

11871


No.

Supreme Court of Illinois

Holmes.

vs.

People.

71641  7

No. 3.
William Holmes et al.
vs
The People et al.

1879

Box

1000

11871

State of Illinois
Kane County Circuit Clerk's Office
June 2^d 1849

Be it remembered that on the 14th day of April
AD 1848 the Grand Jury elected unimpaired and sworn
in and for said County of Kane at the April Term of
said Court AD 1848 presented to the Court a Bill
of Indictment of which the following is a copy

State of Illinois
Kane County ss

Of the April Term of the Kane
County Circuit Court in the Year
of Our Lord one thousand Eight
hundred and forty Eight.

The Grand Jurors chosen selected and sworn in and
for the County of Kane aforesaid, in the name and by
the authority of the People of the State of Illinois upon
their Oaths present; That William Holmes and
Edward Ames, late of said County on the Eight day of
April in the Year of our Lord one thousand Eight
hundred and forty Eight, with force and arms, at
and within the County aforesaid, two horses of the
Value of one hundred and Ten dollars each of the
personal property Goods and Chattels of William Lewis
Ames and then being found feloniously did steal, take
and Carry Away Contrary to the Form of the Statute in such
case made and provided and against the peace and
Dignity of the said People of the State of Illinois

R. C. Cook

State Attorney 9th Circuit

The said Bill was returned as follows

The People & William Holmes & Edward Ames
Indictment for Carceing. Stone bill A Chm shall forward
Witness: Wudance Bartholomew & Yates, Alfred
Harrington. Filed 24th April 1848 W. H. Hitchin Clk

Subt Afternoon, to wit on the 28th day of April
AD 1848 it being one of the days of the April term 1848 of
Said Court the defendants filed the following Affidavit for
Change of Term and Continuance to wit

State of Illinois
The People
?
William Holmes
Edward Ames

} April Term 1848
Kane Circuit Court.
Indictment for Carceing
Kane County, Ill.

William Holmes, and

Edward Ames, being severally sworn deposed and says
that they cannot safely proceed to the trial of this
Cause at this term of the Court, on account of the absence
of material testimony which they cannot procure at
this term and also on account of the great and violent
Excitement, which prevails against them in this County
so that they cannot as they truly believe obtain
a fair and impartial trial at this term; They are
informed and believe that extraordinary and unusual
efforts have been made to create prejudice against
them, and that the Judge and the inhabitants of the
County are so prejudiced that it would be unsafe for
them to go to trial this term - That they have been
informed and believe that efforts have been made to
get up a mob against them and to lynch them.
And their defendants state that they cannot safely
proceed to trial at this term on account of the absence
of James Anderson, who is a material witness

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for them, without whose testimony they cannot
safely proceed to trial; That said Witness resides, or
he is informed this defendant Ames, in the County of LaSalle
in this State; That since they have been arraigned for
trial, they have not been able to procure the Attendance
of said Witness; That they have caused a subpoena
to be issued for him and placed the same in the hands
of an Officer to be served, but the same has not been
served, and it is wholly impossible for them to ~~procure~~
procure the Attendance of said Witness this term. They
expect to prove by said Witness, that this defendant
Edmund Ames, purchased the Horses in said Indictment
Charge of said Witness and obtained possession of them
from him said Auduson, and these defendants state that
there are two other Witnesses, whose names these defendants
do not know, but who they are informed & believe
reside in said County of LaSalle who are both material
Witnesses for these defendants, without whose testimony
they cannot safely proceed to trial. These defendants
expect to prove by said two last mentioned Witnesses
that they were present at the time of the purchase
of the Horses mentioned in the Indictment by said
Ames of said Auduson and that such purchase
was made, and that the horses were delivered by
said Auduson to said Ames; That they cannot
procure the testimony of said Witness, at this term of
the Court; They know no other Witnesses by whom
the same facts can be proved, and they can
procure said Witnesses by next term; that they
are now confined in jail and have been since
the Indictment was found and have no

opportunity to prepare for trial, they ask for a continuance of this cause

Subscribed and sworn to before me this 28th day of April 1848

N. W. Fletcher
C. M.

Edmund Ames
William Holmes

And the People by Cook State Attorney filed the following affidavits to wit

The People vs
Edmund Ames &
William Holmes

Plain Circuit Court
April Term 1848
Substratum for Larceny

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P. C. Cook State Attorney respectfully states to the Court upon his Official Oath that he is informed and believes that the jail of said County is not in such a situation as to secure the safe keeping of the above named prisoners. That the Sheriff of said County is compelled to employ a nighty guard of two men to secure them at a cost of two dollars per day that the keeping of said prisoners in said jail to ~~prevent~~^{the next} term of this Court will cost this County about \$500. That a special jury can be empaneled without much delay in said County who never had of said prisoners or their crime at less than one fifth of that expense and he prays if in the opinion of the Court too much excitement exists in the present panel of petit jurors to secure them a fair trial, that a special panel be summoned forthwith, under such restrictions to the Sheriff as shall secure a fair trial

P. C. Cook
State Attorney

State of Illinois }
Kane County & } M. W. Helchen Clerk of the Circuit
Court and N. P. Spalding Sheriff of

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Said County being sworn state on oath that the
Statements contained above in the statement of the
State Attorney are true according to their best knowledge
and said Spalding states further that such a Special
Jury as is above described he has no doubt may be
empaneled

M. W. Helchen
N. P. Spalding

Sworn to and subscribed this }
27th of April 1868 } J. D. Eaton

And Affirmed to wit on the 28th day of April
AD 1868 the defendants filed the following objections
to the above affidavits

The People }
? } Indictment for Larceny
Amos Holmes }

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The defendants by their Counsel
object to any statement or Affidavit on part
of People in opposition to Motion for Continuance
April 28th 1868 Arnold Wells
for Def^t

And Affirmed on the same day the following
Affidavit was filed

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The People &c }
? } Kane Co Circuit Court
Edmund Ames } April Term AD 1868
William Holmes } Indictment for Larceny

Peter J. Brubaker deputy Sheriff of said County
being first duly sworn with an oath that he was the
Officer who summoned the tater panel of Peter J. J. J.
summond at this term of this Court; that he summoned
said jurors away from the County seat, and took only
such men as J. J. J. as he became fully satisfied after
consulting with them, had never heard of said
defendants, or of their crimes alleged against
them. That he himself gave them no information
on the subject and charged them to hear no communication
upon the subject, and that he has often diligent and
careful investigation of the relation of each juror summoned
a full panel who as affiant is enjoined by them
and believes know nothing and have heard nothing
of the matter

P. J. Brubaker

Subscribed and Sworn
before me this 28th day
of April 1848

M. W. H. H.
Clerk

Taken before the Hon. John Deau Catton
Associate Justice of the Supreme Court
of the State of Maine and Presiding Judge
of the 9th Judicial Circuit at the April
Term of the Circuit Court of Maine County
before and held at the Court house in Geneva in said County
on the 24th day of April A. D. 1848

Present

the Hon John Deane Caton Judge

P. C. Cook States Attorney

H. B. Spalding Sheriff

Absent

M. W. Welch Clerk

Afterwards, to wit on the 24th day of April AD 1848 it being one of the days of the aforesaid April term AD 1848 the following among other proceedings were had to wit

The Grand Jury came in and presented to the Court an Indictment in a true bill which is endorsed as follows to wit: "The People vs. William Holmes & Edward Auer, Indictment for Larceny: a true Bill Alchuchell foreman, which is ordered by the Court to be filed

And afterwards, to wit on the 25th day of April AD 1848 it being one of the days of the aforesaid term Court still in session the following proceeding were had to wit

The People of the State of Illinois

Indictment for Larceny

William Holmes
Edward Auer

This day comes the people by Cook States Attorney, and the defendants being brought into Court

in custody of the Sheriff, moves to quash the Indictment herein for reasons in file, which is overruled by the Court and the defendants having been furnished with a copy of the Indictment and a list of the jurors and witnesses, herein, and asked by the Court to Plead, stand mute: whereupon it is ordered by the Court that a

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Plen of Not Guilty be entered for them which
is done

And Aftersaid to wit on the 26th day of April
AD 1848 it being one of the days of the aforesaid
term the Court still in session the following proceeding
was had to wit

The People of the
State of Illinois

} Indictment for Larceny

William Holmes
Edward Ames

} This day comes the People by
Cook State Attorney and the depts
by Arnold Wells their Attorneys

and files their affidavits and moves a Continuance
which motion is granted by the Court

And Aftersaid, to wit on the 29th day of April AD
1848 it being one of the days of the aforesaid term the
Court still in session, the following proceeding was
had to wit

The People of the
State of Illinois

} Indictment for Larceny

William Holmes
Edward Ames

} This day comes the People
by Cook State Attorney and
the depts, in person and

by Wells their Attorney also come, and on Motion of
State Attorney it is ordered that a jury come and the
jurors of the jury of good and lawful men to wit

W. G. Grandall Jonathan S. Mearns John S. Lee
 Franklin Ward Absalom Jewell J. M. Hays
 R. J. Haines S. C. Eason Thomas Eastman
 Timothy Parker J. P. Ferrald William Parker

being severally elected
 trial and sworn also come who after hearing the
 evidence and argument of Counsel return under the
 charge of a Sworn Officer of the Court to Consider of
 their Verdict. Subsequently return come onto Court and
 on their Oaths do say, we the Jury find the defendants
 guilty in manner and form as charged in the Indictment
 the value of the property stolen to be two hundred dollars
 and that the defendants be confined in the Penitentiary
 for the term of eight years each; It is therefore ordered
 by the Court that the Sheriff of this County convey the said
 defendants to the Penitentiary in Alton, and that they
 be there confined for the term of eight years each to
 hard labor except one day each which they shall
 be confined in solitary confinement. and that the
 Sheriff have ten days from the adjournment of this
 Court to execute this sentence; and that the
 People have judgment and execution against
 the defendants for their Costs herein.

State of Illinois }
 Hamilton County, Ill. }

I Charles P. Wells Clerk of
 Hamilton County, Circuit Court do

hereby certify that the foregoing is a true and complete
 copy of all the original papers on file in my Office that
 relate to the above entitled Cause, and

True and Complete Copies of the Record as actual
in Said Cause

In testimony whereof I have
hereunto subscribed my Name and
Affixed the Seal of said Court at
Knoxville this 5th day of June 1859
C. B. Mills.
Clerk

And now comes the said Defendants
By B. F. Ridley their attorney and
make the following points and
assign the same for error

- 1 The court erred in over Ruling
the Defendant's motion for a continuance
upon affidavit
- 2 The court erred in Not changing
the venue upon the affidavit of
the Defendants
- 3 The court erred in permitting
the affidavits of Book States
attorney Fletcher Spaulding
and Churchill or either of them
to be read
- 4 The court erred in summoning
a ~~Special~~ ^{Special} Jury to try the Defs

- 5 The court erred in putting the
Defendants upon trial after they had
filed their affidavit and refused
to plead to said indictment
- 6 The court erred in sentencing the Defendants
to the penitentiary

And the Defendant say that in the
Record and proceedings of the
Court there is manifest error

J. L. Hillery
attorney for Defen

And the ^{paid} People of Cook state atty come
and say that in the record and proceed-
ings aforesaid there is no error in
Bl. Cook

State atty

7. It does not appear that the officer, who
had charge of the jury, when they
~~are~~ return to consider of their
verdict, was sworn in accordance
with law -

Answer for
Hulmes -

The People of

William Holmes

Edward Ames

Edward Jones

Filed June 13. 1849.
Melrose Ck.

State of Illinois, Sct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of *Kane* — 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 *Kane* — county, before the Judge thereof, between *The People of the State of Illinois*

_____ plaintiff and *William Holmes & Edward Ames* _____

defendants it is said manifest error hath intervened to the injury of the aforesaid *defendants*

as we are informed by *their* 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 *second Monday of June next* — 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 A. Treat*
Chief Justice of our said Court, and the
seal thereof at Ottawa, this *13th* — day of
June — in the year of our Lord
one thousand eight hundred and forty-*nine*.

Beland

Clerk of the Supreme Court.

William Humes and
Edward ~~Armed~~

of
The People of the State
of Illinois

Mit of Error

Filed June 13, 1849.
S. Ireland Clerk.

Clerk of the Supreme Court

not to law.

we may cause to be done therein, to correct the error, what of right ought to be done, record-
books our Justice and Clerk at Ottawa, in the county of La Salle, on the 13th day of June, 1849, and
that the record and proceedings being inspected,

WITNESSES the Hon. the Justices of our said Court, and the
Chief Justice of our said Court, and the
one thousand eight hundred and forty-
in the year of our Lord

RECORDED in the record and proceedings, as also in the rendition of the
the Judge thereof, Justice

In the Court of the county of La Salle, Illinois
The People of the State of Illinois

State of Illinois