

1549

The State of Alabama,
Baldwin County.

}

CIRCUIT COURT

March Term, 1953

On Appeal from County Court.

THE STATE vs. Cecil Melton, Dolphus Melton, and Rufus Gafford,

The State of Alabama, by its Solicitor, complains of Cecil Melton, Dolphus Melton and Rufus Gafford, that in said county and within twelve months before the commencement of this prosecution ~~they~~ did fight together in a public place

contrary to law and against the peace and dignity of the State of Alabama.

William R. Tanner
Solicitor.

No. 1549, 1550, 1552

STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT

THE STATE

vs.

Cecil Melton, Dolphus Melton,

Rufus Gafford

CHARGE:

Affray

COMPLAINT

Filed 3-17 1953

W. J. Ruck
Clerk

STATE OF ALABAMA)

Plaintiff,)

VS.)

RUFUS GAFFORD,
DOLPHUS MELTON AND
CECIL MELTON,)

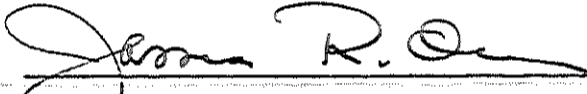
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
CRIMINAL DIVISION

SECURITY FOR COSTS

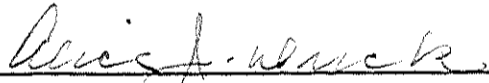
I, the undersigned, hereby acknowledge myself security for all costs of appeal to the Court of Appeals of Alabama from the verdict and judgment rendered in the above entitled cause on the 17th day of March, 1953, and hereby agree to pay all costs; and for payment of this bond, I hereby waive my right of exemption to personal property under the Constitution and Laws of the State of Alabama.

WITNESS my hand and seal this the 23rd day of March, 1953.



James R. Owen

Taken and approved, this
23rd day of March, 1953.



Alice J. Duck, Clerk.

SECURITY FOR COSTS

STATE OF ALABAMA,
Plaintiff,

VS.

RUFUS GAFFORD,
DOLPHUS MELTON AND
CECIL MELTON,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
CRIMINAL DIVISION

William R. Lauten

William R. Lauten, Solicitor.

James R. Owen

James R. Owen, Attorney for Defendants.

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MEMPHIS, TENN.

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MEMPHIS, TENN.

STIPULATION

STATE OF ALABAMA

VS.

RUFUS GAFFORD, DOLPHUS MELTON
AND CECIL MELTON,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
CRIMINAL DIVISION.

1549

DEC 8 1953

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1953-54

1 Div. 669

Rufus Gafford et al

v.

State

Appeal from Baldwin Circuit Court

HARWOOD, JUDGE

By affidavit these three appellants were charged with fighting together in a public place in Baldwin County.

Said affidavit thus charges the appellants with an affray, an offense denounced by Section 17, Title 14,

2.
Code of Alabama 1940.

The cause was, after appellants conviction in the County Court of Baldwin County, appealed to the Circuit Court of Baldwin County. In this court their trial before the court without a jury again resulted in a judgment of guilty. From such judgment appeal was perfected to this court.

In the trial below the evidence presented by the State and by the defense was without material contradictions.

It tended to show that around 9:00 P. M. on a night in August the three appellants, Cecil Melton, Dolphus Melton, and Rufus Gafford, accompanied by Miss Jeanette McMillan were driving along a highway in Baldwin County in the direction of Spanish Fort.

They stopped at the Blue Light, a roadside tavern, apparently for only a short while. When they left Arthur Terry and Joe Simmons asked for a ride, and were permitted to enter the automobile. The inference from the record is that Terry and Simmons were not known to the others prior to this time. Both Terry and Simmons had been drinking.

Cecil Melton was driving the automobile, and Miss McMillan and Rufus Gafford sat on the front seat with him. Terry, Simmons and Dolphus Melton occupied the rear seat.

As the group reached the Montrose community Simmons, according to Miss McMillan, who was a State witness, "all of a sudden this man reached up and put a knife around his neck and told him to stop and Dolphus told us this man had a knife."

Dolphus Melton caught Simmons' arm and a scuffle ensued between them. In this melee Simmons stabbed Dolphus in the leg, inflicting a wound some three inches deep.

Cecil Melton stopped the car in a matter of seconds, left his seat under the steering wheel, and went around to the right rear of the automobile. He reached through the window and attempted to wrest the knife from Simmons.

3.
He eventually succeeded in pulling Simmons from the car, and these two continued to fight on the roadside.

Terry left the automobile on the left side and walked around it toward the fight. As he drew close Cecil Melton hit him one lick and knocked him out. At this interruption Simmons fled the scene.

Terry revived in a moment or so, and helped the others to push the car off.

Terry testified he had been drinking a good bit and did not remember about the occurrences before the fight.

Miss McMillan testified that as Terry left the car Rufus Gafford drew back to hit him, but she told him not to, and Gafford did nothing further. It was then that Terry walked around the car to where Cecil Melton and Simmons were fighting, with the result that he was knocked out by Cecil Melton.

An affray is the fighting together of two or more persons in a public place, to the terror of others. Thompson v. State, 70 Ala. 26; McClellan v. State, 53 Ala. 640. It is distinguished from an assault because of the place in which it is committed and the numbers engaged in it. McClellan v. State, supra. The fighting must be in a public place, otherwise it is an assault and battery. Garwile v. State, 35 Ala. 392.

The general rule is that not only is one justified in defending himself, but it is also his right and duty to defend others upon whom crimes of violence are threatened. In such case the intervener steps into the shoes of the person defended. Robinson v. City of Decatur, 32 Ala. App. 654, 29 So. 2d 429.

An analysis of the undisputed evidence shows that the hitchhiker Simmons first placed an open knife at the neck of Cecil Melton and told him to stop the car. This was an unprovoked and felonious assault with a deadly weapon.

4.
Certainly Dolphus Melton was fully justified in attempting to prevent this apparent assault with a deadly weapon upon his brother. So far as this record reveals, this was Dolphus Melton's only activity. Clearly he is not guilty of any criminal offense, but is to be commended for his efforts to save brother from death or serious bodily harm.

When Dolphus attempted to restrain Simmons the evidence shows that Simmons then turned his felonious attack on Dolphus, and did succeed in inflicting a serious knife wound on him.

Cecil then intervened to prevent the furtherance of this felonious assault on Dolphus, an act he was fully justified in doing under the law.

While thus attempting to suppress the felonious acts of Simmons he was approached by Terry, a companion of Simmons. Upon the appearance of things, Cecil took time by the forelock and knocked Terry out. Was this act criminal under the circumstances?

Our courts are committed to the proposition that in an assault and battery, and assault with a weapon, the plea of self defense is complete if the defendant did not provoke the difficulty and did not fight willingly, making the question of retreat and of the necessity of the defendant being in danger of losing his life or suffering grievous bodily harm inapplicable in such cases. Taylor v. State, 17 Ala. App. 508, 85 So. 877, and cases therein cited.

Clearly Cecil Melton did not provoke the difficulty with Terry. It was Terry who injected himself into the fight between Melton and Simmons by leaving the automobile and approaching the fight. He must be placed in Simmons' shoes by his aborted intervention. So placed Cecil's acts were fully justified so far as Terry is concerned.

So far as the appellant Rufus Gafford is concerned, the evidence shows only that he raised his arm as if

5.
to hit Terry when Terry first left the automobile. He did not do so at the request of Miss McMillan.

The uncontradicted evidence shows that Terry and Simmons, unknown to the appellants at the time, were together when they requested the ride. Thereafter Simmons made an unprovoked and felonious attack upon at least two of occupants of the car. The night was dark.

Surely under the circumstances any reasonable man would suspicion a concert of action between Simmons and Terry. Simmons at the time was engaged in a fight with Cecil Melton who had intervened to save his brother from Simmons' assault. Gafford was fully warranted, under the facts in preparing to defend himself by assuming an attitude of readiness for combat. The exercise of such legal right in a normal manner does not constitute aggression or forfeit the principle of self defense.

There being no evidence tending to show any of these appellants guilty of any illegal conduct, this cause must be reversed as to each appellant.

REVERSED AND REMANDED.

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 17th
March ~~Monday~~ March 1933

in a certain cause in said Court wherein State of Alabama
Plaintiff, and Cecil Melton, Dolphus Melton and Rufus Gafford

Defendant, a judgment was rendered against said
Cecil Melton, Dolphus Melton and Rufus Gafford

to reverse which Judgment the said
Cecil Melton, Dolphus Melton and Rufus Gafford

have on this day applied for and obtained from this office an APPEAL, returnable to the
Term of our Court of Appeals ~~Court~~ of the State of Alabama, to
be held at Montgomery, on the _____ day of _____, 1933 next,
and the necessary bond having been given by the said Cecil Melton, Dolphus Melton and
Rufus Gafford with Aletha Hall, B. F. Sutton,
George Ganey, and John N. Stanford sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

or William R. Lauten attorney, to appear at the
Term of our said Supreme Court, to defend against the said
Appeal, if he think proper.

Alice J. Duck
WITNESS, ~~FRANK BRIDGES~~, Clerk of the Circuit Court of said County, this 21st

day of March, A. D., 1933

Attest:
Alice J. Duck Clerk.

I, William R. Lauten, do hereby accept service this 21st of

March, 1953.

W. R. Lauten

CIRCUIT COURT
BALDWIN COUNTY, ALA.

STATE OF ALABAMA

vs. } Citation in Appeal

CECIL MELTON et als

Issued _____ day of _____ 193_____

Moore Ptg. Co., Bay Minette

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 19 53

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

Rufus Gafford, Dolphus Melton, and Cecil Melton, 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 8th day of December 19 53, 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

8th day of December 19 53

Charles Bricken, Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

October Term, 19.53

1st Div. No. 669

Rufus Gafford, Dolphus Melton
and Cecil Melton

Appellant,

v.

The State

Appellee.

From Baldwin Circuit Court

CERTIFICATE OF
REVERSAL

The State of Alabama,

Baldwin County.

} Filed

this 9th day of Dec 1953

Rebecca

Div. No. _____

CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 1549

Baldwin County, Circuit Court

~~Cecil Melton, Dolphus Melton and Rufus Gafford~~
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 17th day of March 19 53, and
the defendant convicted by ~~a jury~~^{Court} of the offense of Affray
_____, and that on the 17th day of March 19 53,
said defendant was sentenced to a ~~term~~^{Fine} of \$10.00 and cost
_____, which said sentence was suspended
pending an appeal to the Court of Appeals ~~Court~~ of Alabama.

I further certify that on this the 21st day of March
19 53, 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 21st
day of March 19 53.

Clerk of Circuit Court of
Baldwin County, Alabama,

1549

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

122 Div., No. 669

Rufus Gayford et al Appellant

v.

The State 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 five 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

8 day of Dec, 1953

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

46610

1550

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 669

Rufus Gafford,

et al.,

Appellant

vs.

The State

Appellee

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1951

THE OFFICE OF THE CLERK OF THE COURT OF APPEALS OF ALABAMA

STATE OF ALABAMA)
VS.)
CECIL MELTON,)
Defendant.)

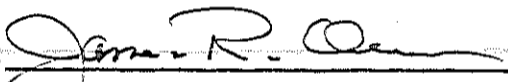
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
NO. 4065

Cecil Melton, the Defendant in the above styled cause, having been adjudged guilty of an affray on the 17th day of March, 1953, and the said Cecil Melton desires to take an appeal under the statute of this State to the Court of Appeals for the State of Alabama from the judgment rendered in said Circuit Court.

Therefore the said Cecil Melton hereby appeals from the judgment rendered against him in the above styled cause, said case being styled on the trial docket as the State of Alabama vs. Cecil Melton and its docket number thereon being Case Number 4065.

Dated this 17th day of March, 1953.

Cecil Melton

By: 

As his Attorney

APPEAL BOND.

THE STATE OF ALABAMA,
Baldwin County.

County Court, _____ Term, 195__.

KNOW ALL MEN BY THESE PRESENTS, That we _____

Cecil Melton

_____, are held and firmly bound unto the State of Alabama, in the sum of Two Hundred 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, this the 3rd day of Nov, 195__

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the above bound- en Cecil Melton, was on the 3rd day of Nov, 195__ convicted in the County, of the offense appeal

and by the judgment of said Court sentenced to 10⁰⁰ and cost

And, whereas, the said Cecil Melton

has this day prayed an appeal from said judgement to the Circuit Court of said County:

Now, if the said Cecil Melton shall appear at the next term of the Circuit Court, and from term to term thereafter until discharged, and abide by and perform whatever sentence may be adjudged in said Court against him, then the above obligation to be void, otherwise to remain in full force and effect.

Cecil Melton (L. S.)

B. F. [unclear] (L. S.)

J. N. [unclear] (L. S.)

Walter [unclear] (L. S.)

Approved: W. R. [unclear]
County Court Judge.

204065

THE STATE OF ALABAMA
Baldwin County

COUNTY COURT

THE STATE
VS.

Cecil Melton

APPEAL BOND

Sureties.

Filed in the office of the Clerk of the
Circuit Court _____ day of

_____, 195__.

_____, Clerk.

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT

We, Cecil Melton, as Principle and the undersigned sureties, agree to pay to the State of Alabama the sum of Three Hundred Dollars (\$300.00), unless the said Cecil Melton appears at the next 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 affray.

And we, and each of us, hereby waive all exemptions we may have to any personal property under the Constitution and Laws of the State of Alabama as to the collection of the penalty of this bond.

Witness our hands and seals this 17th day of March, 1953.

The condition of the above obligation is such that, whereas the above bound Cecil Melton was duly convicted in the Circuit Court of Baldwin County on the 17th day of March, 1953, of the above stated offense, and has duly applied for and obtained an appeal from said conviction and sentence to the Court of Appeals for the State of Alabama, and the amount of his appeal bond has been duly and legally fixed at said above stated sum:

Now, therefore, if the said Cecil Melton shall appear at the next term of the Circuit Court of Baldwin County, and from term to term thereafter until discharged by law, and abide the judgement of the said Court of Appeals for the State of Alabama, then this obligation to be void and of no effect; otherwise to remain in full force and effect.

Cecil Melton (SEAL)

Altha Hall (SEAL)

B. F. Sutton (SEAL)

Approved this 17th day of March, 1953.

David J. ...
Clerk.

6451

FILED
3-17-53
ALICE I. DUCK, Clerk

appeal Bond
Cecil Milton

complaints and the defendant's motion for a writ of habeas corpus, and the court docket and minutes to be read and the same to be filed in the court records.

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