PORTER v. STATE.

Crim. 3845

Opinion delivered September 25, 1933.

1. COUNTIES—FRAUDULENT WARRANT—LIABILITY OF CLERK.—Under Crawford & Moses' Dig., § 2009, providing that if, upon adjudication by the county court, any warrant shall be found to have

been fraudulently or wrongfully issued, the court shall indorse such fact thereon and cause it to be deposited without renewal, and that "any clerk who shall fraudulently or wrongfully, without authority of law, issue any such warrant shall be found guilty of a felony," *held* that the words "any such warrant" refer to the words "fraudulently or wrongfully, without authority of law, issue," and not to the words "shall indorse such fact thereon and cause it to be deposited."

2. COUNTIES—FRAUDULENT WARRANT.—An indictment charging that a county clerk fraudulently issued a county warrant in the name of a fictitious person charged a crime under Crawford & Moses' Dig., § 2009, prohibiting the unlawful issuance of county warrants.
3. CRIMINAL LAW—REPETITION OF INSTRUCTIONS.—Refusal of instructions fully covered by instructions given *held* not error.
4. COUNTIES—ISSUANCE OF FRAUDULENT WARRANT.—In a prosecution of a county clerk for issuing a fraudulent county warrant, it was not error for the trial court to question the county judge as to whether he determined that services had been rendered before he allowed a claim against the county.

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

STATEMENT BY THE COURT.

The grand jury of Franklin County returned the following indictment against appellant, omitting formal parts:

"The said C. B. Porter in the county, district and State aforesaid, on the 18th day of August, 1931, being then and there the duly elected, qualified and acting county clerk of Franklin County, State of Arkansas, did unlawfully, wilfully, fraudulently, wrongfully, knowingly, feloniously and without authority or warrant of law, make, sign and issue a certain county warrant number 1210, drawn against Franklin County Highway Improvement Fund of Franklin County, for the payment out of said fund, the sum of two hundred twenty-five dollars, drawn to and in the name of B. A. Floyd, a fictitious person. Said county warrant being in words and figures as follows, to-wit:

"No. 1210 $225.00

"8-27. The Treasurer of the County of Franklin, State of Arkansas:

"Pay to B. A. Floyd or bearer two hundred twenty-five dollars, out of any money in the treasury for

county highway improvement fund. Given this 18th day of August, A. D. 1931. By order of the county court, record book 'W', page 171. C. B. Porter, county clerk.

"The said C. B. Porter as such county clerk, then and there well knowing the said warrant to be fraudulently, wrongfully, illegally and feloniously issued, not a just charge against said county of Franklin, and contrary to law and the duties of this office as such clerk."

On March 30, 1933, appellant was put upon trial and was convicted as charged in the indictment. Thereafter, and within the time prescribed by law, appellant filed his motion in arrest of judgment, which was overruled by the trial court. The motion in arrest of judgment was on the ground that the indictment did not state facts sufficient to constitute a crime.

Appellant, in brief, practically admits that if the indictment is determined to be sufficient and charges a crime under § 2009 of Crawford & Moses' Digest, the testimony is sufficient to sustain the conviction. Therefore no detailed statement of the testimony introduced is here given.

Appellant, on the trial of the case, interposed a plea of insanity, and it is tacitly admitted by counsel that the question of insanity is concluded by the verdict of the jury. Therefore it is not necessary to here make a detailed statement of the facts on this issue.

In brief, counsel do not seriously contend that any instruction given to the jury by the trial court was erroneous, but it is contended that the trial court erred in refusing to give to the jury appellant's requested instructions numbered 4 and 6.

Requested instruction number 4 reads as follows:

"The intent to defraud is a material element in the charge made in the indictment in this case against the defendant, and if the defendant issued the warrant in this case he cannot be convicted unless you find from the evidence, beyond a reasonable doubt, that he issued the warrant wrongfully and with the intent to defraud."

Requested instruction number 6 reads as follows:

"If you entertain, after a fair and impartial consideration of all of the evidence in the case, a reasonable

doubt as to whether or not the defendant, at the time he issued the warrant in this case, if he did issue it, had the intent to defraud in doing so, the defendant is not guilty, and you will acquit him."

Appellant also complains that the trial court erred by interrogating a State's witness in the following manner:

"T. A. Watson, county and probate judge of Franklin County, testified that when a claim was presented against the county, he looked over it to see about the amount of services and materials before he allowed it. Then the clerk would issue a warrant thereon. That he had never seen any claim of B. A. Floyd for services for the amount of this warrant or for any other services rendered by him. Thereupon the court propounded to the witness the following questions:

" 'Q. Isn't it also your duty, and do you not see yourself, that services have been rendered for the claims?

" 'Q. Don't you satisfy yourself that the services have been rendered?

" 'Q. Do you make an examination to see if a man has actually rendered the services for which claim has been filed?

" 'Q. You take it on yourself to see that the services are rendered, you don't blindly allow a man to file one?' "

Mark E. Woolsey, J. P. Clayton and *Evans & Evans,* for appellant.

Hal L. Norwood, Attorney General, and *John H. Caldwell,* Assistant, for appellee.

JOHNSON, C. J., (after stating the facts). There are three questions presented for determination by this court, namely; first, did the trial court err in refusing to arrest the judgment of conviction; second, did the trial court err in refusing to give to the jury appellant's requested instructions number 4 and 6; third, did the trial court err in propounding to the witness, T. A. Watson, the questions set forth in the statement of facts?

Considering the first question presented for determination, § 2009 of Crawford & Moses' Digest reads as follows:

"FRAUDULENT WARRANTS. If, upon adjudication of any warrant by the county court, it shall be found to have been fraudulently or wrongfully issued without due authority from said court, the court shall indorse such fact thereon and cause it to be deposited, without renewal, in the office of the clerk of said court. Any clerk who shall fraudulently or wrongfully, without authority of law, issue any such warrant shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one year and not more than three years."

The insistence is that the indictment does not allege that the county court of Franklin County made an adjudication that the warrant was fraudulently or wrongfully issued, and that it does not charge that such finding was indorsed upon the warrant, and that it does not charge that the warrant was thereafter deposited with the clerk, and indorsed "without renewal." It is conceded that the indictment follows the latter half of this section. The insistence is that the use of the words "any such warrant" as they appear in the latter half of the section has reference to "shall indorse such fact thereon and cause it to be deposited," as the phrase appears in the first half of the section. We cannot agree with this contention. We think that the words "any such warrant" has reference to the words "fraudulently or wrongfully issued," and with this construction the indictment charges a crime substantially in the language of the statute. It is our conclusion that a criminal violation is charged in the indictment and that the trial court committed no error in refusing to arrest the judgment of conviction.

The next insistence for reversal is that the trial court erred in refusing to give to the jury appellant's requested instructions numbered 4 and 6. This insistence has been carefully considered, but we find that these instructions are fully covered by other instructions given by the trial court. Conceding, without deciding, that the requested instructions numbered 4 and 6 are correct declarations of law, there was no error in refusing to give them, be-

cause they are fully covered by instructions which were given.

It is finally insisted that the trial court erred in interrogating the witness, Watson, while on the witness stand, and the cases of *Sharp* v. *State,* 51 Ark. 147, 10 S. W. 228, 14 Am. St. Rep. 27, and *Arkansas Central Railroad Company* v. *Craig,* 76 Ark. 258, 88 S. W. 878, 6 Ann. Cas. 476, are called to our attention in support thereof.

In the Craig case, cited *supra,* this court said:

"A trial judge has the right to propound such questions to witnesses as may be necessary to elicit pertinent facts; but this must be done in a reasonable and impartial way, so as not to indicate his opinion of the facts."

We think that the questions propounded by the trial court in the instant case are both reasonable and impartial, and that they could not and did not influence the jury in any improper way. There is nothing in the questions propounded to indicate that the trial court had any opinion as to the guilt or innocence of the accused.

No error appearing, the judgment is affirmed.