

**START**

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**CASE**

CASE 1901

COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York, Part II.

THE PEOPLE

vs.

CHARLES MARTIN

2336

HON. JAMES T. MALONE, J.,  
and a jury.

New York, June 3rd, 1914.

Indicted for assault in the second degree:

Indictment filed April 30th, 1914.

Appearances:

ASSISTANT DISTRICT ATTORNEY ROBERT C. MCCORMICK,  
FOR THE PEOPLE.

D. C. OUTLEAR, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,  
Official Stenographer.

1061-2-7804

THE PEOPLE'S TESTIMONY.

MR. OUTLEAR: Before the District Attorney begins his opening, if your Honor please, may I ask that all the witnesses be excluded, all the witnesses for the People.

THE COURT: Yes, all witnesses on both sides.

FREDERICK HERRPENNHEIMER, of the 38th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q Officer, on the 23rd of April of this year, you were a member of the Municipal Police Force? A Yes, sir.

Q Attached to what precinct? A 38th Precinct.

Q Did you, on that day---were you in full uniform on that day? A Yes, sir; long coat.

Q In the uniform of the Municipal Police of the City of New York? A Yes, sir.

Q Did you go to the premises 154 West 133rd Street on that day? A Yes, sir.

Q From what place did you go when you went there? A From the street.

Q How far from the house? A The sidewalk.

Q How far from the house were you when your attention was directed to that building? A Oh, about fifteen feet from the house.

Q Did you speak to any one before you went there? A Oh,

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yes, sure. The girl came running out to me.

Q Who was the girl? A I don't know who she was.

Q She spoke to you? A Yes, sir.

Q And then you went in? A Yes, sir.

Q To what part of the building did you go? What kind of a house was it? A Well, it was a brown stone private house, high stoop house. I went first down into the basement.

Q And then where did you go? A Upstairs through the cellar.

Q And then where? A Up to the top floor, where this party here, this defendant, and a woman were having a quarrel.

Q Who was the woman? A Miss Dora Shelrie.

BY THE COURT:

Q How long have you been on the police force? A About a year.

Q Well, hadn't you learned it in court you should speak out so that people can hear you? A Yes, sir.

BY THE COURT:

Q Well, then, try to do it now.

MR. McCORMICK: Call in Miss Dora Shelrie.

BY MR. McCORMICK:

Q Is that the woman (indicating)? A Yes, sir.

Q But that is not the woman who came out and spoke to you on the street? A No, sir.

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Q But that is not the woman who came out and spoke to you on the street? A No, sir.

Q What was happening between the defendant and this woman who just came into the court room at the time you went to the top floor of the house? A Nothing. I didn't see anything.

BY THE COURT:

Q Didn't you say they were quarreling when they went up there? A Not this woman, but this defendant and this woman.

BY MR. McCORMICK:

Q The defendant and what woman? A Miss Dora Shelrie.

Q That is what I asked you. What did the defendant do?

A He said to her, "Get out of here. Get away from me," and she ran downstairs; as I go up this woman says, "This man has threatened my life."

Q Who said that? A This defendant here.

Q No. Did the woman say? A Yes.

Q What woman? A Miss Dora Shelrie.

Q Speaking of what man? A Charles Martin.

Q And where was he then? A Outside in the hall. And I go upstairs and I get upstairs to this man, he strikes me.

Q And you followed him up? A No, sir.

Q Can't you tell what you did, and what the woman did, so that we can understand you? What did you do when you

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first went into the building? A I went into the cellar, and through the house upstairs. After this man strikes me he runs down in the house after this woman.

Q Now, I want you to tell us what happened between you and this man, the defendant? A He struck me and knocked me down, while I was in this man's apartment.

Q Well, what happened before that? Can't you tell us what happened? A I am trying to tell you.

Q Well, I will see if I can bring it out. You went into the basement? A Yes, sir.

Q And then walked up one flight of stairs? A Yes, sir; three flights of stairs.

Q And how many flights of steps did you walk up before you saw the woman who just came in the court room? A One flight.

Q Where was the defendant? A Upstairs.

Q You didn't know where he was at that time? You didn't see him? A No, sir.

Q And did you go any place with her? A No, sir, not with her. She comes on downstairs, and I went upstairs after I left her, two flights more.

Q And when you got to the top floor, you were in the hall, were you not? A Yes, sir.

Q Then where did you go? A This party that came after me--

Q No. Where did you go? A In this man's apartment.

Q What room did you go into? A Hall room.

Q Front or back? A Back.

Q Was the door open or shut when you reached it? A The door was closed.

Q Did you open it? A No, sir. I knocked on the door first.

Q And did you hear the defendant's voice? A No, sir.

Q What did you do? A Somebody said, "Go right in".

Q No, what did you do? A I went in.

Q Can't you answer the question? When I ask you what you did, don't tell me what somebody told you. Now, officer, the last thing you spoke of was knocking on the door? A Yes, sir.

Q The hall room door? A Yes, sir.

Q The front room? A No, sir, the rear hall room.

Q Now, what is the next thing that happened? A Why, I went in this man's apartment--

Q No. But did he say anything? A I didn't hear this man say anything at all. I went in myself.

Q Well, how did you open the door? A It was on the crack, and I pushed it open.

Q What is the next thing that happened? A I got a blow on the jaw (indicating) and I went to the floor. Where it come from, or who delivered it I didn't know. I didn't know who hit me at all, when I got into this man's apartment.

Q Somebody knocked you down? A Yes, sir. And I am on

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the floor, just about picking myself up again, when I seen the defendant standing over me, ready to hit me again, and, as he goes to hit me, I ducked the blow, and I wrestled with him, and I threw him on the bed, and I had him around the neck, and somehow my hands were sticking up in the air, and he bites my thumb.

Q Get down and show that thumb to the jury? (The witness shows his right thumb to the jury).

Q What is the next thing that happened? A Why, while this man had my thumb in his mouth and was biting me, I hit him, knocked him out, in order to get my hand out of his mouth.

Q What did you hit him with? A With a black jack.

Q You always carry a black jack; do you? A Yes, sir.

Q It is a regulation of the Police department, is it not?

A Yes, sir.

Q What pocket did you carry it in? A In my pants pocket, in the rear.

Q And so while your finger was in this man's mouth, you hit him on the head with the black jack? A Yes, sir.

Q And he let go of you? A Yes, sir, he did. And the man was lying on the bed, and I called the patrol wagon to take him to the station house.

Q Did any physician attend you? A Yes, sir.

Q Who was it? A Dr. Jona, of Harlem Hospital.

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Q Did any blood flow from your thumb at the time? A Yes, sir.

Q How many times did the doctor treat you? A Three times.

Q Were you laid off duty at all? A Yes, I was away sick three days, couldn't work.

Q Was your hand bandaged up, your thumb? A Yes, sir.

Q How long? A Oh, a week.

Q Where did you hit this defendant with the black jack?

A On the side of the head (indicating).

Q Have you got the black jack with you? A Yes, sir.

Q Let me see it. A There it is.

Q You hit him where? A I think his left side, if I ain't mistaken, or right side.

Q Well, you can put that away now. And you were in full uniform when this happened? A Yes, sir.

Q Had you ever been in that house before? A No, sir.

Q Did you talk to the defendant after the assault? A No, sir, outside of having him in court.

Q I asked you whether you talked to him? A No, sir.

Q Did you hear any one else talk with him about it?

A No, sir.

MR. McCORMICK: He is your witness.

CROSS EXAMINATION BY MR. OUTLEAR:

Q Officer, when you went to these premises, 154 West 133rd Street, you were in company with two other officers,

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were you not? A No, sir.

Q Did you have two other brother officers there? A After this thing happened they come. Somebody told them and they come, while I was in the house.

Q Well, didn't they come there with you, as a matter of fact? A No, sir.

Q And stand in the hallway? A No, sir.

Q Now, when you first saw this woman Dora Shelrie, how many flights did she go upstairs with you? A One flight.

Q And what did she say to you? A She said, "That man up there has threatened my life."

Q Yes. Now, when you went in the room how many men were in the room? Two, wasn't there? A No, sir.

Q Wasn't this man and the other man in the room? A When I was in there, I didn't know whether he was in there or not. I didn't see him.

Q -- But did you see anybody when you went in the room?

A No, sir.

Q Now, how large was the room? A Well, a hall bed room, I don't know how large you would say that was.

BY THE COURT:

Q Did you walk right in; was the door open or closed?

A It was closed.

Q And you opened the door and walked in? A Yes, sir.

Q And saw this man in there? A No, sir, I didn't see him.

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BY MR. OUTLEAR:

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Q You didn't see anybody in the room? A No, sir.

Q Well, how large a room was it? Give us an idea?

A About seven feet wide and five feet long.

Q And it was on the top floor? A Yes, sir.

Q And it was light, was it? A Yes, in the day time.

Q So the first you knew, you say, was that you had fallen down on the floor? A That is the first thing I knew.

Q And how hard a lick were you struck? Did it knock you out of your head? A Yes. It knocked me out. I was knocked out for about a minute.

Q Were you unconscious? A I was.

BY THE COURT:

Q Did you see the man hit you? A No, sir, I did not see him at all until I felt the blow, and fell to the floor.

BY MR. OUTLEAR:

Q And you lay down there one minute? A Yes, sir.

Q Now, when you came to you say you saw the defendant standing over you? A Yes, sir.

Q How many flights<sup>of</sup>/steps had you to go before you got to the apartments of the defendant, from where you left this woman Dora Shelrie? A Three flights.

Q Dora Shelrie didn't go up with you, did she? A No.

Q How did you know then that you were going in the right apartment, or the right room? A I was told.

Q How many rooms are there on that floor? A I couldn't say. I was told he was there.

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Q You were told he was upstairs? A Yes, sir; by 11  
another woman that went up with me, not Dora Shelrie, but  
another woman went up with me and told me to go into the  
room; the woman of the house.

Q Now, when you went up there no crime was committed  
in your presence? A No, sir.

Q And you didn't see the defendant do anything to any  
of the women? A No, sir.

Q And is it customary for you to go into private houses,  
unless felony has been committed, or you hear some screams  
that shows that a felony has been committed? A It is always  
customary to investigate a complaint.

Q What is that? A (Answer repeated). If it is made by  
any person at all.

Q Now, did your investigation go as far as-- Well,  
what kind of a complaint was made? A Well, a woman come  
running to me, and hollering that somebody was being murdered  
in the house.

Q Did she tell you how they were being murdered? A No,  
sir.

Q Now, when you got to the house, did you see any evi-  
dence of any struggle or anybody being hurt? A No, sir.

BY THE COURT:

Q You met another person there? A Yes, sir.

Q And did you have any talk with her? A Yes. She was

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running downstairs, and she said, "That man has threatened my life," and I went upstairs with the other woman.

BY MR. OUTLEAR:

Q But you didn't see any evidence of assault on her?

A No, sir.

Q She just simply said, "This man threatened my life?"

A Yes, sir.

Q And you didn't see the man at that time? A No, sir.

Q Now, as a matter of fact, didn't you go to this man's door, with the woman Shelrie? A No, sir.

Q And didn't he open the door? A No, sir.

Q And didn't she say, "I want you to leave these premises?" A No, sir.

Q And didn't the defendant say, "I'll leave if you will pay me my money that I paid you in advance?" A No, sir.

Q And didn't she say to you, "Officer, go in?" A No, sir.

Q And didn't you enter the room while the other two officers stood outside in the hall, and strike him with a black jack and knock him across the bed? A No, sir.

Q Now, where was your black jack? A In my right hand trousers pocket, back pocket.

Q Where were you then? A I was laying on the bed.

Q Were you on top of the defendant? A Yes.

Q Did you pull the black jack out of your pocket with your right hand? A No, sir, my left hand.

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Q What was your defendant doing then? A He was biting my thumb.

Q And did he have hold of you with his hands? A Yes, he had hold of me around my neck, one of his hands.

Q Did he have one of his hands on your left hand? A No, sir.

Q Was he holding you at all? A He had one of his hands around my neck.

Q What was his other hand doing? A I don't know.

Q And you took your left hand, and pulled out your black jack and hit him with your left hand, while he had your thumb in his mouth? A Yes, sir.

Q Now, after you made the arrest, and brought the defendant downstairs did you stop downstairs, and, while your two brother officers held this defendant, go into a room with the defendant? A No, sir.

Q Did you go into any room with her? A No, sir.

Q Did you have any talk with her after you had made the arrest of the defendant? A Yes.

Q Where did you have it? A Right there, with the man standing right there..

Q How many times did you strike him with the black jack?  
A Once.

Q Did this defendant tell you he lived in the premises?  
A Yes.

Q Now, when you went into the room-- At least when you

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received the lick, what was said, at the time you received the lick? A received what?

Q At the time you received the lick, and was knocked down, was anything said in the room? A Yes.

Q What? A Well--

Q Speak up louder, officer. What was said? A Well, this man said to me, "Get out of here, you white---"

Q Now, you don't understand me. At the time you received the lick, what did this man say? A He said, "Get out of here, you white son of a bitch, or I'll knock you dead".

Q That was the time you received the lick? A Yes, sir.

Q Now, do you remember testifying a minute ago, that, when you went into the room, you didn't see anybody? A Yes, I did.

Q And still now you testify that when you went into the room, at the time you received the lick, this man said to you what? A "You white son of a bitch."

Q Well, you hadn't said anything to him then? A No, sir.

Q You mean to say that, the minute you opened the door, and you were in uniform, this man said, "Get out of here, you white son of a bitch," and gave you a lick? A No; he hit me while I was in the room. That was while I was getting the licking on the bed.

Q Well, you said when you were knocked down you were

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out of our head about a minute? A Yes, the first blow I got. 15

BY THE COURT:

Q Where were you struck first? A On the jaw (indicating).

Q And you were knocked on the bed, were you? A No, sir, on the floor first.

Q And did you get up? A Yes. In about a minute's time.

Q And then you saw the defendant? A Yes, sir.

Q But you didn't see him originally, until you were knocked to the floor? A No, sir. Until I come to.

Q And then he spoke to you and you got up? A Yes, sir.

Q And then you were thrown to the bed, were you?

A Well, him and I started to wrestle, and I threw him to the bed.

Q And then he bit your finger? A Yes, sir.

Q Did he bite it off? A No, sir.

BY MR. OUTLEAR:

Q Do I understand you to say, officer, when you went in there, this defendant said, "Get out of here?" A Not at first, no, sir. While I was getting the licking he said that.

Q While you were what? A While he was giving me the licking, biting my finger, kicking me, doing everything, when we were laying on the bed.

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Q He said "Get out of here"? A Yes, sir.

Q Well, how long did you lay on the bed? A Oh, about three minutes.

Q Well, how long were you out of your head? A About a minute.

Q What was this man doing while you were out of your head? A I don't know; standing over me I guess.

Q ~~You wouldn't~~ say to this man, officer, that you were going to kill him? A No, sir.

BY THE COURT:

Q Were you able to put the handcuffs on him? A Yes, sir.

Q You arrested him and put the handcuffs on him, did you? A Yes, sir.

BY MR. OUTLEAR:

Q You didn't call him any vile names? A No, sir.

Q Did any one come upstairs? A Yes, sir, sure, people came up, the people in the house.

Q How soon after you had fallen down, do you know?

A About five minutes, I guess.

Q And what were you doing then? A I was laying on the bed when they come, wrestling with this man.

Q Well, what do you mean when you say wrestling? Did he have hold of you and did you have hold of him? A Yes, sir.

Q Were you striking each other? A No, sir, couldn't

strike each other.

Q Well, were you striking him? A No, sir.

BY THE COURT:

Q Did you hit him with your billy or your black jack?

A Yes, sir.

Q Hit him with the black jack? A Yes, sir.

Q That enabled you to put him under arrest; did it?

A Yes, sir.

BY MR. OUTLEAR:

Q Now, after you struck him with the black jack, did he relax his hold on you? A Yes.

Q Where was he then? Was he down on the bed? A Yes.

Q At that time? A Yes.

Q Well, you got up? A Yes.

Q Well, how long was that before these people came upstairs?

A Oh, about five or ten minutes.

Q You mean to say that, after you were struck with the black jack, and he relaxed his hold on you, the people didn't come up for five or ten minutes? A Yes.

Q What were you doing then, during that time? A Standing there in the apartment.

Q Did you knock him out of his senses? A Yes, sir.

Q Where did this man come from that struck you when you went first into the room? A Getting up.

Q Did you see anybody open the door? A No, sir.



Q You say it was light in the room and you saw nobody?

A Nobody in there.

Q How long had you been in the room before you received the lick? A Oh, about two seconds, just walked in.

Q How far were you standing from the door; in what position were you standing at the door? A In a standing position.

Q Were you in the centre of the room? A No.

Q Where? A I had just got off the sill of the door when I got the blow.

Q Did anybody come in behind you, and strike you?

A No, sir.

Q Or in front? A Yes.

Q Where did they hit you? A On the jaw.

Q On the mouth? A On the jaw.

Q Now, could they have--

MR. OUTLEAR: That is all.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q Afterwards you knew who struck you? A Yes, sir.

Q It was this defendant? A Yes, sir.

Q There was nobody else in the room? A Nobody else in the room.

Q Now, when you knocked him senseless, it was after you had been knocked down and had your thumb bitten? A Yes, sir.



RE CROSS EXAMINATION BY MR. OUTLEAR:

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Q Now, officer, you say you did not see any one in the room, until after you had been knocked down and senseless. How do you know that he struck you the first blow that you received in that room? A Because he says so.

Q Is that the reason that you testify that he struck you the first blow? A Yes, sir.

BY THE COURT:

Q When did he say that? A When I come to my senses, he said, "Get out of here, you white son of a bitch, or I will give you another one."

BY MR. OUTLEAR:

Q Was that after you had come to your senses? A Yes, sir.

Q And did you testify that, as soon as you got in the room he said, "Get out of here, you white son of a bitch" and struck you? A No, sir, I did not testify to that.

Q You didn't testify to that? A No, sir.

BY MR. MCCORMICK:

Q This was in the county of New York? A Yes.

DORA SHELLEY, of 154 West 133rd Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q Did you live at 154 West 133rd Street? A Yes, sir.

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Q About how long? A Two years ago; it is going on two years.

Q What sort of a building is it? A It is a brick building.

Q Private house or a flat house? A A private house.

Q And how many floors? A Four floors, with the basement.

Q Do you lease that building? A Yes, sir.

Q From whom do you lease it? A Mrs. Ruth Smith.

Q And you have been the lessee how long? How long have you had that house? A Going on two years.

Q And you run a rooming house there? A A boarding house.

Q A boarding house? A Yes, sir.

Q Was the defendant, on the 23rd of April, one of your roomers or boarders? A He was a roomer there.

Q He didn't take his meals there? A No, sir.

Q What room did he occupy? A The top floor, in the rear, west side.

Q A hall room, or a big room? A A hall room.

Q A hall room or a big room? A A hall room.

Q How long had he roomed there? A He went there about a week and a half.

Q Did you see him on the 23rd of April, 1914, the day the police officer came in? A Yes.

Q Did you have any trouble with him? A I had trouble with him the morning before that, and, that morning--

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Q Well, where did you see him? A Downstairs in my kitchen.

Q I mean at the time the officer came in do you know where the defendant was? A He was upstairs in his room.

Q And did you see the officer on his way upstairs?

A Yes, sir.

Q And did you talk to the officer? A I met him in the hall.

Q Now just answer. Did you talk to him? A Yes, sir.

Q And when you talked to him did you see where the officer went? A Yes, he went upstairs.

Q And where did you go? A I went up, too.

Q Well, did you follow the officer up, or go up with him? A I went up with him.

Q And then how far up did you go? A I went to the top floor, in a little hall leading into the room, and, just as I got to the top floor, I stepped aside, and the officer stepped to the room door of Mr. Martin.

Q And what did you see and hear? A I heard the officer speak to Mr. Martin.

Q Well, what did you hear him say? A By the time he got to the door, before he got a chance to say anything, Mr. Martin landed him.

Q You heard something, didn't you? A Yes, sir.

Q What did it sound like? A Well, it didn't sound anything, but he fell up against the wall, and then went down on.

the floor. I saw Mr. Martin knock the officer down.

Q What did he knock him down with? A With his hand.

Q Was it open or closed? A I don't know that.

Q But you saw the officer go down? A Yes, sir.

Q Where was the officer when he went down? Inside or outside of Martin's room? A He was right inside of the door, because he fell right up against the wall by the door.

Q And where was Mr. Martin when he struck the officer?

A Inside of his room. And I run and hollered; and I run downstairs.

Q And you don't know what happened after that? A When Mr. Martin knocked the officer to the floor, the officer raised up and come again, and I was scared, and Mr. Martin knocked him the second time, and they clinched, and I ran downstairs, and they were hollering down there, and some one went out and got another officer.

Q And how many officers came after that? A Two.

Q And how long after that was it when you heard the police officer again? A I didn't go back upstairs any more. Yes, I did go back upstairs, but I went up to this second floor only.

Q Did you see Martin and the police officer after that?

A When I saw him in the station house.

Q Didn't you see the police officer come out with the defendant? A No, sir, I didn't see him come out.



Q Where were you then? A I ran downstairs, and stayed down there.

Q Down in the basement? A Yes, sir.

Q Did you see the officer's fingers any time after that?

A I saw it at the station house.

Q His thumb, I mean? A I saw it was bleeding, and his face was bruised.

Q What part of his face was bruised? A He was bruised up here on the face. (Indicating the left side of the forehead)

Q Who was the woman who went out and called the officer?

A Dorothy Morris. She works for me. I heard Mr. Martin hollering, "I will kill you", and the officer said, "Turn me loose", and I run downstairs, and told Bertha to go out and get another policeman. I said, "Don't let them people kill each other up there," and I sent Bertha out for another policeman.

Q Did you see the defendant that morning, before the officer came? A Yes, he came down to the kitchen and demanded two dollars and a half off me, and I told him I wasn't going to give him no two dollars and a half, because he had taken a pass key off the bunch that belonged to me, and he would give it to me, and he had no right to it.

CROSS EXAMINATION BY MR. OUTLEAR:

Q You wanted the defendant to leave your premises didn't you? A Well, I told him he couldn't stay t

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he had that row in my house, and he wouldn't give me the pass key.

Q Now, before that Martin and another man who lodged in your house had some words about an umbrella? A I don't know anything about it.

Q Did this gentleman tell you about it? A No, sir, Martin started to tell me about it, but I wouldn't let him because it was none of my business, and I didn't want to hear it.

Q Now, Martin wanted you to give him back the two dollars and a half, and said that he wouldn't leave unless you gave it to him? A I gave it to him the first morning, and he wouldn't have it.

Q And did you at that time send out for an officer? A Mr. Taylor went out for the officer, yes.

Q And you sent for the officer to put Martin out, did you not? A Mr. Taylor went to the officer to arrest Mr. Martin for drawing a razor on me and him.

Q Now, the jurors said he didn't draw a razor on you last week before Judge Mulqueen, didn't they? You were sitting here when the jury didn't leave their seats, and said Martin didn't draw a razor on you? A I was here, yes.

Q And weren't you here in court when Martin was disclosed? A Yes.

Q And didn't you go upstairs with the officer? A Yes, sir.

Q Now, when the officer came down, you said you were

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in the basement, weren't you, when Martin was brought down by the officer? A Yes, sir.

Q You didn't see the defendant go out with the officer?

A No, sir, I didn't see him go downstairs with the officer.

Q And the officer didn't have no talk with you in the hall? A I didn't see him, no.

Q And, after the officer had gone upstairs and put Martin under arrest, you and the officer and Martin had no conversation, standing in the hall; did you? A No, not after he had him under arrest.

Q Now, are you sure of that, Mrs. Shelrie? A No, I didn't have no conversation with Mr. Martin.

Q You are certain of that? A Sure.

Q And you are certain that you did go upstairs with the officer? A Yes, sir.

Q Now, when you were upstairs with the officer, was the door open or closed? A It was open. Martin opened the door when he heard me coming.

Q Martin opened the door? A Yes, sir.

Q The officer didn't shove the door open, did he?

A When Martin heard me coming, he opened the door, and, as I stepped up I stepped aside, and when Martin saw the officer that was the time he landed him.

Q Now, did you go into the door ahead of the officer?

A No, sir, I didn't go in the door at all. I stepped aside as I got to the door, and stood by the side of the officer.

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Q And when the officer first got in there, what did he say? A Before the officer had a chance to say anything, Mr. Martin hit him.

Q What did Martin say when he struck him? A I didn't hear Martin say anything.

Q And, after he struck the officer, did the officer fall on the floor? A When he struck the officer, I told you he fell towards the wall.

Q Well, did he fall on the floor? A Well, he fell to the wall first, and then to the floor, and then he got up, and Mr. Martin struck him again.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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## A F T E R   R E C E S S .

D O R A   S H E L R I E , cross examination being continued,  
testified as follows:

CROSS EXAMINATION CONTINUED BY MR. OUTLEAR:

Q You state, Mrs. Shelrie, that you went upstairs and  
stood in the door? A I didn't.

Q Well, where did you stand? A I stood by the side of the  
door.

Q How far were you from the entrance to the room of  
the defendant? A About a yard.

Q About a yard? A Yes, sir.

Q Now, you saw this defendant when you were standing  
a yard from the door, I mean this man (indicating)? A I saw  
him when he opened the door.

Q Yes. You saw him when he opened the door? A Yes,  
sir.

Q Did he strike the officer the minute the door was  
opened? A Yes.

Q And was the officer inside of the room? A Yes, the  
officer was standing right in the room door.

Q That is, across the sill upon which the door rests;  
is that what you mean when you say the side of the door?

A Well, the door opened this way (illustrating) and the  
officer stood right there, and when he struck the officer he  
fell kind of like by the wall and the door. I didn't notice  
so particular as to whether his body was resting on the door

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all or not.

Q Now, what I wanted to understand from you, Mrs. Shelle, is this: Whether the officer was standing on the threshold of the door, or inside of the door? A When he fell, he fell in the room, I know.

Q Fell in the room? A Yes, sir.

Q Now, was he facing this defendant? A We had to face him when he was standing in the door.

Q How many licks did the defendant strike the officer? A The first lick he struck him he fell, and, when he raised up he struck him again.

Q Well, did the officer fall on the floor or against the door? A The door rested against the wall, and I think he fell against the wall.

Q Well, which was it? Against the door or the wall? A Well, I didn't pay that strict attention to it, because there was so much excitement.

Q Now, did the officer fall on the floor? A Yes, sir.

Q That is, he fell against the floor-- against the door, and just went down on the floor? A Yes, sir.

Q How long did he remain on the floor? A By the time he got back up?

Q That is, instantly he sprang up? A Yes, sir.

Q Now, did the officer strike the defendant? A Mr. Martin was on his feet, and, when the officer started at him, Mr. Martin struck the officer again, and then they clinched.

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Q And what happened? A I saw them clinched.

Q What happened then? A And they struggled around in the room, and I heard Mr. Martin holler, "I'll kill you", and the officer hollered, "Turn me loose", and I went downstairs I run downstairs. I got scared..

Q Did the officer strike Mr. Martin? A He didn't have a chance to strike him.

Q Was Martin bleeding? A I didn't see Mr. Martin bleeding.

Q Did you see any blood on Martin at all? A Not until he came to the station house.

Q Not until he came from the station house? A To the station house.

Q To the station house? A Yes, sir.

Q Did Martin stand over the officer when he knocked him down, the first time? A When he knocked the officer down, the officer raised up, and went back to him again.

Q Did the officer lay on the floor about half a minute?

A No.

Q Did he lay down on the floor about a minute? A I didn't time it.

Q Well, I call for your best judgment.

THE COURT: Wasn't she told you what she knows on that particular subject? That she saw the blow rendered, the man fall, and the man get up, and the quarrel trans-  
ferred to the floor, and another blow struck?

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BY THE COURT:

Q You didn't fix any time, or take any notice of the exact time, did you? A No, sir.

BY MR. OUTLEAR:

Q Well, when Martin knocked the officer down, he got up immediately? A Yes, almost.

Q And did Martin fall across the bed? A When the two clinched, then they fell across the bed.

Q And how long did they remain on the bed? A I don't know.

Q Who fell on top? A I didn't take especial time to know. The officer was hollering, "Let me go", and Mr. Martin was hollering, "I am going to kill you", and I run downstairs and told Bertha to go out and get another officer, and she got the two officers from the street.

Q Were they on the same floor? A Bertha got the two policemen from the street, and I didn't follow them upstairs, I didn't go back upstairs.

Q Well, did Martin have anything in his hand? A I didn't see him have nothing in his hands when he went for the officer. But he had the razor in his hand the morning before and that morning, when he threatened me. He said to me that morning, that is why I sent for the officer.

Q Now, what morning was this, what day?

THE COURT: Strike that out. And disregard it, gentlemen of the jury, because it has nothing to do

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with this case, and it is not responsive to the question.

BY MR. OUTLEAR:

Q Did Martin have anything in his hands when he was fighting in the room with the officer? A No, sir, I didn't see nothing in his hand; only I heard him say, "I'll kill you," and the officer hollered, "Turn me loose, turn me loose".

Q Did the officer have anything in his hand? A I didn't see him have anything in his hand.

Q When you went to the room, and Martin opened the door, was the officer ahead of you, or were you ahead of the officer? A I was ahead of the officer; and, the minute I seen the door start to crack, I stepped back, and then the officer stepped up to the door, and then Mr. Martin nailed him, hit him.

Q But you are certain you accompanied the officer upstairs to the door? A Yes, sir.

Q And you are also certain that, when Martin was placed under arrest, that is, after the fight, that he didn't have a talk with Martin, standing down on the steps anywhere? A No.

Q And the officer didn't talk with Martin in your presence? A No, I didn't see him talk with Martin in my presence.

Q So that, after the arrest, the first time you saw Martin was when you saw him in the station house? A Yes, sir.

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Q You are certain of that? A Yes, sir, I am certain of it. I heard his voice, but I didn't see him.

Q Now, was there any one else in the room besides Martin?

A When?

Q At the time you went to the door? A That morning?

Q Yes. Besides Martin and the officer? A No, there was no one else in the room.

Q Was there anything that would stop any one from seeing any one, when the door was open? It was very light room on the top floor? A Yes, it was light, daylight.

Q And there was nothing to stop any one from seeing any one in the room? A No, sir.

MR. OUTLEAR: That is all.

MR. McCORMICK: May I recall the officer?

THE COURT: Yes.

FREDERICK HEPPELHIMER, being recalled by the People, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Now, when you went upstairs you saw how many colored women? A About four.

Q Did any of them follow you up or go up with you?

A Yes.

Q Which one? A The woman that come running out for me, and another woman.

Q Do you know who the other one was? A No, I don't know who she is.

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Q Do you know whether she one who just left went up with you? A No, I don't; until I got up there, and she was coming back.

Q Well, do you know whether she went up? A Yes, I do.

Q You know that two women went up with you? A Yes, sir.

Q And you saw two colored women there? A Yes, sir.

Q And one was the one that directed the matter to your attention? A Yes, sir.

Q And the other was in the hallway? A Yes, sir.

Q But you don't know which was which? A No, sir.

CROSS EXAMINATION BY MR. OUTLEAR:

Q Now, you said in your direct examination, when you went upstairs, you went up alone, didn't you? A No, sir.

Q Didn't you say that when you first went up to the defendant's door, you went alone; did you state that? A I can't recall.

Q Now, I ask you again, officer, when you went upstairs did you go alone, or did any one accompany you upstairs? A Yes.

Q Now, when you came downstairs, officer, with this defendant, and placed him under arrest, did you have any conversation with this defendant in the presence of the witness who just left the stand, Mrs. Dora Shelrie? A No, sir.

Q Now, did you state in your direct examination, that you stood in the hallway and spoke with this defendant?

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A No, sir.

Q You didn't state that? A No.

MR. OUTLEAR: That is all.

MR. McCORMICK: The People rest.

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CHARLES MARTIN, the defendant, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. OUTLEAR:

Q Now, Martin, I want you to speak loud. Where were you living at the time of your arrest? A 154 West 133rd Street, sir.

Q And you were lodging there with Mrs. Dora Shelrie?

A Yes, sir.

Q Do you remember the day of your arrest? A Yes, sir.

Q Now, state to the court and jurors exactly what happened just previous to your arrest, and at the time of your arrest, and when the officer came to your room? A On the 22nd, on the night of the 22nd, I works, and I goes home to my room, and there is a man by the name of Taylor, that woman's friend, he loaned me an umbrella a few days before, he was coming downstairs, and he asked me for the umbrella, and I told him I left it at a friend's house, and I'll get it, he said, "You'd better get it." I said, "As soon as I get it I will give it to you."

And he tells her that I was taking a key off the bunch in the parlor, and she comes in, looks for the key, and, while she was looking for the key this man Taylor stepped into the room, and I said "Now, Taylor, you've made a fuss between me and Mrs. Shelrie. Now, step out," and he wouldn't go, and I shoved him out, and he went downstairs.

And it was Wednesday, and I worked that night, and



three hours that morning , until 11 o'clock, in the subway, where I am a porter.

And she calls me downstairs to the basement and she says, "Martin, I want you to give up your room," and I said, "All right, providing you return a part of my money to me," and she said "I will not give you any money back."

And I goes on back in the room upstairs.

About ten or eleven minutes after I was upstairs-- I had my door closed-- some one raps on the door, and I said, "Come in," and this woman pushed the door open, and there were three officers, two standing outside, and this officer that was on the stand, he stepped in the room, and he says, "What are you doing here?" And I said, "I live here".

And he said, "Didn't this woman tell you she didn't want you to live here any more?" And I said, "Yes, but I told her that I would have to have my money back before I left." He said, "Well, you won't get any money, and you have to go." And he said, "Ain't you going?" And I said, "No, not until the woman gives me the money back."

And he pulled the black jack, hit me over the head, and I fell on the bed, and he stood over me and beat me with a black jack, and the two officers were standing right by the door, and then the officers stepped in and said, "Don't hit him any more,2 and while I started downstairs with the other two officers-- The other two were in front, and this officer behind them two-- and we come downstairs, and he went in the woman's

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room, this officer that was here; then, when he came out, he said, "We'll lock him up, anyhow".

And they keep me there, and put me in the wagon, and they officer beat me all the way to the station house, and I couldn't walk, and they threw me out on the sidewalk, and the same officer, kicked me in the ribs, and I have been under the doctor's treatment ever since I came here.

Q Now, did you strike the officer when he came into your room? A No, sir.

Q Did you call the officer any vile names? A No, sir.

Q Who struck the first lick? A The officer struck me when he comes in the room, after he told me to go, and I said no, I wouldn't go and leave my money; and he said, "No, you won't get any money back," and he hits me.

BY THE COURT:

Q You saw his uniform on him? A Yes, sir.

Q And you knew he was a policeman? A Yes, sir. The reason of speaking like that--

THE COURT: Now, just wait. Anything further?

BY MR. OUTLEAR:

Q Now, you have never had any words with this officer or any other officers? A No, sir.

Q Was there any reason for you to strike him when he came to the door? A No, sir, I didn't know what he came up there for, because the woman and me didn't have no fuss, on that day. We had a fuss on the 22nd.

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Q You could see from his uniform that he was an officer? A Yes, sir.

Q And there were two others there? A Yes, sir.

Q Now, did you knock the officer down twice? A No, sir.

MR. McCORMICK: I object to this. He has told his story, your Honor.

THE COURT: Allowed.

BY MR. OURLER:

Q Now, did you strike the officer twice, and knock him down? A No, sir, I didn't.

Q Did the officer lay on the floor for a minute, as the result of a lick from your hand? A No, sir.

BY THE COURT:

Q Did you strike him at all? A No, sir, I didn't; and he lays on top of me in the bed and beats me.

Q Did you bite his thumb? A No, sir, I didn't; I didn't have no time to do that, because there were three officers there, and everybody knows I couldn't do nothing with three officers there;.

MR. McCORMICK: I move to strike it out.

THE COURT: Motion granted. Strike it out.

CROSS EXAMINATION BY MR. McCORMICK:

Q Well, did you see the officer bite his own thumb? A No, sir.

Q Did you see anybody else bite? A No, sir.

Q Do you know how he hurt his thumb? A No, sir.

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Q Now, on the day before that, the 22nd of April, didn't you run after Mrs. Dora Shelrie with a razor in your hand, and threaten to kill her? A No, sir.

Q You had a lot of trouble in that house? A With who, sir?

Q With any one? A Yes.

Q You had trouble with Archibald Taylor? A Yes, sir.

Q And the landlady of the house told you to get out, didn't she? A No, sir.

Q She never told you to get out? A No, sir, not that day.

Q Did she ever tell you to get out? A No, sir.

Q Why didn't you go out when the police officer told you to get out? A Because, your Honor, I paid my rent and I wanted it back.

Q Well, why didn't you go when he told you to get out, when you saw he was a police officer? A Because I didn't know that an officer could come in and order you out, when you had paid your rent.

Q And you were going to settle that question right there and then, were you? A No, sir; but I said that I paid my rent, and the woman wanted to turn me out in the street, without my money. I told him that, sir.

BY MR. McCORMICK:

Q And do you mean to say that you saw the police officer there? A Yes, sir.

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Q And what did you do while this fight was going on?

A There was no fight at all, because this officer knocked me down.

Q What did they do? A They just stood at the door.

Q And did neither one of them lay his hands on you?

A No, sir, not until one of the officers stepped in, and told him not to beat me any more.

Q What is that officer's name? A I don't know.

Q Did you tell your counsel? A Yes, I told him there were two other officers there.

Q How long had you lived in that room? A Over five weeks.

Q You heard the landlady say that you had been there only one week? A Yes, sir, but I had been living there over five weeks.

Q Did you take your meals there? A No, sir.

Q What time of day was this? A About half past twelve o'clock. You mean the day I was arrested?

Q Yes. It was at noon then? A Yes, sir.

Q Where were you working? A I worked in the Interborough Subway; I worked at night.

Q When did you go to work, the night before? A At seven o'clock. And on the night of the 22nd, I quit at ten o'clock. I only worked three hours, the night before I was arrested, and I was in the house all that day.

Q Well, what was this trouble between you and Archibald

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Taylor? A He loans me an umbrella, sir. He loans me the umbrella on the 19th of April. It was raining when I went out, and it stopped raining, and I left the umbrella at a friend's house, and he asked me for it on the 22nd of April, and I told him I would try to get it that evening before I went to work.

He said, "You had better get it," and he went on downstairs and told that woman he seen me in the parlor, taking some keys off the bunch, and she asked me if I had taken the keys, and I said no.

And he said, "Mr. Taylor have told me that he seen you taking the keys," and she comes in and looks around, didn't find no keys, and Taylor stepped in, and I ordered him out, and, when he wouldn't go out, I shoved him out."

Q You threw Taylor out of the room? A Yes, sir.

Q And you tried to throw this policeman out, didn't you? A No, sir.

Q And you don't know how he hurt his thumb? A No, sir, I don't.

RE DIRECT EXAMINATION, BY MR. OUTLEAR:

Q Now, you say you had been living in those premises for five weeks? A Yes, sir.

Q You paid your rent there? A Yes, sir.

Q And that was your home? A Yes, sir.

Q And it was your home when the officers came in and ordered you out? A Yes, sir.

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Q And you didn't feel that he had any right to order you out? A No, sir.

MR. McCORMICK: I object to that as leading.

BY MR. OUTLEAR:

Q Now, coming back to this day that Mrs. Dora Shelrie claims you attempted to assault with a razor-- A Yes, sir.

Q And you were put on trial for that before Judge Mulqueen weren't you? A Yes.

Q And you were acquitted of that, weren't you? A Yes.

Q And the jury didn't leave their seats, did they?

A No, sir.

Q And does the same transaction-- these two assaults grow out of the same transaction?

MR. McCORMICK: Objected to.

THE COURT: Sustained.

MR. OUTLEAR: That is all.

RE CROSS EXAMINATION BY MR. McCORMICK:

Q Now, in that trial-- You remember, the other day, last week? A Last Wednesday, yes.

Q You heard me ask the judge to tell the jury to acquit you, didn't you? A I didn't heard it, sir.

Q Didn't you hear me say that there wasn't sufficient evidence against you? A I didn't hear you say that.

Q But you don't hear me say that in this case, do you? A I didn't hear you say it, no, sir.

Q There were no police officers in that case, were

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there? A No, sir.

Q So you have been tried on one indictment? A Yes, sir.

Q And the District Attorney turned you out on that, didn't he? A Well, I don't know, sir. The District Attorney didn't say anything to me. The Judge had said something.

Q Well, he isn't turning you out now? A Well, all right, sir; I leave it to you.

BY MR. OUTLEAR:

Q How many witnesses were there against you last Wednesday? A Two witnesses.

Q Besides the officer? A No, the officer wasn't here last Wednesday.

PERRY M. LICHTENSTEIN, resident physician City Prison, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. OUTLEAR:

Q And you occupy that position at the present time, do you, doctor? A Yes, sir.

Q And did you have any occasion to call upon Martin while he was in the City Prison? A Yes, sir.

Q Now, will you state to the Court and Jury exactly what condition you found Martin's urine in, and also any marks, if you discovered any on him?

MR. McCORMICK: I object to any question about his urine.

THE COURT: Sustained. He was put under arrest,

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and there were two or three officers there. The question is whether he committed an assault upon a police officer while he was in the performance of his duty, and while he was attempting to resist arrest. That is the question; not what condition he was in.

MR. OUTLEAR: I should think, your Honor, that in view of the fact that there has been a denial of any assault by this defendant on the officer, but a charge that the defendant was assaulted by the officer, I think in the interest of the defendant, that question is proper.

THE COURT: If it were necessary, in order to put this man under arrest, the law authorized the use of so much force and violence as was required.

MR. OUTLEAR: And I may say this, your Honor, that the object of asking this question is not the object of bringing an issue whether or not this defendant is on trial for any licks he gave the officer, but is for the purpose of corroborating the statement of the defendant made before the jury.

Now, he says that certain things happened on that day, and I think it is very material to show corroboration of this statement.

I understand that he is charged with assaulting an officer, but there is another charge as to his veracity.

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Now, if he says that certain things transpired on that day, I think the evidence should be admitted in order to corroborate his statement, and that is the only object.

THE COURT: This matter happened in 133rd Street. This is the doctor in the prison.

MR. OUTLEAR: Yes.

THE COURT: And the prisoner was brought to the prison. I do not know the distance, but it was a very considerable distance. And, if it were necessary in order to put this defendant, or any defendant, under arrest, there was authority for the police officer to use as much force and violence as the occasion required; and, if he did show signs of assault, it might be thoroughly justified. Whatever his condition was is not important, when in the City Prison. Any witnesses you have who can testify as to what they observed up there at 133rd Street I will take.

MR. OUTLEAR: Well, I must state to the Court again that my only object in calling the doctor was to show his condition immediately after he was placed in custody, and in the prison.

THE COURT: Suppose that the defendant violently resisted arrest, and it was necessary to strike him and beat him in order to put him under arrest. Would that

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affect this case?

MR. OUTLEAR: Not at all. And the officer would be perfectly justified in doing it. But, as I said, my only object in offering this evidence is as to the veracity of this defendant, that's all; not to bring in question whether or not the officer struck him. The officer was perfectly right, if it was true, but the defendant denies any assault, and says he assaulted him, and he bears physical marks of the assault; and I think it is highly competent to show his condition by the doctor, to find out who is telling the truth, the officer or the defendant.

MR. McCORMICK: Why, the officer says that he struck him.

THE COURT: I don't care to hear further argument. I am very clear in the matter. Anything that you can bring here to show his condition and appearance at 133rd Street, in this house, I will take, but I will not take his appearance in transit to the prison, a few miles away.

MR. OUTLEAR: Well, that is all, doctor. I would like to except to the ruling of the court.

THE COURT: Anything else?

MR. OUTLEAR: That is all.

MR. McCORMICK: The People rest.

THE COURT: Go to the jury.

THE COURT'S CHARGE.

MALONE, J.

Gentlemen of the Jury:

The form of your verdict will be either guilty or not guilty. Charles Martin is charged with committing the crime of assault in the second degree upon Frederick Heppeneimer on the 23rd day of April of this year, and it is laid in the indictment that on that date and in this County he feloniously assaulted Heppeneimer, who was then a patrolman of the police force of the City of New York, and while he was engaged in the lawful apprehension of him, Martin, that he feloniously assaulted him in order to prevent and resist his arrest, and in that way committed a crime against the peace and dignity of the State of New York.

He denies that he is guilty of the charge, and he goes to you upon the merits of the case.

The defendant is charged under this sub-division of the definition of assault in the second degree, and I read to you from the language of the Statute; "A person who assaults another to prevent or resist the execution of any lawful process or mandate of any court or officer, or the lawful apprehension or detention of himself, or of any other person, is guilty of assault in the second degree."

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The gravity of the assault is not important, nor the consequences directly to the person injured. If the assault was committed upon a police officer while he was in performance of his duty, endeavoring to enforce the law and the mandates of the law, and cause the arrest and detention of a prisoner charged with, or guilty of a crime, he is guilty of assault in the second degree.

It is a serious case, gentlemen, that you are taking here, because of its character, and for that reason you will carefully consider it. Weigh the evidence and properly decide it. It is serious to the defendant, who is charged with an important felony, and of no less importance to the people of the State, who prosecute individuals, in order to sustain and hold up the hands of the police, when, in the proper performance of their duty, they are assaulted. An assault upon a police officer, in uniform, under the circumstances laid in the Statute, is a blow at government itself, and a violence to the administration of the law.

You will take the testimony of Officer Heppenheimer and Mrs. Dora Shelrie, and consider it carefully, and put it alongside that of the defendant, who denies that he committed an assault, and then say whether the State

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has proven these elements beyond a reasonable doubt. If they have, you may find the defendant guilty of assault in the second degree; if they have not, or you entertain a reasonable doubt upon the subject, you will find him not guilty.

The police officer has told you that he was in uniform on the 23rd day of April, 1914, and he was spoken to by some young woman, and directed to the premises 154 West 133rd Street, and, because of what was said to him, he went to the top floor of the those premises, and, on entering, he was struck a blow which dropped him to the floor, and other blows following a renewal of the first assault. What he said you will recall.

You will then take the testimony of the landlady, Mrs. Shelrie, and consider whether the police officer has been substantially sustained in the version which he has given of this matter.

The officer says that he did not see the defendant until after the first blow had been administered. The other witness testified that she did not see the defendant, and saw the blow administered.

Well, if that story is true, as detailed by the witnesses for the People, then you will say whether the

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offense, has not been made out, and the defendant is not guilty.

The defendant has given you a contrary version. He says he had some differences with this witness called for the State, the landlady, and that he did not do other than protest against removal c from his room; that he did not strike the policeman at any time or at any place, but that the policeman assaulted him.

Well, if the story is true, the true version, he is not guilty, and you should find him not guilty. The question is clearly one of fact for you. The stories are diametrically opposed, and, as you determine the facts, you will reach your verdict.

Take all of the surrounding things into your consideration, and then say whether the State has proven its case beyond a reasonable doubt; and, if you find that they have, you will find the defendant guilty; and, if not, you will find him not guilty; and, if you have a reasonable doubt of his guilt, you will acquit him, such a doubt as you, as reasonable men, feel justified in acting upon.

Take this case, and apply wholesome justice to it, and, mindful of its great importance, decide it. Do not treat it in a light way, and do not involve it with any

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other matter than that which is laid in this indictment.

Did this defendant, on the 23rd day of April, strike Officer Heppenheimer, while he was engaged in putting him under arrest, or endeavoring to subject him to the mandate or requirement of the law? If you find that he did, then a verdict of guilty should be found; if, not, you will find him not guilty.

Is there something that you wish me to charge?

MR. OUTLEAR: I ask your Honor to instruct the jurors that they should be guided by their memory of the testimony as given in by the witnesses on both sides.

THE COURT: Oh, yes. You are the absolute judges of the facts, and it is your memory that should control you, and not any one else's.

MR. OUTLEAR: And that the jury be instructed that if they find in the testimony of witnesses on either side, any discrepanches, they may disregard the testimony of any witness on either side.

THE COURT: Yes. If you find that any witness has wilfully testified falsely on any material matter, you are at liberty to disregard the entire testimony of that witness, but you may determine that matter for yourselves. You may find that a witness has told some truth and some falsehood, but you are at liberty, if you desire to do so,

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to disregard a witness absolutely, if you believe that the witness has testified wilfully falsely to any material fact.

You should, if possible, try to reconcile the testimony of witnesses with an intention to tell the truth, and, if possible, harmonize that testimony. Different persons see things in a different way, and one person sees more than another. Are these witnesses for the State substantially in agreement upon the material matters, or are they in conflice and discord upon material matters? If you find that there are differences, are they upon matters which are consequential? You should conclude that there is perjury only hwen impelled to do so unavoidably by the circumstances of the case, and, if you cannot reconcile the testimony of witnesses, choose between them.

MR. OUTLEAR: I ask your Honor to charge the jury that it is not the number of witnesses that testify for either side that will establish the truth or the facts, but the jury are permitted to take into consideration the straightforward manner of the witnesses before them, and their testimony.

THE COURT: Yes, I think those are matters that are proper for the consideration of the jury, and I so charge you, gentlemen.

Is there anything you wish me to charge, Mr. McCormick?

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MR. MCCORMICK: No, sir.

THE COURT: Take the case, gentlemen, and do justice by both sides.

The jury returned to the Court room at 5 P. M. saying that they had not agreed upon a verdict.

THE COURT; Gentlemen, I have this request from your foreman: "Would the fact that this defendant was unaware of the fact that this man was an officer, when he first struck him, affect our verdict?" ✓

I tried to make that as plain as I could, that the State is required to show that the defendant struck the prosecuting witness while he was in the act of putting him under lawful arrest and detention; and, if he did strike him while he was making efforts to arrest him, and he knew he was a policeman, he would come within the provision of law and the indictment.

You have the evidence on the subject. Do you recall what the police officer testified to? That he struck him, and, when he got to his feet, he struck him again? While the policeman did not see the defendant on the occasion of the first blow, he did see him on the occasion of the second blow. You have the testimony of the other witness, who knew the defendant, and who was the landlady of the house, and she said she saw the defendant strike the police-

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was then in his full uniform.

You have the testimony of the defendant on the subject of some talk with the police officer, in which he discussed with him the propriety of his order, and that he knew he was a policeman, but thought that he had no right to assert his authority at that time.

It was the duty of the defendant to submit to lawful arrest or detention, and he had no right in law to determine the merits of the controversy for himself.

You have listened to this evidence, gentlemen, and the defendant has said that he did not strike any blow; that the blows were by the hands of the policeman.

I do not know of anything further that I can say to you on the subject. Did he strike the policeman when he was making efforts to arrest him; and did he appreciate and know that he was a policeman? It makes no difference whether it was on the first or second occasion that the blow was struck.

You have the testimony of the defendant upon the subject of his knowledge of the character of the prosecuting witness. You may recall what he said on that subject, as bearing upon the question whether he was aware of the fact or not.

As I said to you before, the quantity of the assault is not important. If you find that an assault was

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made under such circumstances and conditions, whether it was a great or minor assault, in law it was assault in the second degree, because, as I stated to you before, under such circumstances an assault is an assault on the law itself, and upon government itself.

Retire for the further consideration of your verdict.

MR. OUTLEAR: If the Court please, I should like an exception to the last charge of the Court. I except to the charge of the Court in these words, in which the Court refers to any statement made by the defendant, that the defendant believed that he was acting within his rights, when he opposed the officer, on the ground there was no such testimony given, as I remember, either by the defendant or by any one; that the only testimony referring to the defendant acting within his rights to oppose the officer, was made by counsel in his summing up. I further ask the Court to further instruct the jury that they must rely solely upon their memory of the testimony referring to the defendant acting within his rights to oppose the officer, and not the statement of either the counsel or the Court as to facts.

THE COURT: The facts are entirely for you, gentlemen, and it is your memory that is controlling upon that subject. It is your memory upon the facts that should guide you

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in the determination of the case.

You may now retire to the consideration of your verdict.

(The jury again retired at 5:10 P. M.)

(The jury returned to the court room at 5:15 P. M. finding the defendant guilty of assault in the second degree.)

MR. OUTLEAR: If your Honor please, I would like to have the jury polled.

(The jury is polled by the Clerk.)

THE COURT: Do you desire to make a motion, counselor?

MR. OUTLEAR: Well, if the Court please, I will reserve my right to make any motions until sentence day.

THE COURT: Very well.

MR. OUTLEAR: Will you put this over a week, for investigation, if the Court please?

THE COURT: Yes, one week.

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