

*State v. David*, 49 N.C. 353 (1857)

Where a female slave was in the act of resisting the rightful authority of her master, another slave, her husband, who approached with the intention of violently aiding the resisting slave, heedless of the consequences, and did give such aid as made it necessary for the master to turn his force upon him, by which he was exposed to a fatal blow from the principal, such interfering slave, as well as the principal, is guilty of murder.

There is no analogy to be drawn between cases where a free person is on trial for homicide, and a slave for slaying his master.

The proper rule of practice is, for the party having the right to conclude, to open the argument. The opposite party then replies, and the former again replies in the way of conclusion.

INDICTMENT for MURDER, tried before his Honor, Judge MANLY, at the Spring Term, 1857, of Pitt Superior Court.

The charge in the bill was, that a female slave, Fanny, feloniously assaulted and killed one Abner F. Griffin, and that the prisoner and another slave, Mack, were present, aiding in the homicide.

The deceased had been employed by the owner of these slaves as an overseer, on a plantation in Pitt County, and the accused slaves, and divers others, were in his charge, and had been, for about two months.

Franklin Bell, a witness for the State, stated, that on the evening of the homicide, he and his father visited the plantation where the deceased superintended, and got there about dark. On approaching the house, he saw a negro boy riding off a horse, and mentioned it to the deceased, who went out to enquire concerning it. He was referred by one of the slaves to the house of Fanny and David, for information. Getting a light, he proceeded to the house where David and his wife, Fanny, lived, and called upon him to know where the horse was. Fanny, who had followed David out of the house, answered, that she had sent him off. Upon further enquiry, she said she had sent after an old woman. Deceased told her she ought to have asked him about it; to which she replied, that her master had permitted her to do so, and she intended to do it, as long as there was a horse on the plantation. The deceased said he suspected it was a jug of liquor she had sent for; to which she replied, "it was a very big jug, and he would see when it came." The deceased said he had a great mind to whip her for her impudence; she said he would not whip her that night. The deceased then took a rope out of his pocket, and told her to cross her hands. She said she would not. Deceased said if she did not, he would knock her down. She still refused, when he struck her with a stick, which he had in his hand. She threw up her arms and received the blow upon them. David, who was standing about twelve feet off, then advanced and said, "you ain't got to do so," or "you must not do so here." The witness did not see that he raised his arms. As he approached, the deceased turned from Fanny, and struck David a blow on the head with his stick, which brought him nearly, or quite, to the ground. About the time the deceased struck David, Fanny struck him on the head with a pine-knot, or stick of light-wood, which knocked him down. After the deceased fell, the boy, Mack, who had been standing at the door of the cabin, out of which the three had come, came forward with an axe, and said, "clear the way."

The witness got over the fence to where the parties were--drew a pistol, and told Mack to go back into the house, or he would shoot him, whereupon he did go back into the house. Witness then turned to the others; the deceased was still down on the ground, and David had one knee on the ground, as if in the act of rising; his right hand was on the handle of a maul, and his other upon something which witness did not describe. Deceased had no other weapon than the stick already mentioned.

Another witness for the State, Mr. Baker, stated substantially the same things.

Violet, a slave belonging to the same plantation, testified that she heard the prisoner, Fanny, say, some short time before the homicide, that if the overseer tried to whip her she would fight him.

The prisoner offered no evidence, and his counsel claimed the conclusion. The Attorney General conceded his right to conclude, but insisted on his opening the case, and stating the grounds of his defense. This was objected to by defendant's counsel, but the Court ruled the point against him, and he opened the argument, as well as concluded it. Defendant excepted to this ruling of the Court.

The defendant's counsel contended:

1st. That according to the testimony, David was not guilty.

2nd. That to convict David, the State must show a common purpose between Fanny and David, and that the blow was stricken in pursuance of that purpose.

3rd. That if the blow was not preconcerted, but was given by Fanny upon a sudden impulse, and David was not cognizant of her intention to strike, he would not be guilty.

4th. That if all the parties had been free, Fanny would be guilty of manslaughter only, and David would not be guilty at all.

The Court charged the jury, "that the law of slavery is absolute authority on the part of the owner, unconditional submission on the part of the slave. The master may punish his slave at will, and the manner and degree must, in general, be left to his own judgment and sense of humanity, with the restriction that he cannot kill.

The overseer, to whom the master delegates the management of a plantation, and as incidental thereto, the conduct of the slaves, would be in the place of the owner, and in the absence of any restriction of his power, he would occupy precisely the same relations of privilege and responsibility. Applying these principles to the transaction before us, I am of the opinion the overseer had full power to punish the woman for her insubordination and impudence; and resistance to his rightful privilege was rebellion in her. If, in making such resistance, she struck a blow with a deadly weapon, (a stick calculated to do great bodily harm,) it was a case of murder."

“Such is the law in respect to the principal actor in the commission of this homicide. The rule with respect to the principals in the second degree, is that, all persons who are present at the commission of the crime, aiding and abetting its commission, are guilty also.

An intention to kill is not necessarily involved in a criminal homicide. A purpose to assist another with violence, and under circumstances that must necessarily result in death, or some great bodily hurt, is sufficient to characterise a killing, thus occurring, as murder.

If, therefore, David, when he approached the deceased, intended to assist the woman in resisting him, and to do so by violence, if needful, reckless of the consequences, he also would be guilty of the blow struck by the woman in the prosecution of the purpose, and will be guilty of murder.

But if no such purpose was entertained by David, at the time he advanced upon the deceased; if, in other words, he was not present as an aider and abettor, he would not be guilty.”

“A common purpose or intent was requisite, but it was not necessary that the purpose or intent should be preconceived for any particular length of time; it is sufficient if it had been formed, and was entertained and acted on at the time of the fatal blow.”

The defendant's counsel excepted to this charge.

The jury found Fanny and David guilty of murder, and Mack not guilty. Judgment and appeal by David.

Attorney General, for the State.

Rodman, for defendant.

PEARSON, J.

We fully concur in the instructions given by his Honor. The threat of Fanny, a short time before, to fight the overseer, if he attempted to whip her--the relation of the parties, and their conduct at the time of the homicide--was evidence tending to show a preconceived purpose on their part to resist the overseer, if he should attempt to whip Fanny. The jury having negatived this fact by the acquittal of Mack, we are to assume that there was no such preconceived common purpose. But in respect to the prisoner, David, we are to assume from the verdict that he approached the deceased with an intention to assist Fanny in her resistance, and to do it by violence, if need be, reckless of the consequences.

We are of opinion that this intention, accompanied by the overt act of advancing upon the deceased, although formed at the instant, and not preconceived, brings upon the prisoner the guilt of murder. Resistance to the master is a species of petit treason, and the mind of a slave who commits it, must be wrought up to desperation, and “fatally bent on mischief.” The master not only has the right, but it is his duty, to overcome it at all hazards. The slave knows this, and the spirit of insubordination that raises an arm in resistance, must be reckless of the consequences. If, in this state of things, another slave advances with an intention to take part, and aid in such

resistance, he is alike desperate, and fatally bent on mischief. If the prisoner had caught the deceased by the arms, and held him, while the woman struck the fatal blow, his guilt could not be questioned. His interference produced the same result. By his approach it was made necessary for the deceased to turn and strike him. Thus the deceased was put off of his guard, and exposed to the blow. The accident that the prisoner was knocked down and disabled at the outset, can in no wise relieve him of the consequences of his unlawful act.

It is unnecessary to say how far the prisoner's guilt would have been mitigated, had the deceased been in the act of inflicting upon the woman any grievous or cruel injury, because there was no evidence that such was the case; on the contrary, the deceased was doing no more than what he ought to have done much sooner.

Unconditional submission on the part of slaves must be exacted. If, while one is in the act of resistance, another may come up and give aid, without involving himself in the guilt, the consequences would be awful.

His Honor very properly refused to permit any analogy to be drawn from the law in regard to free persons. It could furnish none in reference to the guilt of slaves where life is taken in the act of resistance to the master.

We agree with his Honor in regard to the rule of practice which he enforced, and to which the prisoner's counsel excepts. As the prisoner offered no evidence, he was entitled to the conclusion, but it was proper that his counsel should be required to state the grounds upon which a conviction was resisted, in order to give the counsel for the State an opportunity of replying to it. Common fairness suggests that this is the proper course. Otherwise the State would be taken wholly at a disadvantage, and the prisoner's counsel might suggest views of the case, and draw inferences from the evidence, which would go to the jury unanswered, unless the presiding Judge should feel himself called upon to notice them. This would be objectionable. The proper rule is, that the party having a right to conclude, opens the argument; the opposite party then has an opportunity to reply, and he, in his turn, may reply, by way of conclusion. There is no error.

PER CURIAM. Judgment affirmed.