



THOMAS S. LAWSON
ATTORNEY GENERAL

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
MONTGOMERY

December 22, 1941.

Hon. R. S. Duck,
Clerk, Circuit Court,
Baldwin County,
Bay Minette, Alabama.

Re: Ben Johnson v. State of Alabama,
In the Court of Appeals.

Dear Sir:

I am enclosing copy of the State's brief
in the above case, which I will thank you to deliver
to counsel for Ben Johnson. His name does not appear
of record and he did not file a brief on appeal.

Yours very truly,

THOS. S. LAWSON,
ATTORNEY GENERAL,
BY-

NOBLE J. RUSSELL,
ASSISTANT ATTORNEY GENERAL.

NJR:VH

Enclosure.

1ST DIV.

NO. 411

IN THE COURT OF APPEALS OF ALABAMA.

ERH JOHNSON,

APPELLANT

V.

STATE OF ALABAMA,

APPELLEE.

APPEALED FROM CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA.

BRIEF AND ARGUMENT

OF

THOS. S. LAWSON,
ATTORNEY GENERAL

AND

NOBLE J. HUSSELL,
ASSISTANT ATTORNEY GENERAL,

ATTORNEYS FOR APPELLEE.

STATEMENT OF THE CASE.

The appellant, Ben Johnson, was tried and convicted in the Circuit Court of Baldwin County, Alabama, for the offense of assault with intent to murder and sentenced to three years in the penitentiary. From said sentence, he takes this appeal to this Honorable Court.

STATEMENT OF FACTS.

The testimony introduced by the State tended to show that on the night of January 10, 1941, one John Styron was in a poolroom at Foley, Alabama; that the poolroom belonged to one Joe Brown; that, beside Styron and the owner of the poolroom, there were also present several other men, including the defendant, Ben Johnson; that around seven o'clock on said night Styron and Johnson had a little difficulty and, as a result of the same, Joe Brown, the owner of the poolroom, took Johnson to the front door and asked him to leave; that after the difficulty Styron stayed around the poolroom for ten or fifteen minutes and then, in company with one Joe Moore, went out of the back of the poolroom toward the toilet; that, upon getting near the toilet, the appellant, Ben Johnson, attacked Styron and cut him very badly about the face and on the throat; that a fight then followed and was finally stopped by Joe Moore. The evidence further tended to show that Styron was cut above the left eye, that his nose was cut and his upper lip was cut clean through and that he had a cut in his throat which went so deep that the jugular vein could be seen. The testimony of defendant tended to show that, after he left the poolroom, he went around to the back to the toilet and that, while he was back there, Styron and several more came out of the rear of the poolroom and attacked him. He testified that he did not have a knife and that he did not cut Styron.

BRIEF AND ARGUMENT.

The record discloses that the organization of the cause

is in proper form. Scott v. State, 228 Ala. 509, 154 So. 113.

The counsel for appellant submitted no brief in this case and we respectfully submit that a careful examination of the record will reveal that there was no error committed by the lower court which obviates the exigency for same. However, for the convenience of this Honorable Court, we shall discuss concisely the few minor points which might have been raised by the counsel for the appellant, which palpably are without merit.

It is first respectfully submitted that the sufficiency of the evidence is not presented on this appeal as the appellant did not ask for the affirmative charge and made no motion for new trial. Adams v. State, 22 Ala. App. 310, 115 So. 862, Cert. Den. 217 Ala. 273, 115 So. 863; Henson v. State, 25 Ala. App. 118, 141 So. 718; Whited v. State, 27 Ala. App. 466, 174 So. 545.

On page 5 of the transcript the defendant reserved an exception to the court's ruling in not allowing the appellant to go into the particulars of the difficulty which preceded the offense with which appellant is charged. It is respectfully submitted that the trial court was absolutely correct in its ruling in this instance as it is the well recognized law that evidence of a former difficulty is admissible but particulars or merits of such difficulty are not admissible. Sanders v. State, 19 Ala. App. 367, 97 So. 294; Dees v. State, 18 Ala. App. 133, 89 So. 95, Cert. Den. 206 Ala. 699, 89 So. 923.

On page 9 of the transcript, the appellant reserved exceptions in two different instances to the ruling of the court on the admission of certain evidence. This Honorable Court will note that in each instance the question was asked and answer was given and after the answer was given the defendant objected. It is respectfully submitted that the exceptions reserved by appellant in these two instances are not presented for review on this appeal as the answers were responsive to the questions and the objections came too late. It has been held that, although a question is objectionable, if no objection is interposed until after the answer, the admission of a responsive answer to the question will not be reviewed on appeal.

Farrior v. State, 12 Ala. App. 123, 67 So. 833.

Furthermore, it is respectfully submitted that the objections are not well taken for the reason that said questions were not objectionable but called for evidence which was admissible.

The foregoing brief fully covers everything presented by the appeal of this case and it is respectfully submitted that the said case should be affirmed.

Furthermore, it does not appear that the errors complained of have probably injuriously affected the substantial rights of the appellant; therefore, judgment should not be reversed or set aside and a new trial granted.- Supreme Court Rule 45.

No reversible error appearing of record, it is respectfully insisted that this cause be affirmed.

Respectfully submitted,

THOS. S. LAMSON,
ATTORNEY GENERAL,

NOBLE J. RUSSELL,
ASSISTANT ATTORNEY GENERAL,
ATTORNEYS FOR APPELLER.

I hereby certify that I have this day mailed, postage prepaid, copy of the foregoing brief and argument to Hon. R. S. Duck, Clerk of the Circuit Court, Baldwin County, Bay Minette, Alabama, with the request that he deliver same to the attorney of record for appellant.

This the ____ day of December, 1941.

NOBLE J. RUSSELL,
ASSISTANT ATTORNEY GENERAL,
OF COUNSEL FOR APPELLEE.