

No. 13210

Supreme Court of Illinois

Gray

vs.

People

71641  7

ILINOIS

SUPREME COURT,

Third Grand Division.

P. D. Act

No. 10

1861

*Gray
vs
People*

1861

1861

State of Illinois } Supreme Court of
 La Salle County } the State of Illinois
 3^d Grand division
 Silas Gray & James Law Allen } Indictment
 vs } for Burglary
 The People of the State of Illinois } Charles

Metzner being first duly sworn & from
 oath says that he is well acquainted
 with the pecuniary circumstances
 of the plaintiffs in Error in the above
 cause that they are unable to pay
 for printing abstracts of the record in
 said cause, that they ^{are now} ~~have been~~
 confined in the Penitentiary of
 the State of Illinois, and have no
 property ^{or money} to the knowledge of this af-
 firmant with which to pay of said
 printing. And further deponent said
 no more.

Sworn & subscribed to } Charles Metzner
 before me this 6th day }
 of May A.D. 1861. }
 L. Leland Clerk
 of the Court & p. 7

10 22. 178
Jas Gray & al dt
The People & Co.
Affidavit

Filed May 7. 1861
L. Leland
Clerk

Charles F. McKenney
Attorney for Affiant
Embr.

Supreme Court of the State of Illinois
April Term A.D. 1861

Sebas Gray &
James Van Allen
vs
The People &c

Parents & authorities on debt in Error

The application for Change of Venue
was properly overruled 15-22599
see act concerning act establishing
court of civil pleas of annua in
Session Laws of 60-61 (not yet published)

The affidavit for continuance is
insufficient

It fails to show
diligence for ought that appears
the same cause which prevented
the obtaining of the witnesses at
the trial will prevent the
obtaining them at the next term

It does not allege that the witness
will testify that Porter's reputation
for truth & veracity is bad

general reputation & no character
nor whether a majority of his
neighbors in his neighborhood would
believe him under ^{his} oath, is
material 11 Ill 378, 10 Phillips Can p 764
note 2042 ib p 956 note 582

The orders of the court recite ~~that~~ the
furnishing a list of jurors to Defts
& the bill of exceptions sets forth
the same Record p 11-17-32

The jurors were all competent
The abstract does not set forth the
whole of their answers They all
stated that they had formed and
expressed no opinion as regards
the guilt or innocence of the
accused had no bias or prejudice
upon their minds and could give
them a fair and impartial trial
according to the Law and evidence
Record p 36 They all come within the
rule laid down in ³Leach 808 & 82
24 Ill. Co - 4 Reio 8-5 Rand. 654. 5 How (Ill) 730. 7 Grant 583
4 Conn 330. 3 Conn. 375 # 4 Black 101

The mistress Porter was not an
approver

The court properly qualified the
defendants & ~~the~~ instruction. It is
the duty of the court to advise the
jury not ^{to} convict on ^{the} uncorroborated
testimony of an accomplice - not
to direct. The jury are the sole
judges of the credibility of a witness
1 Greene En 380

The def 7. 8. 9. 10. 11. 12. & 13 ~~the~~ instructions
were properly refused. The 7th is
based upon the assumption that
actual residence at the time of the
offence is necessary but it was
not required even at common law

3 Chittys Crim L 1102

The 8th & 11th & 12th ~~the~~ require evidence
corroborating an accomplice
sufficient to convict without his
testimony. The court in effect
declares drunkenness to be an excuse
for crime & the 13th ~~the~~ would exclude
from the consideration of the jury
a circumstance forming part of
the res gesta

D. Jones
State's atty

10 MS. 178
Gray et al
vs -

The People vs

Left Points &
Authorities

1 United States of America
State of Illinois. Kane } ss
County. City of Aurora }

Clerk before the Honorable
Benjamin F. Parks The
Judge of The Court of Common Pleas
of The City of Aurora at a regular
Term of said The Court of Common
Pleas of The City of Aurora begun and
held at the Court Room in said City on
Monday the 18th day of March A.D. 1861

Present The Honorable Benjamin F. Parks
Judge

" Damascus Clark
Sheriff of Kane Co

Attest James S. Parr
Clerk

The Court opened by proclamation

Be it remembered that heretofore writs
on the 18th day of March A.D. 1861 the same being
one of the days of the March Term A.D. 1861
of The Court of Common Pleas of The
City of Aurora. the following among other
proceedings were had and entered of
Record in said Court to-wit:

This day the Sheriff of Kane County
returns into Court the Venue Quia
heretofore issued by the Clerk of this

Court by which it appears that the following named persons were duly served to attend the present Term of this Court as Grand Jurors To-wit: William M. Micken. Hackney. Elijah Pratt H. H. Vaukswick. L. C. Winslow Richardson J. W. Hackmore. John Hightwick. J. T. Baldwin W. A. Tanner. Anna Baxter James Wentworth J. W. McCott. S. J. Hitch Charles Douglas D. Stockwell. E. Wallin. Richard Minck Charles Wagner. Martin Parble. Michael Stinger

J. W. Hackmore. Charles Wagner. L. C. Winslow make default and Charles Douglas excused by the Court.

It is ordered by the Court that the Sheriff summon five Talmen from the bystanders who returned the following names To-wit: Isaac Mcarlett John Ayers Delah Enarhart. Richard Greese and Henry Evans. and the said Grand Jurors so summoned and not discharged or defaulted came forward answered to their names and gave their attendance as Grand Jurors. It is ordered by the Court that Benjamin Hackney be appointed Foreman of the Grand Jury who came forward and took the Foreman's oath and the balance of the Grand Jury having been duly sworn and charged by the Court retire to consider of the presentments in charge

3.

And afterwards Term on the 19th day of March A.D. 1861. the same still being one of the days of said March Term of said Court the following among other proceedings were had and entered of Record in said Court Term;

The State Attorney of the 13th Judicial Circuit and of this Court being absent this ordered by the Court that Eugene Caulfield, an attorney of this Court be appointed to perform the duties of State attorney of this Court until the State Attorney of this Circuit shall resume his duties.

And afterwards Term on the 21st day of March A.D. 1861. the same still being one of the days of said March Term of said Court the following among other proceedings were had and entered of Record in said Court Term.

This day again came the Grand Jury into open Court. Answer for their names and present to the Court the following as true Bills of Indictment endorsed as follows Term.

The People of the
State of Illinois }
vs } Indictment for
Galas Gray & } Burglary &
James Van Allen } Larceny

A true bill
Benjamin Hape Kney foreman
of the Grand Jury which is
ordered by the Court to be entered
of Record and that a capias be
returnable forthwith.

3

5



Which indentment is in the words
and figures following To wit.

State of Illinois }
City of Aurora } ss.
Frank County }

Of the March term of the Court of Common
Place of the City of Aurora in said State and
County in the year of our Lord one thousand
eight hundred and sixty one

The Grand Jury chosen selected and sworn
in and for the City of Aurora in the
County of Frank State of Illinois in the
name and by the authority of the people
of state of Illinois upon their oaths present
that Silas Gray and James Vernon Allen
late of Aurora and County of Frank

on the eleventh day of March in the
year of our lord one thousand eight hun-
-red and a sixty one in said city of Aurora
in the County and State aforesaid about
the hour of nine in the night of the same
day with force and arms at the city
of Aurora aforesaid in the County aforesaid
the dwelling house of one George. Mc-
Hadden their situate wilfully and malic-
iously and forcibly and feloniously and
burglariously did break and enter with
intent the goods and chattels of the said
George. McHadden in the said dwelling
house then and there being then and
there feloniously and burglariously to steal
take and carry away and then and there
in said dwelling house and velvet curtain
~~of the value of seven dollars one foot stuff~~
~~of the value of six dollars one button~~
~~off of the value three dollars one~~
~~picture~~

1 0 1 1 1 1 1 1

7 said dwelling house one velvet bournett
of the value of seven dollars one fur
cuff of the value of six dollars - one
britannia coffee pot of the value of three
dollars. one victrola of the value of
three dollars. one pair of fur cuffs of
the value of two dollars one merino dress
of the value of ten dollars. one muslin de
laine dress of the value of two dollars
three muslin curtains of the value of three
dollars each. one knit bed spread of the
value of four dollars. one mosquito bed
spread of the value of two dollars - one
quilted skirt of the value of five dollars.
one double barreled gun of the value of
ten dollars of the goods and chattels of
the said George M. Stadden in the said
dwelling house then and there being
found then and there feloniously and
burglariously did steal, take and carry
away. contrary to to the form of the statute
in such cases made and provided and
against the peace and dignity of the same
people of the State of Illinois.

Eugene C. Fairfield
State Attorney pro tempore of the
Fifteenth Judicial Circuit and of the
Court of Common Pleas of the City
of Aurora of the State of Illinois.

And on the back of said Indictment
appear endorsements which are in
the words and figures following, To wit:

Court of Common Pleas
of the City of Aurora.
March Term 1861

The People of the State of Illinois

Silas Gray and
James Van Allen

Indictment for
Burglary & Larceny

Wm. J. Dill,
Benjamin Hackney
Foreman of the Grand Jury

Witnesses

Eliza M. Hubbard
William P. Libby
Asa P. Harnsworth
Austin Steele
James W. Hadden
John Porter
William H. Wilgate
Asa W. Dexter
Mervin Fabor
John Reising
John A. Steele
Franklin Cheffer
Madama Fabor

Dated March 22^d 1861

J. L. Parr Clerk

Eugene Canfield States Attorney pro tempore.

9 And afterwards Dovit. on the same day last aforesaid. the same being one of the days of the March Term A.D. 1861 of said Court of Common Pleas of the City of Aurora. the following among other proceedings were had ^{and} entered of Record in said Court Dovit.

This day again came the Grand Jury into open Court answer to their names and present to the Court the following as true bill of Indictment endorsed as follows Dovit:

The People of the
State of Illinois }
Giles Gray and } Indictment for
James Van Allen } Burglary &
Larceny.

A true bill
Benjamin H. Buckley Foreman of the
Grand Jury which is ordered by the
Court to be entered of record ^{and} that
a capias issue returnable forthwith

And afterwards Dovit. on the same day last aforesaid there issued out of the office of the Clerk of said Court a certain writ of capias which said capias is in the words and figures following Dovit.

State of Illinois }
Kane County } ss. The People of the
City of Aurora } State of Illinois to the
Sheriff, Coroner & Constable of said
County Greeting:

We command you
to take Silas Gray & James Van Allen if
to be found in your County, and them safely
keep, so that you have their bodies before
the Court of Common Pleas of the City
of Aurora, in said County at a term
thereof now holden at the Court Room, in the
City of Aurora, in said County forthwith, to
answer unto an indictment in said
Court in behalf of the People of the State
of Illinois against them for Burglary &
Larceny and make due return of this
writ.

 Witness James S. Parr, Clerk of said
Court, and the seal thereof
at the City of Aurora, in said
County this 21st day of March A.
D. 1861. J. S. Parr Clerk.

And on the back of said Capias appears
an endorsement which is in the words &
figures following To-wit:

Arrested the within named Silas Gray &
James Van Allen 21 day of March 1861
Demarcus LeFebvre Sheriff
S. J. Andrews Deputy.

11

and afterwards Court on the 25th day of March A.D. 1861. the same still being one of the days of the said March Term of said Court the following among other proceedings were had and entered of Record in said Court Court:

12

The People of the
State of Illinois

^{vs}
Giles Gray and
James Van Allen

Indictment for Burglary
& Larceny.

This day come the People by S. C. Unfield State's attorney pro
hinc, and the Defendants in person and by
Dridley and Metzner their attorneys also
come, and enter their motion to quash the
Indictment herein, and the Court being
fully advised overrules said motion
Thereupon each of said Defendants
being furnished with a copy of the Indictment
herein, list of witnesses in said cause, and
a list of the jury attending the present Term
of this Court and being arraigned and the
Indictment read to them each pleads each
for himself says that he is not guilty in
manner and form as charged in the In-
dictment which is ordered by the Court
to be entered of Record. Thereupon the
Defendants enter their motion for a change
of venue in this cause which motion is
overruled by the Court, to which decision
the Defendants except. Thereupon the

13 they have been so furnished. To which the Defendants except.

Thereupon on the Peoples motion it is ordered that a jury come whereupon come the following Jurors.

Robert Johnson. Thomas Bellar. Silas Miller and Abner Thayer, and the panel being exhausted by challenges. It is ordered by the Court that the Sheriff summon Twelve Jurors instantler who thereupon returned twelve good and lawful men whereupon comes Mark Smith, and the panel of Jurors being exhausted by challenges. It is ordered by the Court that the Sheriff summon twenty four Jurors to be selected from the City and Township of Aurora to appear instantler who thereupon returned twenty four good & lawful men. whereupon comes William James. Gilbert Ketchum and William Anderson and the panel being again exhausted by challenges. It is ordered by the Court that the Sheriff summon Six Jurors to appear instantler. who thereupon returned Six good and lawful men and the same being exhausted It is ordered by the Court that the Sheriff summon Six Jurors to appear instantler. whereupon comes, Abner Wicks, Joseph Burley, J. H. Hattery and A. B. Wood and the said jury Jurors.

Robert Johnson. Mark Smith. Abner Wicks

Thomas Dellar. William Barnes. Joseph Purley
Silas Miller. Gilbert Ketchum f B Wattery
Toak Thayer. William Anderson & B. Wood,
having been severally tried, elected and
sworn according to law also come, and having
heard a portion of the evidence the hour
of adjournment for the day having arriv-
ed. It is ordered by the Court that the
jury be kept together in charge of a sworn
officer of the Court, and meet the Court
tomorrow morning.

And afterwards Court on the 28th day of
March. A.D. 1861 the same still being one of
the days of said March Term of said Court
the following among other proceedings were
had and entered of Record in said Court Court:

The People of the
State of Illinois

vs
Silas Gray & } Indictment for Burglary
James Van Allen } and Larceny

This day again come
the People by Eugene Canfield States
attorney pro tem and the Defendants in
person and by Metzner & Little their
attorneys also come and the jury hereto
for empanelled in this cause also
come, and having heard the portion of the
evidence adduced the hour of adjourn-
ment for the day having arrived. It is
ordered that when the Court adjourns the

15 Jury be kept in charge of a sworn officer of the Court, and meet the Court tomorrow morning.

And afterwards Court on the 29th day of March A.D. 1861 the same still being one of the days of said March Term A.D. 1861. of said Court the following among other proceedings were had and entered of Record in said Court Court.

12 The People of the State of Illinois
vs
Giles Gray & James Van Allen } Indictment for Burglary & Larceny

This day again come the People by Canfield State's attorney pro temp. and the Defendants in person and by Metzner and Little. their attorneys come and the jury heretofore empannelled in this cause also come, and having heard all the evidence adduced, arguments of counsel and instructions of the Court retire to consider of their verdict, in charge of an officer of the Court duly sworn for that purpose, and afterwards return into Court and for a verdict upon their oaths say. We the jury find the Defendants guilty in manner and form as charged in the Indictment and fix the time of their imprisonment in the Penitentiary of the State of Illinois at five years each. Whereupon come the Defendants and ask that the said jury be polled, and

each of said Jurors being seperately enquired
of answers that that was and is his verdict.
Thereupon it is ordered by the Court that the
verdict be entered of Record. Thereupon come
the Defendants and enter their motion for
a new trial herein, which motion is taken
under advisement by the Court.

And afterwards Court: on the 20th day of March A.D. 1881 the
same still being one of the days of said March Term
of said Court the following among other proceedings were
had and entered of Record in said Court Court:

125 The People of the
State of Illinois }
14 } Indictment for Burglary &
Charles Gray & } Larceny
James Van Allen }
This day again come the
People by C. Canfield States
Attorney pro tem and the Defendants in person^{and}
by Melnyer & Little their attorneys also come, and this cause
having been heard upon the Defendants motion for
a new trial herein and the Court now being fully advised
overrules said motion. Thereupon the Defendants enter
their motion for an arrest of the judgment in this case and
the Court being fully advised overrules said motion to
the overruling of which motions the Defendants by their
counsel at the time excepted. Therefore it is considered
by the Court that each of said Defendants be confined
in the Penitentiary of the State of Illinois at Joliet for the
Term of five years, one day of each year of said Term
in solitary confinement the rest of said Term
at hard labor and that the Sheriff of Kane County

17.

be allowed five days to convey said Defendants to the Warden of said Penitentiary which judgment was then and there pronounced upon each of said Defendants by the Court, and on the Defendants motion thirty days time is given them to file their Bill of exceptions herewith.

And afterwards To wit: on the 11th day of April 1861 there was filed in the office of the Clerk of said Court a certain Bill of exceptions which is in the words and figures following To wit:

The People of the State of Illinois	}	Court of Common Pleas of the City of Aurora
vs		
Vilas Gray and James Van Allen		March Term A.D. 1861

Indictment for Burglary and Larceny

Be it remembered that on the 35th day of March A.D. 1861 it being one of the days of the March Term A.D. 1861 of said Court the said defendants being then and there about to be arraigned to plead to said Indictment the said defendants then and there objected to being arraigned upon said Indictment for the reason that they had not been furnished with a list of the Jurors and witnesses and the Court then and there ordered the Clerk to make out said list and furnish the same to the defendants that the said Court then and there delayed its

proceedings for the space of half an hour that the
same might be done that the said Clerk did ma-
out a list of said Jurors and witnesses for each of the
said Defendants that there and there the said
Court having understood by some one that said lists
of Jurors and witnesses had been furnished said
Defendants asked the said Defendants if they were
ready to plead that said Defendants then and there
waived the reading of the said Indictment and entered
their said plea of not guilty

And the said Defendants then and there moved said
Court for a change of Venue in said cause upon the
following affidavit

The People of the State of Illinois } Court of Common Pleas
vs } of the City of Aurora
Silas Gray and James Van Allen } March Term A.D. 1861

Indictment for Burglary and Larceny

James Van Allen, being first duly sworn upon
oath says that he is one of the Defendants in the
above entitled cause that in the belief of this
affiant Justice and a fair and impartial trial
in said cause require that the venue in said
cause be changed from the Court of Common Pleas
of the City of Aurora to some other Court where
the causes and complaints hereinafter set forth
do not exist This affiant would further state
that he has the consent of said Silas Gray to

19

such change of venue and that the particular facts and circumstances upon which said belief is founded are as follows to wit one John Porter a witness for the prosecution in this cause and who testified against these Defendants in the above cause on the preliminary examination has so prejudiced the minds of the People of the City of Aurora by his testimony given as aforesaid against these Defendants that it will be utterly impossible for these Defendants to obtain a fair trial in this Court that said John Porter on said preliminary examination testified that he was one of the party who committed said Burglary and Larceny above complained of and pretended and claimed that your affiant planned and that said Silas Gray together with your affiant acted as the ringleaders in said Burglary and Larceny which said statement ~~and~~ ^{his} testimony this affiant avers is utterly false and untrue as far as this affiant is concerned

This affiant would further state that by the statements made by said John Porter and also by the testimony given by said Porter on several other preliminary examinations held against sundry and diverse persons upon criminal charges were before last and last week before Lyman Baldwin Esqr. Gray, H. Fitch Esqr. and James E. Barr Esqr. all Justices of the Peace for the County of Kane State of Illinois this affiant and said Silas Gray Defendant aforesaid were implicated with said criminal acts and charges whereby the inhabitants of said City of Aurora and also the inhabitants

31 of the County of Kane were prejudiced against your affiant and said Silas Gray and do believe that these defendants committed the Burglary in said Indictment mentioned which said statements and said testimony implicating this affiant with any of said criminal acts and charges are untrue and utterly false and as to said statements implicating said Silas Gray with said criminal acts and charges as this affiant has been informed and believes are untrue This affiant would further state that the statements and testimony of said Volm. Porter implicating these defendants and each of them as aforesaid has been a constant source of conversation among the inhabitants of said City of Aurora and also of the inhabitants of the County of Kane and have produced a strong prejudice against these defendants in the minds of the inhabitants thereof Your affiant would further state that the Aurora Beacon a newspaper printed in the City of Aurora and which has a large circulation in said City of Aurora and also in said County of Kane in its issue of last Thursday purported to give a statement of said Burglary and the conviction of these defendants thereto a copy of which said article in said Beacon is hereto attached marked A

And which your affiant prays may be taken as part of this application and which said article was published in said paper unbeknown to these defendants. This affiant would further state that the Aurora Chronicle a newspaper printed

21. in the City of Aurora and which said news =
paper has also a large circulation in said City
of Aurora and also said County of Kane in
its issue of that of Friday contained an article
purporting to give a history of said Burghay and
Larceny and the pretended conviction of these
Defendants to said affair a copy of which said
article is hereto attached marked B
and which this affiant prays may be taken as
part of this application which said article was
published in said paper without the knowledge
of these Defendants This affiant would further
state that both of said articles have been read by
almost every person in the City of Aurora and
the pretended facts therein stated fully commented
upon by the inhabitants of the City of Aurora and
also of the County of Kane and which said
articles have produced a strong feeling and prejudice
against these Defendants and a public opinion
is so strong against these Defendants in this
said City of Aurora by reason of said articles
that it will have a strong and injurious influence
against these Defendants upon the minds of any
Jury which could be impaneled to try said
cause so much so as to make it impossible for
these Defendants to have a fair trial in this
Court This affiant would further state that
by the statements made by said John. Porter
and also some of the Officers who assisted or
assisted in arresting these Defendants the public
has been induced to believe that there is a regular
organized gang of thieves and robbers existing
in the Big Woods. And that these Defendants are

the ring leaders thereof which your affiant
avows is not true but which said statements
have also produced a strong feeling against
these defendants in the minds of the inhabitants
of said City of Aurora and in the minds of the
inhabitants of the County of Kane by reason of
which said cause against the minds of the
inhabitants of said City of Aurora and also
those of said County of Kane are so prejudiced
against these defendants that they cannot have
a fair and impartial trial in said cause
in this Court or any Court in said County of
Kane Wherefore these defendants pray that the
venue in said cause may be changed &c
to a Court where the causes ~~above~~ set forth
do not exist and a further defendant saith not
&c

Signed & Subscribed to
before me this 25th

Day of March. 1861

J. L. Barr

Clk

James Wm. Allen

A

More about the Thieves

In our article of last week about the breaking open
of Geo Hadden's house we spoke of but one person
Sile Gray being concerned in the matter, the others
being at large as we went to press it was deemed
best to make no mention of further suspicions until
all concerned could be arrested. On Thursday three
of burglars had an examination before Justice
Barr and Baldwin in Court Hall

23

The person who eluded the pursuit of Monday night was a fellow named John Porter familiarly known as Sailor Vack. Officer Dexter found him on Tuesday hidden in a barn of Tom Bird in the Big Woods. He preached upon James Van Allen a young man who has heretofore been much respected by our citizens an admitted member of the bar and possessing considerable talent. Sailor Vack accused him of being the leader of the rascality of having got up the sight and engaged others into the commission of this particular burglary against their own judgment. Officers Dexter and Lawyer with sufficient help set off on Wednesday morning to the woods and surrounded the house of Hei Renada where Vack told them they would find Van Allen hidden. Van Allen soon attempted to leave the house was called to stop and upon manifesting more desire to go another way was brought too by a shot from Lawyer's pistol. He was searched and upon his person found a pistol and strong shot.

On the examination held on Friday Sailor Vack turned State's Evidence and the complicity of three in the business of robbing Headden's house distinctly proven the plan of proceedings &c upon the testimony advanced the Justices bound Key and Van Allen over in \$1,000 bonds to appear at the Court of Common Pleas now in session. no bail being found they have been kept in confinement. On Monday the 18th two others connected with the same

gang named Peter Plant and William Smith were arrested in the Big Woods and had examination before Justices Baldwin and Hitch upon charge of breaking open the house of Mr. Clark Smith about Christmas time and taking from it several articles for housekeeping. Also a barrel of Porter Sailor Dack was with these fellows at the time of the robbery and was principal witness against them. Also He told the officers they would find certain articles stolen if they would go to Bill Smith's house into a bedroom then into a clothes-room and open a small trap door. They did so and found bedding etc which was identified as Clark Smith's property. The burglary was committed while the family were in Chicago. The thieves had general good time about the table made tea etc. Suspicions have rested upon these fellows before but sufficient proof was not at hand to warrant an arrest. Plant and Smith were bound over in \$800 each to appear before the Circuit Court and in default of bail are yet in Jail. Another examination also took place on Saturday of Alexander a Brother of Bill Smith accused of stealing harness from E. P. Carpenter. As in the other case Dack was the principal witness by him the hiding place of the harness was found and all the circumstances stated by Sailor Dack being corroborated Alex was also sent up to await trial at the next term of the

25 Circuit Court This harnep is but one of some thirty or more which have been stolen hereabouts within six months and all probably fallen prey to the gang now arrested.

While the examination of these above named has been in progress several suspicious parties have been lying about town eager for every breath dropped and seeming to fear that some one of the prisoners may implicate them. There are undoubtedly some arant thieves yet left in the Big Woods may be the grand king of all these young fellows. We hope some clinching evidence may yet be found to bind him tho' he appears to have kept himself secure from the reach of the law and reaped the profits of the business while the boys have to take the consequences.

One of the anxious ones was recognized on Saturday by officer Brown of Batavia as Anthony Guyott a man who was last fall indicted at Geneva for stealing a horse blanket from John Jones but escaped from custody. Since his escape he says he has been to Detroit and in prison for some offence and that he was paroled out on promise of leaving the state within 48 hours. Brown arrested him and has him now in Geneva Jail also awaiting trial. This gang of thieves is well broken up we think and no links in the evidence wanting to send all those now arrested to Jail.

B

The seven Thieves Considerable excitement

has been manifested during the past week by the discovery that a robbery organization does really exist in the Big Woods. Seven of miscreants have been caught but we feel sure that the gang is not broken up. These fellows are only as so many cog wheels in a machine of which the machinist and the motive power remains and there is timber enough left to make other wheels that will do the work of the prompter as well as these fellows have. It will be claimed that the prisoners stole for themselves and appropriated the property. In some cases they did and in as many it has been discovered what became of it. Where is the watch and jewelry which Dan Allen carried away from Haddens house. The present holder of the property is the man to be taken. Shrewd villainy is not so easily ferreted out as these bunglers have been. There is a professional at the source of all these outrages and so long as he remains at liberty there is little safety for property in Aurora. Great credit is due the officers for the prompt and efficient manner in which they have followed up the clues given and in making the arrests they have been wary and used good judgment throughout. They have undoubtedly discovered evidence enough to send the culprits to the penitentiary we hope for a long term. The crime of burglary is of altogether too frequent occurrence in our midst to be punished leniently. An example is necessary to put a quietus on this thing. Think of it a man cannot leave his house

27 for a day, or even less, but such hounds as these will discover what they term "a sight," and ransack it of its valuables.

The names and offences of the prisoners are as follows: James Van Allen. Silas Grey. John Porter. John Smith and Peter Plant burglary. Alexander Smith and Anthony Smith Larceny. It might state the facts and give the testimony of "Dailor Jack," (Porter), whose "conscience troubles him" that he pleaded guilty and implicated the others, who are now in custody; but we forbear, lest our view or construction of the circumstances may influence the jury, who are to try these men for the offences charged against them.

The attorney for the People then and there admitted that he had had verbal notice of such application for such change of venue upon said affidavit and had mailed written notice of such application but objected to said application on the ground that said notice had been given him only some fifteen minutes before, which said motion after hearing the argument of Counsel, the Court then and there overruled; to which said decision of said Court in overruling said motion said Defendants and each of them, then and there excepted.

And on the 26th day of March A. D. 1881 still being one of the days of the March Term of said Court said Defendant James

29 is a transient person and has not come to this State as this affiant has been informed till October last that said Porter came from Hartford, Van Buren County, State of Michigan and prior to that time lived and resided at Brockport in the State of New York. that this affiant has been in jail ever since week ago last Sunday and has not been able to procure witnesses on the part of the defence for this affiant.

This affiant would further state that he will be able to show by the witnesses hereinafter mentioned that said Porter's character for truth & veracity is and has been bad so that the majority of the neighbors of said Porter in the neighborhood where he has resided in said State of Michigan and said State of New York would not believe said Porter under oath on account of the bad character and reputation of said John Porter for truth & veracity in the neighborhood where said Porter has resided as aforesaid.

This affiant would further state that he cannot safely proceed to trial at the present term of this Court on account of the absence of James Prentice Willard Prentice, Henry Smith, Joseph Smith all residing in the town of Hartford County of Van Buren, State of Michigan, and also George Smith, Elias Smith & Mary Smith residing in the town of Brockport, State of New York, that he will be able and can prove by said witnesses that the character

30 reputation of said John Porter for truth & veracity in the State of Michigan and State of New York is so bad that they would not believe said John Porter under oath.

This affiant would further state that he has not been able nor will he be able to procure the personal attendance of said witnesses at the present Term of this Court to testify in the above cause on account of the heavy bail required from your affiant for his appearance at this Term of Court to answer the above charge which bail your affiant was and has been unable to give by reason whereof this affiant has been imprisoned in the City Jail at Calaboose and the County Jail ever since a week ago last Friday the 15th day of March A.D. 1861 and has been unable to prepare his defence on said charges.

This affiant would further state that the indictment herein was found by the Grand Jury on the 21st day of March 1861 and this affiant was brought into Court for the first time since the finding of said indictment by the Sheriff of said County of Kane in the forenoon of the 25th day of March A.D. 1861 & was then & there arraigned to plead to said indictment. This affiant further says that on the 14th day of March A.D. 1861 he was confined in the common jail at Geneva in said County a distance of ten miles from the place of holding this Court and has not been brought from there till the morning of the 25th inst that he has not been permitted

31 to be present in this Court exceeding four hours since the finding of said indictment as aforesaid and has not either before or after the arraignment on said indictment been able to procure the attendance of any of said witnesses.

This affiant would further state that he knows of no other witnesses by whom he can prove the facts above set forth except persons who reside in the neighborhood of the former places of residence of said John Porter to wit. the town of Hartford County of Van Buren State of Michigan and the town of Brockport in the State of New York none of which said persons are now in this neighborhood or in the State of Illinois to the knowledge of this affiant so that their attendance can be procured at the present Term of this Court.

This affiant would further state that he will be able to procure the personal attendance of said witnesses at the next Term of this Court to testify in behalf of this affiant in said cause.

This affiant would further state that this application is not made for delay but that Justice may be done.

Subscribed to before
me this 26th day of March James Van Allen
adverses
J. E. Parr
Clerk

32 which said motion for said continuance said Court then and there overruled.

Do which decision of said Court in over-
-ruling said motion for a continuance James Van Allen by his counsel then and there excepted.

And on the 24th day of March A.D. 1861 still being one of the days of the said March Term of said Court said cause having come on for trial, the said Defendants then and there objected to going to trial for the alleged reason that they had not been furnished with a copy of the list of jurors and witnesses (said Defendants then and there admitting that they had each been furnished with a copy of the said indictment, on which was endorsed the names of the witnesses) and it then and there appearing that the said defendants had not had the said copies of the said list of jurors which had previously been prepared for them to wit on the said 25th day of March A.D. 1861 one of the days of the said March Term of the said Court. The Court then and there ordered that the said copy of said list be handed to said Defendants (which was accordingly done; and said Defendants then and there still objected to going to trial which said objection of said Defendants the Court then and there overruled: to which said decision of said Court in not sustaining said Defendants objection, and compelling them to go to trial, said Defendants then and there excepted.

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And said Court then and there ordered a jury to be impanelled and among other Elds Miller was called as a juror in said cause who being duly sworn to answer questions &c testified as follows.

" have heard about the burglary, there might
 " be a strong presumption in my mind that
 " they are guilty. If all I heard was true but I
 " know that it is not true. If all I heard is
 " true I believe them guilty. Have no bias that
 " would interfere with my giving these defendants
 " a fair and impartial trial. Some of the facts
 " I have heard I know to be false. I have no
 " opinion or bias in the case can give the defend
 " ants a fair and impartial trial according to
 " the law & the evidence. Said defendant then
 and there challenged said Elias Miller for cause which said challenge of said defendants said Court then and there overruled. To which decision of said Court in not sustaining said challenge said defendants then and there excepted.

And one Frank Thayer being then and there called as a juror being sworn testified as follows.

" heard about the burglary soon after it happened
 " heard that John Porter had turned State's evidence
 " I think Burnsworth told me one of the parties
 " was caught in the act he mentioned that
 " person to be Elias Gray, he gave me a state
 " ment of the matter. I believed the man's
 " statement was true, if he was caught in the
 " act, he was guilty. Have no bias in my mind

34 " that would interfere with giving these defend-
" ants a fair and impartial trial. I have no
" no opinion. The name that Darnsworth
" mentioned I think may have been Elias
" Gray. I am not certain.

Defendants then and there challenged
said Noah Thayer for cause which said chal-
- lenger of said defendants the Court then and
there overruled to which said decision of said
Court in overruling said challenge said
defendants then there by their Counsel
objected.

William H. Anderson called as a juror sworn
and examined by the Counsel for the defence.
" don't know these defendants, have heard about
" the burglary, have read about it in the papers
" I believe the reports, there was a house breaking
" if these defendants are the persons named in
" the newspapers. I have an opinion about
" their guilt or innocence, in the papers one
" of the persons name may have been Elias
" Gray, and if it should turn out that Elias
" Gray was one of the defendants I should have
" a opinion as to their guilt or innocence
Examined by the Court.

" I don't know the defendants don't
" know that Elias Gray is one of the defendants
" or not. I have no opinion as regard the
" guilt or innocence of the defendants.

The said defendants then and there
challenged said William H. Anderson for
cause which said challenge of said defendants

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the Court then and there overruled to which decision of the Court in overruling said challenge the defendants by their Counsel then and there excepted

Alvah Hicks was then and there called & sworn as a juror and examined by the defence.
 " I have seen Van Allen the defendant about
 " town frequently have heard the reports about
 " the burglary, have read an account of the
 " burglary in the papers. I have no reason
 " to disbelieve the reports if they are true. I
 " have formed a decided opinion.

Examined by the Court.
 " I can hardly say that I have formed an opinion
 " I have no opinion as regards the guilt or
 " innocence of the defendants.

Said defendants then and there challenged said Alvah Hicks for cause which said challenge of said defendants the Court then and there overruled. to which decision of the Court in not sustaining said defendants challenge said defendants then and there by the Counsel excepted.

And one of D's Attorney being then and there called, sworn and examined by the Counsel for the defence.
 " I have heard about the burglary the next
 " day after it happened, have heard the
 " matter talked about frequently since, was
 " present at the preliminary examination

36 " of these parties a week ago last Friday a
" few minutes only have no bias or prejudice
" about the matter. I have no opinion as regards
" the guilt or innocence of the defendants.

Said defendants then and there
challenged said J. D. Wattery, for cause,
which said challenge of said defendants the
Court then and there overruled to which
decision of the Court in overruling said
challenge of the defendants then and there by
their Counsel excepted

All of the above and foregoing jurymen
stated that they had formed and expressed
no opinion as regards the guilt, or innocence
of the defendants had no bias or prejudice upon
their minds, could give the defendants a
fair trial according to the law and the evidence.

The attorney for the State then and there
to sustain the charge in the indictment
introduced one William P. Gibbs who
testified as follows.

" I reside in Aurora - on Monday
night the 11th day of March I attended a
lecture by Doct Brigham and on my way
home passed by George McWaddens house
which is situated in the City of Aurora
County of Kane, and State of Illinois; and
saw a light in said house as I came up to
it. I stopped.

(Here John Porter was brought in)
I identify the hat John Porter has on, as the

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white hat, I saw that night.

As I came in front of said house, I saw the light. It was then between nine and ten o'clock at night. I saw the light pass from the front to back of said house. The house fronts to the south. The light was then in the second or upper story of the house. I saw a man with a white hat on up stairs in the house when the light was. I saw two persons, but could not distinguish the drop of the other. They appeared to be rummaging around the room - they appeared to be in search of things; The man with the white hat was rummaging a bureau; Can't tell how long they were up stairs; Should think fifteen minutes; After that the light came down stairs; I could not distinguish them in the house down stairs; They were there about five minutes I should think down stairs, but cannot tell exactly; Then I saw two men with bundles come out of the house from the back part around on the last side; They came toward the gate on the street south of the house; I asked them what they were doing, when they dropped their bundles and ran.

Asa C. Farnsworth and Elias M. Hubbard were with me that night when we discovered the light in the house, when the two men came out of the house, they, Hubbard & Farnsworth were on the street that runs past on the west side of the house, around the corner, but came up to

the gate where I was just as the two men started to run; Hubbard and Farnsworth came up; I think before the two men dropped the bundles; The gate was fast and Farnsworth and Hubbard gave chase after the two men who came out of the house, and shortly after I heard a report of a pistol; I had stayed behind to watch the bundles.

I saw the defendant Silas Gray after Hubbard and Farnsworth had caught him; They were leading him along, he had on a black cap on his head; I didn't notice the dress of the two men when they came out of the house with the bundles.

William W. Milgate and myself took the bundles that the two men dropped, to Merwin Tabor who lives opposite that night; They consisted of clothing, a bounet, a ted pot; were tied up in white blankets, or sheets; We set the goods in the hall of Tabor's house. Mrs Tabor was there; Saw the same goods in Grand jury room.

These are the same goods.

After leaving the bundles at Mr Tabor's Mr Milgate and myself returned to the house of George M Hadden, where in the door yard, on the east side of the house Mr Milgate found a gun, the muzzle was sticking in the mud; This is the same gun; We went into the house; I noticed a book case with the glass doors broken and the back torn off and

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drawer out; a lock cut off the door of a small closet which was in lower part of the house, on the east side near the front hall; Then I went up stairs; I found things scattered around; Down stairs. I noticed a door which leads outside with the lock cut around on the inside; up stairs doors were all open; saw bureau with drawers out; bureau stood in front Room up stairs; The man who had on the white hat whom I saw when I first discovered the light as I have testified stood one step from the bureau, while the other was searching the drawers; I saw also, up stairs while in the house some trunks that were open; Down stairs near the book case I found the scabbard to a dirk; The house of George M. Wadden where I saw all this, stands on the corner of Chain Street, and another of which I do not know the name, and fronts south. Was a piazza on the front and east side. There is a hedge in front. House has blinds. One was open on the west side where I looked through when I first saw light. —

Drop Examined

I did not see more than two men that night in that house; I was perhaps twenty rods from the house when I first discovered the light; I did not go into the house until they brought the bundles out; I am sure that when I asked them

what they were doing they made no reply I don't know but that they had been drinking, but did not think him much drunk, or he wouldn't have jumped over so high a fence; The man that had on white hat stooped forward never saw more than two persons there. Direct Ex resumed.

I did not notice whether man with white hat was tall or not.
Cross Ex resumed.

I did think that Jack was the man that wore the white hat"

Now O Darnsworth was then called by the People sworn and testified as follows—

Now Gibbs who has just testified. Elias M. Hubbard and myself were passing the house of George W. Hadden which is situated in the City of Aurora County of Kane and State of Illinois on the night of the eleventh day of March instant. at about half past nine in the night when our attention was attracted by a light in the back chamber of the house; The persons who were in the house passed from the back to the front chamber; I saw one person & perhaps more; They soon passed down stairs into the rear part of the house. Gibbs remained in front of the house while Hubbard and myself

41/ went around the corner on the west side to watch their motions. I stood looking through a crack in the fence a man pass the window, a full chested man with round shoulders, and was stooping forward. He had on a sort of bell crowned light felt hat which came down close on his head; I watched them there until they passed out the back door and shouldered bundles and passed round the east side of the house to the front. When I got within a rod of the gate where Gibbs stood he spoke to them they dropped their bundles and ran back I ran to the gate and tried to open it and found it fastened I ran around on the west side of the house to the rear plot and saw them coming over the fence with some ~~invis~~ ^{invis} ~~ible~~ ^{ible} I cannot state within their ~~st~~ st of the fugitives but think there were 4. It was dark and I could not see plainly I called on them to stop or I would shoot ~~when~~ one of them discharged a pistol Mr Hubbard was with me and ahead Hubbard followed him and caught him and called to me that one was there I went up and found the defendant Silas Gray lying on his face we took possession of him took him up to Shedd and then to Asa A. Dexter and then to the calaboose afterwards I went back to the calaboose with the officer Dexter and the city marshal Lawyer and tried to get the 1st Gray to tell who was with him but he refused to tell we found on him a silk apron two or three

42 Daguerotypes a metallic. paddle a two barrel
pistol and a paper box These are the things
we found The pistol was not loaded
don't think I had it in my hands though we
found the pistol secreted under a bed quilt
upon which the prisoner Gray was lying in the
calaboose The light in the house went
out just as the men went out of the house
whether before or after I can't say The men
said something to one another when they
came out of the house (Cross examined)
I did not see more than one person at any
one time in the house They did not reply
when Gibbs spoke to them when I found Gray
he was lying on his face no one had hold of
him Hubbard was by him Gray was apparently
somewhat drunk he wanted to lie down
somewhere on the way to the calaboose His
language was exceedingly profane and implied
that he was intoxicated he wanted a drink
Direct Examination

Gray walked along without any particular
difficulty The round shouldered man I dis-
-covered the officers said was John Porter alias
Sailor Jack

Elia. Mr. Hubbard called by the people
Sworn and testified as follows.

I was going up town on the night of March 17th
instant and came near George M. Hadden's
house in company with William. F. Gibbs and
Asa. P. Farnsworth. Farnsworth noticed and
called our attention to a light in said Hadden's

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house we went up to the fence in front of the house myself and Farnsworth then went to south west corner and watched the light. The window blinds were tipped so that we could see in. Saw one person can't say that I saw more going to and fro up stairs soon after I saw two men up stairs one had on a cap and the other a light or white slouched hat low crowned. They then went into front room again. I could see them reach down and take up things they were sometime at work there. Farnsworth and myself as they passed down stairs went round on the other street to the rear of the house saw them in a back room or kitchen. There were no blinds. The light they had was a candle could not see but one person there soon one of them came to the door and said come on boys no use fooling around here. We went get any more. Did not hear any answer. Two persons passed out and after the second one came out the light was put out inside of the house the second one had got out before the light was extinguished. The man that I saw come out had on either dark hats or caps and not the light hat I had seen. They passed on the east side of the house toward the front. Farnsworth and myself then went around to front. Gibbs hailed them and said good evening. The one to the rear answered good evening and something else but don't know what it was and both dropped their bundles turned around and ran. Farnsworth tried to open the gate and

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pulled off a picket but could not open it he
~~and~~ myself ran around the corner to the
 rear of the lot and heard them jump over
 the fence on the east side of the barn and
 saw them running from the fence We gave chase
 and Farnsworth told them to stop or he would
 fire and one of them fired and a ball whistled
 by to my right one ran up towards the brewery
 and soon the other fell down They had separated
 I followed the one who fell down and soon over-
 took him and tripped him up when he fell
 again and across a bully on his face I stood
 thru by him untill Farnsworth came up
 when we took hold of him to get up and go
 with us We took him to Shedd's house and
 then to Asa. A. Dexter house who took him
 to the calaboose He bullied some and pre-
 tended to be awful drunk Silas Gray one of
 the defendants was the man He had on a
 cap and the same coat he has on now
 after that I went to Merwin Tabors with Mr.
 Gibbs and William H. Milgate and saw three
 bundles there I identify the trapt and bonnet
 and some clothing marked with George. M.
 Haddens name Gibbs. Milgate Merwin Tabor
 and myself then took a light and over from
 Tabors house to George. M. Haddens house
 As we were going along Milgate spied this
 double barreled gun I think this is the same
 gun We found two doors unfastened The wood
 shed door or rear door the one the men came
 out of and one east of the Kitchen We went
 through the house found a book case stove to

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pieces and locks of drawers cut In the room at the rear of the hall there was a closet door cut open China dishes and papers were strewn over the floor Things generally scattered all over the house and every door open We went up stairs into the room where we first saw the light which had a closet opening out of it This had been opened and had clothes on shelves &c taken down &c In south east corner there was a small bureau with drawers out and contents emptied Then we came down stairs and into room where we found a door leading out on the piazza partly cut around the lock on the inside of the door I was in the house next day with Barnes. Hadden and noticed that a light of glass in a back window on the east side of the house was broken out and that the window spring had been worked at with a knife Looked as though they had tried to raise the window The night before March 11th instant. I noticed a scabbard to a dagger down stairs knew that night ~~that~~ one was staying in the house and that George M. Hadden was sick in the country The person whom I caught was one of the persons who was in the house as I followed him from the house right up close Have since heard the voice which spoke at the door Think it was Silas Gray (John Portus hat was here shown witness) I think that is the same white or light colored felt hat I have spoke of
Crop Examined
I first saw this hat at George M. Hadden's house

I did not see it on the persons who had the bundles. They had on dark hats or caps. The bundles were swung over their shoulders. They were sideways towards me when they came out of the house and the light shone right on them and I could see that they had on dark hats or caps. Gray had been drinking some. He laid on his face perfectly still until we took him up when I say dark hats or caps I mean blue or black. The man that had on light hat had on dark coat.

Direct Examination

The next morning after the burglary I followed up the trail where I chased Gray the night before and picked up one or two daguerotypes and this crop and banner. I identify these daguerotypes as the ones I picked up.

Crop Examined

I found them between George, M. Hadden's house and where the fugitive fell.

William, H. Milgate called by the people sworn and testified as follows.

I have seen these bundles before when I first saw them they were in front of George, M. Hadden's house. William, P. Gibbs and myself carried them to Merwin Taber's and left them in the hall of his house. When we went back and went into George, M. Hadden's house to see if the doors were open. Then we went down town to see what they were doing with the man who was caught. We went into

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the Aurora House and from there to the calaboose and then we went back to Tabors house accompanied by Eli's Mr. Hubbard. We stopped at Tabors for a hammer to fasten up the door in George. Mr. Hadden's house when we got there Tabor was at home and the bundles that Gibbs and I had left there were still where we left them and in the same condition as when we left them. Tabor joined us and we went over to George. Mr. Hadden's house again. I found a double barreled gun there in a flower bed on the east side of the house and picked it up. The muzzle was sticking in the mud. It was some five or six feet from the piazza and from 15 to 16 feet from the to of the house. There was dirt in the muzzle. The gun shown me is the same one I found.

Memorandum Tabor called by the People sworn and testified as follows

I have seen these bundles before it was on the night of Monday 11th day of March instant about 10 O'clock in the hall of my house. I identify the goods velvet bonnet then the fur muff and the brittonia coffee pot.

Defendants here admit that the goods produced are the same that were at the nitrup Tabors house in his hall on Monday evening March 11th 1861.

George. Mr. Hadden called by the People sworn and testified as follows

My dwelling house is on claim street in the City of Aurora in the county of Home and

48 State of Illinois it is the same house described by the other witnesses It is my dwelling house and was my dwelling house on the night of the 1st March A.D. 1861 I know these goods They are mine Defendants here admit that the goods are the goods of George M. Hadden and of the value stated in the indictment George M. Hadden Examination resumed There are among these goods a velvet bonnet a fur muff a buttoned cuff a pair of fur cuffs a merino wrap a muslin detain wrap These muslin contains a knit bed spread a massilla bed spread and a quilted skirt This gown is mine It is a double panelled gown All these things were left by me in my house when I left there on Christmas last Previous to the burglary I was last in my house on the 8th of January last and when I left it I left all the windows and outside doors locked The reason I was absent from my house is that I was sick and was at my brother's in the country to be taken care of I left with the intention of returning and still intend to return when I recover from my illness My wife is dead

And be it further remembered that of the 28th day of March A.D. 1861 it still being one of the days of the March term A.D. 1861 of said court and while said court was then and there engaged in the trial of said cause the court adjourned until One O'clock P.M. of said day in the usual mode by proclamation

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and on the afternoon of said day to wit at
one of said day the Judge of said Court entered
the Court room and ordered the Sheriff to
bring the defendants into court and also
ordered the clerk to call the names of the
Juries impaneled in said cause and pro-
ceeded with the trial of said cause without
convening Court by proclamation in the
usual mode and that on behalf of the
prosecution among others the following persons
were sworn to testify and did testify on
behalf of the prosecution in said cause in
the afternoon of said day The fact was
the Court at 12 O'clock adjourned for dinner until
half past one on our clock at half past one the
Court took his seat he ordered the Sheriff to
bring in the Jury and defendants had the
clerk call the names of the Jury and then
told the parties who were all present to proceed
with the case The Court has no recollection
as regards whether a proclamation for the opening
of Court was made or not But is content
that the above statement shall be taken as
the Court has no recollection upon that subject

James W. Hadden called by the people and
sworn and testified as follows
Previous to the burglary I was last in George
Mc. Hadden's house on the Friday next previous
to March 11th 1861 I examined windows
and doors and found all fastened when
I left I left the doors locked and windows
fastened One or two of the windows have no

blinds I was not there the Tuesday fol-
 -lowing which was the next morning after the
 burglary. The first thing I noticed was that
 two slats had been pulled out of the blinds
 of a window on the east side of the house
 farther on on the same side I found another
 where some one had attempted to cut out glass
 and had finally broke it out. From there
 I unlocked the door leading into ~~the sitting~~
 room and went into the house. The lock
 to this outside door had been partially cut
 out from the inside other locks were cut
 out on the inside of the house everything
 was in disorder there was not a box or
 trunk in the house but what had been
 broken into. I found the point of a dagger
 knife at the book case. The point shown
 me now is the same one. The cup and
 saucer shown me I have seen at the house.
 The miniature found on Silas Gray at the
 calaboose I have also seen.
 George M. Hadden recalled and testified
 as follows

I recognize the miniature the
 cup and saucer and the ladle as my
 property I left them in my house

John, H. Stule called by the People sworn
 and testified as follows

I know the defendants Silas Gray and
 James Van Allen I also know John
 Porter. Monday evening March 11th inst.
 I saw James Van Allen one of the defendants

5/ and John Porter together on the cross walk
above and opposite John Reising's store on
Broadway in this City; Van Allen spoke to
me and said "God damn you dont you
know me"; Told me to tell Silas Gray to
come out; I went into Reising's Van Allen
followed shortly after; I asked him if he had
found Silas Gray? He said he hadnt; I
stayed there a few moments and then
started for home when I again saw James
Van Allen and John Porter where I saw them
first, on the walk; They started on up past
the Railroad Depot in the direction of George
M. Waddens house I followed them four or
five rods. When I last saw them they were
going up the hill past the depot; I think
this was about nine o'clock in the night;
Silas Gray was not with them; At least I
did not see him; I saw him at Reising's
that night; He was dressed as he now is
with a dark coat and black velvet cap;
Van Allen had on a black coat and a
black low crowned felt hat; John Porter
had on a brown coat and a light or white
felt hat.

Crop Examined

I live with Mrs. Moirer now; at that
time I boarded with Mrs. Clark; I did not
see Silas Gray after they left the Depot.

Austin Steele called by People sworn
or testified as follows—

I know James Van Allen and Silas

Gray; I have seen John Porter; I saw those three persons on Monday evening March 11th instant about 9 o'clock at John Reising's store on Broadway in the City of Aurora; As they came into Reising's Silas Gray shook hands with me; James Van Allen came up and spoke to me; Gray asked me to take something to drink but I declined; Gray spoke to Reising for something to drink once or twice who paid no attention to him; Van Allen came up to Gray said "let us go"; Gray didn't want to go out; Van Allen took hold of his coat and pulled him to the door. Of all three I mean Silas Gray, John Porter and James Van Allen started and went out and crossed over the street and stood two or three minutes on the sidewalk opposite; I had followed them out. They then went up the street leading past the depot; This was about nine o'clock in the night. James Van Allen had on a black coat and a low crowned black felt hat; Silas Gray had on a black coat and a black cap and John Porter a light felt hat and a snuff colored coat.

Don't think any of them went past the stove at Reising's that night stood in middle of room near the end of the counter.
 Cop Examined

If John Steele had went on same side with the boys I should have seen him

53 Gustav Washburn called by People and sworn, and testified as follows.

I know these Defendants, and also John Porter I saw them and him at John Reising's store in this city on Monday night the 11th of March instant; I saw them three times that day; I am clerk for John Reising; That evening about 7 or 8 o'clock I saw James Van Allen the Defendant go back of the store behind the counter on the back end of which there were three candles burning; I don't know whether he took a candle or not, I spoke to him about it as I didn't like to have him behind the Counter.

Crop Examination.

I saw Van Allen behind the Counter twice that day; John Reising keeps a grocery store, and keeps liquor for sale;

Ans A Dexter called by People, sworn & testified as follows.

I took the defendant Silas Gray into custody on Monday night about 11 o'clock the 11th of March instant; Mr S. Arneworth brought him to my house; I looked up Sawyer the City Marshall and we took Gray to the lockup & left him; A few minutes after we returned and found Silas Gray lying on his face on some blankets in the lockup or calaboose; I found right under him that two barreled pistol exhibited here found it was not loaded

54 but had been lately discharged, found
apron & handkerchief. Ladle &c. found
daguerotypes in the stove; I had a
conversation with him he denied every-
thing that night. I arrested John
Porter in a log barn of Thomas Bird
living on McKey farm in Putaria.
D. Andrews, D.C. Lawyer &c were with
me; This was on Wednesday after the
burglary was committed about 11 o'clock
at night. Miriam Kennedy ^{and} William
Smith were in the barn with him. She
saw the light when passing & went to the
barn; They had a candle. Kennedy
opened the door; They had a bed there
to sleep on, buffalo skin ^{and} blankets.
John Porter was dressed in white hat
& buff colored coat; Took him from
there to calaboose here.

Early the next morning we arrested
James Van Allen at the house of Miriam
Kennedy; The night before John Porter
told us that we would find James
Van Allen if we went up there before
morning (Deft objected to said evidence
& moved the Court to exclude from the
jury the statements of said Porter, which
objection the Court overruled & defendant
accepted) Accordingly. Myself, D.
Andrews, Lawyer, Charles Higgins
Frank Court, & Eph. Conrad. Miriam Evans
&c went there; we posted ourselves at
different places around the house

55 Completely surrounding it. I lay down
by a stump & waited for daylight
Just before daylight I saw a man
inside of the house pass by a
window in the house several times;
Sheriff Andrus about then got over
the fence and came where I was
The man I saw pass the window I
thought was Defendant Van Allen
William Evans was posted near the
south door; I heard him say "Here
he is" I ran around to the other end
of the house, then ran toward the
barn. James Van Allen came out
of the house running north towards
the barn. Lawyer Hollered at him
& told him to stop when Van Allen
ran the other way. Then Lawyer
shot at him with his pistol; at that
he ran a little to the right. Joseph
Erward caught him & they both
fell to the ground & we came up &
Lawyer put hand cuffs on him.
I remarked to him that we had
the pins too well set up for him.
He said that if he had got a
little more the start, we could
not have caught him. That if he
had once got into the woods there
wasnt a man or an officer in
Kane County who could have
caught him! He then said
"By God, you cant prove anything

56. against me"

We took Van Allen into Miram Kennedy's house and searched him. We hadn't told him on what charge he was arrested. We found on him a six barreled revolver every barrel loaded a powder canister, a powder flask & bullets that fitted revolver, a note purporting to be signed by Charles Metzger and a heavy olung shot; He had on two suits of clothes throughout. There was fifteen Dollars in money in his pocket. He had on a black low crowned hat.

The day we were carrying him up to the County jail at Geneva which was the Friday after the arrest. I took off his hat, and found the lining torn out, and said that that corresponded with what we had heard. when he said "By God, I tore that lining out myself over three weeks ago because the hat was too small for me"

Sawyer and myself found in the garret of Tom Bird's barn where we arrested John Porter a piece of hat lining. On Thursday night after the burglary. We have seen Van Allen's hat since. The hat shown me is the one. The lining is torn out, and the piece I have looks as though it belonged to it. The hat is of the size known as "4" and this lining has the figure "4" on

57 it. I arrested John Porter on a warrant for breaking into George W. Maddens house and told him of the charge. He told me where Van Allen was. We had been searching for Van Allen unsuccessfully previously. James Van Allen told me after he was arrested that he saw D. Andrus get over the fence up near Miriam Kennedys before he Van Allen left Kennedys house & before he was arrested.

Crop Examination

I have had some difficulties with Van Allen. He sued me for taking property exempt from execution. I thought I had been wrongfully prosecuted.

When we took him there was a good deal of excitement. They all talked some to him & some to themselves, some one might have accused him of the burglary when he remarked we could not prove everything against him.

I did not hear what others said. There was a good deal of talking -

D. & Lawyer called & sworn testified as follows.

I went with Deft. to arrest James Van Allen. Saw him coming around the house directly behind me. Told to stop or I would shoot. He turned and ran away from me and

59 Kennedy as he came around the corner of the barn - I didnt say anything to him. I didnt accuse him of any crime - Dont recollect what he said except about if he had got the start of us -

George M. Wadsworth recalled & identify the Powder canister produced by Mr Lawyer - I had two, one of them smaller than this - I think this is the other. I know this because my little boy had it one day to play with & stepped on it and made this dent that I now see - Mine had about the same quantity of powder of the same quality that this has -

Cross Examination

I have no particular mark upon it by which I recognize it except the dent.

Charles Higgins called sworn &c.

"I have seen this powder canister before - saw it taken from Van Allen at the time of his arrest and brought it down from there myself in the bundle.

Cross Examination

Want say that I saw the Canister at Kennedy's but saw it in the bundle of traps here in town.

J D Andrus called our witness
 Was present at the search of
 Van Allen - I found this knife
 upon him, and saw the powder
 canister there at Kennedy's

George M Hadden recalled &c
 I have seen this knife before
 I think - I should think it was a
 knife my little boy had -
 Corp Examination
 I am not certain
 my boys knife was just like it -

John Porter called by the
 Prosecution sworn. objected to by
 Defendants. examined by the Counsel
 for the Defendants on voir dire &
 testified as follows.

"I was one of the men who com-
 mitted the burglary in George M.
 Haddens House in the night of the
 11th of March A.D. 1861"

It was here admitted by the
 Counsel for the prosecution that
 John Porter was an accomplice to the
 burglary and larceny, and that he
 had been separately indicted by the
 Grand Jury for the said offence, but
 that said John Porter had not been
 arraigned upon said indictment
 nor pleaded to the same

61 The Counsel for the defendant then and there objected to allowing said John Porter to testify in said cause against said defendants
1st Because he was an approver within the meaning of the Statute
and

2^d Because no motion had been made by the Counsel for the People in said Cause for the Court to allow him to testify -

All of which objection of said Defendants the Court then and there overruled and the defendants then and there by their Counsel excepted to the decision of the Court in overruling said Defendants objection and allowing said John Porter to testify ~~said defendants excepted~~.

And said defendants then and there offered to show alibi that said John Porter had been induced by promises of favor by the officers in authority to turn State's Evidence and testify against said defendants; to which evidence the attorney for the state then and there objected and the Court sustained said objection to the decision of the Court in sustaining said objection the defendants by their Counsel then and there excepted.

59 Kennedy as he came around the corner of the barn - I didnt say anything to him. I didnt accuse him of any crime - I dont recollect what he said except about if he had got the start of us -

George McAdams recalled & identify the Powder canister produced by Mr Lawyer - I had two, one of them smaller than this - I think this is the other. I know this because my little boy had it one day to play with & stepped on it and made this dent that I now see - Mine had about the same quantity of powder of the same quality that this has -

Cross Examination

I have no particular mark upon it by which I recognize it except the dent.

Charles Higgins called sworn & "I have seen this powder canister before - saw it taken from Van Allen at the time of his arrest and brought it down from there myself in the bundle.

Cross Examination

- I cant say that I saw the Canister at Kennedys but saw it in the bundle of traps here in town.

J D Andrews called & swore
 Was present at the search of
 Van Allen - I found this knife
 upon him, and saw the powder
 canister there at Kennedy's

George M Hadden recalled &c
 I have seen this knife before
 I think - I should think it was a
 knife my little boy had -
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 had been separately indicted by the
 Grand Jury for the said offence, but
 that said John Porter had not been
 arraigned upon said indictment
 nor pleaded to the same

63

in. and said that Hiram Kennedy told him about it. —

After we left Sheffer's saloon Van Allen wanted us, that is Silas Gray & me, to join with him and go up to his house. He did not say whose house it was. He wanted that we should go up that night. He said that we must not buy a candle - it wouldn't do - He then went into John A. Rissings grocery store, which is also on Broadway in this City, stayed there awhile - James Van Allen while we were in there went behind the counter and to the further end where there were some candles burning, and snuffing one of them out put it in his pocket.

He then went out James Van Allen and myself, and on the cross walk in front of Rissings we met John A. Steele. Van Allen spoke to him and said "God damn you, don't you know me" & wanted to have him tell Silas (meaning the defendant Silas Gray) to come along. Steel then went into Rissings and Van Allen followed him in, I went to the door and pretty soon Gray & Van Allen came along and we started to go up to the house together - He went up past the Depot and up the hill Van Allen had on the same drop he has now, a black coat and a black felt hat - Gray had on a black coat, and a black velvet hat - I had on

64 this light or white felt hat, and this Coat
a snuff colored one.

On the way up there, a block or two
before we got to the house James Van Allen
wanted I should change hats with him and I
did - His was smaller than mine and too
small for me I wore his the black hat until
the night I was arrested in Tom Birds barn
when Heiam Kennedy brought me back mine
this one and took Van Allen's up at the barn
where I was arrested I tore out the sweat lining
to Van Allen's hat as it was too small for me
I noticed that the hat was number seven as I
saw that the lining had the figure 7 on it I
told the officers when I tore the lining out the
hat I now see is the one and the piece of
lining shown me I should think the same
I had on this black felt hat all the time at
the house when the burglary was committed
when we got up to the house which I now
understand is George. Mc. Hadden's we went
by it on the walk and then came back and
finding the gate fastened Van Allen and Gray
jumped the gate into the yard and went
up to a window on the east side and tried to
open the blinds and broke a Stat or two but
could not open it Then they went further on and
cut out a window glass and worked at the spring
with a knife I stood at the gate and watched
after awhile they got another window up and
Van Allen said to me that all was ready I
then went into the yard and we three entered
the house The house is a white house with blinds

65

except to the kitchen or rear part. It has a verandah or piazza the south end and east side and fronts to the south it is on a corner and has a hedge on the front. When we got in we opened the back door. Looking around there Van Allen found a dagger. He and Gray broke the glass to the book case and finally had to tear the back off to get into it. Van Allen cut open a closet door where they found a bonnet a muff &c. We had a light it was the candle Van Allen stole. Van Allen sent me out once to watch and see if any one was in sight. I went out and while out I went on the piazza when I heard him. Van Allen cutting open a door that came outside. He was inside. I spoke he said back is that you. I said yes where are you. I answered out of doors. When he stopped. When I went in they Gray and Van Allen were throwing things into white blankets or something like them. When I came in from outside I said to Van Allen that outside I could see the light and hear them talk and he replied that he did not care and that we wouldn't leave till we had got all we could carry off. We went up stairs. There was a bureau up stairs that Van Allen broke open and a closet Van Allen had on my hat and a black coat. After awhile we came down stairs to the kitchen. Van Allen found a double barreled gun somewhere. Pretty soon we got ready to start. Van Allen said Ray you sack take a bundle and go ahead I will take the gun and put out the light. We went out the back door. Gray

66 and myself and as we went out he said
"Boys come along no use in fooling around
here any longer, we cant get any more"
Van Allen stayed behind to put out the
light- Gray and I had each a bundle
They went around the east side of the house
towards the south gate, when a man hailed
us and said "Good evening" I said "Good
evening" He wanted to know what we
were doing & what we had got there,

He dropped our bundles and turned around
and ran; I ran against Van Allen east
of the door on the east side of the house.

He had the double barrellled gun over
his shoulder. Gray and I jumped over
the fence on the north end, rear of lot
near the barn. They followed us. I
heard a shot fired. Dont know who
fired it. It was not me. I got away
I did not see either of the Defendants know
that night.

While we were in the house Van
Allen asked Gray if his pistol was
loaded, who replied that it was. both
barrels. Van Allen said his was too.

It was about nine o'clock in the
night when we got up to the house
perhaps a little later.

I went to William Smiths
house, and from thence to Cow Birds
barn where I was arrested. There are
the goods we stole, that are now shown
me. I know the bonnet - the muff

67

The coffee pot and some other things
 Van Allen broke the point off
 the dagger, cutting out the closet lock.
 Crop Examination

I have been in this
 County since last fall, came here
 from Chicago. Previously I had been
 aboard a vessel on a trip from
 Chicago to Buffalo & return - Had
 been aboard another prior to that
 time, one trip from Chicago to
 Oswego & return. - A year ago this
 Spring I went over to Michigan in
 - tending to stay if I liked - I worked
 for my board at a tavern there -
 was there about three weeks - did
 not like & came back to Chicago
 Prior to that time I worked in
 Chicago in a sail loft during the
 winter, worked two months. Did nothing
 the balance of the winter. The fall prior
 to that I came from Michigan where
 I had been about a year previously
 was on a steamer running from
 Chicago to — in Michigan
 one trip - Previously I worked for a
 farmer - I saw Van Allen in
 Michigan once, a year ago. last
 fall - First saw him here at a
 school house after I had been here
 about three weeks. -

I have a mother living in
 Brockport New York. I have no

68. father living - I ran away from home when I was ten years old with a canal boy, and took with me from my mother twenty five dollars. Since I have been in this County I have worked two months for Clark Smith - The balance of the time I stayed with Bill Smith - Had no money when I left Clark Smith.

I assisted in breaking into the house of Clark Smith and carrying away his property. It was in the night time Clark Smith was gone to Chicago.

I swore in my vote last fall - thought I was a legal voter then and think so now - Sailors have a right to vote anywhere at a Presidential Election.

Gray was somewhat cornered the night of the burglary, but could work and talk well enough. Van Allen did not appear to be tight.

I am a sailor although I work dropping wood, have not been home but once since I ran away from home. I stole twenty five dollars of my mothers money all of my sisters and brothers are at home except one. he lives in Wisconsin.

Frank Shaffer sworn for People
Know these defendants and

69 John Porter. The three were in my
saloon on Broadway in this City
on Monday the 10th March instant.
They came about four o'clock in
the afternoon and left about seven
o'clock in the evening.

And I Deft^r recalled by
People.

I found the hat lining that
I have testified to, in consequence
of information from John Porter
the powder canister produced
by S E Sawyer was taken from
James Van Allen at Hiram
Kennedy's house at the time
he was arrested.

George W Hadden recalled
by People.

I left a Bowie Knife on
the bureau in my bedroom that
was taken the night of the burglary.
It had a sheath. The point shown
me produced by J W Hadden
I think belonged to it.

Here the People rested
Defence

Jerome Van Allen called and
sworn on behalf of the Defendants
& testified as follows.

The defendant Van Allen is my brother. I have seen this knife before. saw my brother have it last fall & have used it myself. same condition then as now. blade ground off considerable and from that I know it.

The Defendants then there offered in evidence the record of The Court of Common Pleas of the City of Aurora of an indictment against said Defendant Elias Gray for an assault with intent to commit murder & offered to show that the shooting at the witness Hubbard on the night of the 11th day of March A.D. 1881. was the offence for which said indictment was found. To the introduction of which record and other proof, the Counsel for the state then and there objected. and the Court then and there sustained said objection. to which ruling of the Court in sustaining said objection and excluding said proof from the jury said Defendant Gray by his counsel then & there excepted.

This being all the evidence introduced in the case either on the part of the prosecution. or on the part of the defence the Court on behalf

41. of the prosecution instructed the jury as follows

1. For People

The jury are instructed that John Porter, although an accomplice with the defendants in the offence charged and has acknowledged the same, is a competent witness for the People to prove the guilt of the defendants and if the jury believe from the evidence that the testimony of said John Porter is true and that his testimony is corroborated in material particulars by the testimony of other credible witnesses on the trial then the testimony of said Porter is entitled to the same credit by the jury as that of any other credible witness. But the question of credibility is one for the jury to determine

2. The jury are instructed on the part of the prosecution that in order to establish the fact of the taking and carrying away of the goods mentioned in the indictment it is not necessary that the goods should have been removed from the premises of the owner. Any moving of another's goods from

the place where they were put is a sufficient taking and carrying away under the law.

I The jury are instructed on the part of the people that to constitute burglary in a dwelling house it is not necessary that any person should actually be residing in the house at the time of the commission of the offence charged, for if the owner of the same & who has resided in the same leaves it only temporarily with the intention of returning, it is still his dwelling house and the breaking & entering the same wilfully & maliciously in the night time even in the absence of such owner constitutes burglary in a dwelling house."

Do the giving of which said instructions and each of them the defendants by their Counsel then and there excepted.

And the defendants then and there asked the Court to instruct the jury on behalf of the defendants as follows

For Deft

1 The jury are instructed that the evidence of John Porter is not

#4 Before the jury should find the defendants or either of them guilty they must believe from the evidence that the evidence of John Porter is corroborated not only as to the circumstances of the crime but also as to the identification of the defendants or either of them as the person or persons who committed the burglary and unless said Porter's evidence is corroborated by other evidence as to the identification of James Van Allen as the person who assisted in committing the burglary they must find him not guilty. But in criminal cases the jury are judges of the law as well as evidence

73 sufficient to warrant a verdict of guilty against the defendants unless his evidence is corroborated by other evidence

2 The jury are instructed to disregard any evidence of any confession or admission made by the defendant Gray on the morning after his arrest

3 If there is a reasonable doubt as to the guilt of these defendants the jury must give the defendants the benefit of such doubt and find a verdict of not guilty

5 In criminal cases the jury are judges of the law as well as the evidence "

Which were given;
and also as follows;

6 " The jury are instructed that if they believe from the evidence that the testimony of John Porter has been confirmed as to the person of Elias Gray but not as to the person of James Van Allen they must acquit said James Van Allen "

Which said instruction the Court refused to give but gave the same qualified as follows "

75, they must acquit them.

9 The jury are instructed to disregard the evidence of John Porter altogether

10 The jury are instructed that the criminal intent is the gist of this charge and therefore if the jury believe from the evidence that Silas Gray was intoxicated at the time of the commission of the offence and while so under the influence of liquor was induced by any other person to assist or commit the burglary himself they must find him not guilty and in arriving at a conclusion as to the criminal intent the jury must take into consideration all the facts & circumstances of the case the age of the defendant Gray his pecuniary circumstances, his associates and all the circumstances connected with the affair.

11 The jury are further instructed that said John Porter's evidence alone is not sufficient to warrant the jury in finding the defendants or either of them guilty unless the evidence regardless of the evidence of said John Porter, that the defendants committed the burglary as charged in the indictment.

12 Before the jury can find the defendants or either of them guilty they must believe that the testimony of John Porter as to time, place and the identification of the defendants or either of them as the persons who committed the burglary complained of is corroborated by other evidence and unless such corroborating proof is of itself sufficient conclusion to place the guilt of the defendants or either of them beyond a reasonable doubt they must acquit.

13 The jury are instructed that they must disregard the shooting affair altogether in arriving at the amount of punishment if any to be inflicted on defendant May. "

Which instructions of said defendants and each of them the Court then and there refused to give; to the refusal of the Court to give said instructions and each of them. the said defendants by their Counsel then and there excepted

The Court then on its own behalf instructed the jury as follows

77

By the Court you are instructed as to the form of your verdict. If you find the defendants guilty as charged in the indictment you will say:

1 We find the defendants guilty as charged in the indictment and will also fix the time of their confinement in the State Prison at not less than one year nor more than ten.

2

If you find the defendants not guilty of burglary but guilty of larceny you will say we find the defendants not guilty of Burglary but guilty of Larceny and will find the value of the property and if the value is greater than five dollars you will also fix the period of their confinement in State Prison for a period of not less than one nor more than ten years.

3

The Jury can acquit of Burglary and find the defendants guilty of Larceny if the proof will warrant them so doing.

4

The testimony of accomplices in crime who confess their own infamy should be received with great caution by the jury. It is a dangerous class of testimony, to be carefully considered where the liberty of the citizen is at stake. It should be corroborated

by other proof and in determining the question of what weight it is entitled to. The jury should look at his appearance upon the stand. The naturalness of his story. Its reasonableness in connection with all the proof in the case. And if the testimony of such accomplices is not strongly corroborated by other proof it should be wholly excluded from their consideration by the jury. A conviction in a case of felony should not depend upon the testimony of an accomplice alone.

5 Possession of personal property feloniously taken shortly after the same is taken is *prima facie* evidence of guilt

6 If the jury believe from the evidence that a powder canister was found upon James Van Allen and that that Powder canister is the property of George M Hadden feloniously taken on the 11th of March 1861. from the house of George M Hadden then the defendant Van Allen should explain that possession and in the absence of an explanation the jury should convict

79 7.

Drunkenness is no excuse for crime.

To the giving of which instructions and each of them the said defendants by their Counsel then and there excepted.

And on the 29th day of March A.D. 1861 it still being one of the days of the March Term A.D. 1861 of said Court. the jury empannelled in said cause returned into Court the following verdict:

We the jury find the defendants guilty as charged in the indictment and fix the term of their confinement in the State Prison at five years

Thomas Sella's
Foreman

And the said defendants then and there move said Court for a new trial among others for the following reasons

State of Illinois } Court of Common Pleas
Franklin County } ss. of the City of Aurora
City of Aurora } March Term A.D. 1861

The People of the State of Illinois } Indictment for
as } Burglary and
Silas Gray and James Van Allen } Larceny

James Van Allen being first duly sworn

upon his oath says that he is one of the
Defendants in the above cause that your offi-
-Ant by C. J. Moctynus his counsel at the
time of the arraignment of these Defendants
objected to being arraigned upon said indict-
-ment for the reason that a list of the Jurors had
not been furnished to these Defendants that
said Court then and there postponed the
arraignment of these Defendants for about
a half hour and ordered the clerk to furnish
a list of the Jurors to these Defendants but
that the same was not done and these
Defendants were arraigned upon said indict-
-ment without furnishing these Defendants a
list of said Jurors and that said list was
not furnished to these Defendants until
the next day after such arraignment and
just before the commencement of trial in
said cause and further Depoant faith-
fully

Sworn and Subscribed to
before me this 30th

Day of March A.D. 1861

A. C. Barr

Clerk

James Wm. Allen

Which said motion of said Defendants
for a new trial the Court then and there
overruled to which decision of the Court in
overruling said Defendants motion for a new
trial said Defendant by their Counsel then
and there excepted and pray that this
their bill of exceptions may be signed.

Sealed

B. F. Parks *Seal*
Judge of the Court of Common Pleas
of the City of Aurora

State of Illinois }
Kane County } ss. I Charles P. Johnston
City of Aurora } Clerk of the Court of Common
Pleas of the City of Aurora, in said City
County and State, do hereby certify that
the above and foregoing transcript contains
a true and correct copy of the indictment
found and copias issued thereon of all and every
order ^{of the Court} entered of Record, of the final order
of judgment of the Court and of the Bill of
exceptions filed in a case in said Court
between The People of the State of Illinois
and Elias May & James ^{Wm. Allen} Defendants, as
appears to us of record & from the files in my
office.

Witness my name seal of said
Court at the City of Aurora aforesaid
this 15th day of April A.D. 1861

Chas P Johnston
Clerk

This may certify that the foregoing
record in our opinion contains a full
and true history of the proceedings on the
trial of the above entitled cause.

B H Peck, Esq.
Judge of the Court of
Common Pleas of the City
of Aurora.

Augusta Campbell Seal

Prosecuting attorney pro tem
for the 34 Judicial Circ. for the
Court of Common Pleas of the
City of Aurora.

5th The Court erred in allowing Elias Miller
Noah Mager Wm L Anderson, Abah Stokes
& J D Lettens to each of them to be sworn
as jurors in said cause and not allowing
defendants challenge the each of them.

for may for all

And now come the said James Rice
Allen & Silas Gray plaintiffs in Error
& say that in the record & proceedings
above set forth there are the follow-
ing errors to wit

1st The Court erred in not ^{sustaining} ~~quashing~~ said
Indictment.

2^d The Court erred in overruling plaintiffs
in Error motion for change of venue

3^d The Court erred in ~~not~~ granting plaintiffs
in Error motion for a continuance

4th The Court erred in compelling defendants
below to go to trial & not sustaining
their objection that they had not been
furnished with a list of the jurors & wit-
nesses

5th ~~The Court erred in permitting witness
Porter to testify as to what John Porter
said~~

The Court erred in permitting John Porter
to testify.

The Court erred in not permitting the
Indictment against Silas Gray for an
assault with intent to murder to be in-
troduced in evidence

- 8th The Court erred in giving people instructions
- 9th The Court erred in qualifying defendants instructions.
- 10 The Court erred in not giving defendants "7" "8" "9" "10" "11" "12" & "13" instructions.
- 11 The Court erred in giving the instruction given by the Court.
- 12 The Court erred in not granting defendants motion for a new trial
- 13 The Court erred in not sustaining defendants motion in award of judgment

Charles F. Meyer
Atty for Eff in
Error.

Supreme Court of the State of Illinois
April Term A.D. 1861

Silas Gray &
James Van Allen }
vs
The People &c }

And now comes the said defendant in Error G. D. Jones States Atty & says that in the recent judgment & proceedings aforesaid there is no error wherefore

D. Jones
states etc

10 PD-178
Com Plea Aurora

The People &c

14
Dela Gray &
James Van Allen

Filed April 17. 1861
L. Leland
Clerk

Fee

20 folio's \$20.00
C. P. Seal "35"
\$20.35