

BLAYLOCK *v.* STATE.

Crim. 3838

Opinion delivered June 12, 1933.

INTOXICATING LIQUOR—SUFFICIENCY OF EVIDENCE.—In a prosecution for selling liquor, a conviction will not be sustained, in absence of any substantial evidence of accused's guilt, by proving, in rebuttal of testimony of witnesses who testified that they did not purchase any liquor from accused, that such witnesses had told the rebuttal witness that they had bought liquor from the accused.

Appeal from Franklin Circuit Court, Ozark District;
J. O. Kincannon, Judge; reversed.

Hal L. Norwood, Attorney General, and *Robert F. Smith*, Assistant, for appellee.

BUTLER, J. The appellant was indicted, tried and convicted for selling alcoholic liquors. The testimony on behalf of the State was to the effect that about two and a half miles from a small town was a cedar thicket near the road in which it was the custom of those coming to town and having liquor, to hide it. On a certain day two officers went into the thicket and hearing voices approached to a place where two men were in conversation, who upon seeing the officers began to run but were halted and captured and found to have liquor in their possession. The appellant was not with them at this time.

The two men who were arrested testified that on the day of their arrest they saw the appellant in town and asked him if he knew where they could get any liquor, and he told them he thought he did. They got into appellant's car with him and started out toward the cedar thicket, and when they had gone about half way some car trouble developed. They got out and went on foot to the thicket leaving the appellant at the car. They began to look for whiskey and found some behind a rock. They did not know to whom this whiskey belonged but took possession of it or a part of it just before the officers appeared. They did not purchase the liquor from the appellant and did not tell the officers that they had.

The appellant testified that he had been told that people peddling liquor would hide it in the cedar thicket and when he was asked if he knew where any liquor was he started with the two men to the thicket, but that he had not placed any liquor there and did not in fact know that there was any at that place.

One of the officers was called in rebuttal by the State and, without any objection being interposed, testified to the effect that the two men who were arrested by the officers and who testified in the case told him that they had bought the liquor from the appellant.