

Jefferson County Circuit Court
Case file criminal
Nov 1866, No. 135

Box

17 Folder 66

State

vs

Bolt, Philip

assault with intent to kill

Assaulted Reeves Bowers; appealed
to 2nd District Court

State of Missouri,

FIFTEENTH JUDICIAL CIRCUIT. }

SS.

In the *Hoffmann* County Circuit Court at the *November* term, A. D. 1866 : The Grand Jurors of the State of Missouri, empanelled, sworn, and charged to

enquire within and for the body of the County of *Hoffmann* upon their oath do present that

late of said county of

Philip Boely

, on the

12

day of

July

in the year of our Lord one thousand eight hundred and *sixty six*, with force and arms, in

and upon the body of one *Bevers*

, in the peace of the

State of Missouri then and there being, unlawfully, feloniously, on purpose, and of his malice aforethought,

then and there did make an assault with a certain *knife of the highest weight*

and one pound

which *stone* then and there being a deadly weapon, then and there had and held

in the right hand of him, the said

Philip Boely

with the intent the said *Bevers*

Bevers then and there to kill, contrary to the forms of the Statute in such cases made and provided, and against the peace and dignity of the State of Missouri.

A. Hoffmann
Circuit Attorney.

• No 135

State of Mo.

vs

Philip Boly

assault to kill

=A true bill =

J H McKee

Horman

Witnesses

Reeves Reeves

Ernst Peppers

Pat. Dummigan

Jesse Beoben

Filed Nov-12 1866

Saml A Rippey clk

H. Smith esq atty

COUNTY OF JEFFERSON, Sct.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting :

We Command you to take *Philip Boly*.
if he be found in your County, and *him* safely keep, so that you have *his* body before the
Honorable Judge of our Circuit Court *forthwith*
at Hillsboro, within and for the County of Jefferson, then and there to answer unto an Indictment
found against *him* by the Grand Inquest for the body of the County of Jefferson, for
Assault with intent to kill
contrary to the form of the Statute in such case made and provided, and against the peace and dignity
of the State.

WITNESS, SAMUEL A. REPPY, Clerk of our said Circuit Court,

with the Seal thereof hereto affixed, at Office, this

Tenth day of *November*

A. D. 1866

Samuel A. Reppy

Clerk Circuit Court.



COUNTY OF JEFFERSON, Sct.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting :

We Command you to take

Philip Boly

if he be found in your County, and *him* safely keep, so that you have *his* body before the

Honorable Judge of our Circuit Court *on the 6th day of May 1867*

at Hillsboro, within and for the County of Jefferson, then and there to answer unto an Indictment

found against *him* by the Grand Inquest for the body of the County of Jefferson, for *an ac-*

Sault to Kill

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

WITNESS, SAMUEL A. REPPY, Clerk of our said Circuit Court,

with the Seal thereof hereto affixed, at Office, this

Nineteenth day of *November*

A. D. 1866

Samuel A. Reppy

Clerk Circuit Court.

I Executed the Within Capias in Jefferson
County Mo By Bringing the Body of
Phillip Boly into Court

W. D. 188

W. D. 188

W. D. 188

of the State

of the State

State
and
Phillip Boly
Sheriff fee \$1.00

THE STATE OF MISSOURI

CORRECTION OF RECORDS

State of Missouri
in
Philip Boily

In the Circuit Court
of Jefferson County—
Missouri

May Term 1867

Now at this day Comes the Defendant and
Demurs to the Indictment in this Cause
for the following Reasons To wit:

1st Because said Indictment does not charge the Defendant with committing any offence in this County ~~or within~~ nor does it charge in what County or State the or within the Jurisdiction of this Court—

2nd Because ~~it is not charged~~ the Charge in said Indictment is too general and indefinite and uncertain so much so as to fail to Charge any Offence.

Jose Williams
citty for Defendant

Mar

Philip Root

Dinner

Filed May 7 1863
C. F. Henry &

DeTarnet

State of Mo
County of Jefferson }
State } And for
my } Grand Jury
Philip Boli }

now at this day
comes the plea in the
above case and makes
his motion that the judgment
and in said case be set
aside and the indictment
remains on the words
of said count for that the
in for the following
reasons, to wit:

1st The count runs in
distinction of the law
from the cases then
stated -

2nd The same was and is
apparently stated,

3rd The jurisdiction is apparent
by appearance -

4th The plea of the officer appearing
opposes
Smith Co. City

State

Philips Body

motion to set aside judgment

March 8th 1867
E. H. Honyok etc

State of Missouri }
County of Jefferson }

State of Mo, }
vs } And for found
Philip Boley } Livery.

Now at this day came
J. H. Smith in atty for the
14th Cin and another out to
and says that the appeal taken
in the above case is not
made for vacation or
delay but because he
believes that the state is
aggrieved by the decision
of the jury and that

Sworn to and Subscribed J. C. J. H. Smith
before me May 8th 1867

Elias V. Honey clerk

State
of
New York

Attendant for appeal

Filed May 8/1867
C. J. Henshaw clerk

In the Court of Jefferson
County at the May Term 1867

Stole } Ind. for Grand Jurors
by } Bail of exceptions
Philip Boli }

Now at this day said
cause coming on to be tried
on a demurrer of defendant
(clerk will hear cap demurrer)
both plaintiff & attorney & defendant being
present - which demurrer
having been seen and considered
by the court is by the same
sustained and the plaintiff to the
action of the court then and
then excepted and then
upon plaintiff put his note
in word & prayer following
(clerk will hear cap note)
which having been seen
and considered by the court is by
the court sustained and the plaintiff to the
action of the court and
decree in the same excepted
and prays the court to
allow said defendant this bill
of exceptions & to make it

a part of the money in said case
which is done according
This the 8th day of May 1867
J. H. Vail, Judge. Recd

State
vs
Philip Body

Bill of exceptions

Filed May 8th 1867
E. J. Kearney

State of Missouri } In the District Court of
Second Judicial District } said District July Term 1867.
July 19. 1867. -

State of Missouri Appt } Criminal Action
vs } Appeal from Jefferson Circuit Court
Philip Botz }

Now at this day come again the parties by their respective attorneys and the Court being here now fully advised of and concerning the premises do consider and adjudge that the judgment aforesaid in form aforesaid by the said Jefferson Circuit Court rendered, be reversed annulled and for naught held and esteemed (and that the said appellant be restored to all things she has lost by reason of said judgment).

It is further considered and adjudged ~~that~~ the Court that the said cause be remanded to the said Jefferson Circuit Court for further proceedings to be had therein in conformity with the opinion of this Court herein delivered and that the said appellant recover against the said respondent his costs and charges herein expended and have execution thereof - -

Opinion filed - (Now see Opinion Marked "A," hereto attached)

Afterwards on the 22nd of the same month the following proceeding was further had in this cause - (over)

State of Missouri }
vs }
Philip Body } Appeal from Jefferson Circuit Court

Now at this day comes the respondent by his attorney and files his motion for a review and arrest of judgment heretofore granted in this cause, which motion being seen and understood, is by the court sustained and the respondent hereupon also files his motion to dismiss the appeal in this cause, which motion being seen and understood, is also sustained by the court and it is therefore ordered and adjudged by the court that the appeal in this cause be dismissed the court - and it is further ordered that this matter be certified to the County Court of Jefferson County for payment - (See opinion marked "B")

("A")

State of Missouri }
vs }
Philip Body } In the 2nd District Court Mo

This is an indictment for a felonious assault with intent to kill - The indictment was demurred to by deft and the demurres sustained by the court below, which is excepted to by plaintiff and the case is sent to this court by appeal - The causes assigned for reversal are 1st - The indictment does not charge any offense to have been committed in the county where the indictment is found - 2nd The Charge

in the indictment is too general and indefinite.
The indictment commences thus
State of Missouri } In the Jefferson County
Fifteenth Judicial Circuit } ss - Circuit Court at
the Nov term 1866

The Grand Jurors of the State of Missouri Emmanuel
W. Sworn and Charged to inquire within and for
the County of Jefferson, upon their oaths do present
that Philip Body late of Jefferson County on the
12th day of July with force and arms in and upon
the body of one Reuben Beavers in the peace of the
State of Missouri then and there being, unlawfully,
feloniously, on purpose and of his Malice afore-
thought, then and there did make an assault
with a certain stone &c and referring to the
time and place, throughout the remainder of the
indictment, by using the words, "then and there" -

This sufficiently Charges the venue of the
offense The Revised Statutes 1865 - page 841
Sec 26. says - "It shall not be necessary to
state any venue in the body of any indictment;
but the County or other jurisdiction named
in the margin thereof, shall be taken to be the
venue for all the facts stated in the body of
the indictment" - Jefferson County is named
in the margin of this indictment - All the
facts stated in this indictment are referred
to that venue by the words "then and there" -
Consequently that venue must be taken for

the venue of all the facts stated in it. The Court below were in sustaining the demurrer for this reason and refusing to grant a new trial.

The 2nd Cause for demurrer does not seem to have been relied upon, as nothing is said about it. The judgment in this case should be reversed and the Cause sent back to Jefferson County for trial. - - About Jackson Judge Carter Concurs. - -

This "Opinion" is filed this - -

Filed July 19, 1867

L. Sargeant, Clerk.

State of Missouri } ("B")
vs
Philip Boyle }

{ Appeal from Jefferson
County Circuit Court

It is the opinion of the Court that on a Motion for review of the action of this Court, the judgment rendered, should be set aside for the reasons that the record from the Court below does not show that there was a final judgment rendered in said Court.

No Appeal will be to this Court unless there has been a final judgment rendered. Stole vs Gregory, 28 Mo 501. - - The record of the Court below shows that the indictment was for an assault with intent to kill. - And also that the Motion to quash the indictment was made in the case of the State vs Boyle, charged with Grand Larceny.

and the vice of exceptions shows that there was no Motion for a new trial in the Case of the State vs Boley, Charged with an assault with intent to kill, but that he did file a Motion for a new trial in the Case of the State vs Boley Charged with Grand Larceny. The record in this Case ^{is} in such an irregular condition that this Court should not pass on the merits of the Case - The Motion for review and in arrest of judgment will be sustained and this appeal will be dismissed. J. H. Vaie Judge
Judge Carter Concurs -

This opinion encloses thus
Filed July 22, 1867

L. Sargeant Clerk -

State of Missouri }
Second Judicial District } L. Sargeant Clerk
of the District Court within & for said District
hereby certify that the foregoing is a true &
perfect Copy of the judgments of the said Court
in the above named matter as therein set forth
together with the "opinions" of the Court thereon
as fully as the same appears from the records and
files belonging to my office - In testimony whereof
I witness my hand and official seal here
affixed at office in the City of Cape
Girardeau this 24th day of July 1867
L. Sargeant Clerk -

State of Missouri } In the District Court
Second Judicial District } of said District
July Term 1867
July 22, 1867

State of Missouri Apph } Appeal from Jefferson
vs } Circuit Court
Philip Boly Resp't } Now at this day comes
the respondent by his attorney and files
his motion for a review and arrest of
judgment heretofore granted in this cause
which motion being seen and understood
is by the court sustained and the re-
spondent hereupon also files his motion
to dismiss the appeal in this cause, which
motion being seen and understood, is also
sustained by the court and it is therefore
ordered and adjudged by the court that
the appeal in this cause be dismissed the
court - And it is further ordered that
this matter be certified to the County Court
of Jefferson County for payment (Opinion filed)

(Fee Bill in this cause is for
of Clerk District Court) -

Jefferson County Mo. To
L. Sargeant, Clerk Second District Court. Dr.
(over)

To Docket fee in Case of State vs Boly	\$10.00
Certified Copy of Indictments for Dist Court	\$ 1.00
Copy of Judgments & Opinions Certified to Jefferson Co Circuit Court	" 1.75
This copy of judgments & fee bill for the Court	1.00
Postage	0.06
	<u>\$13.81</u>

J. L. Sargeant, Clerk of said District Court, Certifies that the above and foregoing is a true and perfect copy of the judgments of the said Dist Court as above stated, together with the fee bill due District Court Clerk, as fully as the same appears from the records belonging to my office. Witness my hand & official seal here affixed at office in the City of Cape Girardeau this 24th day of July A.D. 1867

J. L. Sargeant Clerk

For Jeff Co Court

Chester Spurgeon 24th July 67
I look best to your account

Accompanying please find
Certificate Copies of records from this office.
The Master does not receive the profits to
be certified to the Court below, but the
Court wish to see much Certificate in
this matter - I send you also copy
of the last judgment in the case Waters v. Boley

with free of Costs which I ask you to
file with the Clerk promptly because the
Protestant Collection is due next week.
I did not write your Costs. I saw
only \$255 for your transport and I
thought there might be more coming to
you. Please attend to the Collection of
the same for me and send me promptly
a money for said and I will do as much
for you upon opportunity
Very Respectfully & Obediently
Your Clerk