

## THE STATE VS. HERRINGTON

Vulgar language, however offensive, does not justify an assault and battery, though it may be considered by the jury in mitigation of the fine.

*Appeal from Crawford Circuit Court.*

Hon. JOHN M. WILSON, Circuit Judge.

Mr. Attorney General HOLLOWELL, for the State.

Mr. Justice COMPTON delivered the opinion of the Court.

The defendant, Herrington, was indicted in the Crawford Circuit Court for an assault and battery upon one West.

At the trial the defendant was acquitted, and the case comes before us on exceptions taken to the decision of the court overruling the State's motion for a new trial.

The only question presented for our determination is, whether the verdict of the jury was warranted by the testimony.

It appears that West, the party injured, in a spirit of jest, indulged in pranks and vulgar language, which were offensive and annoying to the defendant, who, in consequence thereof, became exasperated, and inflicted a severe blow upon West with an iron wedge.

Although the language and deportment of West, as stated in the bill of exceptions, were in the highest degree reprehensible, and well calculated to provoke violence on the part of the defendant, who was quite an old man, yet they did not justify an assault, and could only be considered by the jury in mitigation of the fine.

There being no evidence whatever, as appears by the record, to support the finding of the jury, the judgment must be reversed, and the cause remanded for further proceedings.