

**STATE V. EDINS, 1920-NMSC-014, 25 N.M. 680, 187 P. 545 (S. Ct. 1920)**

**STATE  
vs.  
EDINS et al.**

No. 2421.

SUPREME COURT OF NEW MEXICO

1920-NMSC-014, 25 N.M. 680, 187 P. 545

February 02, 1920, Decided

Appeal from District Court, Chaves County; S. G. Bratton, Judge.

Steve Edins and Aubrey Calley were convicted of voluntary manslaughter, and they appeal. Reversed and remanded, with directions to award a new trial.

**SYLLABUS**

**SYLLABUS BY THE COURT**

The production in evidence before a jury of an admission outside of court, by counsel for defendants, that in his opinion, unless a certain fact could be shown, his clients would be convicted, was inadmissible and highly prejudicial and requires a reversal.

**COUNSEL**

E. P. BUJAC, of Carlsbad, J. C. GILBERT, of Roswell, and JOHN B. HOWARD, for appellants.

O. O. ASKREN, Atty. Gen., and N. D. MEYER, Asst. Atty. Gen., for the State.

**JUDGES**

PARKER, C. J. ROBERTS and RAYNOLDS, J.J., concur.

**AUTHOR: PARKER**

**OPINION**

{\*680} {1} OPINION OF THE COURT PARKER, C. J. The defendants were indicted for murder and convicted of voluntary manslaughter. It appears that defendants went to the home of the deceased, and the defendant Edins announced to the deceased that he

should consider himself under arrest; this defendant claiming that the deceased had robbed his house of certain articles of merchandise, some of which were found upon the premises of the deceased. The deceased submitted to the arrest, and the defendant Edins told his codefendant, Aubrey Calley, to take charge of the prisoner while he (Edins) searched the premises. Thereupon the deceased refused to allow the search and started toward the door of his tent, when the defendant Calley approached him and forbade his entering into his tent. Thereupon the shooting commenced, and in the controversy the deceased was killed by the defendant {\*681} Calley. It appears from the testimony that the defendants had no authority to either arrest the deceased or to search his premises; they never having been deputized or authorized by the sheriff to exercise the functions of a peace officer. During the examination of one J. N. Hewitt, sheriff of Eddy county, the following occurred: "Q. Isn't it a fact, in the Gilder Hotel, night before last, Major Bujac came to you with tears in his eyes and told you unless you would swear that you gave this defendant, Steve Edins, a commission, that they were a bunch of blowed-up suckers?" (This question was not answered.)

"Q. You didn't give him a deputy sheriff's commission at any time? A. No, sir.

"Q. And he was trying to get you to swear something that was not true? A. Yes, sir."

{2} Upon redirect examination the following occurred:

"Q. Did I ask you if the facts were that you had deputized Steve, and you said that you had not? My question was, 'Mr. Hewitt, did you deputize Steve Edins?' and you said you did not, and I said, 'Then you can't swear that?'" (An objection to this question was sustained.)

"Q. Did I tell you all I wanted was whatever the truth would be in the case, and if he was not deputized, why he was not deputized? A. Yes, sir.

"Q. Then I did not ask you to swear a lie, did I? A. You asked me if I could swear that I had deputized Steve Edins.

"Q. And you said you could not, and I bid you good night? A. Yes, sir.

"Q. And that was all there was to it? A. Yes; that is a fact; yes, sir."

{3} Upon recross-examination by the district attorney the following occurred:

"Q. He said if you didn't do it they were a bunch of blowed-up suckers?"

{4} Proper exceptions to this question were preserved, but the court overruled the objection. Then the examination proceeded:

"Q. Did he, Mr. Hewitt? A. Yes, sir."

{\*682} {5} Counsel for appellant strenuously urge that this testimony was inadmissible and highly prejudicial to the defendants. In this contention they are evidently correct. The statement attributed to Major Bujac, of counsel for defendants, if true, was made by him without the presence of the defendants, and so far as the record discloses, without their knowledge or consent. Statements by counsel, without the knowledge or authority of his client, in expressing an opinion as to the prospects of acquittal or a conviction of his client, are no more admissible in a court of justice before a jury than would the same statements be if made by a stranger.

{6} That the evidence was highly prejudicial to the defendants is apparent. The production before the jury of such an admission by counsel absolutely closed the door between him and the jury, so that he must have been unable to argue to them the innocence of the defendants from any standpoint whatever.

{7} Other errors are assigned, but they are of such a character that they will probably not occur at a retrial of the case.

{8} For the reasons stated, the judgment of the trial court should be reversed, and the cause remanded, with directions to award a new trial; and it is so ordered.

ROBERTS and RAYNOLDS, J.J., concur.