

CLARK v. STATE.

Opinion delivered October 29, 1928.

1. INTOXICATING LIQUORS—MANUFACTURE—INSTRUCTION.—In a trial for manufacturing liquor, an instruction to acquit if defendants just happened on the still, and stayed there 15 or 20 minutes, and did no act toward the manufacturing of the whiskey made there, was properly refused as singling out or emphasizing defendants' testimony, and as being on the weight of the testimony.
2. CRIMINAL LAW—GENERAL INSTRUCTIONS.—The court is required to give only general instructions covering the law applicable to the facts of the case.

Appeal from Nevada Circuit Court; *J. H. McCollum*, Judge; affirmed.

J. O. A. Bush and *Dexter Bush*, for appellant.

H. W. Applegate, Attorney General, and *John L. Carter*, Assistant, for appellee.

HUMPHREYS, J. Appellants were indicted and convicted in the circuit court of Nevada County for manufacturing liquor, and, as a punishment therefor, were adjudged to serve a term of one year in the State Penitentiary, from which they have duly prosecuted an appeal to this court.

The only error assigned for a reversal of the judgment is that the court erred in refusing to give appellants' requested instruction No. 1, which reads as follows:

"If you find from the evidence in this case that the defendants just happened upon this still, and stayed there for fifteen or twenty minutes, and did not act toward the manufacturing of the whiskey which was made there, then you will find them not guilty."

The requested instruction singled out or emphasized the testimony of appellants, and, on that account, amounted to a request upon the weight of the evidence. It was not error to refuse the request. The court gave general instructions covering the law applicable to the facts in the case, which was all he was required to do. *Smith v. State*, 162 Ark. 458, 258 S. W. 349.

The general instructions given by the court were as follows:

“The defendants are on trial charged with the making or manufacturing, or being interested in making and manufacturing, alcoholic, vinous, malt, spirituous and fermented liquors. The burden is on the State to prove the defendants’ guilt by the evidence beyond a reasonable doubt. If you entertain a reasonable doubt of the defendants’ guilt, it will be your duty to give them the benefit of the doubt, and acquit them. They are presumed to be innocent of the offense for which they are being tried. That presumption accompanies them, shields them and protects them against conviction until it is overcome by the evidence in the case, convincing you beyond a reasonable doubt of their guilt.

“If you find from the evidence in this case, beyond a reasonable doubt, that the defendants, in Nevada County, Arkansas, at any time within three years before this indictment was returned into court, were engaged in the manufacture of alcoholic, vinous, malt, spirituous or fermented liquors, or if you find from the evidence, beyond a reasonable doubt, that they assisted in the manufacture of such liquors, it will be your duty to convict them and assess their punishment at imprisonment in the penitentiary for one year.

“Should you convict these defendants, the form of your verdict should be: ‘We, the jury, find the defendants guilty,’ and assess their punishment as I have indicated. Should you acquit them, the form of your verdict should be: ‘We, the jury, find the defendants not guilty.’ One of you sign the verdict as foreman.”

No error appearing, the judgment is affirmed.