Hillsboro' Jany 25th 1870

Hon. A. W. Tourgee

Dear Sir

I received your letter of the 24th inst. this morning, and reply at my earliest convenience as requested.

I have regretted to see the comments made by some of our public journals, upon your action in the case alluded to by you; because I thought at the time, and I still think, it was right and proper. The facts in the case are, as I recollect them, that Dennis Haines (colored) was indicted at Spring Term 1869 for Larceny. The State introduced Mr James Parks of this place, as a witness, who proved that some months before, his house of business was entered, and a pair of Boots, shoes, leather and other articles were stolen therefrom. That he had never seen or heard of any of the articles since except the Boots, which he had recovered, & had only heard of them some four or five weeks after the stealing. Mr A. W. Clark was then next introduced by the State,

who proved that some three or four weeks after the making of the Larceny, being in the City of Raleigh, he saw the Boots, identified by Parks, in the Store of Mr Upchurch, & recognized them as the Boots lost by Parks, and upon returning to Hillsboro he reported this fact to Parks — Mr Upchurch proved that on or about the day which recognized the Boots the Defendant Dennis Cain brought the Boots to him, openly and in the day time & pawned them to him for $5, saying that he was on his way down the Country, and as he returned, if he had the money he would redeem them — The boots were worth $9 — before defendant returned they were delivered to Mr Parks — This was the case for the State — no evidence was offered by the defendant & the case was submitted to the Jury under the charge of your Honor —

The charge of the Court was to the effect, that the only evidence against the defendant was his possession of the boots several weeks after the Larceny, and that the lapse of time between the Larceny & his so being found in possession of the stolen goods, did not raise such a presumption in law of his guilt as would justify a verdict of guilty in the absence of any other testimony —

The Jury returned a verdict of "Guilty" whereupon I as Counsel for the defendant moved the Court to set aside the verdict, and grant the defendant a new trial on the grounds that it was against the charge of the Court & that there was not sufficient evidence to sustain it — This was done and the defendant bound in his own recognizance to appear at the Fall Term of the Court to answer — The Court also directed that if at the next Term no further evidence could be introduced by the State, that the Solicitor enter a Nol. Pros: — At Fall Term the case was again called for trial, Counsel having been retained to appear with the Solicitor — It was announced by the State that additional evidence had been obtained, and the second trial was had — The State introduced Mr Parks Mr Cheek & Mr Upchurch who all proved what they had proved on the former trial, neither more nor less — Washington Day (colored) was then called by the State and asked if he knew the defendant he said "he did" [illegible] then asked if he knew how he made his living [illegible] "he did not" — This was the only additional testimony [illegible] that given on the first trial — The case was then argued by Counsel & submitted under the charge of the [illegible] which was in substance the same as in the first trial [illegible] The Jury after retiring returned with a verdict [illegible] "Guilty" — I again moved the Court to set aside [illegible] and grant a new trial for the reasons [illegible]

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former Trial. And in reply to the State, I remarked that the fact of another Jury having convicted the defendant on the same evidence should not weigh with the Court if the conviction was an improper one, for that it was as much the duty of the Court to protect the innocent, or those not convicted according to the law & the evidence, as it was to punish the guilty.
I also said, that I was afraid that prejudice, unknown to the jurors themselves, had entered the Jury box, for that I did not believe a white man would have been convicted upon the evidence in the case, + under the same charge from the Court. I may have been wrong in my opinion of the law, as applicable to the case, but I thought I was right then, and I am of the same opinion still.
Your Honor after hearing the motion argued, promptly set aside the verdict & granted the defendant a new Trial, and in so doing did what, I think, was eminently right and proper.
I have written this statement hastily, but think I have omitted no material fact. My own endorsement was as I have stated above.

Very respectfully
Your Obt Servt
Henry R. Nash

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