4 Phil. 451

[G.R. No. 2029. April 25, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CHAUNCEY MCGOVERN, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

It is charged in the complaint in this case that the defendant, Chauncey McGovern, in a criminal case against Dean Tompkins, falsely testified (1) that he was an expert in handwriting and had had a technical training in the science of the discovery of forged handwriting; (2) that he had testified as a handwriting expert in the Dreyfus, Capt. Oberlin Carter, Roland Molineaux, Fair, Dr. Kennedy, Dolly Reynolds, and other cases; (3) that he had worked as an expert in handwriting for about three years for the Sunday World; and (4) that he had examined twenty-four documents which were exhibits in the Tompkins case under powerful magnifying glasses.

The Government did not, in our opinion, prove the second of these charges, viz, that the defendant testified in the Tompkins case that he had been a witness in the Dreyfus and other cases mentioned. A statement that he had testified as an expert in the Dreyfus, Molineaux, Carter, and Fair cases was so thoroughly improbable on its face that it would at once have challenged the attention of every person present, and would have led the prosecuting attorney at the commencement of his cross-examination to inquire about his connection with those cases. The record, however, shows that the fiscal, after cross-examining the witness through fifteen pages of testimony upon subjects which had little or no connection with the case, excused him without making any such inquiries and it was not until six days afterwards, when he was recalled for further cross-examination, that the matter was gone into. That the Government did not then understand him to have positively stated that he was a witness in those cases is shown by the form of the question which was asked McGovern. The inquiry was as follows:

> "Please describe to the court what you mean by saying that you acted as handwriting expert in the Dreyfus case."

The defendant then promptly denied that he had made such a statement. His answer was as follows:

> "That I acted as handwriting expert? I did not say that.
>
> "Q. What did you say?
>
> "A. That I handled the evidence. Handled the papers which were used in evidence, and had described them."

The stenographer makes the witness say:

> "I have acted as handwriting expert *in all the important evidence* in the Dreyfus case, etc."

If McGovern had intended to say that he had testified as a witness in these cases the phrase above italicized is unnecessary and unintelligible. His natural answer would have been: "I testified af a handwriting expert in those cases." The phrase is, however, intelligible if the defendant testified, as he at the same trial claimed and now claims that he did, viz, that he had *handled*, as handwriting expert, all the important evidence in the Dreyfus case, etc.

At the first recess after this statement by the witness the stenographer, not being sure, as he says, that he had the names of the cases correctly taken, asked the defendant to write them down. This the defendant did, commencing with the same phrase, "All the important evidence." It is apparent that the stenographer misunderstood the word "handled" and in its place put the word "acted."

Moreover, the defendant both in that case and in this case, and the witness Aitken in this case, testified positively that he did not say in the Tompkins case that he had been a witness in the Dreyfus and in the other cases.

The strong preponderance of the evidence is in favor of the proposition that he did not

testify in this particular as alleged in the complaint.

The allegation that he had testified that he had worked as an expert in handwriting for about three years for the Sunday World is not proven. The stenographer's notes show that he said this: "I was also connected with the Sunday World," and later he told what he had done for the World in connection with handwriting. There was no evidence offered at this trial to show that he had not worked for this newspaper during the time and in the manner testified to by him at the former trial.

The other two specifications of the complaint as to his evidence at the former trial were, we think, proven. It remains to consider whether the Government proved also that they were false.

The Government offered no evidence to show that the statement that he had a technical training in the science of handwriting was false. It did not attempt to prove that he had not had the training and experience which in the Tompkins trial he testified that he had had.

To prove that he falsified when he testified that he was a handwriting expert, the only evidence offered was that of Dr. Dade, who testified as follows:

> "He finished it and Mr. McGovern tunned around and started talking about the case that morning. I did not want to hear anything about it, as I was certain that Mr. McGovern took a different view from what I did, and I turned around to go out. In the meantime I saw that Mr. McGovern was getting out a box of cigars and I did not care to walk out when he wanted to extend hospitalities, and so I stopped for a moment and he laughingly said to me, 'Why, they took my testimony seriously this morning. I am no expert on handwriting. I went on as a joke.'"

McGovern denied that he made this statement. He says that the interview between himself and Dr. Dade occurred within two or three hours after he left the stand; that he was very much excited over the testimony which he had given that morning; that Mr. Harvey had asked him several questions about microscopes used by handwriting experts and how many times they would magnify and also about the Fair will contest, and he had not been prepared for such questions, and he said to Dr. Dade:

> "Those are two bad mistakes I made this morning on the stand, but in evidence six years old a man is liable to forget small details, but I am no expert in comparison with Carvalho and Tipton, and I said, 'That was a pretty good joke I had on Harvey this morning. He thought he had me when he asked me those questions that led up to the question on chirography; and when I answered him he seemed to be much taken aback because I answered so correctly.' Neither Dr. Dade nor Major Atkinson were intimately acquainted with me at that time."

There are several reasons why this testimony of Dr. Dade was not sufficient to convict the defendant of perjury. In the first place, it is denied by the defendant, and we have, therefore, the testimony of one witness against the testimony of another. This is not sufficient to prove perjury where the circumstances, so far from supporting the Government's witness, rather indicate that McGovern intended to be understood in his conversation with Dade as he now claims that he did. It is improbable that at once upon retiring from the stand after such an examination as he had been subjected to that he would state to a person who was not an intimate friend of his, that all that he had testified to was false.

But assuming that Dr. Dade is correct in his testimony, we then have two conflicting statements of the defendant: One under oath, in which he said that he was an expert, and the other not under oath, in which he said that he was not an expert. We can not tell which of these is true, and the circumstances under which the second statement was made rather indicate that his sworn statement was the true one.

In any event, in this particular case, and treating of an expert in handwriting, the statement that he was such an expert is a statement of a mere opinion, the falsity of which is not sufficient to convict the person making it, of perjury. In judicial trials the mere affirmation of a witness that he is an expert in handwriting is of no value. Upon such statement he is not allowed to testify as an expert. He is required to give the experience which he has had in the art in question. The judge then decides whether he is or is not an expert. This was the procedure followed in the Tompkins case. McGovern stated at considerable length what experience and practice he had had. None of these statements have been proved to be false. McGovern has never said that any of them were untrue. Upon such statements the judge trying the Tompkins case decided that McGovern was an expert, and he made that decision not upon the declaration of McGovern to that effect but upon the other facts testified to by him, the truth of which is not controverted in this case. Under these circumstances the bare

statement of McGovern made out of court, that he was not an expert, is not sufficient to convict him of perjury.

McGovern testified at the Tompkins trial that he had examined twenty-four of the documents used in that case with powerful magnifying glasses. That the defendant examined these documents with magnifying glasses is not disputed. The glasses were in court during the cross-examination of this defendant in the Tompkins case. The Government claims, however, that they were not "powerful" magnifying glasses. The word "powerful" is a relative term, and there is no evidence in this case to show its meaning, or to show how many diameters a glass must enlarge an object in order to be called a powerful glass. The only evidence on this point which the Government presented was that of Dr. Dade, who said that the glasses used by McGovern were from an Army surgeon's optical case, being Nos. 8, 10, and 20; that they magnified to a certain extent, as they were for nearsighted persons, but to what extent they magnified he did not know. McGovern, in the Tompkins trial, testified that the No. 8 in his opinion magnified about two diameters, the No. 10 about three, and the No. 20 about four or five. In this trial he testified that they magnified from one to five diameters. That is all the evidence there is in this case relating to the power of these glasses, and we can not say that the Government has proved that McGovern's statement that they were powerful magnifying glasses was not true.

The judgment of the court below is reversed, and the defendant acquitted, with the costs of both instances *de oficio*.

Arellano, C. J., Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

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