

BOYCE *v.* CITY OF BRINKLEY.

Opinion delivered March 10, 1913.

EVIDENCE—HEARSAY TESTIMONY.—When defendant is charged with selling liquor in violation of a city ordinance, testimony by the town marshal in answer to the question, why he arrested defendant, "that six or eight persons told him that defendant was selling whiskey right along" is hearsay testimony and incompetent.

Appeal from Monroe Circuit Court; *Eugene Lankford*, Judge; reversed.

- *C. F. Greenlee*, for appellant.

Hearsay evidence is not admissible. 6 Enc. Ev., 443; 16 Cyc. 1195; 10 Ark. 638; 16 *Id.* 628. The judgment should be reversed.

No brief for appellee.

Wood, J. The appellant was convicted of selling liquor in violation of an ordinance of the city of Brinkley. The testimony tended to show that appellant sold whiskey in violation of the ordinance of the city. Appellant testified that he had not sold any whiskey. Witness L. C. Owen testified as follows: I am marshal of the City of Brinkley, and was Marshal in August, 1911. I made affidavit against defendant on August 25, 1911, and arrested him on that day. Witness was asked the following question: "Why did you arrest the defendant?" The defendant objected to the question. The court overruled the objection, and witness answered as follows: "Well, six or eight persons told me defendant was selling whiskey right along, and I was going to inquire of Will Grant if he had not bought whiskey from defendant." The answer was objected to, and the court overruled the objection, and defendant duly saved his exceptions.

The admission of this testimony is made the principal ground of the motion for a new trial. The court erred in allowing the witness to testify that six or eight persons told him "defendant was selling whiskey right along." The testimony was hearsay evidence and was

therefore incompetent. It was prejudicial to appellant. The court erred in not excluding it. *State v. Woody*, 10 Ark. 638; *Sadler v. Sadler*, 16 Ark. 628; 16 Cyc. p. 1195; Enc. Ev. vol. 6, p. 443.

The judgment is reversed and the cause remanded for a new trial.

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