

13730

No. _____

Supreme Court of Illinois

Farrell

vs.

People

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

Was before the
Honorable Robert S. Wilson Recorder
of the City of Chicago in the County and
State aforesaid, and presiding Judge
of the Recorders Court of the City of Chi-
cago aforesaid at a term thereof
began and held on the first Monday
in June, it being the fourth day of
June in the year of our Lord one
thousand eight hundred and fifty
five and of the Independence of
the United States the seventy ninth

Present

Honorable Robert S. Wilson Recorder
Daniel McElroy States attorney
James Andrews Sheriff of Cook Co
Attest Philip A. Hoynes Clerk

Be it remembered that afterwards
to wit on the fifth day of June
in the year last aforesaid it being
one of the days of the June term afore-
said the following proceedings among

others were had and entered of record
in said Court which said proceedings
are in words and figures following to
wit

The Sheriff of Cook County
returned into Court the venire for a
Grand Jury issued from the names
selected by the Common Council of the
City of Chicago in pursuance of the pro-
visions of the act of the General assembly
of the State of Illinois creating the
Recorders Court of the City of Chicago
served by summoning the following
named persons to wit S D Ward
Walter Shelby Patrick Lamb Elias T
Watkins C A Spring D Horton John
Knight John Borman H D Bassett
Horace Barber C Cook James L Bates
R S King Oliver S Goss Lewis P Hill and
C A Dyer who upon being called ans-
wered to their names and gave their
attendance as Grand Jurors at their
turns as follows to wit S D Ward
Walter Shelby Elias T Watkins C A
Spring D Horton John Borman
H D Bassett Oliver S Goss Lewis P
Hill

Whereupon for sufficient reasons made known to the Court James L Gales R. Skiny and Patrick Lamb, were excused from further attendance as Grand Jurors at this term

It is Ordered by the Court that attachment issue for the bodies of John Knight Horace Barber C Cook and E H Dyer return, able instanto they having been duly served with process as Grand Jurors

The following named persons were returned on the venire "not found" to wit: L B Harkness H J Noble John Lawler James Law John Austin Henry Taylor and A B Jones

It is Ordered by the Court that a special venire issue for eight good and lawful men to complete the panel of the Grand Jury return, able instanto which was duly returned served by summoning the following named persons who upon being called answered to their names as follows and gave their attendance at this term to wit Samuel Meiler Charles M Donnelo Jacob Bishop E H Allen H H Shook

John Bates Albert and Charles Coe,
glass who together with S D Ward
Walter Shelby Elias P Watkins C Co
Spring D Norton John Borman H D
Bassett Oliver Goss and Lewis P Hill
were duly sworn in as a Grand Jury
in and for the body of the City of
Chicago and the Court having appoint-
ed E H Aiken one of their number as
foreman of the said Grand Jury and
they having received the charge of
said Court retired to consider of their
presentments

And afterwards to wit the twentieth
day of June in the year last aforesaid
it being one of the days of the June term
aforesaid the Grand Jury came into
Court and among others made the fo-
llowing presentment endorsed a true
bill to wit

70 The people of the State of Illinois
v Larceny
William Farrell John W
Stewart and John C Brown
which
said presentment is in words and

figures following to wit

State of Illinois }
City of Chicago } 33
Cook County }

Of the June 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 fifty five of
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 au-
thority of the people of the State of Il-
linois upon their oaths present that
William Farrell John W Stewart
and John C Brown late of said City
on the first day of May in the year
of our Lord one thousand eight hun-
dred and fifty five in said City of
Chicago in the County and State a-
foresaid being then and there Bailees
to one Joseph Hennis of a certain
Bank Bill for the payment of five
dollars and of the value to the
said Joseph Hennis of five dollars

and as such bailes did then and there feloniously convert the same to their own use with intent then and there feloniously to steal the same contrary to the Statute and against the peace and dignity of the same people of the State of Illinois

Wm Hoy
State attorney

And on the back of the Said Indictment is the following endorsement to wit:
70 Gen No 810 Recorder Court of the City of Chicago June Term 1855
The people of the State of Illinois vs
Wm Farrell et al Indictment for Larceny
a true bill E H Allen Foreman of
the Grand Jury Witnesses Joseph Harris
Filed June 7, A.D. 1855 W Hoyne
Clerk

And afterwards to wit on the twelfth day of June in the year last aforesaid it being one of the days of the June Term aforesaid the following proceedings among others were had and entered of Record in the Court aforesaid which said proceedings

are in words and figures as follows to
wit

The People

70

^r William Farrell John
ⁿ Stewart and John C Brown

Larceny

And now

at this day come the said people by
Daniel M. Troy States attorney and
the said defendants as well in their own
proper person as by Joseph B. Underwood
Esq. their counsel also come and they
being furnished with copies of their in-
dictment lists of the Jurors and Wit-
nesses and they being duly arraigned
and forthwith demanded of and con-
cerning the crime alleged against them
in the said indictment how they would
acquit themselves for plea herein in
this behalf say that they are not guilty
in the manner and form as they are
charged in the said indictment and
of this they put themselves upon the
Country and the people do the like
and issue being joined it is Ordered
by the Court that a Jury come thereupon
come the Jurors of a Jury of good
and lawful men to wit George Haines

H D French Wm Spence D a Gago
D Johnson F L Kent Elijah Moon
Charles Connor and Fitch Isaac
Frank George H Hosley and George
H Jennings who being duly elected
tried and sworn well and truly to
try the issues joined between the parties
according to law and the evidence
and after hearing the testimony of the
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
and say We of the Jury find the
defendants John W Stewart and John
C Brown not guilty in the manner
and form as they are charged in the
indictment We find the defendant William
Farrell guilty in the manner and
form as he is charged in the indict-
ment We find the value of the property
taken to be five dollars and we fix
the term of his imprisonment at one
year in the penitentiary of this State
at Alton

Whereupon it is Ordered
by the Court that the said defendant

William Farrell be remanded to the custody of the Sheriff of Cook County and that the said defendants John W Stewart and John C Brown be discharged from custody and go hence without day

And afterwards to wit on the twenty sixth day of June in the year last aforesaid it being one of the days of the June term aforesaid the following proceedings among others were had and entered of Record in the Court aforesaid which said proceedings are in words and figures as follows to wit

The People

7th

William Farrell impleaded
with John W Stewart and
John C Brown

Larceny

This day come the said people by David McAnoy States attorney and the said defendant as well in his own proper person as by his counsel also comes and now neither the said defendant nor his counsel for him saying anything

further why the sentence of the Court
should not now be pronounced against
him on a verdict of guilty heretofore
rendered in this cause

Therefore it is
Ordered and Adjudged by the Court
that the said William Fairclough, implicated
with John W Stewart and John C
Brown 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 fifteen days from and after
the adjournment of this Court to the
penitentiary of this State at Alton 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 defendant and confine him
in said penitentiary in safe and
secure custody at hard labor for
and during the term of one year
from and after the delivery hereof
and that he be thereafter discharged
It is further Ordered by the Court that
the said defendant pay all the costs of
these proceedings

Bill of Exceptions

William Farrell of the June term A D
The People } 1855 Recorder's Court of the
City of Chicago

Be it remembered that on the trial of this cause the people to prove the case on their part called Joseph Hennis who was sworn and gave the only testimony on the part of the prosecution introduced in the case said Hennis testified that on the day of A D 1855 he arrived in the City of Chicago on the Central Michigan Rail Road Cars at about twelve o'clock at night that Farrell the defendant a pack driver met him that witness was a stranger in the City and asked Farrell if there was any train going to Fond du Lac that night to which Farrell answered in the negative and that there would be no conveyance until the next morning Farrell then asked witness if he wished to go to a hotel witness answered that he did if there was no train going that night to Fond du Lac that he wished to go to one nearest the depot of the Rail

Road which would take him to Fond du Lac Farrell then told him to get in to his hack and he immediately got into Farrell's Hack together with another passenger and the defendant Stewart Farrell drove to the Union House kept by Stewart situated South on State Street nearly a mile from the Fond du Lac depot on the north side opened the carriage door took the carpet sack of witness went to front door of the house which was fastened then went to side door - took a key from his pocket and went into the house with witness lit a candle and showed witness to a room upstairs - Farrell then asked witness if he wished to buy Rail Road tickets to Fond du Lac and presented two tickets witness asked the price of them Farrell answered six dollars witness said he preferred buying at the ticket office witness then asked Farrell how much he charged witness for bringing him to the hotel Farrell answered twenty five cents witness then told Farrell he had no change and handed Farrell a five dollar bill of the value of five dollars and asked Farrell to give him the change Farrell received the bill and

x
Told witness he would go down stairs
and get him the change from Stewart
the Landlord and immediately went
downstairs witness waited half an hour
for Farrell to return and then went to
bed Farrell did not return and was arres-
ted on the ~~evening~~^{Evening} of the next day during
all this time Brown was outside with
the carriage when Farrell was upstairs
talking Stewart was down stairs in the
bar room and he came up to witnesses
room witness told him about it and he
promised to see about it in the morning
witness could not see Stewart in the
morning

The defendant Farrell then
called C O Johnson — who
was sworn and testified that he was
bar keeper to Stewart that he knew the
defendant Farrell to be a driver of a
packing coach in the City of Chicago
that the defendant Farrell was never in
any way connected with defendant
Stewart's hotel nor was he Farrell ever
an inmate of the house witness only
knew him as he knew other hack
men and this was all the testimony
given in this case on either side

Second Instructions to the giving of which said instructions the defendants. Counsel then and there objected and excepted.

That if the Jury shall believe from the evidence that the witness Kemmis handed the five dollar bill to the defendant Farrell from which Farrell was to take twenty five cents due to Farrell and return him the ballance of Four dollars and seventy five cents and if the Jury shall further believe from the evidence that Farrell after he so received the bill did not return the change but kept the change intending to defraud Kemmis still he is not guilty of feloniously converting the five dollar bill charged in the Indictment otherwise if nothing was due to Farrell

If the Jury shall believe from the evidence that Farrell was entitled to twenty five cents as his fare as hackman for driving the witness Kemmis to the hotel and that the witness Kemmis gave Farrell a five dollar bill from which to take twenty five cents then in law ^{Farrell} was not bailed to Kemmis for five dollars but only for four dollars and seventy five cents

but if Farrell was entitled to no pay otherwise

The Court then gave without any request from the prosecution the following instructions

If the Jury shall believe from the evidence that Farrell received the bill at the time intending not to return any change but to feloniously convert the whole to his own use then it is Larceny

All the Instructions must be considered by the Jury together and not to decide the case upon any one Instruction to which said several instructions the defendant Farrell then and there excepted and prayed the Court to sign and seal this his bill of Exceptions which is done in open Court

R D Wilson Clerk
Recorder

And on the back of the said bill of Exceptions is the following endorsement to wit William Farrell vs The People Bill of Exceptions Filed June 12th 1855
P A Dwyne Clerk

The people of the
State of Illinois
William^r ^d Farrall et al

Copy of the Record

Errors assigned

- 1st The Court erred in refusing the 1st & 2^d of defendants instructions as asked
- 2^d The Court erred in amending, qualifying and giving as amended and qualified, the said 1st and 2^d instructions
- 3^d The Court erred in giving the additional instructions
- 4th The Court erred in rendering judgment for that the indictment does not allege the general value of the property converted
- 5th The Court erred in rendering judgment upon the verdict, for that, the verdict does not find the value of the property converted, nor the value of the property taken, when converted
- 6th General Assignment.

J. B. Underwood
of counsel for plaintiff

And now comes W. H. Wallace who
defends the defendant in this behalf
and assigns the following errors in the
aforesaid
by the record
excepted
in all

11

Wm Farnell
at
People

Record

13730

Filed July 12, 1858.
L. Ireland Clk.

11

~~11~~