LUITWEILER v. UNITED STATES.

(Circuit Court of Appeals, Fifth Circuit. March 29, 1898.)

No. 617.

1. CRIMINAL LAW—APPEAL—MOTIONS FOR NEW TRIAL.
Rulings on motions for a new trial in the federal courts are not assignable as error.

2. SAME—OBJECTIONS TO EVIDENCE—EXCEPTIONS.
Rulings on objections to evidence are not reviewable when no seasonable exceptions were taken.

In Error to the District Court of the United States for the Eastern District of Texas.

Frank Lee, for plaintiff in error.
J. Ward Gurley, U. S. Atty.

Before PARDEE and McCORMICK, Circuit Judges, and SWAYNE, District Judge.

PARDEE, Circuit Judge. The plaintiff in error, E. H. Luitweiler, was indicted, tried, convicted, and sentenced in the district court for the Eastern district of Texas, sitting at Paris, Tex., for receiving a bribe while acting as a commissioner of the United States circuit court in the Indian Territory. After vainly moving for a new trial in the court below, he sues out this writ of error, assigning as error certain alleged rulings of the trial court in regard to the admission of evidence on the trial, and the refusals to grant a new trial; giving many reasons why the court erred in refusing a new trial. The bill of exceptions contained in the record shows that objections were made by the counsel for the plaintiff in error to certain questions propounded different witnesses in the course of the trial, but does not show that any objection was made, or exception seasonably reserved, to any ruling of the court in relation thereto.

The first assignment of error is to the effect that the court erred in permitting the witness James Wolverton, over the objections of the defendant, to testify that he had heard the plaintiff in error had received a bribe from one McNeese; also, that he had heard that the defendant had received other bribes from different parties. The bill of exceptions shows as follows:

"The defendant offered as a witness James Wolverton, and proved by him that he was acquainted with the general reputation of the defendant, E. H. Luitweiler, for honesty, and that it was good. On cross-examination the district attorney asked witness if he had not heard that the defendant had received a bribe from one McNeese, as a consideration upon which defendant would release said McNeese, who was on trial before defendant, who was sitting as United States commissioner. Defendant objected on the grounds that the question elicited hearsay testimony, and did not seek to obtain any fact the witness knew. Second. It was trying indirectly, by hearsay evidence, to prove that the defendant had accepted other bribes than the one charged in the case on trial. The court overruled the objection, and witness stated that he had heard that the defendant had received the money to discharge said McNeese. Then the district attorney, over the objection of the defendant, asked witness if he had not heard that the defendant had accepted $125 from Dr. Davis, as a bribe, and if he had not heard that the defendant had accepted money from Dr. Evans, as

a bribe. Defendant objected to the questions and answers—First, because it was hearsay, and not admissible to show that the defendant had accepted bribes other than the one charged, for which he was on trial; second, because the government had at command the witnesses Dr. Davis and Dr. J. C. Evans, who were present, and had been sworn as witnesses, and were then in the witness room; third, the prosecution was proving by hearsay facts that throwed [sic] suspicion upon the defendant, when, if the facts asked about were true, the prosecution was in a position to prove it by direct testimony. All of which objections made by the defendant were overruled by the court, and the witness answered that he had heard of the defendant accepting the bribes asked about, but did not know anything of the truth of the charges. Whereupon the court admitted the testimony of Wolverton that he had heard about the transactions between Luitweiler, McNeese, Evans, and Davis, but stated to the jury that his statements were not admitted as evidence against the defendant, Luitweiler, but simply to test the witness' memory and credibility."

The second assignment of error is that the court erred in permitting the prosecuting attorney to ask the defendant, while on the witness stand, if he had not accepted bribes from Mr. McNeese, Dr. Davis, Dr. Howell, and Dr. J. C. Evans. In relation to this matter the bill of exceptions shows as follows:

"On cross-examination of the defendant the district attorney asked the defendant if on a certain time he did not receive from Dr. Davis, through Dr. Howell, $125, as a bribe, for which he was to suppress papers that were then out, charging Davis with the crime of introducing and selling intoxicating liquors in the Indian Territory, and if he (the defendant) did not accept a bribe from one McNeese, and if he did not accept a bribe from Dr. J. C. Evans, for which he (the defendant) agreed to dismiss the case against Evans. The defendant then and there objected to the question, and to defendant's being required to answer—First, because it was attempted to try three cases at one time; second, because, no matter what the defendant's answer might be, the question assumed that the defendant had received the bribes asked about; third, if the prosecution wanted to prove the truth of what Dr. Evans, Dr. Howell, and Mr. McNeese had done in regard to bribing defendant, they were each of them in the witness room, and the prosecution ought to put them on the stand, and not assume the defendant guilty of accepting bribes generally. Whereupon the prosecuting attorney remarked, in the presence of the jury, 'We will put them on the stand.' Counsel for the defendant then said, 'If the gentlemen say they will put Dr. Evans, Dr. Howell, and Dr. Davis, and McNeese on the stand, and prove those facts, we will withdraw the objections.' The defendant then answered the question in the negative. When the defendant closed his evidence, Dr. Davis was offered as a witness by the government. The defendant objected, and the jury was withdrawn. Then the court heard the testimony of Dr. Davis and Dr. Howell and Dr. Evans and Mr. McNeese, and none of them testified to any fact that the court would allow to go to the jury against the defendant."

The other three assignments of error are that the court erred in refusing to grant a new trial, for many and various reasons. Rulings on motions for a new trial are not reviewable on error. On the whole record, there is no ruling of the court below which we are authorized to review, and as, prima facie, the indictment is good, and the proceeding regular, we can grant the plaintiff in error no relief. Affirmed.

In re VON DER AHE.

(Circuit Court, W. D. Pennsylvania. February 11, 1898.)

CONSTITUTIONAL LAW—DUE PROCESS—ARREST OF PRINCIPAL BY BAIL.

The arrest of a principal by his bail is based on the relationship the parties have established between themselves, and not on any process of the court; and hence the bail may make the arrest in another state than that where the bond is given, and transfer him thereto, without infringing his right under the federal constitution to due process of law.

Habeas Corpus.

J. S. & E. G. Ferguson, for relator.

C. A. O'Brien, Richard B. Scandrett, and A. O. Fording, for respondent.

BUFFINGTON, District Judge. This is a writ of habeas corpus, sued out by Chris Von Der Ahe against Nicholas A. Bendell, commanding him to show by what right he holds the petitioner, and deprives him of his liberty. The respondent justifies his detention of said petitioner under the facts here set forth, viz.: One Baldwin had brought, in the court of common pleas No. 3, of Allegheny county, Pa., an action of trespass for malicious prosecution against Von Der Ahe. Under the laws and practice in Pennsylvania, the suit was begun by the issue of a capias, by virtue of which capias Von Der Ahe was arrested by the sheriff of said county. To procure his release from custody and avoid imprisonment, Von Der Ahe had one Nimick become his bail on a capias bond, the condition of which was that he (Von Der Ahe) "shall satisfy the condemnation money and costs, or surrender himself into the custody of the sheriff of Allegheny county, or, in default thereof, that the said W. A. Nimick, the above-named bail, will do so for him." Thereupon Von Der Ahe was released from custody. Upon trial of the case, a judgment was entered in Baldwin's favor, which was subsequently affirmed by the supreme court of Pennsylvania. 39 Atl. 7.

Under the Pennsylvania practice, the bail may, it is to be noted, discharge themselves by a surrender of their principal at any time prior to 14 days after the service of a scire facias or summons upon them, issued after the termination of the action (1 Troub. & H. Prac. § 319); and, upon the execution of the bond, "it shall be lawful for the bail therein, to have, from the officer by whom it is taken, a bail piece," etc. Act June 13, 1836, § 11 (Purd. Dig. p. 63). Von Der Ahe having failed to pay the judgment or surrender himself to the sheriff, Nimick, the bail, on February 3, 1898, took out a bail piece, which was duly certified by the prothonotary and judge of the court wherein the action was brought. By indorsement thereon, Nimick authorized Bendell, the respondent, to execute the same, and in his "behalf to take, seize, and surrender to the sheriff of Allegheny county, Pennsylvania, said Chris Von Der Ahe." In pursuance of such authority, Bendell subsequently took Von Der Ahe into custody at St. Louis, in the state of Missouri, and by force brought him to Pittsburgh, for delivery to the sheriff. Thereupon the petitioner, alleging that he was a citizen of