

**START**

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**CASE**

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I N D E X.

Witness.

Direct. Cross. Re-D. Re-C.

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FRED P. BALLINGER,

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CASE # 1521

#163v

COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York, Part II.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

LAWRENCE WHITE.

: Before:

: HON. EDWARD SWANN, J.,

: and a jury.  
-----X

New York, April 4th, 1912.

Indicted for robbery, in the first degree, etc.

Indictment filed

A P P E A R A N C E S:

For the People: ROBERT C. McCORMICK, ESQ., Assistant  
District Attorney.

For Defendant: GEORGE SIMPSON, ESQ.

(A jury is duly empanelled and sworn.)

(Mr. McCormick opens to the jury in behalf of  
the People.)

FRED P. BALLINGER, called as a witness in behalf  
of the People, being first duly sworn, testifies as  
follows:

THE COURT: I would like to ask you in regard to the  
necessity for staying here, possibly. Do you object to  
that, Counsellor?

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MR. SIMPSON: I shall object strenuously to that, although you may ask him quietly what you wish to ask him, Your Honor.

THE COURT: Very well, it has nothing to do with the merits of this case.

MR. SIMPSON: I do not know the effect of it upon this jury, whether it has merit or no merit.

BY THE COURT:

Q Doctor, do you feel that you cannot wait over until Monday to try this case? A Yes, sir, this weather gives me a cough. I left once before just on account of my lungs. From this injury I had an adhesion and I left before by the advice of physicians, and I began coughing when I came down here this time.

Q Do you feel that with this air on the eastern seaboard you cannot stay here? A Yes, sir.

Q You have to go west? A Yes, sir.

MR. SIMPSON: I object to that line of questioning in the presence of the jury, and I except.

THE COURT: It has nothing to do with the merits. It is merely for the doctor to state under oath whether or not he felt he could not remain over until Monday. It has nothing to do with the guilt or innocence of the defendant.

MR. SIMPSON: I object to your Honor's statement in the presence of this jury, on the ground that whether this

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man was going to stay here or go away, for whether it is convenient for him to stay here when he is a witness on behalf of the People --- it is not a question of his convenience at all.

THE COURT: It is now half past four. It is merely for the purpose of informing the Court whether or not to continue the case at this late hour, or whether to adjourn it until Monday, that was all.

MR. SIMPSON: Exception to your Honor's remarks.

THE COURT: Yes.

MR. SIMPSON: I object to any remark about this disability about his.

THE COURT: You have excepted, have you not?

MR. SIMPSON: I may get another objection in, and another exception.

THE COURT: What do you mean? You know there is a limit to the great patience which I uniformly display. If you mean that the judge cannot utter a word without your taking an exception, you do so at your peril.

MR. SIMPSON: Your Honor realizes thoroughly that I do not mean anything or say anything to your Honor that would in any wise ---

THE COURT: I don't know what you mean, but the modern method of certain lawyers of making insulting remarks to

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the Court, and has been done all of to-day, has got to stop. I have made all allowance for counsel. The pressure that they are under in trying a case, I appreciate -- I thoroughly appreciate it. I was at that side of the Bar myself. But there is some limit to that, and you have reached that limit. Whenever you have any reason to object, you put it upon the record, that is your right.

MR. SIMPSON: Now, may I interpose an objection to your Honor's remarks regarding my behavior before the Court?

THE COURT: Proceed.

MR. SIMPSON: Exception.

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you live? A Council Bluffs, Iowa.

Q Where were you on the 22nd of November 1911? A I left St. Bartholomew's Hospital, at 42nd street, about 10:15, or 10:30, and took a car.

Q Where were you about one o'clock on the morning of the 22nd? A On Seventh avenue and 41st --- on 40th street.

Q Did you meet any one there? A Yes, sir.

Q At that time were you with anybody before you met anybody else? A Yes, sir.

Q Who was it? A Mr. Warren.

Q Did you meet any one there? A Yes, sir.

Q Who was it? A Two men strangers to me.

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Q And did you go any place with them? A Yes, sir.

Q Where? A Across the road to a saloon.

BY THE COURT:

Q Were you intoxicated when you met them? A No, sir.

BY MR. MCCORMICK:

Q Had you had anything to drink that evening? A I had probably had between 10:30 and that time -- I had had dinner -- possibly five or six small glasses of beer; that's all.

Q What kind of beer? A Pilsner, imported beer.

Q Where did you go with these two men you met on the street? A Across the road to the saloon to get change to give them money to get a lunch with.

Q Tell the circumstances under which you met these two men?

A They stopped me on the street and asked me to give them change for a lunch, something to eat --- and I didn't have the change, and I told them so, and one of them says, "Well, you can get it across the road"; and they took me across the road into this place where this defendant was proprietor, and when I got in there the lunch counter was closed up, and one of them said, "Captain, make that a beer, will you?", and I said, "Yes." And while we sat at this table ---

Q Where was this table? A It was in the same room that the bar was in.

Q How many persons sat down at the table? A Four men.

Q Who were they? A Myself, Mr. Warren and the two strang-

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ers.

Q How many other people at that time were in the bar-room? A I think there was two men, when we went in, but they went out.

Q When they went out that left you four men and the defendant? A Yes, sir.

Q Who was tending bar? A Yes, sir.

Q What then happened? A Three men came in.

Q Now, first, did you buy a drink? A Yes, sir.

Q Tell us about that? A The men ordered beer. Each man took a glass of beer and I paid for it.

Q That was twenty cents, wasn't it? A Yes, sir.

Q Did you hand this defendant any money? A Yes, sir.

Q What? A I gave him the change.

Q What money did you hand him? A Well, I can't tell whether --- just the exact change, or, I think it was the exact change, because I was to give these men fifteen cents apiece.

MR. SIMPSON: I move to give out what he was to give these men.

THE COURT: Motion granted.

Q After you paid the defendant for the first few drinks, and you four men were sitting at that table, what was the next thing happened? A Three men came into the room, spoke to the bartender and spoke to these men, walked up to the table.

Q What men? A These two strangers.

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Q Go right on and tell all that happened? A I said, to those men, "Are these friends of yours," and they said yes.

BY MR. SIMPSON:

Q Whom did you speak to?

MR. McCORMICK: Wait, you can cross examine later. I object to his breaking in on the examination of this witness.

BY THE COURT:

Q Was the defendant present? A Yes, sir.

THE COURT: Objection overruled.

BY MR. McCORMICK:

Q Who was it you said that to? A These two strangers that took me in. I said, "Are these friends of yours?" They said "Yes", and I said, "Will you have a glass of beer?" They said yes. They sat down at the table.

Q Did you order any beer? A Just ordered the beer for them, yes, sir.

Q Three beers? A Three beers.

Q Then what happened? A Well, when I say three beers, we had just finished our beer and these men came in and I ordered just another round.

Q Then you ordered seven? A Seven beers, yes, and they sat down to the table, and the bartender came up and said, "Pay for these drinks." I said I had paid for the first one, and he said I had not. Just then one of these gentlemen came

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in and made some remark.

Q One of the three who came in? A One of the three that came in made some remark.

Q What was it? A I can't recall, what, but it was something about "Why don't you pay for the drinks?". Mr. Warren the gentlemen with me spoke to him, and he immediately struck Mr. Warren.

BY THE COURT:

Q Who was this? A One of the three men which walked in.

Q Was the defendant present? A Yes, sir, and I saw him knock Mr. Warren down. I saw Mr. Warren's face and nose bleeding, and I supposed that Mr. Warren had started ---

MR. SIMPSON: I object.

THE COURT: Objection sustained. Never mind about the supposition. Just tell us what you absolutely saw?

Q Just tell us what you absolutely saw? A I saw Mr. Warren get up and walk out as I suppose ---

MR. SIMPSON: Objected to.

Q Don't you know whether he walked out or not? A No, sir. I supposed he had because I immediately started for the door myself.

Q He walked in that direction, did he? A No, sir. He walked for the front door and I tried to get out the side door.

MR. SIMPSON: No objection.

BY MR. McCORMICK:

Q Did you have some conversation with this defendant? A No,

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sir. I got up then and started to go to the door, and he said I had not paid him. I threw him down a two dollar bill. I got no change back and when I got as far as the door one of the three men ran up to me and struck me in the face, and as I was getting away from that man this man struck me in the side of the face.

Q Which man? A This man, the defendant. He struck me on this side of the face, indicating left side of face.

Q What with? A With his fist.

Q Then what happened? A Then they all jumped on me.

Q Did anybody hit you on the head with anything?

MR. SIMPSON: I object to that as leading and the District Attorney knows better.

THE COURT: Yes, objection sustained.

Q Tell us from beginning to end? A This man struck me first.

Q Which man? A The defendant struck me on the side of the face and then they all kind of --- some one hit me over the head and I got sick at the stomach and weak at the knees, and I fell to the floor, but not unconscious; and then they began stamping me, and they broke a couple of my ribs and then I lost consciousness. The next thing I knew I was out on the sidewalk.

BY THE COURT:

Did you say anything to them just as you were about to

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leave? A No, sir, I was unconscious.

Q No, but just before the defendant assaulted you as you say? A Nothing, only he said I had not paid him, and I threw down a two dollar bill, and I was immediately attacked afterwards.

Q Did you have any quarrel as to whether or not you had paid your bill? A Nothing at all, only as I have stated. He said I had not paid it, and I told him I had, and the other man started the trouble at once.

Q Did you call him a liar or something of that sort? A No, sir.

Q Did you abuse him? A No, sir, I said nothing at all.  
BY MR. McCORMICK:

Q What is the next thing that happened? A I came to on the sidewalk. I got up and I walked up 41st street to 42nd street, and I met an officer.

Q How were you walking, erectly? A No, sir, I was bent over.

Q Show us? A I was walking about in this direction (indicating with head and body bent well forward), and I met an officer and asked the officer to call an officer, which he did, and sent me down to the hospital.

Q How long did you stay in the hospital? A I was about three weeks altogether. I was down to Bellevue, and then up to the Polyclinic nineteen days or three weeks.

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Q When was the next time that you saw this defendant?

A When I was up at the Polyclinic they brought him down there for identification.

Q Answer the question. A Two or three days possibly; I am not clear.

Q Who came with him to the hospital? A Officer Marrin, a detective.

Q Did you say anything or did the defendant say anything to you upon that occasion? A No, sir, I just merely identified him.

Q You must have said something? A I said, "That is the man that struck me."

Q What is your business? A Practicing medicine.

Q Where? A In Iowa, Council Bluffs.

Q How long had you been in New York on that occasion? A I had been probably three to five weeks.

Q What had you been doing that night? A That night?

Q That evening? A I had been over to St. Bartholomew's Eye & Ear, Nose and Throat work, to do some work; I had examined some cases over there.

Q When you went in the saloon did you have anything that you did not have after they assaulted you, did you lose anything? A Yes, sir, I lost about fifteen to twenty dollars in cash and about a seventy-five dollar overcoat.

Q Where was the cash? A In the pocket of the overcoat.

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Q Which pocket? A I can't say that.

Q Now, you have told the whole story, haven't you? A Yes, sir, I think so.

Q You don't remember anything that you have left out, do you? A I don't remember anything.

CROSS EXAMINATION BY MR. SIMPSON:

Q I have examined you before, haven't I? A I think so, Mr. Simpson.

BY THE COURT:

Q Before the city magistrate? A I think so, sir.

BY MR. SIMPSON:

Q You say you are a practicing physician? A Yes, sir.

Q When were you admitted to practice? A About --- I graduated up at the University at Albany -- Medical Department-- in 1880.

Q When were you admitted to practice? A At that time. I think I was registered in this State in 1881 when the law passed.

Q Registered in 1881? A I think so, or in 1882, whenever that law passed, directly afterward, in New York State.

Q How long were you a resident of New York before you went to Council Bluffs? A I was born here and resided in the northern part of this state.

Q How long were you a practicing physician in the City of

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New York, before you went to Council Bluffs? A Not in the city.

Q In the state? A About two years.

Q Then I take it for twenty years you have been a resident of Council Bluffs? A Better than that, twenty-eight years.

Q How often do you come to New York? A I have been here,-- I think this is my third or fourth post graduate course here.

Q On the morning of November 21st, 1911, I want you to tell his Honor, and these gentlemen of the jury, your movements for the day; taking us from the early afternoon of November 21st, if you will? A Well, at that time all days were about alike; I was taking a special course down at the --- a special course of operative surgery at the Morgue, foot of 26th street. The rule was that we had to be there at eight o'clock in the morning. We worked there until one or two, then I would go up to the Polyclinic, and I had a friend here at that time.

BY THE COURT:

Q Speak of that particular day? A I am, your Honor. This particular day. And I went up to the Polyclinic.

BY MR. SIMPSON:

Q How long did you remain at the Polyclinic? A I can't say that -- probably about an hour or two.

Q What time would that leave you? A I left the Morgue I think that day, about two or three o'clock.

Q After three o'clock where did you go? A I then went up to the Polyclinic, and then up on Broadway to the Western Union

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Telegraph Office.

Q What time did you get away from the Western Union Telegraph Office? A Well, I should say about four o'clock, - pretty late.

Q Up to that time had you taken any drinks? A No, sir.

Q Absolutely nothing? A No, sir.

Q Was Warren with you? A Not all the time.

Q What part of the time was Warren with you? A Along in the afternoon.

Q What time of the day along in the afternoon? A I should say between three and four o'clock, about four o'clock.

Q Where did you meet Warren? A I met him at the Morgue.

Q By the way, Warren is a newspaper man, isn't he? A Yes, sir.

Q How long had you known Warren before that day? A Oh, quite a while -- ever since I have been here -- say three weeks.

Q Been congenial companions for three weeks? A Well, I only saw him in the mornings.

Q Did you ever see him late at night and early mornings? A No, sir. I saw him in the morning as he came down there to report, --- or get his report.

Q What time did you pick up with Warren? About four o'clock, you say? Between three and four o'clock? A Sometime along there.

Q When you picked up with Warren did you have any drink?

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Q Where did you go after that? A I had no dinner that day. I came downtown and had lunch.

Q At what time? A About, I should judge four o'clock, or half past four.

Q Was Warren with you? A Yes, sir.

Q And what lunch room did you go to? A We went down on 14th street. I went down to get some fish at Luchow's.

Q While at Luchow's, how much drink did you have? A Probably a couple of glasses of Pilsner beer.

Q No whiskey? A No, sir, I don't drink whiskey.

Q You are sure you don't drink whiskey? A Quite positive.

Q And you had no whiskey that day nor the next morning?  
A No, sir.

Q What did Mr. Warren have? A Mr. Warren drank, I think, nothing but beer.

Q While in Luchow's, how long did you remain there? A Just long enough for dinner, probably three quarters of an hour --- or lunch rather.

Q That would bring you up around six o'clock? A In that neighborhood.

Q After leaving Luchow's, where did you go? A Then I went up to the Polyclinic and over to my rooming house on Lexington avenue.

Q Was Warren with you? A No, sir.

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Q Where did you leave Warren? A Downtown.

Q Where? A I don't know just where. We walked out of Luchow's, and we took the train, and I think I left him at one of the subway stations. He had to go over to Bellevue.

Q After leaving the Polyclinic, about what hour was that?

A About six o'clock, I should judge.

Q Did you again meet Warren? A I went over to my room and Mr. Warren called for me about a quarter past seven, and we went up to St. Bartholomew's.

Q Going up to St. Bartholomew's did you have any drink?

A No, sir.

Q After leaving there where did you go? A Then we took a car --- it was about 10:15 or 10:30 -- we took a car and went over as far as Fifth avenue, if I remember correctly. Walked over from there to Broadway. Walked down Broadway to about 34th or 35th street, and back on the opposite side.

Q And in that walk did you have any drink? A No, sir.

Then when we got back to 42nd street, the theatre was out, and we walked into a saloon and restaurant opposite Hammerstein's opera house. We probably stayed in there an hour.

Q In Padell's corner, wasn't it? You know that corner?

A No, sir, I do not.

Q Next to the Hermitage? A Well, it is opposite the opera house. I met some gentleman in there and we talked for probably an hour.

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Q Had you reached midnight yet? A It was then about eleven o'clock, I should judge, and we stayed in there. I will say from half to three quarters of an hour to an hour, and then--

Q What drink did you have in there? A I only had a couple of --- three glasses of Pilsner beer, that is all, and then we left there and went over to Joel's Cafe for supper.

Q Where is Joel's cafe? A I never was there before, but I think it is on 41st street.

Q Well, you went in there, you and Warren? A Yes, sir.

Q You had supper? A Yes, sir.

Q What did you drink? A Had one or two glasses of beer there? A Yes, sir.

Q When did you leave Joel's? A I should judge about one or quarter past one --- we were not there over an hour.

Q After you left Joel's where did you go? A I started for home, and walked down Seventh avenue to near 40th street, and I met these men.

Q I take it that in your travels from Luchow's to Joel's you had had approximately ten glasses of beer? A Hardly, Mr. Simpson.

Q Well, about how many would you say? A I should say a half a dozen, make it a half a dozen -- six or eight, sir; we will say really from six to eight, during the entire afternoon and evening.

Q Well, I said approximately ten, so we are not very much

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out of the way. A Not very much.

Q You met upon Seventh avenue two panhandlers? A I thought they were workmen.

Q Well, they were panhandler's holding you up for the price of a drink? A Well, I didn't think so at the time.

BY THE COURT:

Q They were beggars, weren't they? Didn't they ask you for something to eat? A Yes, sir, but they looked like workmen to me.

BY MR. SIMPSON:

Q These men asked you for something to eat, and what did you do? What was the first thing you did? A I felt in my pocket for the change, and it was fifteen cents apiece.

Q Who suggested going into this saloon that this man was the bartender of? A One of the men that asked me for this money.

BY THE COURT:

Q He suggested this saloon, did he? A Yes, sir.

Q Did you then think that he was a worthy mendicant, to steer you into a saloon? A It was the only place. He said, "You can get change in here." I didn't have change, your Honor, and he took me in there just for the change.

BY MR. SIMPSON:

Q How far was this place that you had just previously left from this place that these panhandlers were trying to steer you to, or did steer you to?

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Objected to. Question withdrawn.

Q Well, I will withdraw the word "panhandlers", and say beggar, or hold-up man on the street.

MR. McCORMICK: Objected to.

THE COURT: I think we can safely say that they were beggars.

Q You will concede that they were beggars? A No, sir, I still maintain that I thought this one man that asked me was a workman in hard luck -- he looked that way to me.

Q Do you usually pick up with workmen in hard luck who ask you for money, and go into a saloon? A No, sir, but I always give him --- a man that asks me for something to eat, the price to get something to eat.

Q You didn't give him the price, however, but you took him with you? A No, I didn't. I went in to get change.

Q But you took him in? A I went in with him to get the change.

Q Two of them? A Yes, sir, there was two of them.

Q Why didn't you go to Joel's? There was a restaurant. These men were hungry. A We were possibly a block and a half beyond. This other place was across the road, and I was on my way home.

Q But this was a saloon, and Joel's was an eating place. Here was a man begging for food and you were taking him, or he was taking you to get drink, not food? A He asked me to give

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him money to get something to eat, and as I remember it, there was a restaurant in there, a lunch counter in this place.

Q Was the barroom separated from that back room by anything at all? A No, sir.

Q You are positive of that? A Yes, sir.

Q How large a room was this room where these tables were?

A Well, they were all in the same room with the bar. The table we sat at was in the same room with the bar.

Q How many tables were there, if you remember? A Well, I should say a half a dozen.

Q Would you say there were twelve there? A I wouldn't say that.

Q Do you know whether there were twelve there? A I don't know.

Q Well, you got into this place, we have it. You got at a table. You had these two strangers and Mr. Warren? A Yes, sir.

Q And instead of getting something to eat, a drink was ordered, consisting of four beers -- that is what you had?

A Yes, sir.

Q You are sure Warren did not take a whiskey? A I am positive.

Q You are positive about it? A Yes, sir.

Q And you are positive you had no whiskey? A Mr. Simpson--

Q Pardon me, don't argue with me. This jury wants to

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know. A As a gentleman I do not drink whiskey.

Q You did not have any that night? A I did not.

Q I am going to put these questions to you categorically, and you may answer them yes or no, or make an explanation if you desire, but we want the record straight. Is it not the fact that on Wednesday morning, at about three o'clock, November 22nd, 1911, you entered the premises 563 Seventh avenue with three other men; yes or no, did you? A What date was that?

Q On the morning of November 22nd? A I was in with three men.

Q At about three a. m.? A No, sir.

Q What hour would you say? A I should say about half past one.

Q How long did you remain in there? A I was in there not to exceed ten minutes.

BY THE COURT:

Q What hour did you say it was? A 1:30 when I went in.

THE COURT: Gentlemen, we will suspend till Monday afternoon at 2 o'clock. Do not make up your minds as to the guilt or innocence of the defendant until you have heard the judge's charge.

(ADJOURNED until April 8th, 1912, at 2 p. m.)

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New York, Monday, April 8th, 1912.

The trial is further adjourned, owing to the illness of Judge Swann, to Tuesday, April 9th.

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Tuesday, April 9th, 1912.

The trial is further adjourned owing to the illness of Judge Swann to Wednesday, April 10th, 1912.

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Wednesday, April 10th, 1912.

TRIAL RESUMED.

THE COURT: By consent of both sides, the Court withdraws a juror and declares a mistrial of this case. The defendant is discharged on his own recognizance.

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