

ROBINSON vs. THE STATE.

There being no palpable injustice in the finding and judgment of the court, sitting as a jury, a new trial was properly refused.

Appeal from the Circuit Court of Johnson County.

THIS was an indictment against Robinson for an assault and battery upon Patterson, determined in the Johnson circuit court, at the September term 1845, before BROWN, judge.

Appellant was indicted by the name of *Allen Robinson*; he pleaded in abatement that his name was not *Allen Robinson*, but *Alney McLean Robinson*. The attorney for the State replied that he was as well known by the name given him in the indictment, as by the one set up in his plea, to which he took issue, the cause was submitted to the court, sitting as a jury, the court found for the State, and rendered final judgment against defendant, assessing the fine, &c.

Defendant moved for a new trial on the ground that the finding was contrary to evidence; the court overruled the motion; he excepted and took a bill of exceptions, setting out the evidence, which, in substance, follows:

“Patterson, a witness sworn on behalf of the State, stated that down to, and until after the finding of the indictment, he knew defendant by the name of *Matthew Robinson*, and that before the indictment he had known him by the name of *Allen Robinson*, but since the finding of the indictment, defendant had told witness that his name was *Allen*, and witness had also heard Col. Howel call him *Allen*.” This was all the evidence introduced, and the court found against defendant, and fined him ten dollars and costs. Defendant appealed.

PASCHAL, for appellant.

WATKINS, Atto. Gen'l, contra.

OLDHAM, J. The only question presented by the record in this case, is whether the circuit court properly overruled the motion for a new trial. The evidence introduced upon the trial by the State, justly warrants the verdict found by the court sitting as a jury. There is no such palpable injustice in the finding and judgment as will authorize this court to reverse the judgment. Affirmed.
