

LEE v. STATE.

Opinion delivered March 18, 1899.

WITNESS—IMPEACHMENT.—It is not admissible to impeach a witness by proving on cross-examination that three of her sons have served terms in the penitentiary for infamous crimes.

Appeal from Pulaski Circuit Court, First Division.

ROBERT J. LEA, Judge.

T. J. Oliphint, for appellant.

It was error to allow the state to impeach defendant's witnesses by showing that certain ones of their families and kinsmen were felons. It was error to allow the prosecuting attorney to comment on this in argument. 58 Ark. 368.

Jeff Davis, Attorney General, and *Chas. Jacobson*, for appellant.

The question as to argument of prosecuting attorney, being raised here for the first time, will not be considered. The limits within which either party may cross-examine on matters not strictly relevant, but which affect the credibility of a witness, is largely discretionary with the court; and, to warrant a reversal, this discretion must be abused. Undh. Cr. Ev. § 221 and cases on p. 272; 1 N. Y. 379; 5 Gratt. 664; 16 Mich. 43; 58 Ark. 478; 45 Ark. 309.

BATTLE, J. William Lee was indicted by a grand jury of the Pulaski circuit court for grand larceny, alleged to have been committed by feloniously stealing, taking and carrying away one cow the property of John Saul, was convicted, and his punishment was assessed at one year's imprisonment in the penitentiary. In his trial evidence was adduced by the state tending to prove his guilt, and by him witnesses were introduced whose testimony tended to prove the falsity of the state's evidence, and to show that the principal witness who testified against him was unworthy of belief. Among these witnesses were *Jemina Forbus*, *Jane Lee* and *John Lee*. The state impeached their credibility. The prosecuting

attorney was allowed, over the objections of the defendant, to ask Jemina Forbus the following questions: "Are you the mother of Rufe Lee, and was he not in the penitentiary for perjury, committed while testifying in a case against him for burning Wash Robinson's barn?" "Were you the mother of John Lee, and had he not served a term in the penitentiary for killing a man?" "Were you the mother of Dick Forbus, and was he serving in the penitentiary for stealing a cow?" All of which she answered in the affirmative. Similar questions were asked Jane and John Lee, over the objections of the defendant, and were answered in the affirmative.

This mode of impeachment was improper, and the testimony elicited was inadmissible. Witnesses may be impeached by cross-examination as to their associations which affect their credibility, but such associations must be voluntary. They are not responsible, legally or morally, for the acts of their kin, with which acts they are in no wise connected. It does not follow that a witness is unworthy of belief because a relative has committed a felony. Worthy credible witnesses may have felons for kindred.

Reversed and remanded for a new trial.
