No. 13627

Supreme Court of Illinois

Clark

vs.

People

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 6

PEOPLE'S CAUSES.

Clerk

vs

Case

13627

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Recorders Court ~~for the County~~ of the City of Chicago — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Recorders Court of the City of Chicago ~~County~~, before the Judge thereof, between The People of the State of Illinois

plaintiffs and William Clark

defendant, it is said manifest error hath intervened, to the injury of the aforesaid William Clark as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

L. Silund
Clerk of the Supreme Court.

6-156

William Clark

No. vs.

The People &c.

WRIT OF ERROR.

This Writ of Error is made a Supersedeas, and as such is to be obeyed by all concerned.

L. Leland Clerk.

FILED Jany. 30, A. D. 1863

L. Leland
Clerk.

Supreme Court of the State of Illinois
April Term A.D. 1863.

Wm. Clark
5 vs
The People &c

Points & Authorities for Defts in error —

The motion for a continuance was properly overruled — Because non constat 1st That the witnesses were not present or could not have been procured & 2nd That there were not other available witnesses by whom the same facts could have been shown as by those named —

What the owner of the horses & his wife did and said at the time the witness delivered the horses to them & what the Sheriff & Scott told the witness when he departed to Chicago to recover the horses for Scott were all a part of the res gestae

The evidence was not material to the issue & therefore it was not error to admit it - 14 Ohio 386

Although the evidence was exceptionable yet there was sufficient legal testimony to support the verdict and no injustice was done

A new trial therefore will not be granted

What am Cum Lo 639
11 East - 307 - 22 Pick 397.
3 Sing & R 14

D P Jones
Pltfs Atty

Wm Clark R

vs

The People

Deft's Brief

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

ABSTRACT.

5 Indictment filed October 8, 1862, in the October Term of the Recorder's Court, of the city of Chicago, A. D., 1862, and contains one count for larceny.

4 "That William Clark, late of said city of Chicago, on the 1st day of October, A. D., 1862, in said city of Chicago, in the county of Cook, and State aforesaid, one Sorrel Horse of the value of seventy-five dollars, one Bay Horse of the value of seventy-five dollars, the personal goods and property of Alfred Brewington, then and there
4 being found, did then and there feloniously steal, take and carry away, contrary to the statute," etc.

5 To this Indictment, on the 8th day of October, A. D., 1862, in said Recorder's Court, defendant in proper person plead not guilty.

5 Plea of not guilty accepted, and the prisoner remanded to jail.

6 On the 10th day of October, A. D., 1862, a jury was called to
6 try said cause; jury selected and sworn to try said cause.

The People proved by their first witness, Alfred Brewington:
11 That he lost a pair of horses on the night of the 2d of August last; that the horses was his property, and were taken from Mercer county, Illinois; that they were worth seventy-five dollars each; that the Defendant and another man stopped at his house on the morning of the 2d of August last, and took breakfast; that they staid fifteen minutes

and then went west. That was the first time he saw the Defendant; saw him next in jail in Chicago, two weeks after the horses were stolen. The other man he has never seen since. He found his horses in Chicago, near Captain Bradley's house. He wrote to Bradley, and described his horses, and then heard that Bradley had them. Came to Chicago and found them. Know the defendant to be one of the
11 men who took breakfast at his house aforesaid.

11 The People then called Joseph Dixon, who said: I am a police officer. I first saw defendant leading three horses, on the 11th of August last; followed him to where he put the horses up in this city. I arrested him there. He told me that there was another horse on the North Side, corner of Wells and Division streets. I went and found the horse; it was a bay horse. Heard Brewington describe
12 horses. Delivered same horses to him.

On Cross Examination said: Clark, the defendant, disclaimed to own either of the horses; said that they all belonged to another man; said one of the horses had been sent here to sell, by a Mr. G. Doughty, a farmer, who lived at or near Geneseo, in this state. Said the horses belonged to Heflin, and that he was taking care of them for him. I arrested Heflin and locked him up; kept him some time. He was a tall, dark-skinned man, with light whiskers. Mrs. Buchanan described him to me as one of the men who came there with the horses. I arrested him on her description; we let him go; do n't
12 know what became of him; could not connect him with the horses. The Defendant did not claim to own any of the horses, but said they were Heflin's.

The People then called Mary Buchanan, who said: that she knew
13 the Defendant; that he and another man came to our place and left some horses; that the Defendant first came alone and left one horse. He borrowed twelve dollars of my husband; left a horse as security for the money. He and another man came and brought two more horses. Said, when my husband lent him the money, that he wanted to pay some freight on some horses at depot. *I told my husband not*
13 *to let him have the money, I suspected that the horses were stolen.* (To her suspicion, or what she and her husband talked together, objected to by defence. Objection overruled, and the defendant excepted.) I did not pay any attention to the horses or their colors. I was looking after my money.

13 On Cross Examination, she said: I do n't recollect how the other man looked. He was a tall, slim man; dark skin and light whiskers.

When my husband let this man have the money, the other man was there to; he was sitting close by on some steps with a newspaper before his face. After this man Clark got the money, they both went off together. I saw the other man in Mr. Bradley's office; I saw
14 this man Clark there; I recollect this man best; I did not notice either particularly; I was watching my money; do n't know what the color of the horses were. I saw this man Clark feeding them in our barn; the other man told him to feed them and take good care of them; I heard the other man tell him so. The other man told my husband to feed them also. Do n't know officer Dixon. One of Bradley's men arrested this man Clark and the other man; do n't recollect what the other man's name is; do n't know what officer arrested them. The man that arrested them took the horses away with him. I only know that he said that he was one of Bradley's
14 men. He told me that he would see that I got my twelve dollars.

14 Certificate that the foregoing is all of the evidence given in the case, both on behalf of the People and the Defendant.

7 VERDICT.

We, the Jury, find the Defendant guilty as charged in the Indictment. We find the value of the property stolen to be one hundred and twenty-five dollars, and fix his time of imprisonment in the
7 State Penitentiary at three years and six months.

7 Motion in arrest of judgment, and for a new trial. Court takes the motion under consideration, and orders that the Defendant be
7 remanded back to jail.

October 22, A. D., 1862. Court overrules the motion in arrest of
8 judgment, and for a new trial. To which ruling of the Court in overruling said motion in arrest of judgment, and for a new trial, the said
8 Defendant by his counsel then and there excepts.

SENTENCE BY THE COURT.

8 That the said Defendant, William Clark, be taken from the bar of the Court, to the common jail of Cook county, from whence he came, and from thence by the Sheriff of Cook county, within ten days from and after the adjournment of this court, to the Penitentiary
8 at Joliet, and be delivered to the warden or keeper of said Penitentiary, and the said warden and keeper is hereby required and command-

ed to take the body of the said William Clark, and confine him in said Penitentiary, in a safe and secure custody, for and during the term of three years and six months, from and after the delivery here-
8 of; one day of said term in solitary confinement, and the residue of
9 said term at hard labor, and that he be thereafter discharged.

JUDGMENT FOR COSTS.

It is further ordered by the Court, that the said Defendant pay
9 all the costs of these proceedings, and that execution be issued thereof.

Certificate of the Judge to the Bill of Exceptions.

14 R. S. WILSON, Recorder.

Filing of the Bill of Exceptions. Filed October 23, A. D., 1862.

16 J. K. C. FORREST, Clerk.

Certificate of the State's Attorney, expressive of his opinion that
17 the Record is true and correct, and that in case a *supersedeas* issues, the prisoner should be bailed.

19 Final certificate of the Clerk of the Recorder's Court, of the city of Chicago, certifying that the Record is correct, and all of the papers in said Record filed in his office.

SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

6

Clark
vs
The People

Abstract

Filed Apr 25. 1863
L. Lelaine
Clk

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

BRIEF.

Pages of Abstract.

What Mary Buchanan thought and talked with her husband is clearly improper evidence. First, As being hearsay and irrelevant to
2 the issue. Secondly, Its tendency was to prejudice the minds of the Jury.

Volume 1, Greenleaf's Evidence, 8th Edition, Page 70, Section 52. Page 584, Section 448.

2 The Court should have sustained the Defendant's objection. The overruling of which is clearly error.

The Prosecution sought to establish the Indictment, by proof of the Defendant's possession of the horses. (See the testimony of Dixon and Mary Buchanan.) They utterly failed in this — but did prove
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2 connection with the horses, as sworn to by Dixon, to wit: That he is taking care of them for Heflin is not upon its face unreasonable or improbable, and especially when the evidence shows that Heflin was

ordering him about in the premises. In order to show his possession of the property, the State's Attorney ought to have shown upon the trial of the cause, that the Defendant's statement, about him taking care of the horses for Heflin was untrue.

Rex vs. Abraham, 2d Carr & K., 550, Roscoe's Criminal Evidence, 5th American Edition, page 79, Crowhust's case there cited. 1st Carr & K., page 370. 1st Volume Archbold's Criminal Practice and Pleading, 6th Edition, pages 117 and 118, Note (1.)

It cannot be doubted from the evidence, that the People upon the trial of the cause, clearly showed the possession of the horses to be in Heflin, and not in the Defendant. If Heflin was an honest, upright
2 and 3 man, why his connection with the horses, as Mary Buchanan testifies? Why did not the State's Attorney produce him upon the trial to show the Defendant's statement untrue. Unfortunately for Clark the law shut his mouth, and he can give no account of the transaction, except as he wrings it from the mouths of the reluctant witnesses for the Prosecution.

The law presumes the Defendant innocent. And before he can be legally convicted, this presumption must be overcome by evidence which shows his guilt, or at least raises a violent presumption that he is guilty. It not being shown that the Defendant was in possession of the horses, otherwise than as the servant or special agent of Heflin, we candidly submit that he is improperly convicted in this case, and that the presumption of innocence, which the law raised for the Defendant, was not overthrown or its force destroyed by the evidence on behalf of the Prosecution — but on the contrary was strengthened by
2 their evidence, showing so clearly the possession of the horses in Heflin.

1st Volume Greenleaf on Evidence, 8th Edition page 42, section 34 and 35. Sixth Edition, 1st Volume, Archbold's C. P. and P., page 117, 2 Note (1).

SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

Arthur W. Windett
for Plff. in Error

6

William Clark
vs
The People

Plffs. Brief

Filed May 6. 1863
S Leander
Clk

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

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SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

6

Clark
vs
The People

Abstract

Filed Apl 25. 1843
L Leland
Clk

Supreme Court of the State of Illinois
April Term A.D. 1863

Wm Clerk
5 vs.
The People

Points and Authorities for Defts in error—

The motion for a continuance was properly overruled. Because non constat— 1st That the witnesses were not present or could not have been procured & 2nd That there were not other available witnesses by whom the same facts could have been shown as by those named—

That the owner of the horses & his wife did & said at the time the witness delivered the horses to them & what the Sheriff & Scott told the witness when he started to go to Chicago to recover the horses for Scott were all a part of the res gestae

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Mont am Crim L 639
11 East 307 - 22 Pick 397
3 Serg & R 14

D D Jones
States Atty -

Wm Clarke
vs —
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Deft to Bring

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

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Volume 1, Greenleaf's Evidence,
8th Edition, Page 70, Section 52.
Page 584, Section 448.

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ordering him about in the premises. In order to show his possession of the property, the State's Attorney ought to have shown upon the trial of the cause, that the Defendant's statement, about him taking care of the horses for Heflin was untrue.

Rex vs. Abraham, 2d Carr & K., 550, Roscoe's Criminal Evidence, 5th American Edition, page 79, Crowhust's case there cited. 1st Carr & K., page 370. 1st Volume Archbold's Criminal Practice and Pleading, 6th Edition, pages 117 and 118, Note (1.)

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1st Volume Greenleaf on Evidence, 8th Edition page 42, section 34 and 35. Sixth Edition, 1st Volume, Archbold's C. P. and P., page 117, 2 Note (1).

SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

Arthur H. Windett for Plff. in Error.

2 Iredell - 406
14 Maine - 398

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1 Carr. & Kir. 370
2 Carr & P. " 459

~~No. 5~~ No. 6. 156

William Clark

v.

The People

Pltff's

Points & Brief.

Filed May 6th 1863

L. Leland

Clerk

Arthur M. Lindsell

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

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1st Volume Greenleaf on Evidence, 8th Edition page 42, section 34 and 35. Sixth Edition, 1st Volume, Archbold's C. P. and P., page 117, 2 Note (1).

Arthur T. Bissell
for Plff. in Error

SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

6-156.

William Clark
vs
The People

Plffs Brief.

Filed May 6. 1863
S. Leland
Clk

SUPREME COURT,

State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

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ABSTRACT.

Page of Record.

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"That William Clark, on the First day of October, in the year of
4 our Lord One Thousand Eight Hundred and Sixty-two, in said city of Chicago, in the County and State aforesaid, one Bay Mare of the value of one hundred dollars; one Bay Mare of the value of one hundred dollars, the personal goods and property of Archabold Scott,
4 then and there being found, did then and there feloniously steal, take and carry away, contrary to the statute," etc.

To this Indictment on the 8th day of October, A. D. 1862, the
6 Defendant in proper person plead not guilty.

On same day and year last aforesaid, Court ordered the plea ac-
6 cepted and entered of Record, and the Defendant remanded back to jail.

Affidavit of Defendant for continuance filed in said Recorder's
7 Court on the 10th day of said October, A. D. 1862, sets up that Clark was duly sworn, and says that he is the Defendant in the case; that the case is now pending in said Court, and that the Indictment was found at said October Term of said Court, and filed in said Court on the 8th day of October, A. D. 1862. That he has five witnesses in said cause; that their names are Daniel Dodd, Benjamin Coates,

J. C. Wallace, Harvey Eastman and John Drew, all of whom live in the town of Davenport, State of Iowa; that he cannot safely proceed
7 to trial without said witnesses; that he can prove by said witnesses that at the time said horses were stolen as charged by the prosecuting
8 witness, this deponent was in said town of Davenport, and had nothing to do with it in any shape or manner whatever, and that this deponent's character is good; that for eight months last past, this deponent has been engaged in the mercantile business in the said town of Davenport; that this affidavit is not made for delay or the hindrance
8 of public justice, but is made in good faith, etc.

8 October 10, 1862, motion for continuance overruled by the Court,
9 to which ruling of the Court in overruling said motion for a continuance, the said Defendant by his counsel then and there excepted.

On said 10th day of October, A. D., 1862, it was ordered by the
9 Court that a Jury come; the Jury was called, selected and sworn to try the case.

The People then called as their first witness Alfred Brewington,
15 who said: I came to this city to identify some horses which I understood was here. The Sheriff of Henry county sent word to the Sheriff of Mercer county, that the Scott horses were in Chicago, and that a man by the name of Clark had stolen them. (To what the Sheriff of Henry county told the Sheriff of Mercer county, to wit: That the Scott horses were in Chicago, and that Clark had stolen them, objected to by defence, objection overruled, and the Defendant excepted.)
15 I came here and identified the horses. They are worth, at cash value, forty or fifty dollars apiece. I delivered horses to Scott. Scott and his wife were sitting in the yard shelling corn. When I came in to their yard with the horses, they cried for joy when they saw their old family team coming back. (To what Mr. and Mrs. Scott did or said, objected to by defence, objection overruled, and Defendant excepted.)
15 I know nothing further about this matter.

On Cross Examination said: Mr. Scott lives about fifteen miles
15 & 16from Rock Island; about one hundred and ninety-seven miles from here.

The People then called John M. Burns, who said: I live in Henry county. Archabold Scott told me that he heard of his horses in Chicago, (To what Archabold Scott told Burns objected to by de-
16 fence, objection overruled by the Court, and the Defendant then and there excepted,) and wanted me to go after them. I came to Chicago

and found the horses here. I know them well. Their cash value is about fifty dollars each. They are old horses. I took the same horses and delivered them to Archabold Scott. He and his wife knew them well, and cried for joy when they received them back. (To what Scott and his wife did or said, when they received the horses back, objected to by defence, objection overruled by the Court, and
16 the Defendant then and there excepted).

The People then called as a witness Joseph Dixon, who said: I
16 am a policeman. I found these two horses, one at Dennis Buchanan's barn, corner of Water and Market streets, and the other on the North
16 side, at the corner of Division and North Wells streets. I delivered them to Burns. One was a small bay horse and the other was a sorrel. One of them I saw this man Clark leading. One I found at Buchanan's stable. I arrested the Defendant. I asked him where he
17 got the horses. He said he got them of a man by the name of Heflin, on Kenzie street, on the North side. I followed the Defendant into Mr. Buchanan's barn, corner of Market and South Water streets. Mary Buchanan, the wife of Dennis Buchanan, would not willingly let them go without twelve dollars; I agreed it should be paid, and took the horses. I advertised the horses. John M. Burns came here after the horses. I delivered the same horses to him.

On Cross Examination he said: The Defendant, Clark, told me
17 he got the horses of Heflin. He disclaimed to own them, but always said that they belonged to Heflin. I arrested Heflin; we kept him locked up some time, and then let him go. I do not know what became of him. I arrested him after I arrested Clark. Mrs. Buchanan
17 described him to me, as one of the men who came there to their stable with the horses. Clark told me he was taking care of them for Heflin.

The People then called Elizabeth Scott, who said: I live in Henry county, Illinois. On the night of the 7th of August last, my husband, Archabold Scott, put into his pasture two bay mares. The next
17 morning they were gone. They were his property. He is sick abed,
18 and could not come here. The horses are worth one hundred dollars apiece to us. John M. Burns brought the horses home. I knew the horses were in Chicago, because the Sheriff of Mercer county sent word to the Sheriff of Henry county, that the horses were in Chicago, and that Clark, the man who stole them, was in jail. (To what the Sheriff of Mercer county told the Sheriff of Henry county, objected to by defence, objection overruled by the Court, and the Defendant excepted.) They were our old family team. I know the horses that

were returned to us by Burns, to be the same horses that were taken from us on the night of the 7th of August last.

18 On Cross Examination, she said: I do not know what the cash value of the horses are; they are worth one hundred dollars each to us; I know nothing about this matter except what I have stated.

The People then called as a witness, Mary Buchanan, who said: This Defendant came to our barn Sunday morning, and brought a horse there; he then went and brought two more. I know this is the same man. My husband lent him twelve dollars. He said that he wanted to pay freight on some horses that were at the depot. I did
19 not want my husband to lend him the money, because I thought the horses were stolen. (To what she thought objected to by defence, objection overruled by the Court, and Defendant excepted.) My husband let him have twelve dollars, and he left a horse as security for
19 the money. Our stable is in this city.

On Cross Examination, she said: There was another man came with this one. He was a tall, slim, dark-skinned man, with light whiskers. I remember this man. He borrowed twelve dollars of my husband to pay the freight on some horses. The other man was present. He sat on the steps close by, with a newspaper up to his face. He seemed to be writing something with a pencil. He told this man to feed the horses and take good care of them. He told my husband to feed and take care of them to. One of Bradley's men arrested both of these men, and took the horses away. The man that took the horses away said that he was an officer, and that he would be responsible for the twelve dollars. I saw both of the men, this man Clark and the other man, in Mr. Bradley's office. I should not know the other man if I saw him. This man came to the stable first with one
19 & 20horse. Then the other man and he came with two horses.

Certificate, that the following is all of the evidence given on the
20 trial of this cause, both on behalf of the People and the Defendant.

VERDICT.

10 We, the Jury, find the Defendant guilty as charged in the Indictment. We find the value of the property stolen, to be eighty dollars,
10 and fix the term of imprisonment in the State Penitentiary at one year.

Motion in arrest of Judgment and for new trial. The Court
10 takes motion under advisement, and orders the prisoner remanded to jail.

October 22, A. D. 1862. Court overrules the Defendant's motion in arrest of Judgment and for new trial. To which ruling of the
12 Court in overruling said motion, the Defendant then and there excepted.

SENTENCE.

12 That the said Defendant, William Clark, be taken from the Bar of the Court to the common jail of Cook county, from whence he came, and from thence by the Sheriff of Cook county, within ten days from and after the adjournment of this Court, to the State Penitentiary at Joliet, and to 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 Clark, and confine him in said Penitentiary, in a safe and secure custody, for and during the term of one year, from and after the First day of May,
12 A. D. 1866, (the said Defendant having been sentenced by the Court
13 on another verdict of guilty, rendered at this term, to three years and
13 six months imprisonment, which said time expires on the aforesaid First day of May, A. D. 1866,) one day of said term in solitary confinement, and the residue of said term at hard labor, and that he be thereafter discharged.

JUDGMENT FOR COSTS.

13 It is further ordered by the Court, that the said Defendant pay all the costs of these proceedings, and that Execution be issued therefor.

20 Signature of the Judge to Bill of Exceptions.

R. S. WILSON, Recorder.

22 Filing of the Bill of Exceptions, filed October 23, A. D. 1862.

J. K. C. FORREST, Clerk.

28 Certificate of State's Attorney expressive of his opinion that the foregoing Record contains a full, true and perfect history of the pro-

ceedings had in the case, and that in case a *supersedeas* is granted, it is proper that the prisoner should be allowed bail.

30 Certificate of the Clerk of the Recorder's Court, that the foregoing Record is a true and complete copy of all the proceedings had in the case, and a perfect copy of all papers on file in his office, etc.

SAMUEL M. FELKER,

Of Counsel with the Plaintiff in Error.

5-155

Clark
vs
The People

Abstract

Filed A/L 25
1863

L Leland
Clk

Supreme Court of the State of Illinois
April Term A.D. 1863 -

Wm Clark
vs
The People

Points and Authorities for Defts in Error

The motion for a ~~con~~ continuance was properly overruled because non constat 1st that the witnesses were not present and could not have been procured & 2nd that there were not other available witnesses by whom the same facts could have been shown as by those named

What the owner of the horses & his wife did and said at the time the witness delivered the horses to them & what the Sheriff & Scott told the witness when he started to go to Chicago to recover the horses for Scott were all a part of the res gestae

The evidence was not material to the issue & therefore it was not error to admit it - 14 Ohio 286.

Although the evidence was exceptionable yet there was sufficient legal testimony to support the verdict - & no injustice was done

A new trial will not therefore be granted

Whart - Am Crim L - 639
11 East - 307 - 22 Pick. 397
3 Serg & R 14

D. D. Jones
States Atty -

6. P.D. - 156

Wm Clark

vs.

The People &c

Defts Brief

Filed May 12 1863

L. Leland

Clerk

#121

State of Illinois
County of Cook
City of Chicago } ss

Pleas before the Honorable Robert S. Wilson, Recorder of the City of Chicago, and Presiding Judge of the Recorders Court of said City, at a term thereof, began and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday of, it being the Sixth day of October, in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States the Eighty Seventh.

Present: Hon. Robert S. Wilson, Recorder of the City of Chicago
Joseph Knox, States Attorney
A. C. Hesing, Sheriff of Cook County.

Attest: Joseph K. C. Forrest. Clerk of said Court.

Be it Remembered, to wit;

on the Eighth day of October, 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 Sheriff returned into Court the Venire Facias formerly issued, by which it appears to the Court, that the following named persons have been duly summoned to appear this day, and serve as Grand Jurors at this Term of Court, to wit;

Henry Fuller.	Jas. Mc Carthy.	F. [illegible] Slater.
Thos. Steinmuller.	Isaac Speer.	Geo. M. High
Patrick Maloy.	A. G. Throop.	A. J. Hayward.
Chas. H. Barnes.	E. Rawson.	L. Baer
John Kean.	M. Donnahue.	Joseph Miller
Louis Kuhnhard	Joseph Walz.	Jacob Harris
William Ellis.	John Towers.	E. Haleng.
D. A. Gage. and	James S. Finch.	

who upon being called, answered to their respective names and gave their personal attendance at this Term of Court as a Grand Jury in and for the body of the City of Chicago.— and Henry Fuller one of the said Grand Jurors having been appointed Fore-

3 #1

man of said Grand Jury, they were duly sworn in and charged by the Court, and thereupon retire to consider of their presentments.

And afterwards to wit; on the Eighth day of October 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 Grand Jury came into open Court and among others made the following presentment, endorsed "True Bill" which "True Bill" is in the words and figures following, to wit;

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

At the October term of the Recorders Court of the City of Chicago in said State and County, in the year of our Lord one thousand eight hundred and sixty two.

The Grand Jurors chosen, selected and sworn

4th

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 Clark late of said City, on the first day of October in the year of our Lord one thousand eight hundred and sixty two, in said City of Chicago, in the County and State aforesaid, one sorrel horse of the value of seventy five dollars, one bay horse of the value of seventy five dollars the personal goods and property of Alfred Brimington 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.

which said True Bill has the following endorsement. to wit;

" T. G. No. 3481.
Recorder's Court
of the City of Chicago
October Term 1862.
The People of the State of Illinois
vs.
William Clark
Indictment for Larceny.
A True Bill. Henry Fuller, Foreman of the Grand Jury.

5th

Witnesses:
Joseph H. Dixon. Alfred Zeunington. Dennis Zuchanan. Mary Zuchanan.
Filed: the Eighth day of October A. D. 1862.—
J. T. C. Forest. Clerk.

And thereupon to wit, on the day and 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
3481. vs Indictment for Larceny.
William Clark

This day come the said People by Joseph Knox States Attorney and the said defendant as well in his own proper person as by his Counsel S. M. Felker Esq. also come, and the said defendant having been furnished with a copy of his Indictment and a list of Jurors and Witnesses and he being now here duly arraigned, for Plea says that he is "Not Guilty" in manner and form as charged in the Indictment; thereupon the Court orders that said Plea be accepted and entered of Record and that the said defendant be remanded.

6th

And afterwards to wit, on the Tenth day of October 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

3481. vs Indictment for Larceny

William Clark

This day again come the said People by Joseph Knox ~~State~~ Attorney, and the said defendant as well in his own proper person as by his Counsel J. M. Felker also come, and now issue being joined, it is ordered by the Court that a Jury come, thereupon come a Jury of good and lawfull men, to wit; William Arend. Thos. J. Holt. James Campbell. Valentine Keller. Ira Coleman. Gottlieb Leibbrand Joseph Holdurnp. Henry Fink. John Daly. W. H. Haase. Adam Amberg. and Thomas Kelly who were duly empanelled and sworn; and they having 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 come into Court again and for Verdict say "We the

~~15~~ 7th

Jury find the defendant guilty as charged in the Indictment, we find the value of the property stolen to be One hundred and twenty five dollars, and fix his time of imprisonment in the States Penitentiary at Three years and six months."

And now come the said defendant by his Counsel and moves the Court for a new trial and in arrest of Judgment in this cause; and the Court not being fully advised in the premises, takes said motions under advisement, and orders the said defendant to be remanded.

And afterwards to wit, on the twenty second day of October 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 proceedings are in the words and figures following, to wit;

The People of the State of Illinois
3481. vs Indictment for Larceny.
William Clark

This day again come the said People by Joseph Knox, States Attorney and the said defendant as well in his own proper person

6th

as by his Counsel J. M. Felker Esq. also came; and the Court having considered the motion for a new trial and the motion in arrest of judgment heretofore made by the said defendant herein, and after hearing counsel as well in support of said motions as in opposition thereto; orders that said motion for a new trial and 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 now neither the said defendant nor his Counsel saying anything further why the judgment of the Court should not now be pronounced against him on the Verdict of guilty heretofore rendered in this cause;

Therefore, it is ordered and adjudged by the Court that the said defendant William Clark be taken from the bar of the Court to the Common Jail of Cook County from whence he came, and from thence by the Sheriff of Cook County, within Ten 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 the said William Clark and confine him in said Penitentiary in a safe and secure custody, for and during the term of Three years and six months from and after the delivery hereof. One

9th 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 pay all the costs of these proceedings and that Execution issue therefor.

Brevingtons case

#~~22~~
11th

Be it further remembered that the People to prove their said issue called as a witness Alfred Brevington who being duly sworn in open Court testified as follows, I lost a pair of Horses, they were taken on the second of last August in the night time, They were my property They were taken from Mercer County Illinois, They are worth Seventy five Dollars each, This man the defendant and another man was together and stoped at my House on the morning of the second of August last and took breakfast. They staid from fifteen to thirty minutes and went west, The first time I ever saw this man was at my House that morning, I next saw him in Jail here in this City, The second week after the Horses was stolen, I have never seen the other man since, I found my Horses here near Capt. Bradleys House in this City, One was a Sorrell Horse and the other was a Bay, I wrote to Bradley describing my Horse, I soon heard he had them, I came and found them in this City, I know they are the same Horses, I know the defendant to be the same man who took breakfast at my House the morning before they were stolen,

The People then called Joseph Dixon as a witness who said, I am a Police officer, I first saw this

12th

defendant Clark leading three Horses on the morning of the Eleventh of August last, I followed him to where he put the Horses up in this City, I arrested him there, He told me there was another Horse on the north side corner of Wells & Division Street, I went there and found the Horse, It was a bay Horse, I have heard Mr Brewington describe the Horses, I delivered the same Horses which I found with Clark to Mr Brewington and which Mr Brewington Identified as his.

Cross examined,

Clark the defendant disclaimed to own either Horse, and told me that they all belonged to another man, and said that one of the Horses had been sent here to sell by Mr G. Doughty a farmer who lived at or near Geneseo in this State, He told me that the Horses belonged to Heflin and that he was taking care of them for him, I arrested Heflin and locked him up, we kept him some time, He was a tall dark skin man with light whiskers, Mrs Buchanan described him to me as one of the men who came there with the Horses, I arrested him on her description, we let him goe, I dont know what became of him, we could not connect him with the Horses, the defendant did not claim to own any of

the Horses, But said that they were Heaflins.

The People then called as a witness, Mary Buchanan, who testified as follows. I know this man the defendant, He and another man came to our place and left some Horses, This man the defendant came first alone, and left One Horse, he borrowed twelve dollars of my husband and left a Horse as security for the money, He and another man came and brought two more Horses. When my husband lent him the money he said he wanted to pay some freight on some Horses at the depot. I told my husband not to let him have the money, I suspected that the Horses was stolen. (To her suspicions as what she and her husband talked together, objected to by defence, objection overruled and the defendant excepted, I did not pay any attention to the Horses, nor their Color, I was looking after my money.

13th

Cross.

I dont recollect how the other man looked, He was a tall slim man dark skin and light whiskers, When my husband let this man have the money, the other man was there to. He was sitting close by, on some steps with a newspaper before his face, after this man Clark got the money they both went off together, I saw the other man in Mr Brendly office, I saw this man

~~14~~ 15

14th

Clark there, I recollect this man best, I did not notice either particularly, I was watching my money, I dont know what the color of the Horses was, I saw this man Clark feeding them in our Barn, The other man told him to feed them and take good care of them, I heard the other man tell him so, The other man told my husband to feed them also, I do not know officer Dixon, One of Bradlys men arrested this man Clark and the other man, I dont know what the other mans name is, I dont know what officer arrested them, The man that arrested them took the Horses away with him, I only know that he said that he was one of Bradlys men, He told me that he would see that I got my twelve dollars.

People rested

Defence offered no evidence.

Counsel for defendant moved in arrest of judgement, and for a new trial, the Court overruled said motion to which ruling of the said Court the defendant by his Counsel excepted and prayed an appeal to the supreme Court of the state of Illinois and tenders this his Bill of exceptions to which the said Judge R. S. Wilson has set his hand and seal this twenty second day of October A. D. 1862.

R. S. Wilson

Recorder.

The People of the state of Illinois
vs
William Clark

Bill of Exceptions

Filed

October 23d A.D. 1862

J. K. C. Forrest
clk

17th

I, Joseph Knox States Attorney, having prosecuted the case of the People of the State of Illinois versus William Clark, and examined the Witnesses in open Court and having carefully examined the foregoing Record do hereby certify that in my opinion the foregoing Record contains a full, true and perfect history of the proceedings had on the trial of said cause, and that the testimony is correct as given on the trial of said cause in the Recorders Court of the City of Chicago at the October Term of said Court A.D. 1862

And I do further certify that in case a supersedeas is granted in said cause, it is a proper case, wherein the prisoner should be admitted to Bail

J. Knox
States Atty

19th

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

I, Joseph K. C. Forrest, Clerk of the Recorders Court of the City of Chicago, County and State aforesaid, do hereby certify, the above and foregoing to be a true and complete copy of all the proceedings entered of Record and of all the papers on file in a certain cause, heretofore pending in said Court, wherein the People of the State of Illinois were Plaintiff and William Clark was defendant.

Witness, Joseph K. C. Forrest Clerk of said Court and the Seal thereof at Chicago this Fifteenth day of December A. D. 1862.

J. K. C. Forrest
Clerk

Let a supersedeas issue in this cause

J. D. Caton

Jany 30. 1863.

20th

21st

Now comes the defendant and says. That in the Record and proceedings aforesaid and in the rendition of the Judgement aforesaid there is manifest error in this, to wit;

1st The Court erred in permitting improper evidence, to be given to the Jury, on the part of the People.

2d The Court erred in overruling the defendants objections made during the progress of the trial,

3d The Court erred in overruling the defendants motion in arrest of Judgement.

4th The Court erred in pronouncing Judgement on the verdict.

Samuel M. Gelker
Atty for Plaintiff in error.

And now comes the said people of the State of Illinois by D. P. Jones States Attorney and say that in the record and proceedings aforesaid and in the rendition of the judgement aforesaid, there is no error wherefore they pray judgement &c D. P. Jones
States Attorney

6

William Clark
vs
The People ex
Rel. Evans

Filed Jany. 30, 1863
L. Leland
Clk.