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FROM THE
ST. LOUIS CRIMINAL COURT

THE STATE OF MISSOURI,

Respondent

vs.

Leo Smith

Appellant

Filed September 26, 1896.

Jno. R. Green clerk.

Jas. R. Blairmond

Atty for Appellant

State of Missouri, }
City of St. Louis. } ss.

I, Archibald Carr

Clerk of the St. Louis Criminal Court, certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in the cause of the State of Missouri, plaintiff, vs. Lee Smith

defendant, as fully as the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed, at

office, in the City of St. Louis, this 13th

day of August A. D. 1896

Archibald Carr

Clerk of the St. Louis Criminal Court.

Appeal from the
St. Louis Criminal Court

Division No. 1

Thos. B. Harvey
Judge

The State of Missouri
Lee, ^{vs} Smith } Attempted Sodomy

State of Missouri, }
City of St. Louis. } ss.

At a term of the St. Louis Criminal Court, begun and held at the City of St. Louis
within and for said City, on the first Monday of July
the same being the first day of said month in the year of our
Lord one thousand eight hundred and ninety five

There were present :

The Honorable Thomas B. Harvey
Judge of ~~said Court~~ ;
the St. Louis Criminal Court Div. No. 2.

William Jachritz
Circuit Attorney of the Eighth Judicial Circuit ;

Jesse A. McDonald
Assistant Circuit Attorney of the Eighth Judicial Circuit ;

Henry Trull
Sheriff of the City of St. Louis ;

and Archibald Carr
Clerk of said Court.

At which term of said Court the following, among other proceedings, were had, to-wit :

Monday July 1st 1896

This day, the Sheriff of the City of St. Louis makes return to the Court of the names of the persons by him summoned to appear and serve as Grand Jurors at the present term of this Court, and who being duly called, came as follows, to-wit:

John Alb, William P. Hammes
 Frank W. Bittner, Charles C. Illsley
 Edward S. Brooks, Milton M. McKeen
 John James, Donald L. McLeod
 Henry Francis Lin, Charles V. Schraus
 Edward Helsh and Christopher Muckermann

twelve good and lawful men, who being duly empanelled, are thereupon duly sworn according to law, as Grand Jurors. Whereupon the Court doth appoint

Edward Helsh

foreman of said Grand Jury. Thereupon the said Grand Jurors receive their charge from the Court and they retire to consider their presentments and such other business as may come before them.

It being made to appear to the Honorable Thos. B. Harrey Judge of the St. Louis Criminal Court Division No. 2. That the Honorable Henry L. Edmunds Judge of Division No 1, of said Court is absent and unable to attend to the business of his Division of said Court, the aforesaid Judge of Division No 2 of said Court, appears and presides as Judge in Division No. 1. of said Court.

sent and unable to attend to the business of his Division of said Court, the aforesaid Judge of Division No 2 of said Court, appears and presides as Judge in Division No. 1. of said Court.

Wednesday July 10. 1895

This day Edward Stelsh, foreman of the Grand Jury resigns as such foreman, and thereupon the Court being satisfied, that said Stelsh can not longer perform the duties of such foreman, appointed William M. McKee ~~foreman~~ foreman of said Grand Jury.

Saturday July 25. 1896

On this day the Grand Jury return to the Bar, and through their foreman return the following indictment as a true bill, to wit:

STATE OF MISSOURI, } ss.
City of St. Louis.

St. Louis Criminal Court, July Term, 1895

THE GRAND JURORS OF THE STATE OF MISSOURI, within and for the body of the City of St. Louis,
now here in Court, duly impaneled, sworn and charged, upon their oath present, that.....

Lee Smith

late of the City of St. Louis aforesaid, and State aforesaid, on the *third* day of
March one thousand eight hundred and ninety-*five*, at the City of St. Louis
aforesaid, *in and upon one Henry Spreew feloniously*
ly did make an assault; and then and there feloniously
and wickedly did attempt to commit the de-
testable and abominable crime against nature, with
the said Henry Spreew, by then and there feloniously and
wickedly having a venereal affair with and carnally
knowing the body of the said Henry Spreew; and then and
there feloniously and wickedly and against the order of
nature with the said Henry Spreew did attempt to
commit and perpetrate the detestable and abominable
crime of buggery; and in said attempt and toward the
Commission of said offense, felony, and detestable and
abominable crime against nature the said Lee Smith
then and there feloniously did forcibly compel the said
Henry Spreew to unbutton the trousers and expose the
bare body of him the said Henry Spreew, and then
and there feloniously did lie upon the body of him, the
said Henry Spreew; and the said Lee Smith then and
there did fail in the perpetration of said offense, felony
and abominable and detestable crime against nature;
Contrary to the form of the Statute in such case made
and provided and against the peace and dignity
of the State.

Jesse A. McDonald
Assistant Circuit Attorney.

No. 92

ST. LOUIS CRIMINAL COURT.

July Term, 1895

THE STATE OF MISSOURI,
vs.

Lee Smith

Charge: Attempted Sodomy

Witnesses: Chas Majors
Peter Stalsh
Henry Dereew
George Hoffmann
Pouville Palmer
Alex Klein

A TRUE BILL.

M. M. McKeen
Foreman.

Filed July 26th 1895
Archibald Carr
Clerk of St. Louis Criminal Court.

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Tuesday July 30. 1895

The State of Missouri }
vs } attempted Sodomy
Lee Smith }

This day the above named defendant enters into and files recognizance to appear and answer to the indictment in the above entitled cause; thereupon each party requesting and con-
senting, it is ordered by the court, that said cause be continued.

And at the October Term of Court A.D. 1895
The following proceedings were had, to wit:

Wednesday October 16th 1895.

The State of Missouri } Attempted
Lee ^{vs.} Smith, ^{me} } Sodomy.

Now comes the defendant
by his Attorney ^{and} files his motion
to quash the indictment herein in
words ^{and} figures as follows:—

In the St Louis Criminal Court

State of Missouri
vs
Lee Smith } Attempted Burglary

Now at this day comes the defend-
ent and by his Attorney moves the Court to
quash the indictment herein for the following
reasons.

Because said indictment fails to
set forth any facts that constitute an offense
against the laws of the State of Missouri.

Because admitting all that is al-
leged in the Indictment to be true, it
does not constitute a public offense.

Clairborne & Anderson
for Deft.

Saturday October 19, 1895

The State of Missouri }
 ^{vs} } Attempted Sodomy
Lee Smith

It is this day ordered by
the Court, that the above entitled cause
be transferred to Division Number two
of said Court for trial, or such other dis-
position as may be necessary.

Saturday October 26th 1895

The State of Missouri }
vs } Attempted Sodomy
Lee Smith }

It is this day ordered by the Court, that the above entitled cause be continued, for want of quarters in which to hold Court.

And at the November Term of Court, A. D. 1895, the following proceedings were had, to wit:

Saturday October 26th 1895

The State of Missouri }
vs } Attempted Sodomy
Lee Smith }

It is this day ordered by the Court, that the above entitled cause be continued, for want of quarters in which to hold Court.

And at the November Term of Court, A. D. 1895, the following proceedings were had, to wit:

Wednesday December 18th 1895

The State of Missouri
Lee ^{vs} Smith } Attempted Sodomy

Now at this time it is ordered by the Court, that the above entitled cause be continued, to the next term of Court, both parties consenting and agreeing thereto, and it is further ordered by the Court, parties to the cause agreeing and consenting to the same, that the case be specially set for trial on January 31st A. D. 1896.

And at the January term of the Court A. D. 1896, the following proceedings proceedings were had, to wit:

Tuesday January 14th 1896.

The State of Missouri }
 } Lee Smith } Attempted Sodomy

This day the court having
fully considered the motion herein to quash
the indictment, and being fully advised
thereof, doth overrule the same.

Wednesday January 27th 1896

The State of Missouri
vs
Lee Smith } Attempted Sodomy

This day the defendant in his own proper person comes into Court, and thereupon on motion of the Circuit Attorney is arraigned upon the indictment against him, and waiving the reading of the indictment pleads not guilty as charged therein, and for trial puts himself upon the country and the State does the same, and both parties being ready for trial it is ordered that a jury come, and the defendant thereupon waives his right to a full panel, and made his challenge from a panel of twenty four jurors, and the Circuit Attorney does the same.

Thereupon came a jury, to wit:
John Commerich, Ocie Starbaugh
August Uthoff John R. Henderson
Frank Harding C. H. Blacketer
George Mogge Julius Rebstock
Thomas Aysley Thomas Byrne
John Dichter and William L. Rayless
twelve good and lawful men duly
elected, tried and sworn, the issues

Herein well and truly to try, and a true verdict render, according to the law and the evidence.

Whereupon the trial of this cause proceeds, and the testimony of witnesses is partly heard, but not being concluded at the hour of adjournment, further proceedings herein are deferred, until to morrow morning.

Thursday January 23^d 1896

The State of Missouri }
vs } Attempted Sodomy.
Lee Smith }

This day the defendant in his own proper person again comes into Court, and the Circuit Attorney comes on, presenting the State. The jurors aforesaid also come into Court, and thereupon the trial of this cause is resumed.

The testimony of witnesses is further heard and concluded. The jurors receive their instructions from the Court, and the arguments of counsel are heard and concluded. Thereupon the cause is submitted to the jury for a verdict in the premises, and they retire to consider thereof in charge of a Deputy Sheriff, duly sworn according to law, to keep the jurors together, in the rooms set apart for juries of this court, and not permit any one to speak to or communicate with them, nor do so himself, unless by order of the Court, or ask them, if they have agreed upon a verdict.

Whereupon each party consenting, it is ordered by the Court that a sealed verdict ^{be returned} into Court, should the jury ^{agree} ~~find~~ during adjournment of Court.

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Friday January 24th 1896

The State of Missouri }
vs } attempted Sodomy
Lee Smith }

This day the defendant in his own proper person, again comes into court as also come the jurors aforesaid and said jurors having agreed upon a verdict, are conducted into Court by the officer having them in charge, and in presence of said defendant, render the following as their verdict, to wit:

State of Missouri } on indictment ^{for attempt} to commit the
vs } detestable and abominable
Lee Smith } crime against nature.

As the jury in the above entitled cause find the defendant guilty of attempt to commit the detestable and abominable crime against nature, as charged in the indictment, and assess his punishment at imprisonment in the Penitentiary for the term of two (2) years.

J. H. Sommerich
Foreman

Whereupon the defendant by his Attorney files his motion for a new trial herein.

Tuesday March 3rd 1896.

The State of Missouri, }
vs. } Attempted
Lee Smith } Sodomy.

Now comes the
defendant, by his Attorney, and files
his motion in arrest of judgment
herein.)