THE RECORD.

THE PEOPLE OF THE STATE OF }
ILLINOIS, }
 vs. } *Indictment for Larceny.*
WILLIAM G. CONKWRIGHT. }

3 "STATE OF ILLINOIS, }
CITY OF CHICAGO, } ss.
COOK COUNTY. }

"Of the December term of the Recorder's Court of the city of Chicago, in said State and county, in the year of our Lord one thousand eight hundred and sixty-three.

4 "The grand jurors, chosen, selected and sworn, in and for the city of Chicago, in the county of Cook and State of Illinois, in the name and by the authority of the people of the State of Illinois, upon their oaths present, that William G. Conkwright, late of said city, on the seventh day of December, in the year of our Lord one thousand eight hundred and sixty-three, in said city of Chicago, in the county and State aforesaid, six boxes of the value of two dollars and fifty cents each, the personal goods and property of the Chicago and North Western Railroad Company, then and there being found, did then and there feloniously steal, take and carry away, contrary to the statute and against the peace and dignity of the same people of the State of Illinois.

"JOSEPH KNOX, *States Attorney.*

"P. G. No. 4106.
RECORDER'S COURT OF THE CITY OF CHICAGO,
December Term, A. D. 1863. }

"THE PEOPLE OF THE STATE OF
ILLINOIS,
vs.
WILLIAM G. CONKWRIGHT, } *Indictment for Larceny.*

"A True bill.

"JAMES LONG, *Foreman of the Grand Jury.*

"*Witnesses* :—Wm Leonard, Philip Epling, Morris Myres, Officer Rogers, Frank Davenport, Thomas Hull, Geo. Afflick.

"Filed the seventeenth day of December, A. D. 1863.

"DANIEL O. HARA, *Clerk.*"

Evidence for Prosecution.

William Eppeling being called as a witness on the part of the people, testified as follows :

13 I am overseer of the brass-box filling department of the Chicago and North Western Railroad Machine Shop in the city of Chicago. I have been in the employ of the N. W. R. R. Co. in that capacity for seven or eight years. (The witness here exhibited patterns in court in which the brass boxes filling around the car axles are cast ; a part of the brass boxes alleged to have been stolen also exhibited in court, and agreed in all respects with the pattern, even to the private marks of the patterns.) The Chicago and N. W. R. R. Co. lost in this city a great many brass boxes during the summer and fall of the year of 1863. The brass boxes are worth thirty-five cents per pound. The machine shops of the Chicago and N. W. R. R. Co. are located in Chicago, Cook county, Illinois.

William Leonard was next called on the part of the people, and, being duly sworn, testified as follows :

I cannot tell much about these boxes. They look like the boxes of the Chicago and North Western Railroad Co., but I am not sure they belong to that company. They are precisely similar to that company's boxes, even to the private marks thereon. No two companies, to my knowledge, have the same private marks on their patterns or boxes. They are worth thirty cents per pound.

George Afflick was next sworn on the part of the people, and testified as follows :

14 I am in the employ of C. P. Bradley, the superintendant of police of this city. A man from the Alton and St. Louis R. R. Co. swore out a search-warrant to search defendant's premises in this city, and I, with Officer James Rogers, went to defendant's premises on Saturday, December 12th, to search for stolen R. R. goods. We asked defendant if he had any brass R. R. boxes. He said he had no brass boxes that he knew of, except a small quantity, which he showed us, perhaps eight or ten pounds. We told him we had a search-warrant, and he expressed a willingness and gave us permission to search his premises. Defendant's store is about 20 by 30 feet square, or perhaps larger, and, with the exception of the office, filled up with bales of rags, weighing about 500 pounds each, and piled up two and in some places three bales high. We used a tackle for lifting up the bales, and found the brass here in court laying under and around the bales; some of the brass was down on the floor under the bales. While we were finding the brass boxes and pieces, defendant and a boy named King came in, and defendant said to the boy: "This is the stuff Myers left here, ain't it?" and the boy answered "Yes." Defendant asked the boy King if he bought it, and the boy said "No."

On cross-examination he testified :

15 I never told defendant's friends that if I got a chance to swear in this cause I would swear him in the penitentiary. (It also appeared in evidence that the property in question was taken from the North Western Railroad Company in the city of Chicago; that there was one hundred pounds of it; that soon after it was stolen it was found in defendant's possession, under bales of rags two tiers high, in the city of Chicago, each bale weighing about five hundred pounds.)

James Rogers was next sworn on the part of the people, and testified as follows :

I am a detective policeman of the city of Chicago; have been policeman about nine months, and went to defendant's premises, No. 40 Market street, about the 12th December, 1863. I went to search for boxes belonging to the Alton and St. Louis Railroad Co. I asked defendant if he had any R. R. boxes. He said he had none to his knowledge. He told me I could search his premises. I and George Affleck commenced search, and completed it on Sunday following. Defendant's premises are about thirty by forty feet square, and filled two or three bales thick with rag bales, which will weigh about five hundred pounds each. We found the brass boxes scattered about among the rags, and some of them we found on the floor directly under the 500 lbs. bale. While we were searching, defendant and a boy named King came in, and defendant asked the boy King if Myers did not leave those brass

boxes there, and the boy said he did. Defendant said to the boy: "Did not you buy the boxes of Myers?" and he said "No."

The people here rested their case.

Evidence for Defendant.

- 16 *Charles King* was called and sworn on the part of the defendant, and testified as follows:

I have worked for the defendant nearly a year, and was at his store on Thursday, December 10, 1863. At about five or six o'clock in the afternoon Morris Myers came to the store with some brass boxes, (witness here identified the boxes as being the same shown and now in court,) and asked me if I wanted to buy some brass. I asked what kind it was. Myers then showed it to me, and I told him defendant had ordered me not to buy such articles, as he would have trouble if he did, and I refused to buy them of him. Myers then said he wanted me to leave them in the store, as he wished to get oats in the bags. He had the brass in bags. Myers then went up on the rag bale and emptied the bags, and went away. Myers never came back after it. I never told defendant about it; I forgot to tell him before the officers came, and when they came I was afraid to tell him. Defendant was gone to the post office when Myers came to the store, and did not come back before I shut the store up for the night. I shut the store up at seven o'clock p. m. Defendant did not ask me if those were the things that Myers brought to the store when the police officers came for the purpose of searching, but he asked me how they came there, and I told him Morris Myers left them there on Thursday night. Defendant did not ask me if I bought them of Myers. There were two men in the store when Myers left the brass boxes; their names were Alonzo Frisby and Robinson.

- 17 *Alonzo Frisbie* was sworn on the part of the defendant, and testified as follows:

I know the defendant; was at his store on Thursday, December 10th, last, when Morris Myers brought some brass boxes there; I heard Myers ask the boy King if he wanted to buy some brass. King told Myers to wait and defendant would be back in a few minutes—this was all the boy King told Myers. (Witness examined the brass boxes and said they were the same boxes Myers brought to defendant's store.) I staid at defendant's store until the boy King closed it up for the night; it was about seven o'clock p. m. when the store was closed. (I have seen defendant refuse to buy such goods.) Ruled out.

And the said Alonzo Frisbie being recalled, testified as follows :

I heard the boy King say when Morris Myers was at defendant's store and wanted to sell the brass boxes, that Mr. Conkwright would not let him buy such articles and would not buy them himself. Don't know why I swore first that King only told Myers defendant would be back in a few minutes.

Oliver Hugg was next sworn a witness on the part of defendant, and testified as follows :

I know the general character of the defendant, and have known him for five or six years—his character is good.

John W. Slandry was next sworn on the part of defendant, and testified as follows :

I have known defendant several years and know his general character—it is good.

18 *Christopher Pinegor*, being sworn on the part of defendant, testified as follows :

I have known defendant several years ; know his general character ; it is good.

Robert Manson being sworn on the part of defendant, said :

I have known defendant seven or eight years, never known of his being in trouble but once before. I heard that he was indicted at the June term of this court for receiving stolen goods, but I also learned that a *nolle prosequi* was entered, and I did not think that was any stain on his character. I know his general character to be good.

This was all the evidence in the case.

The people asked the following instructions, which were given :

18

19 3d. If a person incites or encourages another to commit a larceny, it makes him equally guilty of the crime himself, and the jury may take into consideration the conduct of defendant and the situation of the property when found, in reference to the question as to whether they do or do not believe from the evidence that the defendant encouraged the

stealing of the property in question, and they will take into consideration all the evidence in the case.

The court also gave on the part of the people the following instructions :

A If the jury believe from the evidence that defendant stole the property in question, or that any one else stole it, and that defendant aided assisted, or abetted in the theft, or that, not being present, he aided, abetted, assisted or encouraged the stealing of the property, then the jury should convict the defendant.

B The unexplained possession of personal property shortly after the property was stolen, is *prima facie* evidence of his guilt.

C If the jury shall believe from the evidence in the case, that Myers brought the property there, then the jury will enquire from the evidence whether it was brought there in good faith, without any guilty knowledge or encouragement of the defendant; and to arrive at a conclusion upon this point, the jury will take into consideration the evidence in relation to the manner in which the property alleged to have been brought there, whether it was concealed, whether Myers ever called for the property, and all the facts in relation to it.

D A reasonable doubt means such a doubt as a reasonable man entertains from all the facts and circumstances in the case, but if from all the facts and circumstances in evidence in the case, the jury are satisfied of the guilt of the defendant, that is sufficient.

9 The jury thereupon returned the following verdict : "We the jury find the defendant guilty in manner and form as charged in the indictment, find the value of the property stolen to be fifteen dollars, and fix his term of imprisonment at one year in the penitentiary."

21 And thereupon the defendant made and entered his motion for a new trial upon the following grounds:

1st. That the court erred in giving the instructions given to the jury by the court.

2d. That the verdict should be set aside on account of the misconduct of the jury.

3d. That the verdict was against law.

4th. That the verdict was against the evidence.

32 And in support of which motion the following affidavits were read :

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

George Beuthenmuller, being first duly sworn, deposes and says, that he was one of the members of the petit jury before whom William G. Conkwright was tried on an indictment for larceny, in the recorder's court of the city of Chicago, county and state aforesaid, and that said trial was had on the 9th day of February, A. D. 1864. He, this deponent, between the hours of seven and eight o'clock P. M., went out of said court room alone without any officer, and took a beer jug to Klinger's saloon under the Sherman House ; and this, deponent further says, that he resides at 180 Washington street, Chicago, Cook county, Illinois.

G. BEUTHENMULLER.

Subscribed and sworn to before }
me this 22d day of February, } [Rev. Stat. 54.]
A. D. 1864.
{ L. S. } JOSHUA C. KNICKERBOCKER,
Notary Public.

22 STATE OF ILLINOIS, }
COOK COUNTY, } ss.
CITY OF CHICAGO. }

Loring F. Waite, being first duly sworn, deposes and says, that he resides at North Morgan St. Chicago, Cook county, Illinois, and that he is acquainted with William G. Ogle, one of the petit jurors who tried, or before whom William G. Conkwright was tried on an indictment for larceny, on the 9th day of February, A. D. 1864, in the recorder's court of the city of Chicago, aforesaid, at the February term of said court, and further says, that on the morning of the tenth of February, A. D. 1864, he saw William G. Ogle, aforesaid, and several other persons representing themselves as jurymen in the same cause with said Ogle, but whose names this deponent does not know, at about the hour of seven o'clock A. M. of said tenth day of February A. D. 1864, in a saloon at No. 147 Randolph St. Chicago, Illinois: and further deponent says not.

L. F. WAITE.

Subscribed and sworn to before }
me this 11th day of February, } [Rev Stat. 54.]
A. D. 1864.
{ L. S. } JOSHUA KNICKERBOCKER,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

Ellerg Stewart, being first duly sworn, deposes and says: that he resides at No. 41 North Wells St., Chicago, Cook county, Illinois, and that

he is acquainted with William G. Ogle, who was one of the jurymen who tried the case of the People *vs.* William G. Conkwright, on an indictment for larceny, in the recorder's court in the city of Chicago, on the 9th day of February, A. D. 1864; and further says, that said William G. Ogle, and five or six other men, calling themselves members of the same jury in the same cause, were seen by this deponent on the night of said 9th day of February, A. D. 1864, between the hours of eleven and twelve o'clock P. M., of said day, in a saloon known as No. 149 Randolph St.; and this deponent further says, that the whole company of said men staid at said saloon about one-half hour, and that he conversed with said men, or most of them, freely during their stay in said saloon; and further this deponent saith not.

ELLERG STEWART.

Subscribed and sworn before me }
this 11th day of February, }
A. D. 1864.

[Rev. Stat. 54.]

{ L. S. } JOSHUA C. KNICKERBOCKER,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO, }

William Tucker, being first duly sworn, says that he resides at the north-west corner of Morgan and Prairie sts., in the city of Chicago, county and State aforesaid, and that he is acquainted with William G. Ogle, who was a member of the petit jury before whom William G. Conkwright was tried for larceny on the 9th day of February, A. D. 1864, in the recorder's court of said city of Chicago, at the February term, A. D. 1864, and that he saw said William G. Ogle, with other persons representing themselves as members of the same jury empanelled in the same cause, at a saloon known as number 147 Randolph st., Chicago, Illinois, on the 9th day of February, A. D. 1864, at about the hour of ten o'clock P. M. of said day, and that he conversed freely with said Ogle and the other men who accompanied him and represented themselves as jurors aforesaid; and further says not.

WM. TUCKER.

Subscribed and sworn to before }
me this 11th day of February, }
A. D. 1864.

[Rev. Stat. 54.]

{ L. S. } JOSHUA C. KNICKERBOCKER,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO, }

John P. Jones, being first duly sworn, deposes and says, that he resides at No. 27 North Canal st., in the city of Chicago, county and State aforesaid, and that he is acquainted with William G. Ogle, one of the

26 members of the petit jury who tried William G. Conkwright on the charge of larceny on the 9th day of February, A. D. 1864, in the recorder's court of the city of Chicago, at the February term of said court, and further says that he saw said William G. Ogle on the said 9th day of February, A. D. 1864, at a saloon on the north side of Randolph st., between Wells and Franklin sts., in said city of Chicago, at about the hour of eight o'clock P. M., and conversed with said William G. Ogle in said saloon at the place and time aforesaid; and further says not.

JOHN PRY JONES.

Subscribed and sworn to before }
me this 11th day of February, } [5c. Rev. St.]
A. D. 1864.

{ L. S. } JOSHUA C. KNICKERBOCKER,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO, }

27 *George Lawson*, being first duly sworn, deposes and says, that he is a resident of the county of Cook, and State of Illinois, and that he keeps a saloon at No. 215½ Randolph st., Chicago, Cook county and State of Illinois, and that he is well acquainted with William G. Ogle and Joseph Wilson, two of the men who acted as and were members of the petit jury who tried William G. Conkwright on the charge of larceny in the recorder's court of the city of Chicago, on the 9th day of February, A. D. 1864, being the February term of said court; and further says that the said William G. Ogle and Joseph Wilson were at his saloon on said 9th day of February, A. D. 1864, between the hours of eight and nine o'clock P. M. of said day, and that while in said saloon at No. 215½ Randolph st., Chicago, Illinois, the said Joseph Wilson and William G. Ogle aforesaid drank cider, ale and whisky; and further this deponent says not.

GEORGE LAWSON.

Subscribed and sworn to before }
me this 11th day of February, } [5c. Rev. St.]
A. D. 1864.

{ L. S. } JOSHUA C. KNICKERBOCKER,
Notary Public.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

Mary Rice, being first duly sworn, deposes and says that she is aged twenty-five years, and that she resides at No. 49 Franklin st., in the city of Chicago, county and State aforesaid, and that she is well acquainted with William Ogle, one of the members of the petit jury before whom William G. Congwright was tried on an indictment for larceny, in the recorder's court of said city of Chicago, on the 9th day of February, A. D. 1864, being the February term of said court; and further says that

she saw said William G. Ogle at her place of residence as aforesaid on the said 9th day of February, A. D. 1864, between the hours of nine and ten o'clock P. M. of said day; and this deponent further says, that said William G. Ogle, when at her residence on said 9th day of February as aforesaid, was alone and unaccompanied by any sheriff, bailiff, officer or other person whomsoever; and further this deponent says not.

MARY RICE.

Subscribed and sworn to before }
me this 20th day of February, }
A. D. 1864.

[5c. Rev. St.]

{ L. S. | JOSHUA C. KNICKERBOCKER,
Notary Public.

28 STATE OF ILLINOIS, } ss.
COUNTY OF COOK.

Joshua C. Knickerbocker, being first duly sworn, deposes and says, that he is of lawful age, and that he is a resident of the city of Chicago, county and State aforesaid, and that he is acquainted with George Beuttenmuller, one of the members of the petit jury before whom William G. Conkwright was tried on an indictment for larceny, in the recorder's court of the city of Chicago, on the 9th day of February, A. D. 1864, being the February term of said court for the year A. D. 1864; and this deponent further says that he saw said George Beuttenmuller come out of the room in which said recorder's court is held on the said 9th day of February, A. D. 1864, at about or near the hour of half past seven o'clock P. M. of said 9th day of February; that said George Beuttenmuller had with him a large jug; and this deponent says that said George Beuttenmuller, at said time, was not accompanied by any officer or officers, or sheriff, or any person whomsoever. And this deponent further says, that at about 20 minutes to eight o'clock P. M. on said ninth day of February, A. D. 1864, he saw Joseph Wilson and William Ogle, two of the members of the petit jury before whom said William G. Conkwright was tried at the time aforesaid, on the aforesaid indictment, and in said recorder's court of the city of Chicago, come out of said recorder's court room and pass out into Randolph st., and go westward on said st.; and this deponent says said Wilson and Ogle were accompanied by no one, except a man whom this deponent has heard called by the name of Finch, and who acts, or has acted, as this deponent believes, as a bailiff in the circuit or superior court; and further this deponent says not.

JOSHUA C. KNICKERBOCKER.

Subscribed and sworn to before }
me, this 22d day of February, }
A. D. 1864.

[5c. Rev. St.]

{ L. S. } HENRY C. MOREY,
Notary Public.

30 Which motion for a new trial the court overruled—to which decision
 of the court the defendant then and there excepted. Whereupon the
 court then and there sentenced the prisoner to confinement in the peni-
 31 tentiary, at Joliet, at hard labor, for the term of one year; to which
 judgment of the court and sentence as aforesaid the defendant by his
 counsel then and there excepted.

And, for as much as the matters and things aforesaid do not otherwise
 appear, the defendant prays that this bill of exceptions may be signed
 and sealed, and made a part of the record in this cause, which is done
 this first day of March, A. D. 1864.

E. VAN BUREN, [SEAL.]
Recorder of the City of Chicago.

THE ERRORS ASSIGNED.

I. The court erred in giving the several instructions for the people,
 numbered 1, 2, 3. Page 18, 19, and A. B. C. E., page 19.

II. That the court erred in refusing to set aside the verdict of the
 jury.

III. That the court erred in giving the several instructions to the
 jury on the part of the people.

IV. The court erred in refusing to set aside verdict for misconduct of
 jurors.

V. That the court erred in overruling the motion for a new trial.

VI. The court erred in rendering judgment for the people.

E. G. ASAY &
 A. VAN BUREN,
Attorneys for Plaintiff in Error.

P D 8 206

Conkright
vs

The People

Abstract

Filed Apr 22 1864

L. Leland clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864,

AT OTTAWA.

WILLIAM G. CONKWRIGHT,
Plff. in Error,

vs.

PEOPLE OF THE STATE OF
ILLINOIS,
Def'ts in Error.

*Error from the Recorder's Court of
the City of Chicago.*

Abstract of Record

3. 4

Indictment for Larceny

Evidence for prosecution

*Set out testimony of
prosecution with
pages on margin*

Evidence for the Plaintiff

*Set out testimony
for defense with*

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864,

AT OTTAWA.

WILLIAM G. CONKWRIGHT,
Plff. in Error,

vs.

PEOPLE OF THE STATE OF
ILLINOIS,
Def'ts in Error.

Error from the Recorder's Court of
the City of Chicago.

Abstract of Record

3. 4

Indictment for Larceny

Evidence for prosecution

*Set out testimony of
prosecution with
pages in margin*

Evidence for the Plaintiff in error

*Set out testimony
for defense with pages
in margin*

Instructions for the jury

*Set out instructions for
people marked 1. 2. 3.
page 18-19 and A. B.
also page 19 of Record*

7. 10. 20

Verdict of jury

21

Question for new trial & affirm.

21-28 *with in support of the same*

*Set out testimony and
affirmation
in full*

29-30 Motion for new Trial & a
verdict - judgment & sentence
on verdict with exceptions
by Plaintiff in error

12-30 - Bill of exceptions filed

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

I. Instructions marked 1 and 2, on page 18 of the record are bad in law.

II. The misconduct of the jury was such that verdict should have been set aside. Affidavits filed and exhibited on record, page 21-28.

Shepherd vs. Baylor, 2 South., 827.
Commonwealth vs. McCaul, Virg. Cases, 271.
Hunter vs. State, 1 Smith, 453.
Jumpertz vs. People, 21 Illinois, 375
People vs. Douglas, 4 Cowen, 26.
Prescot vs. State, 7 N. H., 287.
Stone " " 4 Humph., 27.
Fox " " Geo. Decis., 35-46.
Hines " " 8 Humph., 597.
Bales " " 13 Smedes & Marsh, 398.
Wilcy " " 1 Swan, 256.
Wormley " " 8 Orath, 712.
Cornielas " " 7 Eng., 782.
Shippey " " Brayt., Vt., 169.

III. The Court erred in giving instructions on part of the people, marked "E," as the same contains an improper construction of the words, "reasonable doubt," and tells the jury, in substance, that if they are reasonable men, and are satisfied of defendant's (now plaintiff in error) guilt, they need not be satisfied beyond a reasonable doubt.

IV. Instruction "C," given by the Court on behalf of the people was improper, as it was wholly immaterial with what motive or intent, Meyers brought the property to defendant's place, as the charge is for originally taking the property, and not subsequently removing or concealing it.

E. G. ASAY, *E. G. Asay*
 A. VAN BUREN,
 Attorneys for Plff. in Error.

8 P.D. 206

In the Supreme Court
State of Illinois
April Term A.D. 1864
At Ottawa

William G. Conkright
Plaintiff in Error

— vs —

~~The People~~ State of Illinois
Defendant in Error

Filed

27. 1864.
A. C. Cland
Clk.

E. G.

A. C.

P. D.

State of Illinois }
County of Cook }

Supreme Court of Illinois
Third Grand Division at Ottawa
April Term A.D. 1864

William G. Conkright
Plff in Error

— vs —

People of the State of Illinois
Defts in Error

Error from the Recorders
Court of the City of Chicago

Argument of Plff. in Error

By

E. G. Asay

H. Van Buren and

A. D. Parker

Attorneys for Plaintiff in Error

First

It may not be improper before discussing the points made upon the brief in this cause, to consider for a moment the facts making up the cause. The first prominent fact is, that the only evidence offered upon the trial, to convict the Plff. in Error, was the bare fact, that the property was found in his store, and that too, under such circumstances which of themselves should be deemed abundantly sufficient to do away with any legal, technical presumption of guilt, which under certain, but different and unexplained circumstances, the law arbitrarily, and as sometimes seem cruelly, establishes.

This plaintiff was doing a large business, and employed clerks in his store, was himself out much of the time, and when enquired of, if he had such goods, he replied "Not that he knew of" and expressed perfect willingness, that the store should be searched.

The goods were found in such place as to be in view of the manner of the business and management of the store, they might have been for days, without any actual knowledge on part of this Plaintiff; and the law must in reason require actual knowledge in such cases, to give any force to the fact of possession.

Though the law makes unexplained possession evidence of guilt, yet no good lawyer will claim, that actual possession, like property being found upon the premises of another, accessible to other parties, could wisely and reasonably give presumption of guilt, unless the jury believed, not only, that the property was in fact in plaintiff's possession, but also, that he knew of the possession. The Court will perceive at once, that in just such cases as this, parties may technically have the legal possession in fact, and yet have no knowledge at all of such possession, and it is only the knowledge in such cases that gives rise to this arbitrary rule of evidence.

A more strict rule of construction would be unsafe in the extreme, as it would almost daily subject persons who keep hotels, stores, and shops, resorted to by all classes of people, to danger of conviction for having articles in their places, which they knew nothing of.

Now the possession of the plaintiff in this cause, being of this loose and uncertain character, which of itself must be quite unsatisfactory, was it once fully explained upon the coming in of the Clerk, who proved that plaintiff had in fact no knowledge of the possession of the property in question.

Now we submit that the facts in this cause as explained by the circumstances, together with the positive and uncontradicted statement of the witness Lewis, entirely fail to show such a possession of the property, as the law requires to establish any reasonable presumption of guilt.

In view of these suggestions, let us consider the soundness of the charge, given by the court below, to the jury in this case, marked 1. and 2. page 18 of the Record.

The instruction is in these words
1st "The court instruct the jury, that the possession of stolen property, soon after it is stolen, is of itself prima facie evidence, that it was stolen by the Defendant."

2^d "The burden of proving the possession to be honest is then thrown on the defendant, and it is for him to prove that he came honestly by it."

The first part of this charge, is clearly incorrect in this, it should say the "unexplained" possession &c. This term is used by all the writers upon this subject, and is clearly correct as applied to this cause, as here the prisoner certainly had the possession, but it was surrounded by circumstances, situation and business of the prisoner, as clearly so explain the possession in connection with

testimony of Lewis, that such possession could
rise no presumption of guilt.

The latter part of this charge, while it is in
nearly the language, often used in common
parlance and sometimes to juries, yet
upon consideration and sound principle
is pernicious indeed. And the unsound-
ness of such a rule can be nowise so
clearly apparent, as in the very cases at
the bar, here the only evidence against the
prisoner is this possession, which the law
says rises a presumption of guilt, now
clearly all the prisoner has to do, is to
remove that presumption, then there is no
case, against him; or he may so weaken
that presumption, either by the circumstances
attending the possession, or the positive proof
of witnesses (as in this case of the clerk Lewis) or
by good character as to raise a reasonable
doubt of guilt, in either of these cases the
evidence of the government is given, and
they are without a case, If a juror is reason-
able in this stage of a case, to tell the accused,
you must go on, and prove, how, when and
where you came by these goods, and that
all your conduct was honest, in regard
to the whole matter.

Clearly all the prisoner has to do, is to disprove
of the proof made against him, and if in any

of the ways referred to be can rise in the minds of the jury, a reasonable doubt, he is entitled to that doubt, and that must acquit him and he cannot be called upon to make proof of any facts beyond this.

No well considered cause can be found when this charge has been sustained in its full scope. While in every cause, when the point has been discussed in principle the Courts have fully sustained our view of this doctrine. The following cases are fully to the point.

1 Appleton 19 Main 398, and other causes cited under the point in the Brief, which we ask the special attention of the Court.

The injustice of holding the law, to be in accordance with the instruction in this cause is apparent, when we consider the peculiar and dangerous character of this evidence.

Lord Hale says, in the application of the evidence respecting the possession of stolen property, quite certain, is meaning &c. Roscoe on Criminal Evidence 19 11 Martin 450 & notes.

Second

The Court clearly committed error in not setting aside the verdict of the jury on grounds of the misconduct of the jury.

In this country at least, it is claimed

that every citizen is entitled to, and can always obtain what our constitution so clearly grants, to wit: "A fair and impartial trial by a jury of his peers."

Now to sustain the ruling of the court in this proceeding, we must understand this sacred provision of the law to mean; that a citizen can be arrested and tried for an offence punishable by confinement in the penitentiary, by a jury who are one minute hearing the testimony bearing upon that citizen's guilt or innocence, and the next moment scattered in drinking saloons, in all parts of the city, and freely drinking to an unlimited extent, and miffing their minds to do justice, and yet the next moment come into court and declare us guilty.

We believe such is not the true policy of the law, it would not be securing a fair and impartial trial to allow jurors thus to trifle with our liberties, and then say if you take any exception to our conduct, you must show that drunkenness and debauchery have produced the verdict. We should not be driven to this, and it cannot be securing to us that safeguard against injustice which justice demands, and no court will consider an authority thus held, while the cases cited in

the Brief clearly held that the conduct, as disclosed by the affidavits in this cause, is of such a dangerous character, that no verdict thus rendered should be sustained, at least when it deprives a citizen of his liberty.

The reasoning of the Judge upon this point in the case in 51st Ill. Rep. 375 applies with equal force in this cause.

What could have operated upon the minds of the jury in this cause to induce the verdict which they gave, but the improper ruling of the Court, and outside prejudice and passion, which might have been brought to bear upon them, in these different saloons, and upon the streets?

Could this be a fair and impartial trial, when the only evidence against the accused is the naked, simple, and technical proposition of the property, fully explained by the clerk, who stands unimpeached and uncontradicted; and that too, when the accused is shown by the best citizens of Chicago that for a large number of years he has been an unblemished character as a business and upright man?

When such a verdict is obtained, truly the Court should not hesitate long in deciding that something was partial and wicked.

Third

In this cause, is it not most apparent, that the verdict was contrary to the evidence in the cause? and for that reason should have been set aside.

As we have before remarked, the only evidence, was the "presumption" arising from possession of the stolen property.

All the authorities recognize three ways, as legitimate, by which this technical presumption may be removed, or so weakened as to raise a reasonable doubt, and thus acquit the prisoner: to wit:

First - The circumstances attending the possession, being of such a character, as to destroy its force, such as the place being accessible to other persons.

Specifying of this Evidence Mr. Starkie (11 Starkie 455, Note) "This evidence must depend upon the accompanying circumstances of the cause and it is to be carefully observed, that that mere finding of stolen goods in the house of the prisoner, where there are other inmates capable of stealing the property is insufficient evidence to prove a possession by the prisoner." This is approved by Roscoe, Page 19 of Roscoe's Evidence.

If this be good law, this alone should end the cause.

Second. - This presumption may be removed by

proof as to the manner in which prisoners came into possession. Was not this fully done by the uncontradicted testimony of witness Lewis?

Third - This presumption may be so weakened as to raise a reasonable doubt in the minds of the jury. By proof of good character of the accused this was done most triumphantly, and the state did not seem even willing to attempt to make proof against it.

With such a defence, by all the recognized modes, prescribed in such cases, can it be said that the verdict shall stand?

And these considerations may, we think properly be considered under the head of the improper conduct of the jury.

Fourth

We now come to the instruction marked "20" as referred to in Point "III" in the Brief, and here it would seem that the Honorable Judge outdone himself in wiping out one of the grand bulwarks and safeguards to liberty in criminal proceedings. The policy of the criminal law has always been until now, that the accused was to be presumed innocent till found guilty.

And that he should be entitled to every reasonable doubt in the case, and if the circumstances and the evidence in

the cause created a reasonable doubt, the prisoner at the bar was entitled to the same and he be acquitted.

The instruction in this cause virtually wipe out this whole principle of evidence. The jury are told that "a reasonable doubt is such a doubt as reasonable men entertain from all the facts and circumstances in the cause;" and then concludes by telling the jury that if from all the facts and circumstances in the evidence in the cause, the jury are satisfied of the guilt of the Defendant, that is sufficient?

Thus entirely doing away with the necessity of being satisfied beyond a reasonable doubt.

The law supposes all juries are reasonable men, and the matter of reasonable doubt should be confined to the evidence in the cause and not applied to the jury.

Thus the court virtually tell the jury, that if they are reasonable men they are only required to find the balance of evidence against the prisoner they should convict him.

This view is endorsed by Burrell on Circumstantial Evidence 200 + 202

Webster Case, Mass.

Fifth

Instruction "C" is clearly improper as it allows the jury to take in consideration

the motive and good faith of Myers in bringing the property stolen to prisoners store.

This is not only improper but it is equally improper to allow them to consider the motive simply of prisoners in allowing Myers to bring the property to his store.

As the act of taking the property there or receiving it by prisoner simply, is not proper, as it goes to prove another offence and not the one on trial, here the only enquiry is, did the prisoner steal the property or in other words was he guilty of the original taking? this being the gist of Larceny.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

I. Instructions marked 1 and 2, on page 18 of the record are bad in law.

State vs. Merrick, 1 Appleton, Me., 398.

" " *Bennett*, 3 Brev., 513.

2 Iredell, 402.

1 Greene, Iowa, 106.

Ib. 348-9.

II. The misconduct of the jury was such that verdict should have been set aside. Affidavits filed and exhibited on record, page 21-28.

Shepherd vs. Baylor, 2 South., 827.

Commonwealth vs. McCaul, Virg. Cases, 271.

Hunter vs. State, 1 Smith, 453.

Jumpertz vs. People, 21 Illinois, 375

People vs. Douglas, 4 Cowen, 26.

Prescot vs. State, 7 N. H., 287.

Stone " " 4 Humph., 27.

Fox " " Geo. Decis., 35-46.

Hines " " 8 Humph., 597.

Bales " " 13 Smedes & Marsh, 398.

Wilcy " " 1 Swan, 256.

Wormley, " " 8 Orath, 712.

Cornielas " " 7 Eng., 782.

Shippey " " Brayt., Vt., 169.

III. The Court erred in giving instructions on part of the people, marked "E," as the same contains an improper construction of the words, "reasonable doubt," and tells the jury, in substance, that if they are reasonable men, and are satisfied of defendant's (now plaintiff in error) guilt, they need not be satisfied beyond a reasonable doubt.

IV. Instruction "C," given by the Court on behalf of the people was improper, as it was wholly immaterial with what motive or intent, Meyers brought the property to defendant's place, as the charge is for originally taking the property, and not subsequently removing or concealing it.

E. G. ASAY,

A. VAN BUREN,

Attorneys for Plff. in Error.

Burill on Circumstantial Ev., 200-20

4012 Legal Opinion

White vs. Burrill

476

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Supreme Court
Ottawa 1864

Conk right
Off in error

People
kept in error

Agreement

Given May 20. 1864
L. L. L. L. L.

Asay Dan Bureau
Public for Ottawa

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

PLEAS

BEFORE THE

HONORABLE EVERT VAN BUREN,

Recorder of the City of Chicago, and Presiding Judge of the Recorder's Court of said City, at a term thereof begun and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday, (being the Seventh day) of December in the year of our Lord one thousand eight hundred and sixty-three and of the Independence of the said United States the eighty eighth

Present, Honorable EVERT VAN BUREN, Recorder of the City of Chicago.

Joseph H. Wood States Attorney.

G. J. Hammond Sheriff of Cook County.

Attest, DANIEL O'HARA, Clerk of said Court.

Be it Remembered, that, on the Seventh day of December in the year 1863 aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The Sheriff of Cook County returned into Court the Venue Facias heretofore issued by which it appears that the following named persons have been duly summoned, to appear this day and serve

2

Grand jurors at the present term of this Court, to wit;

James Long.	Joseph Kellogg.	A. W. Pinson
M. C. Guine.	O. Wheaton.	Philip Petrie
George Wolf.	Peter Troesch.	Amasa Thompson
John Lobstein.	H. M. Higgins.	H. M. Sewey.
Ernest Remin.	J. A. Fort.	A. H. Heald.
Charles Tollanshee.	C. J. Wells.	Gustavus Frost.
A. H. Pitkin.	Leander Reed.	O. Kendall.
W ^m Arbuckle.	Adam Ambury	

who upon being called answered to their respective names and gave their personal attendance as a Grand jury in and for the body of the City of Chicago at the present Term of this Court, and James Long one of the said Grand jurors being appointed Foreman of said Grand jury, they were duly sworn and charged by the Court and thereupon retired to consider of their presentments.

And afterwards, to wit, on the seven tenth day of December in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit:

The Grand jury came into open Court and among others, made the following presentment, under the "True Bill"; to wit;

N^o 4106. The People of the State of Illinois
 Indictment for Larceny.
 William G. Conkwright.

which said True Bill is in the words and figures following, to wit:

" State of Illinois
 " City of Chicago
 " Cook County } ss.

Of the December term of the
 " Records Court of the City of Chicago, in said State
 " and County, in the year of our Lord one thousand eight
 " hundred and sixty three.

" The Grand jurors chosen, selected and sworn,
 " in and for the City of Chicago, in the County of Cook and
 " State of Illinois, in the name and by the authority of the
 " People of the State of Illinois, upon their oaths, present
 " that William G. Conkwright, late of said City, on the
 " Seventh day of December in the year of our Lord one thou
 " sand eight hundred and sixty three in said City of Chi
 " cago, in the County and State aforesaid, did take of the

value of two dollars and fifty cents each; the personal goods
and property of The Chicago and North Western Rail Road
Company then and there being found, did then and there fel-
oniously steal, take and carry away contrary to the Statute, and
against the peace and dignity of the same People of the
State of Illinois.

Joseph Knox, State's Attorney.

and the foregoing 'True Bill' has the following endorsements,
to wit:

P. G. No. 4106.

Records Court of the City of Chicago.

December Term. 1863.

The People of the State of Illinois

Wm. G. Conkwright.

Indictment for Larceny.

A. True Bill. James Long, Foreman of the Grand Jury.

Witnesses:

Wm. Leonard. Philip Opeling. Morris Hayes. Officer Rogers

Frank Davenport. Thomas Hull. Geo. Affleck.

Filed the seventeenth day of December A. D. 1863.

Daniel O'Hara, Clerk.

And afterwards, to wit, on the twenty first day of December in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

N^o 4106.

The People of the State of Illinois

Indictment for Larceny.

William G. Conkwright.

This day came the said People by Joseph Knop, State Attorney, and the said defendant as well in his own proper person as by his Counsel J. C. Knickerbocker Esq. also came, and he having been furnished with a copy of the Indictment in this cause and lists of the names of the Witnesses and jurors, and being now here duly arraigned and forthwith demanded of and concerning the crime alleged against him in said Indictment, how he will acquit himself thereof, for a Plea in that behalf says; that he is not guilty in manner and form as charged therein, and of this he puts himself upon the Country and the said People do the like.

Thereupon the Court orders the said defendant to be remanded into the custody of the Sheriff of Cook County.

And afterwards, to wit, at the January Term A. D. 1864. of said Court, to wit, on the Seventh day of January A. D. 1864, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The People of the
State of Illinois

4106.

William G. Conkwright.

Indictment for Larceny.

This day came the said People by Joseph Knox, State Attorney, and the said defendant as well in his own proper person as by his Counsel J. C. Knickerbocker Esq. also come, and now issue being joined, it is ordered by the Court, that a jury come, thereupon come a jury of good and lawful men, to wit, J. M. Harris. John Mc Mahon. David Hoyt. Jacob Wilder. Peter Gatton. John L. Walsh. A. F. Parker. Wm George. Patrick Loftus. H. W. Chamberlain. Wm O. George and J. L. Metzger. — who were duly empanelled and sworn, and they heard the testimony of Witnesses, and the hour of adjournment having arrived, it is ordered that the further consideration of this cause be postponed until the coming in of the Court to-morrow morning at Ten o'clock.

And afterwards, to wit, on the eighth day of January in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit:

The People of the
State of Illinois

N^o. 4106.

William G. Conkwright.

Indictment for Larceny.

This day again came as well the said People by Joseph Knol, State attorney, as the said defendant in his own proper person and by J. C. Knickerbocker Esq. and the jury aforesaid also came, and they hearing the arguments of Counsel and instructions of the Court, retired in charge of a sworn officer to consider of their Verdict; and by order of the Court they were afterwards returned to the bar of the Court by the officer having them in charge, and they being unable to agree upon a Verdict, were, upon consent of said parties, discharged from further consideration of this cause.

And thereupon, the Court ordered the said defendant to be remanded into the custody of the Sheriff.

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And afterwards, to wit, at the February Term of said Court in the year last aforesaid, to wit on the Ninth day of February A. D. 1864, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The People of the
State of Illinois

No. 4106.

vs
William G. Conkwright.

Indictment for Larceny.

This day came the said People by Joseph Knof. State Attorney and the said defendant as well in his own proper person as by his Counsel J. C. Knickerbocker Esq. also come, and now issue being joined, it is ordered by the Court that a jury come, thereupon come a jury of good and lawful men, to wit; Charles Ford. Frank Gregory. J. Zettlemuller. F. Lotze. Joseph Wilson. William Jwisler. H. A. Winkrope. John M. Hough. John Goodwin. Daniel Kusey. W. Ogle. J. Sinclair, who were duly empanelled and sworn and they hearing the testimony of Witnesses, arguments of Counsel and instructions of the Court, retire in charge of a sworn officer of the Court, to consider of their Verdict.

And afterwards, to wit, on the Tenth day of February in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following to wit;

The People of the
State of Illinois

pp. 4106.

William G. Conkwright.

Indictment for Larceny.

This day again come the said People by Joseph Knop, State Attorney, and the said defendant as well in his own proper person as by his Counsel J. C. Knickstocker Esq. also come, and the jury aforesaid being now returned to the bar of the Court by the officer having them in charge, and they having agreed upon their Verdict, say; "We the jury find the defendant guilty in manner and form as charged in the Indictment, find the value of the property stolen, to be Fifteen Dollars, and fix his term of imprisonment at One year in the State Penitentiary."

Whereupon the defendant by his Counsel has demanded that the jury be polled and the jury aforesaid being separately called and enquired of whether the foregoing Verdict by them returned, was and is now their Verdict, severally answer and say, that it was and is now their Verdict, and thereupon it is ordered that said Verdict be accepted and entered of Record.

And now come the said defendant and by his

Counsel moves the Court for a new trial and in arrest of judgment.

Whereupon the Court orders the said defendant to be remanded into the custody of the Sheriff.

And afterwards to wit on the twenty fourth day of February in the year last aforesaid, it being the term of Court aforesaid, the following, among other proceedings were had and entered of Record in said Court, which said proceedings are in the words and figures following, to wit;

The People of the
State of Illinois

N^o 4106.

William G. Conkwright

Indictment for Larceny.

This day again come the said People by Joseph Knorr, States attorney and the said defendant as well in his own proper person as by Messrs. Knickerbocker and McComas his Attorneys also come, and the Court having heard Counsel as well in support of a motion, for a new trial and in arrest of judgment, as in opposition thereto, and being fully advised in the premises, doth overrule said motions, and orders that said motion for a new trial and said motion

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in arrest of judgment be and the same are hereby overruled, to which ruling of the Court in overruling said motion for a new trial and said motion in arrest of judgment, the said defendant by his Counsel then and there excepts, and upon his motion twenty days are allowed in which to prepare and file his bill of exception.

And now neither the said defendant nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of guilty, heretofore entered in this cause;

Therefore, it is ordered and adjudged by the Court that the said defendant William G. Conkwright be taken from the bar of this Court to the common jail of Cook County from whence he came, and from thence by the Sheriff of Cook County, within Twenty days from and after the adjournment of this Court, to the Penitentiary of this State at Joliet, and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant William G. Conkwright and confine him in said Penitentiary in a safe and secure custody, for and during the term of One year from and after the delivery hereof. One day of said term in solitary confinement and the residue of said term at hard labor, and that he be thereafter discharged.

It is further ordered by the Court, that the said defendant William G. Conkwright pay all the cost of these proceedings and that execution issue therefor.

And afterwards to wit, on the first day of March A. D. 1864. the said defendant William G. Conkwright by his Counsel filed in the Office of the Clerk of the Records Court his bill of exception, which said bill of exception is in the words and figures, following, to wit,

" State of Illinois)
County of Cook)
City of Chicago)

Records Court of the City of Chicago
February Term A. D. 1864.

The People of the
State of Illinois

vs.
William G. Conkwright.

Indictment for
Larceny.

Be it remembered, that on this 10th day of February A. D. 1864. the same being one of the days of the February Term A. D. 1864. of said Court, this cause, coming on to be tried upon the Indictment herein and the issue joined thereon, and a jury having been empanelled to try the issue joined as aforesaid on the part and behalf of the People of the State of Illinois Plaintiffs herein as aforesaid, called as a Witness;

William Appeling, who being duly sworn, testified as follows;

I am overseer of the brap box filling department of the Chicago and North Western Rail Road Machine Shop in the City of Chicago. I have been in the employ of the N. W. R. R. Co. in that capacity for seven or eight years. (the Witness here exhibited patterns in Court in which the brap boxes filling around the car axles are cast, a part of the brap boxes, alleged to have been stolen also exhibited in Court and agreed in all respect with the pattern even to the private marks of the patterns.) The Chicago, N. W. R. R. Co. lost in this City a great many brap boxes during the summer and fall of the year of 1863, the brap boxes are worth thirty five cents per pound. The Machine shops of the Chicago, N. W. R. R. Co. are located in Chicago, Cook County Illinois.

William Leonard, was next called as Witness on the part of the People and testified as follows-, after having been duly sworn,

I can not tell much about these boxes, they look like the boxes of the Chicago and North Western Rail Road Co, but I am not sure they belong to that Company, they are precisely similar to the Company's boxes even to the private marks thereon, no two companies, to my knowledge, have the same private marks on their patterns or boxes - they are worth 35¢ per pound.

George Afflick was next sworn as a Witness on the part of the People and testified as follows;

I am in the employ of C. P. Bradley, the Superintendent of Police of this City. A man from the Alton and St. Louis R. R. Co. swore out a search warrant to search defendants premises in this City, and I with Officer James Rogers went to defendants premises on Saturday, December 12th to search for stolen R. R. goods, we asked defendant if he had any trap R. R. boxes. he said he had no trap boxes, that he knew of except a small quantity, which he showed us, perhaps eight or ten pounds. We told him we had a search warrant and he expressed a willingness, and gave us permission to search his premises. Defendant's store is about twenty by thirty feet square or perhaps larger - and with the exception of the office filled with bales of rags, weighing about five hundred pounds each and piled up two and in some places three bales high, we used a tackle for lifting up the bales and found the trap, here in Court, laying under the bales and around the bales. Some of the trap was down on the floor under the bales, while we were finding the trap boxes and pieces, defendant and a boy named King came in and defendant said to the boy, "this is the stuff, Myers left here ain't it" and the boy answered "yes" Defendant asked the boy King if he bought it, and the boy said "no".

On Cross examination he testified;

I never told defendant's friends that if I got a chance to swear in this cause I would swear defendant in the penitentiary.
(It also appeared in evidence that the property in question was

taken from the North Western Rail Road Company in the City of Chicago, that there was one hundred pounds of it, that soon after it was stolen, it was found in defendant's possession under bales of rags of two tiers high in the City of Chicago each bale weighing about five hundred pounds.)

James Rogers was next sworn as a Witness on the part of the People and testified as follows..

I am a detective policeman of the City of Chicago, have been policeman about nine months and went to defendant's premises No. 40 Market Street about the 12th December 1863. I went to search for boxes belonging to the Alton and St. Louis Rail Road Co. I asked defendant if he had any P. R. boxes, he said he had none to his knowledge, he told me I could search his premises. I and George Affleck commenced search and completed it on Sunday following. Defendant's premises are about thirty by forty feet square and filled two or three bales thick, with rag bales, which will weigh about five hundred pounds each - we found the brass boxes scattered about among the rags and some of them placed under the rag bales and some of them we found on the floor directly under the 500 lb bale - while we were searching, defendant and a boy named King came in and defendant asked the boy King, if he had not leave these brass boxes there and the boy said, he did. Defendant said to the boy, did not you buy the boxes of Myers and he said no.

The People have rested their case.

Charles King, was called and sworn as a Witness on the part of the defendant and testified as follows;

I have worked for the defendant nearly a year and was at his Store on Thursday December 10th 1863. At about five or six o'clock in the afternoon Morris Myers came to the Store with some braf bales (Witness here identifies the bales as being the same shown and now in Court.) and asked me if I wanted to buy some braf. I asked what kind it was. Myers then showed it to me, and told him, defendant had ordered me not to buy such articles as he would have trouble if I did, and I refused to buy them of him. Myers then said he wanted me to leave them in the Store as he wished to get oats in the bags. He had the braf in bags. Myers then went up on the rag bale and unspriced the braf and went away. Myers never came back after it, I never told defendant about it. I forgot to tell him before the officers came and when they came I was afraid to tell him. Defendant was gone to the Post Office when Myers came to the Store, and did not come back before I shut the store up for the night. I shut the store up at seven o'clock P. M. Defendant did not ask me if these were the things that Myers brought to the Store when the police officers came for the purpose of searching, but he asked me how they came there and I told him, Morris Myers left them there on Thursday night. Defendant did not ask me if I bought them of him. There were two men in the store when Myers left the braf bales, their names are Alonzo Fiskie and Robinson.

Alonzo Frisbie, was sworn on the part of the defendant and testified as follows - I know the defendant - was at his store on Thursday, December 10th last, when Morris Meyers brought some brass boxes there. I heard Meyers ask the boy King if he wanted to buy some brass. King told Meyers to wait and defendant would be back in a few minutes - this was all, the boy King told Meyers - (Witness examined the boxes and said they were the same boxes Meyers brought to defendant's store.) I stayed at Defendant's store, until the boy King closed it up for the night, it was about seven o'clock P. M. when the store was closed. (I have seen defendant refuse to buy such goods) never out.

And the said Alonzo Frisbie being recalled testified as follows;

I heard the boy King say when Morris Meyers was at defendant's store and wanted to sell the brass boxes, that Mr. Conkright would not let him buy such article and would not buy them himself. Don't know why I swore first that King only told Meyers that defendant would be back in a few minutes.

Oliver Hugg was next sworn as a Witness on the part of defendant and testified as follows;

I know the general character of the defendant and have known him for five or six years - his character is good.

John W. Landry being sworn said.

I have known defendant several years and know his general character - it is good.

18
Christopher Fenehan, being sworn testified as follows,

I have known defendant several years, know his general character it is good

Robert Manson being sworn said;

I have known defendant seven or eight years, never knew of his being in trouble but once before. I heard that he was indicted at the June term of this Court for receiving stolen goods. but I also learned that a stolen property was entered and I did not think that was any stain on his character. I know his general character to be good.

Thomas King being sworn testified as follows;

I know defendant's general character, it is good. I never heard of his being in trouble before this.

This was all the evidence in the case.

And after the argument of Counsel for the prosecution and the defendant, the Counsel for the People of the State of Illinois asked on behalf of the People aforesaid, the following instructions - which were given to the jury,

1. The Court instructs the jury that possession of stolen property soon after it was stolen is of itself *prima facie* evidence that it was stolen by the defendant.
2. The burden of proving the possession to have been honest is then thrown on the defendant and it is for him to prove that he came honestly by it.

- 19.
- 19
3. If a person incites or encourages another to commit a larceny, it makes him equally guilty of the crime himself and the jury may take into consideration the conduct of defendant and the situation of the property when found in reference to the question as to whether they do or do not believe from the evidence that the defendant encouraged the stealing of the property in question and they will take into consideration all the evidence in the case.

The Court also gave on the part of the People the following instruction;

A. If the jury believe from the evidence that defendant stole the property in question, or that any one else stole it, and that defendant aided, abetted or attested in the theft or that not being present, he aided, abetted, assisted or encouraged the stealing of the property then the jury should convict the defendant.

B. The unexplained possession of personal property shortly after the property was stolen is *prima facie* evidence of his guilt.

C. If the jury shall believe from the evidence in the case, that a boy brought the property there, then the jury will inquire from the evidence whether it was brought there in good faith without any guilty knowledge or encouragement of the defendant, and to arrive at a conclusion upon this point, the jury will take into consideration the evidence in relation to the manner in which the property was alleged to have been brought there - whether it was concealed, whether a boy

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ever called for the property and all the facts in relation to it

The credibility of Witnesses is for the jury - and they are not bound to believe every Witness, if from his appearance upon the stand or the improbability of his testimony they believe his testimony unworthy of credit.

E. A reasonable doubt means such a doubt as a reasonable man entertains from all the facts and circumstances in the case, but if from all the facts and circumstances in evidence in the case, the jury are satisfied of the guilt of the defendant - that is sufficient."

to which instructions so given by the Court the defendant then and there assented.

The Court also gave the following instruction for defendant;

1. The Court instructs the jury as matter of Law that it is the criminal intent that constitutes the offence of crime and that if the jury are satisfied from the whole evidence in this cause, that there was no criminal intent on the part of the defendant then the jury should find the defendant not guilty.
2. The jury are instructed by the Court that if after hearing all the evidence in this cause, they entertain a reasonable doubt of the guilt of the defendant then and in that event the jury should find the defendant not guilty.
3. The Court instructs the jury that if they believe from all the evidence in the cause that the crime alleged in the indictment

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21
was committed by some person other than the defendant and without complicity on the part of the defendant then the jury should find the defendant not guilty.

4. The Court instructs the jury that all the material allegations in the Indictment must be proved and on the failure of such proof the jury should find the defendant not guilty.

5. The Court instructs the jury that to convict a party as accessory the jury must be satisfied beyond a reasonable doubt that said party has aided, abetted or assisted or advised or encouraged the perpetration of the alleged crime and if they are not so satisfied, the jury should not find the defendant guilty upon the ground that he is an accessory.

The jury thereupon found the defendant guilty and ascertained the value of the property to be \$15⁰⁰ and fixed the term of his imprisonment at one year in the Penitentiary.

And thereupon the defendant made and entered his motion for a new trial upon the following grounds.

1st That the Court erred in giving the instructions given to the jury by the Court.

2nd That the Verdict should be set aside on account of the misconduct of the jury.

3^d That the verdict was against law.

4th That the Verdict was against the evidence.

and in support of which said motion the following affidavits

31,
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were read;

"State of Illinois } ss
County of Cook }

George Beuttenmuller being first duly sworn deposes and says, that he was one of the members of the petit jury before whom William G. Conkwright was tried on an Indictment for Larceny in the Recorders Court of the City of Chicago, County and State aforesaid and that said trial was had on the 9th day of February A. D. 1864 at the February Term of said Court and further says that on said 9th day of February A. D. 1864 he this deponent between the hours of seven and eight o'clock P. M. went out of said Court Room alone without any officer and took a beer jug to Klingers Saloon under the Sherman House and this deponent further says, that he resides at 150 Washington Street Chicago, Cook County, Illinois.

G. Beuttenmuller.

Subscribed and sworn to before

me this 22^d day of February A. D. 1864

54
Rev. St.

E. J. B.

Joshua C. Knickerbocker
Notary Public.

"State of Illinois }
Cook County } ss.
City of Chicago }

Loring F. Waite being first duly sworn deposes and says that he resides on North Morgan Street Chicago

go, Cook County, Illinois and that he is acquainted with William G. Ogle one of the Petit Jurors who tried or before whom William G. Conkwright was tried on an Indictment for Larceny on the ninth day of February A. D. 1864 in the Recorder's Court of the City of Chicago aforesaid at the February Term of said Court and further says that on the morning of the tenth day of February A. D. 1864 he saw William G. Ogle aforesaid and several other persons representing themselves as Jurymen in the same cause with said Ogle but whose names this deponent does not know at about the hour of seven o'clock A. M. of said tenth day of February A. D. 1864 in a Saloon at N^o. 147. Randolph St. Chicago Illinois. and further deponent says not.

L. F. Waite

Subscribed and sworn to before

me this 11th day of February A. D. 1864.

(L. F.)

Joshua C. Knickerbocker
Notary Public.

54.
Rev. St.

State of Illinois }
County of Cook } ss.
City of Chicago }

Albion Stewart being first duly sworn deposes and says that he resides at N^o. 41. North Wells St. Chicago, Cook County Illinois and that he is acquainted with William G. Ogle, who was one of the Jurymen who tried the case of the People vs William G. Conkwright on an Indictment

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"ment for Larceny in the Recorders Court of the City of Chicago on the 9th day of February A.D. 1864 at the February Term of said Court for 1864 and further says that said William G. Ogle and five or six other men, calling themselves members of the same jury in the same cause were seen by this deponent on the night of said 9th day of February A.D. 1864 between the hours of eleven and twelve o'clock P. M. of said day in a saloon known as number 149. Randolph St. and this deponent further says that the whole company of said men staid at said saloon about one half hour and that he conversed with said men or most of them freely during their stay in said saloon and further this deponent says not.

Olling Stewart

Subscribed and sworn to before me

this 11th day of February A.D. 1864

5th
Rev. St.

(L. J.)

Joshua C. Knickerbocker

Notary Public.

State of Illinois }
County of Cook } ss.
City of Chicago }

William Tucker being first duly sworn says that he resides at the North West corner of Morgan and Prairie St. in the City of Chicago, County and State aforesaid, and that he is acquainted with William G. Ogle who was a member of the petit jury before whom William G. Conkwright was tried for larceny on the 9th day of February A.D. 1864 - that

Recorders Court of said City of Chicago at the February Term A.D. 1864 and that he saw said William G. Ogle with other persons representing themselves as members of the same jury empanelled in the same cause at a saloon known as number 147. Randolph St. Chicago Illinois on the 9th day of February A.D. 1864 at about the hour of ten o'clock P. M. of said day and that he conversed freely with said Ogle and the other men who accompanied him and represented themselves as jurors aforesaid and further says not.

Wm. Tucker

Subscribed and sworn to before me this
11th day of February A.D. 1864.

57.
Rec. St.

(L. S.) Joshua C. Knickerbocker
Notary Public.

State of Illinois }
County of Cook } ss.
City of Chicago }

John P. Jones being first duly sworn deposes and says that he resides at No. 27. North Canal St. in the City of Chicago, County and State aforesaid and that he is acquainted with William G. Ogle one of the members of the petit jury who tried William G. Conkwright on the charge of Larceny on the 9th day of February A.D. 1864. in the Recorder's Court of the said City of Chicago at the February Term of said Court and further says that he saw said William G. Ogle on the said 9th day of February A.D. 1864. at a saloon on the

North side of Randolph St. between Wells and Franklin St. in said City of Chicago at about the hour of 8 o'clock P. M. and conversed with said William G. Ogle in said saloon at the place and time aforesaid and further says not.

John Tress Jones.

Subscribed and sworn to before me
this 11th day of February A.D. 1864.

5[¢]
Rev. Stamp

(L.S.) Joshua C. Knickerbocker
Notary Public.

State of Illinois
County of Cook
City of Chicago) ss.

George Lawson being first duly sworn deposes and says that he is a resident of the County of Cook and State of Illinois and that he keeps a saloon at No. 215 1/2 Randolph St. Chicago, Cook County and State of Illinois and that he is well acquainted with William G. Ogle and Joseph Wilson two of the men who acted as and were members of the petit jury who tried William G. Conkwright on the charge of Larceny in the Recorders Court of the City of Chicago on the 9th day of February A.D. 1864 being the February Term of said Court and further says that said William G. Ogle and Joseph Wilson were at his saloon on said 9th day of February A.D. 1864. between the hours of 8 and 9 o'clock P. M. of said day and that while in said Saloon at No. 215 1/2 Randolph St. Chicago, Illinois the said Joseph Wilson and

"William G. Ogle aforesaid, drank cider, ale and whiskey and further this deponent says not.

George Lawson

Subscribed and sworn to before me
this 11th day of February A.D. 1864.

5¢
Rev. Stamp

(L. J.) Joshua C. Knickerbocker
Notary Public.

State of Illinois }
County of Cook }

Mary Rice being first duly sworn deposes and says that she is aged twenty five years and that she resides at No. 49 Franklin St. in the City of Chicago, County and State aforesaid and that she is well acquainted with William Ogle one of the members of the Petit Jury before whom William G. Conkwright was tried on an indictment for larceny in the Recorder's Court of said City of Chicago on the 9th day of February A.D. 1864 being the February Term of said Court and further says that she saw said William Ogle at her place of residence as aforesaid on the said 9th day of February A.D. 1864 between the hours of nine and ten o'clock P.M. of said day and this deponent further says that said William Ogle when at her residence on said 9th day of February as aforesaid was alone and unaccompanied by any Sheriff, bailiff, officer or other person whomsoever and further this deponent says not

Mary Rice

5¢ Rev. Stamp

Subscribed and sworn to before me
this 20th day of February A.D. 1864.

(L.S.)

Joshua C. Kniekerbocker
Notary Public

State of Illinois }
County of Cook } ss.

Joshua C. Kniekerbocker being first duly sworn deposes and says that he is of lawful age and that he is a resident of the City of Chicago, County and State aforesaid and that he is acquainted with George Zentzenmuller one of the members of the Petit Jury before whom William G. Cookwright was tried on an Indictment for larceny in the Records Court of the City of Chicago on the 9th day of February A.D. 1864 being the February Term of said Court for the year A.D. 1864 and this deponent further says that he saw said George Zentzenmuller come out of the room in which said Records Court is held on the ^{said} 9th day of February A.D. 1864 at about or near the hour of half past seven o'clock P. M. of said 9th day of February that said George Zentzenmuller had with him a large jug and this deponent says that said George Zentzenmuller at said time was not accompanied by any officer or officers or Sheriff or any person whomsoever and this deponent further says that at about 20 minutes to eight o'clock P. M. on said ninth day of February A.D. 1864 he saw Joseph Wilson and William Cyle two of the members of the Petit Jury before whom said William G. Cookwright was tried at the time aforesaid on the aforesaid in-

dictament and in said Records Court of the City of Chicago come out of said Records Court Room and pass out into Randolph St. and go westward on said St. and this deponent says said Wilson and Ogle were accompanied by no one except a man whom this deponent has heard called by the name of Firsch and who acts or has acted as this deponent believes as a bailiff in the Circuit or Superior Court and further this deponent says not.

Joshua C. Knickerbocker.

Subscribed and sworn to before me
this 22^d day of February A. D. 1864.

57.
Rev. St.

(L. J.) Henry C. Moorey.
Notary Public.

And the said People of the State of Illinois by Joseph Kner, State Attorney, filed and read on behalf of said People the following affidavit, to wit;

" People
" } Records Court of the City of
Wm G. Conkwright. } Chicago February Term A. D.
1864.

Huzekiah A. Wynkoop being duly sworn on his oath says that he resides in said City of Chicago; and that he was one of the jury on the regular panel during said term of said Court, and that he was one of the jury that tried the said cause against said Wm G. Conkwright during

"said term of said Court, and that he was selected as the foreman of said jury after they had heard the evidence and arguments of counsel and had retired to consider upon their verdict and that he was present in the jury room all of the time during which said jury were deliberating and discussing the said cause, and that the jury agreed upon their Verdict after they had been out about one hour: and that he knows that no one of said jury left the jury room or separated from the rest of the jury until after said jury had agreed upon their Verdict; and that the jury had all signed said Verdict before any one of the said jury left the jury room or separated from the rest; and that said Verdict was sealed and committed to my care before any one of the jury left the jury room or separated from the rest; and that said Verdict signed, sealed and committed to my care before any one of the jury left the jury room or separated from the rest is the same Verdict in all respects which was returned into Court by the jury in said case.

H. A. Wynkoop.

Subscribed and sworn to before me
this 23^d day of February A. D. 1864.

Daniel O'Hara

Clk

Which motion for new trial the Court overruled - to which decision of the Court the defendant then and there excepted whereupon the Court then and there sentenced the prisoner to confinement in the Penitentiary at solict at hard labor.

for the term of one year; to which judgment of the Court and sentence as aforesaid the defendant by his Counsel then and there accepted.

And for as much as the matter and things aforesaid do not otherwise appear, the defendant prays that his bill of exception may be signed and sealed and made a part of the record of this cause, which is done this first day of March A. D. 1864.

C. Van Buren (Seal)
Recorder of the City of Chicago.

STATE OF ILLINOIS, }
COUNTY OF COOK, } SS.
CITY OF CHICAGO. }

I, DANIEL O'HARA, Clerk of the Recorder's Court of the City of Chicago, in the County and State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all the proceedings and orders had and entered of Record and all the papers on file in a certain cause heretofore pending in said Court, on the Criminal side thereof, wherein The People of the State of Illinois were Plaintiffs and William G. Conkright Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Second day of March A.D. 1864.

Daniel O'Hara Clerk.



William G. Conkwright Supreme Court of the State of Illinois
vs. Northern Division
People of the State of Illinois Term 1864

Afterwards to wit at the said
term of the said Supreme Court came
the said William G. Conkwright by Edward
J. Casey and A. Fair Burren his attorneys
and says that in the record and proceedings
aforesaid also in giving the judgment
aforesaid there is manifest error in
this - That the Court erred in giving
the ^{several} instructions on the part of the people
and in this that the Court erred in
refusing to set aside the verdict of the

Record 490 p.
Ill. v. Conkwright

jury and in this that the Court erred
 in overruling the motion for a new
 trial and in this that the Court erred
 in giving ^{the several} instructions to the jury that
 were contrary to the law and also there
 is error in this that the judgment by the
 record aforesaid appears to have been given
 for the defendant against the said
 William of Conkright whereas by the law
 of the land the said judgment ought to
 have been given for the said William
 of Conkright against the said people
 and the said William of Conkright
 prays that the judgment aforesaid of the
 errors aforesaid and for other errors
 in the said record and proceedings
 being may be reversed annulled
 and altogether holden for naught and
 that he may be restored to all things which
 he hath lost by occasion of the said judg-
 ment &c

E. H. Gray

C. Van Buren

Attorneys for the plaintiff

For the defendant in error

By *[Signature]*
 State Attorney

Chicago March 5 1881

After inspecting the foregoing and
together with the assignment of error
relied on for a reversal of the judgment
therein the undersigned one of the
Justices of the Supreme Court of the
State of Illinois am of the opinion that
there is reasonable cause for
-ing a writ of error in said cause.

It is accordingly hereby ordered
that said writ of error be granted
and ~~in~~ ^{also} being the opinion of
the undersigned that said Plaintiff
in Error William B. Cookworth be
to be bailed until the determination
of all the proceedings under said writ
of error it is further ordered that
said writ of error shall operate as
a supersedeas and that said Plaintiff in
Error William B. Cookworth be discharged
from custody upon his entering into a
recognizance to the People of the State of Illinois
accordingly together with the Statute in such case made and provided and in the usual form
with the proper surety in the
sum of one thousand dollars

W B Cookworth
Associate Justice of Supreme Court

87.5.296
William J. Conkright

The People -

Records of
Ems

Filed March 7th 1864
Ladland
Calhoun

Supreme Court of the State of Illinois
April Term 1864

Charles Auger
vs. } Error to Jazwell
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" & & "did Asa Smith mali-
ciously violently & wickedly to
kill & murder and he 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 initials,
who is meant by "Mr. Smith" &
"A S 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

Gileet April 30. 1864
J. L. Goodwin

consequence at the time of
writing the letter

J. P. Jones
State Attorney