

No. 13355

Supreme Court of Illinois

^c
Be~~k~~with

vs.

People

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

7 Peoples
No.  *7*

7 P.D.

Beckwith

vs

People

1861

1861

13355

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County See Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of See County, before the Judge thereof, between
The People of the State of Illinois

plaintiffs and Oscar T. Beckwith

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Oscar T. Beckwith

as we are informed by his complainant 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 Eight day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

Lorenzo Delamer
Clerk of the Supreme Court.

By J. H. Delamer Deputy

The People of the
State of Illinois
No. vs.

Oscar F. Beckwith

WRIT OF ERROR.

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

Lorenzo Deland
Clerk.
By J. Deland. Jy 24

FILED Feb. 8th A. D. 1867

Lorenzo Deland
Clerk.
By J. Deland. Jy 24

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

OSCAR F. BECKWITH, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Defendants in Error.

INDICTMENT FOR ASSAULT WITH INTENT TO COMMIT MURDER.

ERROR FROM LEE.

ABSTRACT OF THE RECORD.

- 1 Of the November Term of the Lee County Circuit Court A. D. 1860; before the Hon. John V. Eustace, Judge of the 22d Judicial Circuit.
- 1&2 On the fifth day of December A. D. 1860, (one of the regular days of said November Term) an indictment was found against the plaintiff in error, for an assault with intent to commit murder.
- 2 On the same day the indictment was returned by the Grand Jury in open Court, endorsed "a True Bill," signed by the foreman, of the Grand Jury, and an order entered by the Court, that a Bench warrant issue for the arrest of the plaintiff in error, and that he be held to bail in the sum of five hundred dollars.
- 2 The Bill of indictment so found by the Grand Jury, is in the words and figures following, to-wit:

2 "STATE OF ILLINOIS }
LEE COUNTY. } ss.
Of the November Term of the Lee County Circuit Court, in the year of our Lord 1860.
- 2 The Grand Jurors, chosen, selected and sworn, in and for the
2 county of Lee, in the name, and by the authority of the people of the State of Illinois, upon their oaths present, that Oscar F. Beck-

with, late of the County of Lee, on the tenth day of October, in
 3 the year of our Lord one thousand eight hundred and sixty, at and
 within the County of Lee, aforesaid, unlawfully, wilfully, feloniously
 and of his malice aforethought, did then and there make an assault
 in and upon one Emily Ann Bennett, (wife of David H. Bennett,) in
 the peace of the said people, then and there bring, with a certain
 axe, made of iron, steel and wood, and with a certain butcher knife,
 made of iron, steel and wood, which he, the said Oscar F. Beck-
 with, in his hand, then and there, had and held, with intent, her,
 the said Emily Ann Bennett, with the axe and butcher knife, afore-
 said, then and there feloniously, wilfully and of his malice afore-
 thought, then and there to kill and murder, contrary to the form of
 the statute, made and provided, and against the peace and dignity
 of the same people and State of Illinois."

3: "And the Grand Jurors aforesaid, upon their oaths aforesaid, do
 further present, that Oscar F. Beckwith, late of the County of Lee,
 on the tenth day of October, in the year of our Lord one thousand
 eight hundred and sixty, at and within the County of Lee, afore-
 said, unlawfully, wilfully, and feloniously and of his malice afore-
 3 thought, did then and there make an assault, in and upon one Emily
 Ann Bennett, in the peace of the people of the State of Illinois,
 3&4 then and there bring, with a certain axe made of Iron, steel and
 4 wood, which he, the said Oscar F. Beckwith, in his hand *did* then
 and there, had and held, with intent, her, the said Emily Ann Ben-
 nett, with the axe aforesaid, then and there feloniously, wilfully,
 and of his malice aforethought, then and there to kill and murder,
 contrary to the form of the statute, in such case made and provid-
 ed, and against the peace and dignity of the same People of the
 4 State of Illinois."

4 "And the Grand Jurors aforesaid upon their oaths aforesaid, do
 further present, that Oscar F. Beckwith, late of the County of Lee,
 on the tenth day of October, in the year of our Lord one thousand
 eight hundred and sixty, at and within the County of Lee, afore-
 said, unlawfully, wilfully, feloniously, and of his malice aforethought,
 did then and there make an assault upon one Emily Ann Bebee, in
 the peace of the said people, then and there bring, with a certain
 butcher knife made of iron, wood and steel, which he, the said
 Oscar F. Beckwith, then and there had and held, with intent, her,
 the said Emily Ann Bebee, with the knife aforesaid, then and there
 feloniously, wilfully and of his malice aforethought, then and there
 4 to kill and murder, contrary to the form of the statute in such case
 5 made and provided, and against the peace and dignity of the same
 people of the State of Illinois."

6 "And afterwards to wit: on the eleventh day of December, aforesaid, as yet one of the regular days of said November Term, the following proceedings were had in this behalf, as appears to us of record, that is to say:

"Indictment for an assault with intent to commit murder.

"On this day comes McCartney, States Attorney, and the prisoner being brought into Court, (and Stevens and Wood appearing as Counsel for said prisoner) now enters his motion to quash this indictment, which said motion is by the Court overruled; and the said prisoner being now arraigned for a plea, saith that he is "*not guilty*," in manner and form as charged in the indictment against him, and now come a Jury of good and lawful men, to-wit:"

What follows in quotation marks is taken verbatim from the record.

6 "And the said Jury having heard the evidence and the argument
of counsel retire in in charge of a sworn officer to consider of their
7 verdict. And afterwards on this day come the said Jury into
Court, and return the following verdict, to-wit :

7 "We, the Jurors, find the defendant guilty of an assault with a deadly weapon, with intent to inflict a bodily injury upon the person of Emily Ann Bennett, where the circumstances of the assault showed an abandoned and malignant heart.

7 "And, therefore, the said prisoner by his said counsel, enters his motions in arrest of judgment, and also for a new trial. And therefore the prisoner is remanded to await further action herein."

What follows in quotation marks is copied verbatim from the record.

7 And afterwards on the thirteenth day of December aforesaid, the prisoner was brought into Court, and the motions in arrest of judgment and for a new trial were heard, and were by the Court overruled.

"And thereupon the Court proceeds to pronounce judgment and sentence on the said prisoner."

Which judgment and sentence is as follows:

8 "It is the judgment and sentence of the Court, that the said prisoner pay a fine of five hundred dollars, and that he be confined in the County Jail of this County for nine calendar months, and that he pay the costs of this prosecution, and that he stand committed till the said fine and costs are fully paid, and this judgment be so satisfied."

9 Upon the trial of said cause, and before the Jury retired to consider upon their verdict, the Court gave the following instruction (the fourth number) to the Jury, to-wit:

9 "Under the indictment the Jury can find the defendant guilty or not guilty, in manner and form as charged in the indictment; or they may find him guilty of an assault with a deadly weapon, with intent to inflict a bodily injury upon the person of Mrs. Bennett, if no considerable provocation appears, or if the circumstances shew an abandoned and malignant heart."

9 And the Court refused to give the following instructions asked for by the plaintiff in error, to-wit:

9 "If the Jury believe that an assault was made when the defendant and prosecuting witness were engaged in a fight, and that the defendant had been provoked by words and actions on the part of the witness until his passions were so aroused that he may not have allowed the exercise of reason, the offence would only have been manslaughter in case death had ensued."

10 Unless the Jury believe that the defendant committed the offence charged, wholly and deliberately, and under circumstances where he may be supposed to have acted without a sufficient degree of reason, they must find him not guilty."

ASSIGNMENTS OF ERROR.

1st. The Court erred in overruling the motion to quash the indictment.

2d. The Court erred in permitting a misjoinder of Counts.

3d. The Court erred in refusing certain instructions asked for by the plaintiff in error, and also in giving the fourth or last instruction.

4th. The Court erred in overruling the motion in arrest of judgment and in pronouncing any sentence or judgment upon the plaintiff in error.

5th. The record does not show upon what day or year the Jury rendered their verdict in the case.

6th. The record does not show affirmatively that the plaintiff in error was in Court, at the time the verdict was received and read.

JOHN STEVENS, Attorney for Plaintiff in Error.

Abstract of Record

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

OSCAR F. BECKWITH, Plaintiff in Error

THE PEOPLE OF THE STATE OF ILLINOIS
Defendants, on Error.

BRIEF OF POINTS AND AUTHORITIES.

John Stevens, of counsel for Plaintiff in Error, relies upon the following points and authorities.

I. The Court erred in overruling the motion of the plaintiff in error to quash the indictment, so far as the first and second counts are concerned.

1st. Because at common Law, in indictments for offences against the person, the words "with force and arms" are necessary.

5, Bac. Abr. 85 Indictment, G 6.

These words are used in all approved precedents of indictments for this offence.

The statute leaves the words to be used, describing this offence, in indictments, as at common Law.

Curtis vs. The People, (Breese 199).

This indictment does not contain those words.

2d. Because there is uncertainty in describing the offence committed, and the manner of its commission. An indictment should be certain, clear and explicit.

Barb. Crim. Law, 318. 5 Bac. Abr. 68, G 1—77, G 3.

It should charge the act to have been done with a deadly weapon: *Ainsworth vs. The State*: 5 Howard 242.

3. The conclusion of the first count is insufficient, it does not contain the usual words "in such case."

II. The Court erred in permitting a misjoinder of counts.

The third count charges the defendant with an assault upon the person of Emily Ann Beebe, with intent to commit murder: the first and second counts, an assault upon the person of Emily Ann Bennett with intent to commit murder.

Here two distinct offences or criminal transactions are charged. And in treasons or felonies, no more than one distinct offence or criminal transaction should regularly be charged upon the prisoner in one indictment.

Barb. Crim. Law 339. 2d ed.

III. The court erred in overruling the motion in arrest of judgment: and in pronouncing any sentence or judgment upon the plaintiff in error.

1st. Because the verdict of the jury was contrary to law; under an indictment for an assault with intent to commit murder, a party cannot be convicted of an assault with a deadly weapon with intent to commit a bodily injury—these not be-

ing offences of the same degree or kindred character—the jury cannot convict of a different offence from that laid in the indictment.

Carpenter vs. The People, 4 Scam. 198; 1 Chit. Crim. Law 252; 12 Pickering 493-504-7; 7 Mass. 245; 1 Chit. Crim. Law 646; Breese 197; 7 Porter 500; 7 Missouri 180.

This rule is especially applicable in the present case: the offence for which the plaintiff in error was convicted is defined by statute, and when such is the case an indictment in order to sustain a conviction must either follow the language of the statute, or use words equivalent: and this indictment does not contain the words, or those of an equivalent meaning, used in the fifty second section of the criminal code.

The following authorities sustain the above rule,

Morse vs. The State, 6 Conn. 12; *U. S. vs. Lancaster*, 2 McLean 431; *Updegraff vs. Commonwealth* 6 S. & R. 5.

And, "It is a general rule, that unless the statute be recited, neither the words *contra formam statuti*, nor any periphrasis, intendment, or conclusion, will make good an indictment which does not bring the offence within all the material words of the statute."

5 Bac. Abr. 90, H. 3.

And, "When the words of a statute are descriptive of the nature of the offence, or the purview of the statute; or are necessary to give a summary jurisdiction, there it is necessary to specify in the particular words of such statute. An indictment grounded on a statute must pursue the description of the offence as contained in such statute."

5 Bac. Abr—notes—90, H. 3.

2d. Because the verdict of the jury was not broad enough, it does not find all the facts necessary to constitute the offence of an assault with intent to commit a great bodily injury, failing to show upon whom the assault had been made—only specifying the name of Emily Ann Bennett, as the person upon whom the plaintiff in error intended to ⁱⁿ ~~inflict~~ ^{inflict} a bodily injury.

IV. The Record does not show upon what day or year the jury rendered their verdict in the case.

V. The Record does not show affirmatively, that the Plaintiff in error was in court at the time the verdict of the jury was received and read, leaving the fact as to his being present or absent, to be inferred only from other portions of the record.

JOHN STEVENS,

Counsel for Pl'ff. in Error.

7. P. 2.

Oscar F. Beckwith

The People of the State of
Illinois

Brief

Filed Apr 16. 1861

A. Delmon

Clark

When it rains
all day

Oscar F Beckwith } Plff in error

The People of the State
of Illinois } Defs in error

And now comes the said Oscar F Beckwith and says that in the within foregoing record proceedings and in the rendition of the judgment ^{therein} there is manifest error in this trial.

1 The Court erred in overruling the motion of the Plaintiff in error to quash the indictment.

2 The Court erred in permitting a misstatement of Counts.

3 The Court erred in refusing certain instructions asked for by the plaintiff in error & also in giving the fourth or last instruction.

4 The Court erred in overruling the motion in arrest of judgment & in pronouncing any sentence or judgment upon the Plaintiff in error.

5 The record does not show upon what day or upon the jury rendered their verdict in the case.

6* The record does not show affirmatively
that the plaintiff in error was in court
at the time the verdict of the jury was
received and read -

John Shinn
for Pltff in error -

All now comes to said Defendant in
error & says that in the record &
proceedings aforesaid no error had
occurred

D. J. Jones
State atty

State of Illinois }
Lee County } ss

Hear in the Lee County Circuit
Court in the 22^d Judicial Circuit of the State
of Illinois in the matter of the People of the
State of Illinois Plaintiffs against Oscar F. Beckwith
Defendant upon an Indictment for an assault with
intent to commit Murder -

Do it remembered
that at the November Term of the said Lee
County Circuit Court AD 1860, begun and holden
at the Court House in the City of Dixon in
said Lee County on the fourth Monday of
November in the year aforesaid

Present Hon John V. Eustace Judge of the
said 22^d Judicial Circuit

" David McCartney State's Attorney
for said 22^d Judicial Circuit

" Benjamin F. Shaw Clerk of
said Lee County Circuit Court

" Aaron L. Foster Sheriff
of said Lee County -

And
upon the fifth day of December in the year

3

of Lee, on the tenth day of October in the year of our
Lord, one Thousand Eight Hundred and Sixty, at
and within the County of Lee aforesaid, unlawfully
wilfully, feloniously, and of his malice aforethought
"did then and there make an assault, in and
upon one Emily Ann Bennett (wife of David H. Bennett)
"in the presence of the said People, then and there being
"with a certain axe, made of iron steel and wood
"and with a certain Butcher knife made of iron
"steel and wood which he the said Oscar F. Bosh
"with in his hand then and there had and held
"with intent her the said Emily Ann Bennett, with
Indictment "the axe, and butcher knife aforesaid, then and
"there feloniously, wilfully, and of his malice
"aforethought then and there to kill and murder
"contrary to the form of the Statute, made and
"provided, and against the peace and dignity of the
"said People of the State of Illinois -

"And the Grand Jurors aforesaid upon their oaths
"aforesaid, do further present, that Oscar F. Bosh in the
"State of the County of Lee, on the tenth day of October
"in the year of our Lord one Thousand Eight Hundred
"and Sixty, at, and within the County of Lee aforesaid
"unlawfully, wilfully, & feloniously and of his malice
"aforethought, did then and there make an assault
"in and upon one Emily Ann Bennett in the
"Presence of the People of the State of Illinois, then

" and then being with a certain ax made of
 " iron steel and wood, which he the said Oscar
 " F. Beckwith in his hand did then and there
 " had and held with intent her the said Emily Ann
 " Bennett with the ax aforesaid then and there
 " feloniously, wilfully, and of his malice aforesaid
 " then and there to kill and murder contrary to
 " the form of the Statute, in such case made and
 " provided, and against the peace and dignity of
 " the same people of the State of Illinois

Indictment. And the grand jurors aforesaid upon their
 " Oaths aforesaid do further present that Oscar
 " F. Beckwith late of the County of Lee, on the tenth
 " day of October in the year of Our Lord One Thousand
 " Eight Hundred and Sixty at and within the
 " County of Lee aforesaid unlawfully, wilfully
 " feloniously, and of his malice aforesaid, did
 " then and there make an assault upon one
 " Emily Ann Pehee in the Peace of the said People
 " then and there being with a certain Butcher
 " Knife, made of iron wood and steel, which
 " he the said Oscar F. Beckwith then and there
 " had and held with intent her the said Emily
 " Ann Pehee with the knife aforesaid then and
 " there feloniously, wilfully, and of his malice aforesaid
 " thought then and there to kill and murder
 " contrary to the form of the Statute in such

Case made and provided, and against the peace
and dignity of the same People of the State
of Illinois

David McCartney
States Attorney

And upon the filing of said Bill upon the
date aforesaid a Bench Warrant issued
under the seal of said Court, and thereupon
the said Oscar F. Beckwith, by virtue of such
Bench Warrant was arrested and brought
before the said Court at said Term sitting
as aforesaid: to wit: on 7th day of December
aforesaid, as yet one of the regular days of said
November Term, when the following proceedings
were had in this behalf as appears to us of record
that is to say:—

" The People of the State of Illinois } Indictment for an
" " } assault, with intent to
" Oscar F. Beckwith } Commit Murder.

Read—

" On this day comes McCartney
" States Attorney, and the Prisoner being brought
" into Court, and Mr. Stevens appearing as counsel for
" the said Prisoner, he is now furnished with a copy of
" the Indictment against him, together with the names
" of the Grand Jury who found said Indictment, and
" also a list of the People's Witnesses, and the names
" of the Petit Jurors now on attendance in Court."

Furnishing
Copies

And afterwards to wit on the eleventh day
of December aforesaid, as yet one of the regular
days of said November Term, the following
proceedings were had in this behalf, as appears
to us of Record, What is to say:-

" The People of the State of Illinois } Indictment for an
" Oscar F. Breckinridge } assault with intent
" to Commit Murder

Record...

On this day comes McCortney
States Attorney, and the prisoner being brought
into Court, (and Stevens and Wood appearing as counsel
for said prisoner,) now enters his motion to quash
this Indictment, which said motion is by the Court
overruled; and the said Prisoner being now arraign-
ed for a plea to wit that he is "not guilty" in
manner and form as charged in the Indictment
against him: and now come a jury of good and
lawful men to wit:- Milan Barnes, Henry E. Williams,
S. D. Sherwood, George Helm, John Croubie, John Williams,
Mark Coy, Abner D. Moon, Henry C. Wood, Jerome B.
Suttle, B. F. Burr, and Herman Zimmerman
who were duly elected tried and sworn well and
truly to try the prisoner at the Bar, And the prose-
cuting Attorney, and moves for leave to add the names
of certain witnesses on the back of the Indictment
in this case, which said motion is by the Court
overruled. And the said jury having heard the witness
and the argument of Counsel, retire in charge of a

" sworn officer to consider of their verdict:

" And afterwards on this day, come the said

" jury into Court, and return the following Verdict

" Vain; - " We the jurors find the Defendant Guilty of an

" assault with a deadly weapon, with intent to inflict

Verdict, " a deadly injury upon the person of Emily Ann Barnett

" where the circumstances of the assault shewed an

" abandoned and malignant heart". And thereupon

" the said Prisoner by his said Counsel enters his motion

" in arrest of Judgment, and also for a new trial: and

" thereupon the prisoner is remanded to await

" further action herein "

And afterwards on the 13th day of December aforesaid

on yet one of the regular days of the said November

Term, the following orders & judgment were had in this

wholly as appears to us of Record that is to say:

" The People of the State of Illinois } Indictment for an

Record, "

" " " } assault with intent

" Oscar F. Beckwith } to commit Murder

" On this day comes McHenry

" State's Attorney, and the prisoner being brought into

" Court, and his Counsel aforesaid being present, and

" the motions in arrest of Judgment, and for a new

" trial coming on to be heard, one by the Court

" overruled, and thereafter the Court proceeds to

" pronounce judgment and sentence on the said prisoner

Judgment and Sentence, " It is the judgment and sentence of the Court, that
 Judgment " the said Prisoner pay a Fine of Five Hundred
 and " Dollars: and that he be confined in the County Jail
 Sentence, " of this County for Nine Calendar months, and
 " that he pay the costs of this prosecution, and that
 " he stand committed till the said Fine and
 " costs are fully paid, and this judgment be so
 " satisfied "

And the instructions given in
 the trial of said cause are in the words
 following that is to say: -

1 " The jury in forming
 Instructions, " their verdict in this case, are to take into
 " consideration whether had death ensued the
 " Defendant would have been guilty of Murder
 " 1 if they believe it would not have amounted
 " to the crime of Murder, they must acquit
 " the Defendant, so far as he is charged with
 " intent to commit Murder.

2 " In order to
 Instructions, " constitute the crime of Murder, there must
 " be either malice express or implied, and
 " that malice may be inferred, when all the
 " circumstances show an abandoned and
 " malicious heart, or a deliberate intention
 " to take away life unlawfully.

3 " Manslaughter

9

Instructions

Given

is the unlawful killing of a human being without malice express or implied & without deliberation committed voluntarily upon a sudden heat of passion, caused by provocation apparently sufficient to make the passion involuntary

Instructions

By the Court given

Under the Indictment the jury can find the Defendant guilty or not guilty in manner and form as charged in the Indictment; or they may find him guilty of an assault with a deadly weapon with intent to inflict a bodily injury upon the person of Ex. M^r. Barnett; if no considerable provocation appears, or if the circumstances show an abandoned and malignant heart

All of which Instructions were given to the jury; the following instructions were asked, and the Court refused to give them.

Instructions

Refused

" 4 If the jury believe that an assault was made when the Defendant and prosecuting witness were engaged in a fight, and that the Defendant had been provoked by words and actions, on the part of the witness, until his passions were so aroused, that he may not have allowed the exercise of reason, the offense would only have been manslaughter in case death had ensued.

Instructions...

Refused

Unless the jury believe that the Defendant committed the offence charged, cooly & deliberately & under circumstances where he may be supposed to have acted without a sufficient degree of reason, they must find him not guilty."

Memorandum of

Execution &

In Jail...

And afterwards to wit on the 31st day of December aforesaid an Execution issued against the goods & chattels lands and tenements of the said Adam F. Brokawite for the sum of Nine Hundred Dollars Fine, and the sum of Forty four Dollars and twenty cents Plaintiffs costs and Seventeen Dollars and thirty cents Defendants costs, but inasmuch as the said Execution is in the hands of the Sheriff of Lee County, the same cannot be here set out in pace verba,

11

State of Illinois }
Lee County } ss

I Benjamin F Shaw Clerk
of the Circuit Court within & for said County in
the State aforesaid do hereby certify that the
foregoing is a ^{full true and} correct transcript of the records
in said cause, as appears by the books & files
in my office



In testimony of which I have
hereunto set my hand and seal at
the City of Dixon this ninth day of
January A.D. 1861

Benjamin F. Shaw Clerk
per Joseph Ball D. C.

State of Illinois }
Lee County } I do hereby certify that, in my
opinion the foregoing copy of the record
contains a full and true history of the
proceedings on the said trial -
Witness my hand, this 28th day of Jan-
-uary A.D. 1861 -

Joseph Ball
Judge 22nd Jud. Circuit

Set a superseded name in
this case
Feb. 1866

J. S. Cram

7-28

Record

People

1

Oscar S. Grokowitz

Filed Feb. 8. 1866.
L. Ireland

