

OCT 3 1890 AR. STATM'T & RH'F APP. FILED.

OCT 3 1890

Jan 9/91 - Subscribed.

(4) 2080 Oct 7. 90

No. *4830* Term, 188

State of Mo
vs. } *Resp*

David Frank
app

Andrew Circuit Court.

CIRCUIT.

Atty Genl, Att'y for *Resp*

Robert Hill, Att'y for *app*

Filed *February 3^d*, 1888

H. H. Ewing Clerk.

By *Rowan Ray* D. C.

\$..... Transcript Fee, paid by.....

\$10.00 Docket Fee, paid by.....

Hon. Cyrus A. Anthony, J.

State of Missouri
'8

David Grando

Charge Colony

Transcript

1
State of Missouri } ss
County of Andrew } Pleas before the Circuit Court of Andrew County
at a term begun and holden in the City of
Savannah County and State aforesaid on the 5th day of December
1887, before the Honorable Cyrus A. Anthony Judge of the 29th
Judicial Circuit of the State of Missouri.

State of Missouri } ss
County of Andrew } Be it remembered that the Circuit Court of
Andrew County in the State of Missouri met at
the Court house in the City of Savannah on the 5th day of December
A.D. 1887 pursuant to law when there is present the Honorable
Cyrus A. Anthony Judge of the Twenty Ninth Judicial Circuit in the
State of Missouri and ex-officio Judge of the Andrew County Circuit
Court; Now Julius A. Sanders Prosecuting Attorney, John
W. Crank Sheriff and Albert Crank and John Lincoln his
deputies and J. C. Brooks Clerk of this Court when the
following proceedings were had and entered of record to wit:

At this time come John W. Crank Sheriff and Albert Crank
and John Lincoln his deputies and are by the Clerk in open
Court sworn as is required by Section 2781 Revised Statutes
of the State of Missouri of 1879.

At this time come John W. Crank Sheriff of Andrew County Missouri
and returns his *venue facias* for a Grand Jury for this term of Court
sworn upon the following named persons to wit: W. H. Best, David
Lilly, J. D. Miller, J. H. Jenkins, E. J. Blakeslee, David Bonham, G. H.
Montgomery, B. Sewell, James B. Stanton, Rudolph Born,
Samuel Fordshaw and Abner Wait. The Grand Jury having
been sworn as is required by Section 1774 Revised Statutes of
the State of Missouri of 1879. David Bonham is now at

Term

Opening order
of Court.

Swearing
of Sheriff &
deputies

Empanelling of
Grand Jury
Appointment of
Foreman

this time by the Court appointed Foreman and the Grand Jury after having been charged by the Court as is required by Law retire to their room to consider of their presentments and indictments,

Style of Cause

State of Missouri Plaintiff
against
David Frank Defendant

Filing of indictment in open court

Be it Remembered that heretofore to wit: on the 7th day of December 1887 it being the 30th day of the said December Term 1887 of the Andrew County Circuit Court, an indictment was returned by the Grand Jury through its foreman, against the Defendant in the above entitled ^{cause} which said indictment is in words and figures following to wit:

State of Missouri } ss.
County of Andrew }

Indictment

In the Andrew Circuit Court December Term thereof A.D. 1887

The Grand Jurors for the State of Missouri duly empannelled sworn and charged to inquire within and for the body of the County of Andrew and State aforesaid upon their oath present and charge that David Frank on the 30th day of October 1887 at the County of Andrew State of Missouri feloniously wickedly and against the order of nature did commit the detestable and abominable crime against nature with a certain beast to wit: with a female dog by then and there wickedly and feloniously having carnal knowledge of the body of said dog against the peace and dignity of the State.

Julius A. Sanders
Prosecuting Attorney

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Endorsements
on indictment

And upon the back of said indictment there appears the following endorsements.

The State of Missouri

vs

David Frank
Charge Sodomy

A True Bill
David Bonhau

Foreman

Witnesses

Ellw Holt
John L. Holt

Filed December 7th
1887. J. D. [unclear]

Clerk

and afterwards to wit on the 8th day of December 1887 it being the 4th day of the said December Term of the Andrew County Circuit Court the following proceedings were had in said cause in open court to wit:

State of Missouri Plaintiff
Against
David Frank Defendant. Sodomy

Cause docketed
and set for
trial

On motion of the Prosecutory Attorney this cause is ordered docketed for this Term of Court. Come now the parties hereto the State by the Prosecutory Attorney and the defendant in person and by his attorney and by agreement of the parties this cause is set for trial on the second Tuesday of this Term of Court

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herein against him a jury is ordered called, impannelled and sworn to try this case as follows, John Brator James Tansell Charles Mc Gungle et al vs Morris, Joseph Smith, W. F. Ford, Alms, Hart, R. W. Spear, W. W. Davidson G. J. Kemmiser E. B. Bumps, R. K. Carter, twelve good and lawful men from the body of the County of Andrew and State of Missouri and the jury after hearing the evidence and receiving the instructions from the Court and hearing the argument of Counsel as well for the defendant as for the State retire to consider of their verdict in Charge of John N. Crank Sheriff of Andrew County Missouri who is sworn for that purpose as is required by Section 1910 Revised Statutes of the State of Missouri of 1879 and having agreed return unto open Court the following Verdict to wit:

Verdict

We the jury find the defendant guilty of an attempt to commit the offence charged and assess his punishment at imprisonment in the penitentiary for a period of two years.
 W. F. Ford Foreman

After affirmance to wit: on the 16th day of December 1887 it being the 10th day of the December Term of said Supreme Court the following further proceedings were had in said cause to wit:

State of Missouri Plaintiffs
 against
 David Frank Defendant, *Prisoner*
 Come now the defendant in person and by his attorneys and files his motion moving the Court to grant him a new trial of this case, and also files the affidavits of Charles H. Booher and Levi Frank in

Filing motion for new trial & aff

support of his motion for a new trial and also at this time come the state by the Prosecuting Attorney and files the Counter affidavits of J. W. Krauk, John Lincoln and J. A. Sanders as motion for a new trial of this case. At this time said motion for a new trial is by agreement taken up, submitted to the Court and by the Court seen and heard and the Court being fully advised in the premises overruled said motion for a new trial.

overruling
Motion for new
trial

At this time the defendant files motion in arrest of judgment and said motion in arrest of judgment is at this time by the Court overruled.

filing motion
in arrest of
judgment
and overruling
thereof

Now at this day come the Prosecuting Attorney for the state and also come the defendant herein in person in the custody of the Sheriff of this County and in presence of his attorneys and counsel in open Court, whereupon said defendant is informed by the Court that he having been tried by jury and found guilty of an attempt to commit the offence charged in the indictment herein against him charging him with the crime of Ordony and being now asked by the Court if he had any legal cause to show why judgment should not be pronounced against him according to law and still failing to show such cause.

Judgment &
Sentence,

It is therefore sentenced, ordered and adjudged by the Court, that the said defendant David Krauk having been tried and found guilty as aforesaid, be confined in the Penitentiary of the State of Missouri for the period of two years from the 16th day of December 1887 and that that the Sheriff of this County shall, without delay remove and safely convey the said defendant to the said Penitentiary there to be kept confined and treated in the manner by law and the Warden of said Penitentiary is required to receive and safely keep him the said defendant in the Penitentiary

last day of this regular December Term 1887 of said Court, said Court having adjourned for its regular December Term 1887 on the 16th day of December 1887. Which said Bill of Exceptions is as follows to wit:

Bill of State of Missouri Plaintiff & Andrew Circuit Court, vs Defendant & Dec. Term 1887
 Exceptions, Daniel Grant

Be it remembered that on the trial of this cause the same being a prosecution on indictment for the crime of Arson, against said defendant the following proceedings were had.

The state, to sustain the issues upon its part and establish the guilt of the defendant offered evidence as follows

Evidence of Ellen Holt

Ellen Holt, Being sworn testified: Am the wife of Henry Holt, live two and a half miles east of Saranuah of A Schuster farm. Have lived there since March 1st 1887, Prior to that time, lived four miles North West of Saranuah. Have known deft since last March. He worked for us this fall. Saw deft last days of October. Come to our house when sun was about half hour high. I had a conversation with him. Come for money my husband owed him for work. I met him as I come out of field where I had been helping husband gather corn. We asked for Mr Holt. I told him Holt had gone or started to town with load of corn. This conversation was at gate 175 steps from the house South West

He went on and overtook Holt at a gate over in field. I went to the house. Had helped to gather corn all

9 day. We had a female dog. Had thrown wraps and blanket by post and wire fence near gate. Dog was on wraps. Frank passed by the dog after he left me.

I went to house and put baby on floor and went to cellar. When I come out of cellar I heard dog scream and howl and run to see what was the matter and came to a grass place in a little hollow (25) steps from the gate where wraps were and in there he had my dog. I was about 15 ft from him when I saw him.

He had one hand hold of left hind leg. Was on his knees. Other hand round shoulder of slut. His pants part down. Had his privates out. He was trying to get dog to him. She was pulling and holding to get away. I tried to get round a little bank to get closer and broke some dry weeds and made noise stepping on sticks and leaves and he looked round and saw me and let her go.

I asked what are you doing with my dog? He said nothing. He got up and fastened his clothing. This was in Andrew County. Can't tell date. Think it was in last week in October last.

Cross Examination

Cross Examination
Ellen Hull Prof Knight our nearest neighbor lives $\frac{1}{2}$ quarter away has dog. Jas Frodshaw lives South East $\frac{1}{2}$ quarter Gleason in $\frac{1}{2}$ quarter. The Moonys live 100 yds. further. They settled all around. Our dog will be 4 years old next June, she has had pups three times. Last time in June last. We have a pup yet of last litter.

If one was kind to her she was a kind dog; but if any body hurt her she would bite them. She was very cross if she was being hurt. Of course she would bite

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if she could get to them. Sometimes she would bite. Can't say if she would every time she was hurt. She is an ordinary sized dog. Not a fist. She is a short haired plick dog.

When I heard her she was howling as if in great distress and being badly hurt.

I did not tell Jerry, dog was on blankets; but nearby, the blankets were in plain view of house.

Frank passed by dog to go to over late my husband. Frank over took husband and talked with him 5 minutes or more. I was in house 10 minutes and cellar 10 minutes more I should think. Was skimming milk in cellar when I heard the dog and started and went down. I did not say anything when I got in 15-ft. Was nothing in way to prevent me seeing. I went a step or few steps around to get closer than 15-ft. I was trying to see - was doing.

I told the jury I ran and went fast from house I only ran part way. Can't say how far I ran. I expect I ran 25 yds. I walk rest of way from house.

I did walk careful by to get up on him. I commenced to walk carefully before I saw him. I walked carefully to see him.

I expected to see Dave Frank there before I left the house to go down did not know what was the matter with the dog.

After I got to house and before I heard the dog. I saw Frank come back from seeing my husband and he was in a few feet the traps.

When I went down and first saw Dave Frank with dog I was half afraid. I did not start to go closer only to go down bank.

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I started to go where I could get dog and call her away. I was slipping around very carefully when made noise in weeds and leaves.

I was scared and excited. Not to bad scared to call dog. I could have spoken across the 15-ft if I had tried. After seeing him and dog I went east two steps and south three steps. Frank was south of me when I saw him. Dog did not notice me when I was there in 15-ft and did not try to come to me. Frank had right hand hold of dogs left hind leg and left hand and arm up around dogs shoulder. Dogs head and neck were free she could not bite him. She was not trying to bite or snap Frank that I could see. She was scrambling to get away. He was trying to bring dog to him. The dog was not over a quarter of an inch from Frank's body. Frank was facing North East more east than South. Frank was partly between me and dog. Dog was also partly between me and dog. I notice particularly that it was his right hand hold of her left hind leg. I could not be mistaken. His hand was not crossed before him any how. Did not reach around behind him. ~~It~~ crossed as near as I can remember.

Had hold of hind leg on thick part up near body. I expected to catch Dave Frank down there. Can't tell the day. I first testified before the Grand Jury.

I never told it around to my neighbors. I never told any body. That is before testified before the Grand Jury.

Question

Did you not tell Mrs. Knight wife of Prof. Knight?

Answer. Yes I believe I did told my husband too.

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Can't tell if it was last week in October, can't remember day of month or week. Think it was Monday or Tuesday. Know we had gathered corn all day. This was half hour by sun.

Dave come for money. Had worked for us one day. Helped R. Born thrash. We got all his money but 10 cts so my husband said.

Dave and my husband were not much over 5 minutes together. Dave and dog were at second hollow, 25 steps from where wraps were left. Almost west from the blankets and south west of the house.

Have the dog in town. She is an ordinary sized dog. We kept the dog penned up in barn for 2 or 3 weeks she had been out about two weeks at that time.

Henry Holt.

Am husband of Elly Holt. Resides on Schusters farm east of town. Knows the defendant.

He came to our house for money and overtook me as I was going through the gate. He called to me to halt. I stopped and paid him 65 cts all the change I had. I still owe him 10 cts. This gate is a half quarter from house. I only stopped few minutes. I told him I had to go on. Have a female dog. She is part Shepard and part Grey hound.

Cross examined.

Saw dog at blankets 175 yds. from house where I started. The gate is south west of house half quarter. Blankets are 175 steps. I stepped it Monday last.

Blankets were 250 ft from gate dog 4 yrs old next spring. She is slick haired dog. Probably weight 50 lbs. Can't tell when she had pups last time. Can't tell me

Testimony of
Henry Holt

Cross Examined

five months, First saw Dave at gate. He first said hello. It rather level between house and gate, I had dig tied up 18 days. Found her loose on Sunday before this. It was not 2 or 3 weeks before this. Can't tell whether she will try to bite or not if hurt. She is not cross, Guess she would bite broad.

Closing of
Case and
Evidence State here closed its case. This was all the evidence offered in the case.

Whereupon the Court instructed the Jury as follows.

Instructions
No 1 The Court instructs the Jury that if they believe from the evidence beyond a reasonable doubt that the defendant in this County and State at any time within three years next before the finding of the indictment in this case did not have carnal knowledge by actual penetration into the body of the dog with sexual organ of the defendant but that he made an attempt to copulate or have intercourse with said dog and in such attempt did any act towards the commission of said offense and failed in the perpetration of said offense or was prevented or intercepted in executing the same, then and in that case the Jury will find the defendant guilty of an attempt to commit the offense charged and so state in their verdict and assess his punishment at imprisonment in the Penitentiary, for not less than two years.

No 2 The Court instructs the Jury that the defendant is presumed to be innocent of the offense charged or any attempt to commit the same and if they have a reasonable doubt as to the guilt of the defendant they should acquit the