

11933

No.

Supreme Court of Illinois

Neeley

vs.

People

71641 7

Stephenson County.

William Neeley

*vs.
The People of the State of Illinois*

T. P. D.

1852

11933

Prepared

State of Illinois Supreme Court
Third Grand Division

William Weeley

vs

The People of the State of Illinois

3 Error to Stephenson

(And now comes the said William Weeley by Thos P. Turner his attorney and says there is error in said record judgement and proceedings and that said judgement ought to be reversed and for special points of error he assigns the following to wit

- 1st The court erred in trying this cause without an indictment having been filed in the Carroll County Circuit Court where the offence is charged to have been committed
- 2nd The Court erred in excluding the jurors Peter Rue, David Shutz, ~~John~~ James Senure and P. C. Shoffer
- 3rd The Court erred in permitting the jury to retire to consider of their verdict without a sworn officer to take charge of them
- 4th The court erred in overruling the motion for a new trial
- 5th The court erred in overruling the motion in arrest of judgement
- 6th The Court erred in rendering judgment against the defendant below

7th The court erred in pronouncing sentence
against the defendant below

8th The evidence is insufficient to warrant
a conviction

Thos J Turner

Atty for Pth in Error

Adopt. of errors,

Filed July 6th 1852.

C. Deland Atty.

By J. W. Tolson Deputy.

Wm Stebbins

&

Book of the State of Ohio

against the Error

State of Illinois,
Sixth Judicial Circuit
Carroll County

Memorandum
p.

Be it remembered that heretofore to wit, on the 23^d day of April 1850 at the April Term of the Circuit Court in and for said county the Honorable Benjamin B. Sheldon presiding, the Grand Jury of said county presented as a true bill an indictment against William Kelly for and concerning the crime of Rape and upon the records of said Court on the said of the said April Term A. D. 1850, ^{there} appears the following entry, to wit;

The People

vs
William Kelly
State of Illinois
Carroll County ss.

Memorandum
Record

Indictment for Rape

Of the April Term of the Carroll County, ^{Illinois} Court in the year of our Lord one thousand, eight hundred and fifty.

The Grand Jurors chosen, selected and sworn in and for the County of Carroll in the name and by the authority of the People of the State of Illinois upon their oath present: That William Kelly late of the County of Carroll and State of Illinois aforesaid on the twenty-first day of December in the year of our Lord one thousand eight hundred and forty-nine at and within the County and State aforesaid on the day and year aforesaid, with force and arms, at the County aforesaid in and upon one Catherine Christian in the face of the People then and there being violently, forceably and feloniously did make an assault and beat the said Catherine Christian then and there violently, forceably and against her will feloniously did invade and carnally know contrary to the form of the Statute in such case made and provided and against the peace and dignity of the People of the State of Illinois

H. B. Stillman, State Attorney.

which indictment has the following endorsement, to wit;

The People to

vs
William Kelly

Memorandum
Record

Indictment for Rape. ct.

A true bill, Leonard Goss, Foreman of the Grand Jury.
Witnesses names, Catherine Christian, Daniel Christian,
Dr J. N. H. Judd, Dr White, filed July 6. 1850
John W. Clark, Clerk.

And afterwards to-wit: on the said 23^d day of April A.D. 1850, on the said April term of the said Court there appears upon the records of said Court the following entry, to-wit:

The People
vs.
William Nely
Defendant
Rape.

Order for
Change of Venue.

And now at this time came the said parties by their Attornies and the defendant by his Attorney moved the Court, upon affidavit of said defendant in fact, for a Change of Venue in this cause, whereupon it is ordered by the Court that the venue in this cause be changed to Stephens County at the said defendant's cost.

Said affidavit is in the following words and figures, to-wit:

Aff. for Change

William Nely
vs.
The People
In the Circuit Court of Carroll County of
the April Term A.D. 1850.
Indictment for Rape.

Personally appeared before me the undersigned Clerk of said Court of said County William Nely, the above named defendant who being duly sworn on his oath says that he has good reason to fear and does fear that he will not receive a fair and impartial trial in said County of Carroll where said Indictment is now pending on account that the minds of the inhabitants of said County are prejudiced against him he also states that the same causes exist in the Counties of Whiteside and Ogle he therefore prays that the Venue may be ordered to some other County where the causes above stated do not exist.

Sworn to and subscribed this 24th
day of April A.D. 1850
J. P. Emmert, Clerk

William Nely
B. Filed April 24th 1850
J. P. Emmert, Clerk.

Filed July 1. 1850, John B. Clark, Clk.

Recognizance

And afterwards to-wit: on the 24th day of April A.D. 1850 on the said April Term of the said Court, upon the records of said Court there appears the following recognizance, to-wit:

The People
vs.
Williams Neely

Indictment for Rape.

Recog. of debt.

And now appeared in open court Wm Neely, P. D. Jacobs, James O'Brien, John Peterbangle who each acknowledge themselves indebted to the people of the State of Illinois in the sum of Fifteen hundred dollars to be levied on their goods and chattels, lands and tenements, rights, credits and effects: Conditioned that if the said Williams Neely shall personally be and appear before the Circuit Court of Stephenson County on the 1st day of the next term thereof to be holden at the Court House in Preppont on the fourth Monday of August next in this Indictment for Rape and not depart without leave of Court then this recognizance to be void, otherwise to remain in full force and virtue.

And also the following recognizance, to-wit:

The People
vs.
Williams Neely

Indictment for Rape.

Recog. of
Witnesses

And now appeared in open court James R. Christians, and Catherine Christians the first acknowledged himself to be indebted to the people of the State of Illinois for the sum of Two Hundred dollars to be levied on his goods and chattels, lands and tenements, rights, credits and effects conditioned that if ^{they} the said James R. Christians and Catherine Christians shall personally be and appear before the Circuit Court of Stephenson County on the first day of the next term thereof to be holden at the Court house in Preppont on the 4th Monday of August next in this Indictment for Rape and not depart without leave of Court then this recognizance to be void otherwise to remain in full force and virtue.

Certificates

State of Illinois
Carroll County J. J. P. Emmert Clerk of the Circuit Court in and for said county of Carroll do hereby certify that the foregoing is a true and complete copy of the records in my office in the case of the People of the State of Illinois against Williams Neely as an

Indictment for Rape; and I do further certify the original Indictment in said Cause and referred to in this Prothonotary is herewith transmitted and marked A. The affidavit for change of Venue is also herewith transmitted; and I further certify that the said papers are all the papers on file in the said Cause.

In witness whereof I have hereunto set my hand and affixed the seal of the said Circuit Court at Mount Carroll this 2nd day of July A. D. 1850.

Seal

Attest: J. P. Emmert, Clerk.

Filed July 1. 1850 John W. Wark, Clerk.

And now the said Cause being docketed upon the docket of the Circuit Court for the County of Stephenson, one of the Counties then comprising the Sixth Judicial Circuit of said State but not of the fourth and fifth Judicial Circuits the said Benjamin B. Sheldon Judge thereof presiding the following order and entry was made as appears upon the records of said Court, ~~to wit~~ of the August term A. D. 1850, to-wit:

The People to
vs.
William Nelly
Indictment for Rape

Continued

On motion of the State Attorney It is ordered by the Court that this case be continued to the next term of this Court.

The People to
vs.
William Nelly
Indictment for Rape

Recognizance

Now at this day personally appeared in open Court the Court judicially sitting William Nelly, Charles J. Stanley, James W.'Brien, Abiel Gray, Thomas J. Jacob and severally acknowledged themselves to one and be indebted to the people of the State of Illinois in the penal sum of ^{fifteen} hundred dollars current money of the United States to be levied of their goods and chattels, lands & tenements for the use of the people of the State. Let upon this exhibition to wit: that if the said William Nelly shall personally be and appear before the Circuit Court of the County of Stephenson on the four day of

This next term thereof to be holden at the Court house in Preppar on the fourth ^{or the 11th} Monday of March next to answer to an Indictment found against him by the Grand Jury in and for the County of Carroll for and concerning the crime of Rape and shall not depart thence without leave of the said Court then the above Recognizance to be void otherwise to remain in full force and effect.

And afterwards to wit; at the September Term of the said Circuit Court A. D. 1858 upon the records of the said Court for the said Term there appears the following order, to wit;

The people of the State of Illinois

vs.
William Neely

Indictment for Rape.

Indictment for Rape.

On motion of the defendant by his attorney It is ordered by the Court attachment issue against George W. Christians and Elow Christians to answer for this contempt in failing to appear as witnesses in the said cause when lawfully summoned for that purpose.

And afterwards to wit; on the 9th day of September on a part of the September Term of said Court there appears upon the records of said Court the following entry, to wit;

The People vs

vs.
William Neely

Indictment for Rape.

Indictment for Rape.

On motion of the State attorney It is ordered by the Court that attachment issue against John Bestcher, Lewis Blass, & G. S. White directed to the Sheriff of Carroll County Missouri in default to answer for this contempt in failing to appear as witnesses in the said cause when lawfully summoned for that purpose.

And afterwards to wit; on the 10th day of September on a part of the September Term of said Court there appears upon the records of said Court the following entry, to wit;

The people of the State of Illinois

vs.
William Neely

Indictment for Rape.

Indictment for Rape.

And now at this day came the State attorney in behalf of the people and the defendant in person hereon and also by

Attachments

Arrangement.

Attorney and the defendant being arraigned pleads not guilty to the charges preferred against him in the said Indictment and when issue joined thereupon came a jury of ^{twelve} good and lawful men, to wit; Lewis M. Gingly, Lewis Byler, Daniel Spinn, Jacob Bardel, Samuel Milliken, Jacob Thimcor, James Howe, William Goddard, Robert Barr, John Kryder, Lewis H. Reed and Abiram B. Davis who were severally duly elected, tried and sworn and the jury after hearing a part of the evidence, the hour of adjournment having arrived retired under the direction of the Court in charge of an officer.

And afterwards to wit; on the 11th day of September year of the September term of said court upon the records of said court there appears the following entry, to wit:

The People of the State of Illinois
 vs.
 William Neely

Indictment for Rape.

Verdict

And now at this day again came the State Attorney in behalf of the people and the defendant in person hereon and also by Attorney and the jury yesterday empanelled to try this cause also come and the jury after hearing all the evidence and arguments of counsel retired to consider of their verdict and after a short absence returned into court with the following verdict to wit: We find the defendant guilty as charged in the said Indictment and fix the term of his imprisonment in the penitentiary at the period of five years. And thereupon the said defendant by his attorney moves the Court in arrest of judgment and for a new trial of this cause.

And afterwards to wit; on the 13th day of September year of the September Term of said court, upon the records of said court, there appears the following entry, to wit:

The People of the State of Illinois
 vs.
 William Neely

Indictment for Rape.

Motion for new trial.

The defendant now at this time comes and moves the Court for leave, and leave is given, to file additional reasons for a new trial of this cause.

And afterwards to wit; on the 15th day of September, year of the Septe-

under terms of said Court, there appears upon the records of said Court the following entry, to-wit:

The people of the State of Illinois

vs.
William Neely

Indictment for Rape.

The motion for new trial.

New trial

Continued

And now at this day came on to be heard

the motion for new trial in this cause upon which motion after argument of counsel the Court takes time.

And afterwards to-wit: on the 17th day of September year of the September Term of said Court, upon the records of said Court there appears the following entry, to-wit:

The people of the State of Illinois

vs.
William Neely

Indictment for Rape.

Continued

And now at this day again came

overruled.

the State attorney in behalf of the people and the defendant by his attorney also appears and the Court having fully considered the motion for a new trial of this cause and being fully advised in the premises overrules the said motion to which ruling of the Court the defendant by his attorney excepts and prays that this his exception may be allowed and made part of the record herein which is done. And the Court having also considered the motion in arrest of judgment in this cause orders that the same be overruled.

And afterwards to-wit: on the 19th day of September year of the September Term of said Court, upon the records of said Court, there appears the following entry, to-wit:

The people of the State of Illinois

vs.
William Neely

Indictment for Rape.

Continued

Sentence

And now at this day comes the State attorney in behalf of the people and prays judgment of the Court upon the verdict of the jury in this cause against the said defendant. Whereupon the said defendant is brought into Court by the Sheriff and being charged by the Court whether he has ought to say why the sentence of the law should not now be pronounced against him, answers nothing. It is thereupon con-

heard and adjudged by the Court that the said defendant William Neely be confined in the Penitentiary of the State of Illinois for the full term of five years, six days of which term is solitary confinement and the remainder of said term at hard labor and that he pay the costs of this prosecution. And it is further ordered by the Court that the Sheriff of Stephenson County remove the said defendant William Neely from the bar of this Court to the jail of this county and that he remove him from there to Alton in the county of Madison in this State and there deliver him to the Wardens of the Penitentiary. And that he execute this order within fifteen days from the rising of this Court, And the said defendant by his attorney excepts to this judgment and order aforesaid.

And now the said defendant by his attorney presents to the Court his bill of exceptions and prays that the same may be signed sealed and made part of the Records herein, which is done: said bill of exceptions being in the words and figures following, to wit:

State of Illinois }
 Stephenson County }
 Wm Neely

In the Stephenson County Circuit Court
 Sept Term A. D. 1851.

ads.

Indictment for Rape.

The People of the State of Illinois



As is remembered that on the 1st day of Sept A. D. 1851 on the trial of this cause and on the selection of a jury in said cause the following named persons were duly drawn by the Clerk of said Circuit Court as jurors in said cause and after being duly sworn to answer questions as to their competency to sit as jurors in said cause, to wit: Peter Rice a juror called and sworn in said cause who testified on said examination that he had heard statements which he believed and from these statements he had formed an opinion that if the evidence should turn out as he had heard, he had an opinion; that if the evidence should be different he would be governed by the evidence in finding a verdict in said cause; and upon the Attorney Prosecuting moving the Court to exclude the above juror for cause the Court excluded said juror, and set said juror aside to which the Sept. then and there excepted to the

exceptions



ruling of the Court in said cause made prayer that his exceptions may be allowed and certified. Also James Cheety a juror called in said cause who being duly sworn in his examination as to his competency to sit on a juror in said cause testified that he had formed an opinion from statements he had heard that at the time he heard the statements he believed them. And thereupon in motion of the Attorney prosecuting the Court excluded said juror for cause. And to such ruling and setting aside of said juror by the Court the deft. then and there excepted and prayed his exceptions may be allowed, which is accordingly done.

Also James Dennis, a juror called in said cause who being duly sworn in his examination as to his competency to sit on a juror in said cause testified that he had formed an opinion in said cause from statements he had heard - did not know if he had heard the statements from any witness in the cause. Had an opinion if the evidence should turn out as he had heard. If different then he had no opinion. And thereupon in motion of the Atty. prosecuting the Court excluded and set aside said juror for cause. And to such ruling and setting aside of said juror by the Court the deft. then and there excepted and prays this his exceptions may be allowed and certified which is done.

Also P. C. Shaffer called and sworn in said cause as a juror to answer questions as to his competency as a juror in said cause testified that he had frequently heard the case spoken of. Was at Mr. Carroll's shortly after the examination was had before the Justice - that he had been told by one person present what was the evidence in the case. That if the evidence should turn out as he had been told he had an opinion. If not then he had no opinion.

Each one of the said four jurors excluded testified that he had formed an opinion as to the guilt or innocence of the defendant from statements in regards to the case he had heard of which he believed to be true. The juror Rice testified that he had formed his opinion from statements which he believed he still believes to be true.

The juror Cheety testified that the statements he heard came from such a source that he believed them to be true.

The juror Adams testified that he believed the statements he had heard to be true. That he did not know whether he received them from witness in the case or not, that he should believe the statements his disposed. that if proved to the contrary he did not know that the opinions formed would influence him.

The juror Shaffer testified that he was at Mount Carroll just after the examination of the defendant before the Magistrate; that a juror then related to him what was sworn to on such examinations. He had talked with another person from Mt. Carroll about the case; he had heard statements in regard to the case from one of the Council in it; he had formed an opinion in the case from the statements he had heard and he believed them to be true.

The Council for the deft. asked this juror whether from all he had heard of the evidence and the facts he had formed such an opinion or would prevent him after hearing the evidence in the case from rendering a fair and impartial verdict between the People and the defendant to which he answered or would not, that he had no bias, that would not yield to testimony.

So all of which said jurors on the motion of the Attorney prosecuting the Court set aside and excluded said jurors for cause to which ruling and setting aside by the Court the deft. then and there excepted and prays that his exceptions may be certified according to law, which is accordingly done.

And on the further progress of said trial the Prosecuting Attorney to maintain the prosecution on the part of the People introduced Catherine Christians who testified that she knew the deft. Has known him five years, was the family physician. That the deft. came to the house of the witness on the 21st day of Decr. A. D. 1848, in the County of Carroll. After some conversation with witness about her health, and as to whether she was in a family way, the defendant said he could tell by an examination: Whereupon the witness got up, took a knitting needles and went into the bed-room, laid the quilt back and laid down on the front part of the bed on her back. The defendant following her

into the room immediately and proceeded to make an examination with the knitting needle part of the time using his fingers. After examining the witness in this way a while the defendant said the best time to make an examination was after a connexion with her and asked her if he might do that, the witness said, No; and that she started to get up; the defendant then threw the cover over my face and arms and got on to the bed, ^{at the foot of the bed,} and pressed himself on my person and pressed my legs apart with his hands or knees and his parts penetrated mine: it was against my will; I made efforts to get away: The deft. got off the bed and I immediately got up. He said I should not tell my husband He went out into the kitchen - I went out into the other room - and took up my child - The deft. came in, took up his suit-bags and drew out some powder or medicine for this witness and then left the house - My husband met the deft. at the garden gate and said something to him - the deft. then came back into the house with my husband, talked a little while and then went away - the deft. had been my family physician about four years - Witness had five children living, one dead - the youngest about one year old, was nursing at that time - The oldest child about nine years old, all at home - the next oldest a boy about five years old - the next younger - Witness said her health had been bad some two or three weeks, was so weak that she could scarcely do her own work - that the deft. was a married man and had no child - the witness said she was not in a family way at that time and has had no child since: When the examination in chief was closed and on cross-examination by the defendant said witness stated she had five children living, one dead - the oldest nine years old, next a boy five years old and that they, the witness and her husband had given away two of the small children - all the children was in the room and were sent by witness into the kitchen to make a fire when witness and deft. went into the bed room, there was a plastered partition between the kitchen and bed room - Went into the bed room in two or three minutes after the children went to bed in four - I laid down on the bed on the fore side when I first went

into the room. I laid on my back - He came in as soon as I did -
 I took in a knitting needle - don't know when I gave it to him -
 don't know how long he was examining me - my legs was so he could
 examine me with the needle - I can't say what position my legs was
 in - After he examined me he said he could perform the operation
 if I would let him - I told him, No; and immediately he got on
 the bed at the foot - My legs were in the same position as before -
 do not know what position left's hands was in - My hands was by
 my side - He, the left. must have unbuttoned his pants on the
 bed - Suppose he did in with one hand - Bless him button them up -
 I could not get him off - If I had called my children I do not
 know if they would have come - did not call them - The left. pants
 penetrated mine - don't know how soon he penetrated me - don't
 know if he got through or not - He separated my knees with his
 fingers - He did not use much effort to part my legs - I was on
 my back - I had not thrown the cover over my face - The left
 threw the cover over my face and held it with one hand - I
 suppose - Witness don't remember what they were talking about -
 thought she was in the family way, and the left. came to see -
 left. had come to my house before to see if I was in the family way -
 He told me I could not tell by my feeling - I had the examination
 made because I wanted medicine - He had examined me before with a
 knitting needle - He did the same in his examination with the needle
 before that he did this time, so far as the needle is concerned - He put
 out four or five powders - don't know the name of the medicine - I took
 one of the powders in a day or two - My hair was as usual - I did
 not wash my face, did not comb my hair before my husband came -
 but put it up after I came out of the bed-room. I did not tell my husband
 for a week - I told him on Friday about noon - My husband asked
 me why I did not tell him sooner - When the left. got on me I
 began to weep, wept a minute or two while he was on me, did not
 weep loud - my limbs were hurt - no marks left - The left. went
 away after dinner time - did not eat dinner - I got supper in the
 evening of that day - left. was our family doctor - Had not called

after. I did not require my husband to know the Dr. to call - did not know the Dr. was to call - don't remember of any conversation with my husband about the Dr. calling. After the Dr. asked me if he might have connexion I told him No. I did not have time to lock my legs together. He got off the floor so quick I could not. He got on me in two seconds after the examination. My head was on the pillow, don't know if I moved it. I wanted to know if I was in the family way was the reason he examined me. There was nothing said about producing an abortion by the use of the needle. The Dr. had examined me before when I was about three months gone in the family way - It was done then to produce an abortion. My husband was not present at the first examination. My husband did know the Dr. was to produce an abortion. He did not do so, no abortion was produced. Witness in re-examination states she did not tell her husband for a week and the reason was she was afraid he would do something, does not know what. That her husband did discover deep feelings - on the night before she told her husband, he was going to a meeting - If I told him what produced my deep feelings he would not go to meeting ever again - I told him next day about noon. The Dr. made a previous examination with a knitting needle when I was three months gone in the family way - This witness in answer to the question as to whether she covered her face when the Dr. examined her as stated answered I did not draw the cover over my face and in answer to the question if she cried out answered that she did not cry out in any way to alarm the children. This being all the testimony of this witness in said cause gives no said trial.

And the said People to maintain the issue in this cause further produced Christian who testified as follows: That he is acquainted with Dr. he has known Dr. 5 or 6 years - was at my house on the 21st Decr 1849 I thought my wife was in the family way; I thought so from the fact that she had not had her menses - I sent Dr. in Mr. Carrolls and he said he could give her some medicine. I asked him to bring his wife and call and see us when he was passing - On the day spoken of (21st Decr 1849) just as I got to the gate the Dr. was coming out of the house and going away - I met him in the yard and told him he need not run away or did not look back - He turned around and went into the house - we talked about my wife's health - My wife, the Dr. and self all set in the

rooms together - the deft. staid some 15 or 20 minutes - My wife was not on talkative as usual, she appeared sad - she is always so when unwell she remained sad all week - When I asked her what was the matter on going to meeting she did not make any reply that I remember - she told me next day, Friday - one week after the 21st day of December - On the day she told me I went to Mr. Carroll and advised with Irving and Rinswell, they advised me to prosecute and I did. On cross-examination this witness stated he had called on the deft. to produce an abortion - that his wife knew in - that he did not employ the deft. to go to his house and produce an abortion - while the deft. was in the house after I met him at the gate - we talked about my wife's health - she was present - the dr. gave directions as to how the medicine was to be taken - My wife took me of the powder under my command afterwards - The medicine did not have the effect - I saw no difference in the appearance of the deft. or my wife at that time - my wife acted as usual when in that situation - I saw no difference in either of them - I did once employ the deft. to produce an abortion - he did not produce it -

Dr. Michener was sworn but did not testify to any thing.

This being all the evidence in said cause that was produced on the trial the same was submitted to the jury whereupon the jury after argument returned the following verdict. We find the defendant guilty as charged in the said indictment and give the term of his imprisonment in the Penitentiary at the hard of five years.

The deft. thereupon moved for a new trial and in arrest of judgment and filed his motions and affidavits in the words following

People

v.

William Nely

Circuit Court September Term 1851.

Indictment for Rape

And now at this day comes the said deft. and files his reasons for a new trial and in arrest of judgment on the various heretofore made.

1st. That Jacob Bardes one of the jurors in the cause was an alien and an unnaturalized citizen of the United States, which fact was unknown to the Defendant until after the rendering of the verdict

Memo for
new trial

in this case.

2nd. Because the verdict was against law and evidence.

3rd. Because the juror excluded for cause the following named persons P. V. Shaffer, Peter Rice, and Jacob Shely when in law they were competent jurors.

Campbell, Turner or ab. Wt. for depts.

4th. Because Catherine Christians testified under the threats of her husband and she was forced by him to testify against her will.

Turner, Campbell or ab.

Wt of depts

People vs

Quincy Court

vs. Indictment for Rape of Stephenson Co.

Wm Neely

Sept. Term 1851.

Williams Neely the defendant in this cause after being duly sworn in his oath states that he is informed and believes and so states the fact that Jacob Bawdell one of the jurors who tried said cause and rendered the verdict herein was not at the time of his so acting as a juror in said cause a citizen of the United State, but was an alien and an unnaturalized citizen and as such an incompetent juror to act in said cause or sit as a juror to pass on the right of this affair by law. Your affiant further states that he had no knowledge of the fact that said Jacob Bawdell was an alien at the time he acted as a juror or rendered the verdict in this cause and that the information of this fact has come to his knowledge since the verdict was rendered in this cause. He therefore prays that the finding may be set aside and a new trial granted in said cause and further swears that -

Subscribed and sworn to before me this

the 12th day of Sept A. d. 1851.

Wm. Neely.

Julius Smith, J. P.

Williams Neely

ads.

The People

State of Illinois

Stephenson County

Comptroller

In the Quincy Court of Stephenson County of the September Term A. d. 1851. Indictment for Rape.

Jacob Bawdell of said County being duly sworn deposes and swears that he was one of the jurors em.

Affiant of
Bardel

permitted and sworn to try said cause and that he is a natural born subject or citizen of the new Republic of France and when this affiant was born of the Kingdom of France - that this affiant was born in Alsace a part of Germany subject the government of France aforesaid. And this affiant further saith that he is now an alien citizen of the United States that he has never been naturalized in accordance with the naturalization laws of the United States and further he saith not.

Sworn to and subscribed this 12th day of Jacob Bardel.
September 18 1851, ^{before me} John W. Clark, Ck

People vs

or. Indictment for Rape

Circuit Court

Stephenson County

Sept Term 1851.

Affiant of
left.

of Wm Neely

Williams Neely the defendant in this cause after being duly sworn makes oath and states that since the trial of this cause and since the filing of an affidavit by this affiant in said cause for a new trial this affiant states on his oath that he has discovered material and necessary testimony in said cause as he is advised and believe, to-wit: That the prosecuting witness Catherine Christian the person on whom the supposed Rape was said to have been committed testified under compulsion of her said husband as disclosed in the affidavit of Hancock on file in this cause. Your affiant states said facts came to his knowledge since the trial of said cause and since the filing of his affidavit in this cause. This affiant is advised and believe that if said evidence had been produced on said trial it would have probably produced a different verdict in said cause. and this affiant had no knowledge of the said facts so known by Hancock other than herein stated. and this defendant further saith not.

Subscribed & sworn to before me this the
15th day Sept 1851 Julius Smith, J.P.

Wm. Neely.

State of Illinois

Stephenson County Circuit Court

Stephenson County J.

Sept Term 1851.

Affiant of
Hancock

J. W. Hancock of lawful age after being duly sworn makes oath and states that he was the officer selected

and in whose charge the witnesses for the prosecution in the case of
the People of the State of Illinois, vs. William Neely in a charge of
Rape we and on the order of said Court in the trial of said
Cause to separate the witnesses for the prosecution and keep them in a
situation that they could not collude together this affiant did take
charge of one Catherine Christian the prosecuting witness in said
Cause she being the person on whom the said supposed Rape was charged
to have been committed upon and her husband who was also a witness
in said Cause on the part of the prosecution and excluded under the
same order and with the said Catherine and while so excluded and
about to be called as a witness in said Cause the said Catherine refused
to go up stairs and said she could not go and wished she had not
come here; thereupon the husband seized her by the arms with force
said to her she should not stop here and make a fool of herself -
they then proceeded to the top of the stairs, stopped and said she wished
she had never come and commenced crying - The husband then put his
hand in his pocket and said take my knife and cut my throat
if you are a going to stop here - This affiant told said wit-
nesses they must go in a room up stairs when the husband dragged
her along into said room - When I opened the door to bring the
said Catherine into Court as a witness in said Cause when the
husband insisted on going along into Court as he stated for company -
I told him he could not go and she would be taken care of -
He, the husband said he was afraid they would take advantage of
her unless he went along. And further saith not -
Sworn to and subscribed this 13th day of September A. D. 1857 before me
John W. Clark, Clerk
J. W. Hancock.

And now at this time the Court overrules the motion for
a new trial and in arrest of judgment and rendered the
following judgment, to wit:

The People of the State of Illinois
 vs.
 Williams Neely

Indictment for Rape.

Judgment.

And now at this day comes the State Attorney in behalf of the People and brings judgment of the Court upon the verdict of the jury in this cause against the said defendant; whereupon the said defendant is brought into Court by the Sheriff and being charged by the Court whether he has ought to say why the sentences of the law should not now be pronounced against him answers nothing - It is thereupon considered and adjudged by the Court that the said defendant Williams Neely be confined in the Penitentiary of the State of Illinois for the full term of five years - six days of which term is solitary confinement and the remainder of said term at hard labor and that he pay the costs of this prosecution - And it is further ordered by the Court that the Sheriff of Stephenson County remand the said defendant Williams Neely from the bar of this Court to the jail of this County and that he remove him from thence to Alton in the County of Madison in this State and there deliver him to the Warden of the Penitentiary and that he execute this order within fifteen days from the rising of this Court.

And the said Deft. then and there on to all of said rulings of the Court in refusing a new trial and in refusing to waive the judgment and in rendering judgment in said cause then and there and at the time of such ruling excepted and brings that this his exception may be allowed and signed sealed and certified according to law which is accordingly done.

Beny. R. Sheldon

Seal

State of Illinois
 Stephenson County, Ill. I, John A. Clark Clerk of the Circuit Court in and for the said County do hereby certify that the foregoing is a perfect transcript and complete read in the said cause wherein the

the People of the State of Illinois are plaintiff and
William Kelly defendant upon an indictment
for Rape as the same appears upon the records
and files in my Office

In witness whereof I have hereunto
subscribed my name and affixed
the seal of said Circuit Court at
Keokuk this 20th day of September
A.D. 1854

John A. Clark Clerk

State of Illinois, Jr.

It is ordered that the writ of error to issue in this cause be made a supersedeas; and that William Auley, the plaintiff in error, be admitted to bail until the determination of the writ of error. The plaintiff in error, before he shall be discharged from custody, will enter into a recognizance to the People of the State of Illinois, before the Sheriff of Stephenson County, in the penalty of Five thousand dollars, with such persons as sureties as may be approved by such Sheriff - the sureties to be actual residents of this State, and worth at least five thousand dollars above all demands against ^{them} and justify under oath - Conditioned that the plaintiff in error will personally appear before the Circuit Court of Stephenson County, on the first day of the next term thereof, and on the first day of each succeeding term of said court, until the determination of this writ of error, and submit to such order as the Supreme Court may make in the premises, and will not at any of the terms of said Circuit Court depart the Court without leave. September 26th 1851.

A. H. Treat, C. Justice
Sup. Court, Ill.

The People of

W. Auley

Complete Record

Filed Sept. 29, 1851.

J. G. Ireland, Clerk
By J. Ireland & Co.

Nov. 8, 1851

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Stephenson* GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Stephenson* county, before the Judge thereof, between

The People of the State of Illinois —

plaintiff^s and

William Verby —

defendant it is said manifest error hath intervened, to the injury of the aforesaid

William Verby —

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *29th* day of *September* in the year of our Lord one thousand eight hundred and fifty *one*.

J. Leland Clerk of the Supreme Court.
By *P. K. Leland* Deputy.

William Nesby
vs.
People of the State of Illinois

Writ of Error.

This writ of error is made
a Supersedeas is to be
obeyed accordingly.
J. Seland Clerk.
By P. K. Seland Deputy.

Filed Sept. 29. 1857.
J. Seland Clerk
By P. K. Seland Deputy.

Alias Supersedeas issued
April 24th 1852.

In Dec 1990 }
Criminal Code }

[11933]

1. Sir.

On the filing of the record it will
be proper for you to issue a subpoena
= duces to the Sheriff of Stephenson County
directing him to discharge the prisoner
on the returning into of the recognizance.
You had better copy the order into the
writ.

L. Deland Esq.

A. W. Hunt.