(1022)

INDICTMENT

Baldwin Times - 300-11-49

THE STATE OF ALABAMA,
Baldwin County.

Circuit Court, Spring **Session, 194** 50

The Grand Jury of said County charge that before finding this indictment

Sam Irwin, Jr., whose name is to the Grand Jury otherwise unknown, did wilfully, maliciously or with wanton negligence, set on fire or caused or procured to be set on fire, woods, brush, grass, or other inflamible vegetation on land not owned, leased or controlled by him,

against the peace and dignity of the State of Alabama.

Kenneth Cooper

Solicitor of the Twenty-Eighth Judicial Circuit.

RECORDED
RECORDED

No. .....

THE STATE OF ALABAMA,

BALDWIN COUNTY

Circuit Court

Spring Session ..... ~~Term, 194~~ 50

THE STATE

Vs.

Sam Irwin, Jr

INDICTMENT

Malicious Burning of Woods

No Prosecutor.

WITNESSES:

Odis Baggett
Mrs. Odis Baggett
J. L. Parker

THE BALDWIN TIMES

GRAND JURY NO. 53

A TRUE BILL

J. D. Cooley
Foreman Grand Jury.

Filed in open Court and in the presence of the Grand Jury on the 29th day of March, 1950.

Alice J. Lerch Clerk.

Presented in open Court to the presiding Judge by the Foreman of the Grand Jury, in the presence of 17 other Grand Jurors.

Alice J. Lerch
Clerk.

Bail fixed $500.00

Telfair J. Mashburn, Jr.
Judge.

STATE OF ALABAMA	}	IN THE CIRCUIT COURT OF
VS	}	BALDWIN COUNTY, ALABAMA,
SAM IRWIN JR.	}	AT LAW

Now comes the Defendent, Sam Irwin Jr., and moves the court to set aside the verdict and judgment heretofore on, March 6, 1951, entered in this cause, and grant him a new trial upon the following separate andseveral grounds:

1.

That the verdict and judgment are contrary to the law in the case.

2.

That the verdict and judgment are contrary to the evidence in the case.

3.

That the verdict and judgment are contrary to the preponderance of the evidence in the case.

4.

That the verdict and judgment are contrary to the law and evidence in the case.

Attorney for the Defendant

9-489 Motion for new trial denied.
Done at Bay Minette, Alabama this 7th day of April.

Telfair J. Mashburn, Jr.
Judge.

STATE OF ALABAMA

VS.

SAM IRWIN JR.,

MOTION TO SET ASIDE VERDICT

FILED

MAR 20 1951

ALICE J. DUCK, Clerk

From the law office of
Hubert M. Hall
Bay Minette, Alabama

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, SAM IRWIN JR., as principal and the undersigned as sureties are held and firmly bound unto the State of Alabama in the sum of THREE HUNDRED ($300.00) DOLLARS for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and Administrators jointly and severally firmly by these presents.

Witness our hands and seals on this the 8th day of March, 1951.

The condition of the above obligation is such that whereas the above bound Sam Irwin Jr., was on the 8th day of March, 1951, convicted in the Circuit Court of Baldwin County, Alabama, of the offense of setting woods afire, and by the judgment of said court sentenced to a fine of $50.00 and costs, and six months at hard labor, the six months being suspended and the said Sam Irwin Jr., placed on probation for a period of two years; and

Whereas the said Sam Irwin Jr., has this day prayed an appeal from ~~said judgment to the Court of Appeal of the State of Alabama,~~ with a stay of execution pending said appeal.

Now, if the said Sam Irwin Jr. shall appear at the next term of the Court of Appeals of the State of Alabama, and from term to term thereafter until discharged and abide by and perform whatever sentence or judgment may be adjudged in said court against him, then the above obligation to be void; otherwise to remain in full force and effect.

Sam Irwin Jr. (SEAL)

L. C. Wright (SEAL)

Peter Marsh (SEAL)

Taken and approved this the 8th day of March, 1951.

Alice Jernigan
Clerk

Bond

Mar 8-51

STATE OF ALABAMA	)	IN THE CIRCUIT COURT OF
VS	)	BALDWIN COUNTY, ALABAMA
SAM IRWIN JR.	)	CRIMINAL DIVISION
DEFENDANT	)	NO. 1222

Now comes the Defendant, by H. M. Hall his attorney of record, and appeals to the Court of Appeals of the State of Alabama, from:

1.

The verdict of the Court adjudging the Defendant, Sam Irwin Jr., guilty, entered on March 8, 1951.

2.

The judgment of the court over-ruling the Defendant, Sam Irwin Jr., motion for a new trial made on the 7 day of April, 1951.

Dated this the 8 day of April, 1951.

H. M. Hall

Attorney for Defendant

notice of Appeal

4-8-51

Filed: 5-8-51
Alice J. Lynch
Clerk

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 8th day of March ~~Monday the~~, 1951, in a certain cause in said Court wherein STATE OF ALABAMA Plaintiff, and SAM IRWIN, JR Defendant, a judgment was rendered against said SAM IRWIN, JR to reverse which JUDGMENT, the said SAM IRWIN, JR applied for and obtained from this office an APPEAL, returnable to the Next Term of our Court of Appeals Court of the State of Alabama, to be held at Montgomery, on the ..... day of ....., 194..... next, and the necessary bond having been given by the said SAM IRWIN, JR with L. C. Wright and Peter Morris, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Kenneth Cooper or ....., attorney, to appear at the Next Term of our said ~~Supreme~~ Court of Appeals, to defend against the said Appeal, if he think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 8th day of ~~March~~ April, A. D., 1951.

Attest:

Alice J. Duck, Clerk.

I hereby accept service
this 8 day of April 1951
Bernard H Cooper
Solicitor

CIRCUIT COURT
Baldwin County, Alabama

STATE OF ALABAMA

Vs. } Citation in Appeal

SAM IRWIN, JR

Issued 8th day of ~~March~~ April, 1951

_____Div. No._____ CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 1222

BALDWIN County, Circuit Court

SAM IRWIN, JR., Appellant

VS.

The State of Alabama, Appellee

The State of Alabama,

Baldwin County, The Circuit Court of Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County in and for said County and State, do hereby certify that in the above stated case, which was tried and determined in this Court on the 8th day of March 19 51, and the defendant convicted by ~~a jury~~ The Court of the offense of Setting Woods Afire, and that on the 8th day of March 19 51, said defendant was sentenced to a term of $50.00 fine and 6 mo. in County Jail; Sen. suspended; 2 years probation, which said sentence was suspended pending an appeal to the Court of Appeals ~~Court~~ of Alabama.

I further certify that on this the 8th day of April 19 51, the defendant gave notice in writing of an appeal to the Court of Appeals ~~Court~~ of Alabama.

Witness my hand and the seal of this Court, this the 8th day of April 19 51.

Clerk of Circuit Court of
Baldwin County, Alabama,

(BOX 474)

47386 MARSHALL & BRUCE CO NASHVILLE

SHERIFF'S APPEARANCE BOND

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA
Baldwin County

We, Sam Irwin Jr., as principal, and undersigned as sureties, agree to pay THE STATE OF ALABAMA, the sum of $500.00 Five Hundred DOLLARS unless the said Sam Irwin Jr. appear at the Spring Term, 1950 of the Circuit Court of Baldwin County, Alabama, and from term to term thereafter until discharged by law, to answer a criminal prosecution for the offense of Setting Woods afire.

We hereby waive as to all amounts that may become due hereunder the benefit of all laws exempting personal property from levy and sale under execution or other process for the collection of debt, by constitution or laws of the State of Alabama, and we hereby severally certify that we have property over and above all debts, liabilities, exemptions and this bond to the amount of; real property of the value of $2,000.00 and personal property of the value of $1,000.00.

Sworn to and subscribed before me this the _____ day of _____, 19____

_____, Baldwin County, Ala.

Sam Irwin Jr. (Seal)

Peter Morris (Seal)

James D. Morris (Seal)

_____ (Seal)

Taken and approved this the 5 day of April, 1950

Taylor Wilkins, Sheriff

By D. D. Faye, Deputy Sheriff

RECORDED

No. 1222

THE STATE OF ALABAMA

BALDWIN COUNTY

_____ COURT

SHERIFF'S OFFICE

THE STATE

VS.

_____

_____

Sheriff's Appearance Bond

Amount of Bond, $_____

Filed _____, 19____

_____, Clerk

STATE OF ALABAMA	)	IN THE CIRCUIT COURT OF
VS	)	BALDWIN COUNTY, ALABAMA
SAM IRWIN JR.	)	CRIMINAL DIVISION
DEFENDANT	)	NO. 1222

Now comes the Defendant, by H. M. Hall his attorney of record, and appeals to the Court of Appeals of the State of Alabama, from:

1.

The verdict of the Court adjudging the Defendant, Sam Irwin Jr., guilty, entered on March 8, 1951.

2.

The judgment of the court over-ruling the Defendant, Sam Irwin Jr., motion for a new trial made on the _____day of _____, 1951.

Dated this the _____day of _____, 1951.

_____
Attorney for Defendant

1ST DIV. NO. 626

IN THE COURT OF APPEALS OF ALABAMA

SAM IRWIN, JR.,

APPELLANT

VS

STATE OF ALABAMA,

APPELLEE

APPEALED FROM THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

BRIEF AND ARGUMENT

OF

SI GARRETT
ATTORNEY GENERAL

AND

THOMAS M. GALLOWAY
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

STATEMENT OF THE CASE

The appellant (defendant below) was indicted in the Circuit Court of Baldwin County, Alabama, for the offense of malicious burning of woods. The defendant was duly tried and found guilty. The punishment was fixed at a fifty dollar fine and six months suspended sentence in the county jail. From said judgment of conviction and the sentence thereon, this appeal is taken.

STATEMENT OF THE FACTS

The appellant (defendant below) was seen in the road close to the location of two small fires along the edge of the road. A State's witness testified that he saw the appellant coming from the direction of the fires toward his truck which was parked on the opposite side of the road from the fires. This witness further testified that he extinguished the fires and at the time of doing so they were very small.

Another witness for the State testified that the land belonged to the International Paper Company.

The defendant and a witness for the defense both testified that the defendant did not start the fires and that they were stopped at that place for other purposes.

BRIEF AND ARGUMENT

I

The State respectfully contends that in the instant case the only matter before this court for review is the record proper.

The assignments of error relate to the sufficiency of the evidence. This cannot be considered in the absence of a compliance with Act of July 12, 1943, effective September 1, 1943, General Acts 1943, page 423, Title 7, Section 827 (1) to 827 (6) and Rule 48 of the Supreme Court, Code of Alabama 1940, Title 7, Appendix. West v. Givens et al, 246 Ala. 395, 20 So. (2d) 710.

There is in the record a certified transcript of the evidence but there is no indication that it was ever filed with the clerk or on what day such filing was done. Without this date there is no way to determine if Supreme Court Rule 48 has been complied with and without such compliance the testimony is not before the court. Chapman v. State, 249 Ala. 29, 29 So. (2d) 286. Peabody v. State, 31 Ala. App. 448, 18 So. (2d) 691.

There being no error in the record proper it is respectfully insisted that the case be affirmed.

Respectfully submitted,

Si Garrett
SI GARRETT
ATTORNEY GENERAL

Thomas M. Galloway
THOMAS M. GALLOWAY
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

I hereby certify that I have mailed a copy of the foregoing brief and argument, properly stamped and addressed, to the Honorable Hubert M. Hall, attorney for the appellant, on this 21st day of Nov., 1951.

Thomas M. Galloway
THOMAS M. GALLOWAY
ASSISTANT ATTORNEY GENERAL

There is in the record a certified transcript of the evidence but there is no indictment; one is see even filed with the clerk or on what day or on filing was done. Without such there is no way to determine if purpose conspiracy is had been complied with and without such transcripts the reviewing is not before the court. Cooper v. State, 64 Ark. 54, 40 S.W. 688. Lemons v. State, 11 Ala. App. 68, 66 So. 1001 (1914).

The a having no error in the record proper it is unnecessary to state and the case be affirmed.

Respectfully submitted,

[illegible]

[illegible]

I hereby certify that a true copy of the foregoing brief and argument is properly engrossed and signed, in the prescribed manner, and, that, copies thereof have been delivered, in this 21st day of [illegible], 1977.

[illegible]

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 1951

To the Clerk of the Circuit Court of Baldwin *County, Greeting:*

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

Sam Irwin, Jr., *Appellant*,

and

The State, *Appellee*,

wherein by said Court, at the ..... *Term, 19*....., *it was considered adversely to said appellant*....., *were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant*.....

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 4th *day of* December 1951, *that said judgment of said Circuit Court be reversed and annulled, and the cause remanded to said Court for further proceedings therein;* ~~and that it was further considered that the appellee pay~~

the ~~costs accruing on said appeal in this Court and in the Court below~~

Witness Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 4th *day of* December 19 51

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

October Term, 19 51

1st Div. No. 626

Sam Irwin, Jr.

Appellant,

v.

The State

Appellee.

From Baldwin Circuit Court

CERTIFICATE OF REVERSAL

The State of Alabama,
Baldwin County. } Filed

this 5th day of Dec 19 57

BROWN PRINTING CO., MONTGOMERY 1951

DEC 4 1951

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1951-52

1 Div. 626

Sam Irwin, Jr.

v.

State

Appeal from Baldwin Circuit Court

HARWOOD, JUDGE

This appellant stands convicted under an indictment charging that he "wilfully, wantonly, maliciously, or with wanton negligence, set on fire or caused or procured to be set on fire, woods, brush, grass, or other inflammable

vegetation of land not owned, leased, or controlled by him," etc.

The conduct charged is denounced by Section 204, Title 8, Code of Alabama 1940, as amended.

The evidence presented by the State consists of the testimony of Mr. and Mrs. Otis Baggett.

Their testimony tends to show that late in an afternoon in January or February 1950 they were driving along a road in Baldwin County when they came upon a truck parked on the left hand side of the road. A ditch and a bank bordered the road at the place where the truck was parked. According to Mr. Baggett:

"Went on down the road about a mile and a truck was stopped on the curve and as I came around the curve I seen somebody between the truck and the ditch of the road and I pulled up side the truck and stopped and got out. I recognized Mr. Irwin then and seen two little spots of woods burning on the bank of the road and I said to them: 'Why don't you fellows get out and put out this fire?' And I jumped up on the bank and stomped the little places out with my feet and got back in the car and went on."

Mr. Baggett further testified that the defendant was between the parked truck and the ditch when he came around the curve, and by the time he had driven up to the truck the defendant had gotten back into it.

Mr. Baggett further testified that the defendant was within two or three feet of the fire when he first observed him.

On direct examination Mrs. Baggett's testimony was substantially the same as Mr. Baggett's, except that she stated that the fire was about six feet from the edge of the bank.

Both Mr. and Mrs. Baggett testified on cross examination that neither had seen the defendant set the fire or fires.

The defendant and his companion both denied that the defendant had set the fire. According to these two witnesses the defendant had stopped his truck in order to

relieve himself, and that he had not left the roadway when the Baggett car approached.

This cause was heard by the court without a jury, and at the conclusion of the evidence the court entered a judgment of guilty, and duly imposed punishment.

The appellant timely filed a motion to set aside the judgment, which motion was denied. Hence this appeal.

It is axiomatic that in a criminal case the burden is on the state to prove, beyond all reasonable doubt, that the crime charged has in fact been committed, and that the accused is the person who committed it. Hill v. State, 207 Ala. 444, 93 So. 460. Neither of the above elements could be inferred beyond all reasonable doubt from the evidence presented by the state in this case. It may be said to have presented a picture which would cause this appellant to be suspicioned. But speculation and conjecture must be resorted to if the conclusion is to be reached that appellant was the party guilty of setting the fire in this case. Tunstill v. State, 33 Ala. App. 460, 34 So. 2d 857; cert. den. 250 Ala. 421, 34 So. 2d 859; Pitts v. State, 33 Ala. App. 363, 33 So. 2d 751.

It is our conclusion therefore that the lower court erred in denying the appellant's motion on the assigned grounds that the judgment was contrary to the law and the evidence in the case.

Over the appellant's objection Mr. Baggett was permitted to testify that the land on which the fire was observed was owned by the International Paper Company. Appellant's counsel argues strenuously that error infected this ruling. We pretermit consideration of this point, for it further appears that no evidence was offered by the State tending to show that the land had not been leased to or was not under the control of this appellant. This further burden was upon the State, and its failure to introduce any evidence in this direction presents an additional and necessary reason

for reversing the judgment entered by the lower court.

REVERSED AND REMANDED.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 626

Sam Irwin, Jr. Appellant,

v.

Lestate Baldwin Appellee,

From Baldwin Circuit Court

The State of Alabama,
City and County of Montgomery.

I, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, do hereby certify that the foregoing pages numbered from one to four inclusive, contain a full, true and correct copy of the opinion of said Court of Appeals in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 4 day of Dec, 1951

Charles Bricken Jr.
Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 626

Dan Irwin Jr.
Appellant

vs.

Shirley Cale
Appellee

From Baldwin County Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1946

CAPIAS (1222) BT-300-4-48

THE STATE OF ALABAMA,
Baldwin County

TO ANY SHERIFF OF THE STATE OF ALABAMA:
An indictment having been found against

Sam Irvin, Jr.

at the Spring Term, 1950, of the Circuit Court of Baldwin County, for the offense of

Selling wood in Spir.

you are, therefore, commanded forthwith to arrest the said Defendant and commit him to jail, unless he give bail to answer said indictment, and that you return this Writ according to law.

Dated this 30th day of March, 1950

Reuel Lewis
Clerk Circuit Court of Baldwin County.

THE STATE OF ALABAMA,
Baldwin County

We, _____, as principal and the other undersigned as sureties, agree to pay the State of Alabama _____ Dollars, unless the said _____ appears at the _____ Term of the Circuit Court of Baldwin County, and from Term to Term thereafter until discharged by law, to answer a criminal prosecution for the offense of _____

_____

In signing the above bond we and each of us hereby waive all legal rights of exemptions allowed us by the Constitution and Laws of Alabama.

Witness our hands and seals this _____ day of _____, 194____.

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

Taken and approved _____ day of _____, 194____.

_____
Sheriff of Baldwin County.

#1222

RECORDED

CAPIAS

No. 53

THE STATE

vs.

Sam Irwin Jr.

Bail Fixed in This Case in Open Court at

$ 500.00

By Delfair J. Marlborough
Judge Presiding.

Attest: Alice J. Lesesne
Clerk.

Executed this 5 day of April, 1950

By arresting the within

named Defendant

and placing him under Bond.

Taylor Wilkins, Sheriff

D. D. Kaye, Deputy Sheriff