STATE V. CRANFILL, 1929-NMSC-103, 34 N.M. 449, 282 P. 819 (S. Ct. 1929)

STATE
vs.
CRANFILL

No. 3444

SUPREME COURT OF NEW MEXICO

1929-NMSC-103, 34 N.M. 449, 282 P. 819

December 21, 1929

Appeal from District Court, Curry County; Hatch, Judge.

Martin Cranfill was convicted of selling whisky and keeping said liquor for sale, and he appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. Information for sale of whisky and keeping it for sale, under section 1, c. 89, Laws of 1927, need not negative the exceptions mentioned in the statute.

2. Proof that article sold was whisky and intoxicating not only serves to identify the liquor, but also is evidence of the fact that it was not any one of the other and different kinds of liquor contained in the exceptions to the statute.

3. Section 18, art. 6, Constitution of New Mexico, does not disqualify district judge from presiding at trial for violating liquor law, although he heard and granted application for search warrant under which defendant's premises were searched for liquor.

4. The fact that whisky is intoxicating liquor is one of common knowledge, and expert testimony is not required to prove it.

COUNSEL

Fitzhugh & Fitzhugh, of Clovis, for appellant.

M. A. Otero, Jr., Atty. Gen., and E. C. Warfel, Asst. Atty. Gen., for the State.

JUDGES

Simms, J. Bickley, C. J., and Watson, J., concur. Parker and Catron, JJ., did not participate.

AUTHOR: SIMMS

OPINION

*{*450}* **{1}** OPINION OF THE COURT Under an information in two counts, charging (1) sale of intoxicating liquor, to wit, whisky, and (2) keeping it for sale, appellant was convicted.

{2} The information was drawn pursuant to section 1, c. 89, Laws of 1927, and in each count it charges that such intoxicating liquor (whisky) was not denatured or wood alcohol or grain alcohol intended for medicinal, mechanical, or scientific purposes only, and was not sacramental wine. Appellant says the state failed to prove these exceptions, and thereby failed to make a case, and the court was in error in not granting a peremptory instruction.

{3} We have held that such exceptions need not be negatived in drawing the information. State v. Snyder, 30 N.M. 40, 227 P. 613.

{4} The witnesses for the state testified that the liquor they bought was whisky, and intoxicating, which not only is evidence of what it was but certainly is evidence that it was not any one of the excepted things named in the statute. We perceive no merit in appellant's contention.

{5} Next appellant contends that the trial judge had no right to preside because two of the prosecuting witnesses had appeared before him and given testimony for the purpose of obtaining a search warrant, and, in hearing such testimony and allowing the search warrant to issue, the trial judge had "presided in any inferior court" in the trial of the same case, contrary to the prohibition of section 18 of article 6 of our Constitution. The contention *{*451}* seems so clearly devoid of merit that we overrule it without discussion.

{6} Finally appellant complains that the trial court permitted the state to prove by a witness that the liquor in question was whisky and intoxicating, without first having qualified the witness as an expert whose opinion might be received. It has been repeatedly held that the intoxicating nature of whisky is a matter of such common knowledge that expert testimony is not necessary to establish it. State v. Snyder, supra. See, also, 16 C. J. "Criminal Law," p. 751, and cases cited.

{7} Finding no error in the judgment, we conclude that it should be affirmed, and it is so ordered.