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Arthur A. Johnson	2	5
Edward H. Flanigan	13	13
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MISSING PAGES

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(A Jury was empaneled and sworn, and the Court admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until 12:30 o'clock)

AFTER RECESS

ARTHUR A. JOHNSON, of 3329 Wabash Avenue, Cincinnati, Ohio, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q On October 13th, 1921, were you in the City of New York?

A Yes, sir.

Q And where were you? A At the Bristol Hotel. I had been at the ball game, and had got back there between the hours of 8 and 8:30.

Q Where were you stopping then? A At the Martinique Hotel, and my wife and I were visiting Mr. and Mrs. Flanigan, at the Bristol Hotel.

Q And where is that hotel? A 48th Street, just east of Broadway.

Q And about what time did you arrive at the Bristol Hotel?

A We arrived there along about seven o'clock.

Q And you had dinner, you say? A Yes, with Mr. and Mrs. Flanigan and my wife.

Q What floor was that on, that you had dinner? A The main floor of the hotel. The dining room is in the rear.

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Q And, after you had dinner, where did you go? A We had tickets for the ladies to go to the theater, and Mr. Flanigan and myself went out to the lobby, expecting to meet some friends. We went out together from the dining room, and left his and my wife there.

Q And what did you do when you got out in the lobby? A Mr. Flanigan went to the 'phone, and I went to the toilet, and I entered the urinal. There are four urinals facing a blank wall, and four toilets on the left side, and I walked into the first urinal, and something struck me back of the ear (indicating).

Q You were struck from behind, you say? A Yes, and I turned, and this man (indicating the defendant) struck me in the face with some sort of instrument that he had in his hand; and I took it away from him and struck him with it, and he ran out of the swinging door of the toilet, and I ran after him, and I hit him again as he was going down some steps, and he fell to his knees.

Q Is that the article that the defendant struck you with (indicating)? A Yes. I took it away from him and hit him with it.

MR. DONOHUE: I offer it in evidence.

MR. HOWE: No objection.

THE COURT: It is admitted.

(It is marked People's Exhibit 1)

BY MR. DONOHUE:

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Q Now, in what part of your body were you hit; did you say? A In the back of the ear (indicating), the first time I was struck.

Q And where else were you struck? A Right here, over the bridge of the nose (indicating), and around the eye (indicating).

Q When was that, at what hour? A Between 8 and 8:20.

Q And were you attended by a doctor? A Yes, sir.

Q When? A About 11 o'clock, and I received two stitches in the back of the ear and over the nose.

Q Is this the man that struck you, are you positive this is the man who struck you (indicating the defendant)? A Yes, sir.

Q Had you ever seen him before? A No, sir.

Q And you are positive that he is the man who struck you over the head? A Yes, sir.

Q Now, how much money did you have in your pocket at the time? A I had three thousand dollars in my vest pocket, on the left-hand side, here (indicating) and I had about two hundred and fifty dollars in my right trousers pocket, and I had this ring on, this diamond ring (indicating), and a fob with diamonds set in it.

Q You were visiting here in New York, you say? A Yes. I had been here for the World's Ball Series, with my wife.

Q But you have no doubt at all that this was the man who struck you? A No, sir.

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MR. DONOHUE: You may examine.

CROSS-EXAMINATION BY MR. HOWE:

Q Mr. Johnson, what is your business? A Brokerage business.

Q You are not a resident of New York City; are you? A No, sir.

Q Where do you reside? A In Cincinnati, Ohio. I was born and raised there.

Q And you were on a visit here? A Yes, I came for the World's Series, with my wife.

Q When^{did} you get through with the ball game, that afternoon? A It was the last game of the Series, and we left the ball game as soon as the game was over, I should say between 4:30 and 5 o'clock. Mr. Flanigan and I were together.

Q Where did you go, after you left the ball game? A Mr. Flanigan and I went down to the Bristol Hotel, and his wife and my wife were waiting for us there, and we went to his room, to wash up.

Q I thought you arrived at the Bristol Hotel at seven o'clock? A No, we had supper downstairs, in the hotel, about seven o'clock.

Q Did you stop anywhere on your way downtown? A After we left the game, Mr. Flanigan and I stopped at the house of some friends of his, where he formerly lived.

Q Now, when you say Mr. Flanigan went to the telephone booth, you say that you went downstairs to the toilet? A

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Yes, sir.

Q And, as you entered the toilet, you stood within a swinging door? A Yes, where the first toilet was.

Q And how far is it from the steps to the swinging door? A About twenty feet.

Q And, as you entered the toilet, there is a row of four urinals, you say? A Yes, four urinals and four toilets.

Q Are the urinals on the right, or left hand side, as you enter? A The urinals are here and the toilets here (illustrating).

Q Then the urinals are on the left hand side as you go in? A No, the right hand side.

Q And you stepped into the first one of those urinals? A Yes.

Q But were you urinating at the time you received this blow on the back of the head? A Yes.

Q Now, this blow struck you just where? A You can see the scar right here, over the ear (indicating).

Q Did that blow knock you to the ground? A No, sir.

Q What effect did it have on you? A It had a very peculiar effect. When I was struck, I was surprised, and then I turned to see what had happened.

Q I didn't ask you that.

THE COURT: Yes, you did ask him what effect it had.

Now let him finish his answer. Finish your answer.

A (answer continued) I turned, and as I turned, this man

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struck me here (indicating the top of the head), and then I took this wrench from him.

BY THE COURT:

Q When you turned around, did you see anyone else besides the defendant, in the toilet with you? A No sir.

BY MR. HOWE:

Q Did the first blow daze you? A Yes, somewhat.

Q But how long after the first blow, did you receive the second blow? A Just in the fraction of a second. As quick as I turned, this man leaped towards me and struck me again with the wrench, and I pulled the wrench away from him (illustrating).

Q And you say that you grappled with the man that struck you, when the second blow was struck? A Yes. I seized the wrench. When I turned, I was in this position (illustrating), and he struck me in here (indicating), and I pulled the wrench from his hand, and he ran out of the door, and I ran right after him, and I hit him a glancing blow with the wrench. And I was all blood myself, and I ran him out into the hall.

Q Did you knock him down with the blow? A No, sir; I did not.

Q Where was the defendant when you struck him that first blow? A Right at the door of the toilet, of the first toilet, which was about four feet from the first urinal, in which I was.

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Q Where did he run? A He ran out through the swinging door into the hallway, and I ran after him, and he turned to go down a pair of steps -- there is a shoe shining parlor and a hall leading into the toilet, a little hall, and, as he went down those steps, I hit him again, and he went down to his knees.

Q How many times then, did you strike him? A I struck him once or twice. I can't just recall, because, in my condition at that time, I was pretty much dazed myself.

Q You were pretty much dazed yourself? A Yes.

Q Now, at the time of the arrest of the defendant, didn't you state that there was another man that ran out?

A No, sir; I didn't.

Q You didn't state that to anybody? A No, sir; I didn't.

Q When you went out into the corridor, outside of the swinging doors, did you see a man there? A No, I didn't see a man there. There were two men coming down the steps, when I had him in that position. As I hit him, he went down to his knees, and I heard a noise, and, as I looked up, I saw two men coming down. And I called to Mr. Flanigan, thinking they were coming to help me. My first impression was that they were coming down for something else, thinking they were residents of the hotel, and I called for Mr. Flanigan, and he came down first, the first one.

Q Did you keep on striking the defendant repeatedly, after you chased him out of the urinal? A I think I

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struck him twice, and the last time was on the steps, and he fell on his knees.

Q And he was taken away in an ambulance; wasn't he?

A Yes.

Q Did you go to the Magistrate's Court, the following day? A No, sir, I didn't. I was unable to get out of the hotel myself, the following day.

Q When did you go to the Magistrate's Court? A Four or five days later. I went over to the station with Officer Ferguson.

Q Did you make any complaint in the Magistrate's Court against the defendant? A I did, yes.

Q At the time you made that complaint, the defendant was still in the hospital? A Yes, sir; so I understood.

Q Did you make a complaint in the Magistrate's Court? Now try to think? A Well, I testified before the Grand Jury, if that is what you mean.

Q So that, as I understand it, while the defendant was in the hospital, you went direct to the Grand Jury? A No. But four or five days after, Mr. Ferguson took me over to the station, and questioned me as to my name and address, and took me to some gentleman back of a desk, and he questioned me, too.

Q And this is the first day you have seen the defendant since the day of this trouble? A Yes, sir.

Q Isn't that true? A Yes.

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Q Is that correct? A Yes.

Q Mr. Johnson, have you and Mr. Flanigan had any drinks, that day? A None at all, sir.

Q You do drink occasionally; don't you? A I like a glass of beer, if I can get it.

Q You could get plenty of it in New York City, couldn't you? A I came here for the ball Series, not to drink.

Q Well, on your way from the game to the hotel, didn't you and Mr. Flanigan have any refreshments? A We didn't have any; no, sir.

Q You were interviewed by reporters in this case; weren't you? A Yes, several of them interviewed me.

Q And you, at that time, gave an account of the occurrence in the hotel to the reporters, at that time? A Just what had happened, yes.

Q Didn't you state to the reporters, at the time of your interview, that this defendant and another man, who ran away, had assaulted you in the toilet? A No, sir. There was only one man assaulted me. I said there were two men coming down the steps, when I called for Mr. Flanigan.

Q Now, Mr. Johnson, is it not a fact that, when you received that first blow, your recollection of events, after the blow wasn't very clear? A I had a sort of numb feeling when I was struck the first time, and then, in a fraction of a second I got the second blow, and I can remember everything after that, that is, running him out of the hall, and hitting him. When he struck me, my only

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intention was to stop him.

Q When you say you turned around to pursue the defendant, you had pushed this swinging door aside, to pursue him; did you? A Yes.

Q And didn't those doors close after this man that you were pursuing had passed through them? A I don't understand. When we were grappling together, we were very close, in fact, almost touching the swinging doors, and I went out almost as he did. I hit him as he went out of the door, and he wasn't more than three or four feet ahead of me, and I hit him in this hallway that leads down the steps.

Q You say you have a recollection of two men on that stairway? A Yes, about the eighth or tenth steps above us. They were coming down.

Q How do you know that? A Because I saw them.

Q I thought you were engaged in grappling with the defendant? A I wasn't engaged in grappling with him just then. I had knocked him down, and had him down, and I heard a noise, and I turned, and saw these men coming down the stairs.

Q How much do you weigh, Mr. Johnson? A About one hundred and ninety-five pounds.

Q And you are a man of vigorous health; are you not? A Yes, I never have any trouble with my condition.

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MR. HOWE: That is all, Mr. Johnson.

MR. DONOHUE: That is all.

THE COURT: Gentlemen, we will now take a recess until 2:15 o'clock.

(The Court then admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:15 P.M.)

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AFTER RECESS

EDWARD H. FLANIGAN, of the Hotel Bristol, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Flanigan, were you with Mr. Johnson at the Hotel Bristol on October 13th, 1921? A Yes.

Q And did you leave him while he went into the toilet? A Yes, sir.

Q When did you next see him after that? A When he was downstairs in the toilet.

Q And what did you see then? A I saw Mr. Johnson standing, with a wrench in his hand, and Mr. McDowell was down on his knees, kneeling against the blacking stand.

Q Is this the instrument that you described as a wrench (indicating People's Exhibit 1)? A Yes.

Q You saw that in Mr. Johnson's hand; did you? A Yes.

Q And is this the man that you call Mr. McDowell (indicating the defendant)? A Yes.

Q And you saw Mr. Johnson standing over him? A Yes.

Q And what was Mr. Johnson's condition at the time? A He was bleeding very badly from a wound back of the ear (indicating), and also from a wound on the top of his nose.

Q And the defendant was also bleeding; was he? A Yes, sir.

MR. DONOHUE: You may ~~across~~-examine.

CROSS-EXAMINATION BY MR. HOWE:

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Q When was that, what time was it, Mr. Flanigan?

A About eight o'clock, or shortly after.

Q And you saw no one in the toilet at the time, but these two men? A No, sir, they were not in the toilet then. They were standing on the platform, at the base of the stairway.

Q There are folding doors also there? A Between the toilet and the Reception Room, yes.

Q Now, is it not a fact that the defendant was lying unconscious on the floor of the toilet? A He was leaning against the backing stand.

Q And did he appear to be unconscious when you saw him?

A Yes.

Q And did you notice the condition of his head? A Well, he was bleeding rather freely.

Q From what part of his head? A All over.

Q All over his head? A Yes, sir.

Q Did you see cuts on his forehead? A Yes.

Q And on the top of his head? A Yes.

Q And on the back of the head? A Yes.

Q How many cuts did you see? A It's hard to tell.

Q About how many? A One or two.

Q Is that all? A Yes.

Q Will you indicate with your finger where you saw the two cuts that you refer to? A No, sir; I couldn't.

Q And how long did the defendant remain in that condition,

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before he was taken out? A Perhaps ten or fifteen minutes.

Q He lay there unconscious; did he? A Evidently, yes, sir.

Q And was he carried out of the place? A Yes, sir.

Q Did he have a beard at that time? A No, sir.

Q Smooth-shaven? A Yes.

Q This instrument that you refer to, where was it when you first saw it? A In Mr. Johnson's hand.

Q This piece of iron, People's Exhibit 1? A Yes, sir.

Q Did you see anybody on the stairway? A No, sir.

Q Did you see two men going down the stairway? A No, sir; I didn't.

Q And you saw no one, except Mr. Johnson and the defendant, down in the toilet? A Yes, on the platform.

Q How long were you telephoning, while Johnson had gone to the toilet? A Perhaps about two minutes.

Q About two minutes? A Yes.

Q And, after you got through telephoning, did you go directly over to where he was? A I didn't get through telephoning. I saw people running towards the door, and I ran over there.

Q Saw people running to what door? A The door leading to the stairway, leading to the toilet.

Q Did you see anyone coming up the stairs? A No, sir.

Q Did a number of people precede you to the stairway?
A Yes, sir.

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Q Did you see anyone coming up upstairs? A No, sir.

Q You will not say that no one came up; will you? A No, sir.

Q They may have come up, without your knowledge? A No, sir.

Q You have never seen the defendant before? A No, sir.

Q I mean you had never seen him before you saw him in the company of Mr. Johnson? A No, sir.

Q And you had never had words with him? A No, sir; never.

Q Were you present at the time Mr. Johnson made a statement as to the occurrence down in the toilet? A Yes.

THE COURT: When he made his statement to whom?

MR. HOWE: To the reporters or police officers, or anybody that was there.

THE WITNESS: No, sir.

Q Now, since this occurrence, this is the first time you have seen the defendant? A Yes, sir.

Q The defendant, however, was brought up, this morning, for you to look at; was he not? A No, sir.

Q Weren't you in court when he was brought up? A Yes.

Q Before court convened? A No, sir.

Q Was the defendant pointed out to you? A No, sir.

Q Has his appearance changed in any respect, since the time of this occurrence? A You mean since the accident happened?

Q Yes? A Yes.

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Q In what respect? A He has a full-grown beard, whiskers on, now.

Q Yet, even with a beard on, it has made no apparent change to you as to his appearance? A No, sir.

Q You saw him for a period of how long, in the toilet?
A For about twenty minutes.

Q But you haven't seen him since October 13th? A No, sir.

Q Did you notice whether he had glasses on, at the time?
A He did not.

Q Did you see his glasses lying on the floor? A No, sir; I didn't.

Q What sort of a hat did he have on, if you know? A He had a soft hat on.

Q What color were his clothes? A He had a light suit on.

Q He had a light suit on? A Yes.

Q How long was it after this trouble, that the officers arrived, if you know, about how long? A About three or four minutes.

Q And, during that time, who had possession of this instrument that is in evidence here? A Mr. Johnson.

Q He held it in his hand? A Yes, sir.

Q Were inquiries made by Mr. Johnson, at the time that this defendant was lying on the floor, as to the serious injuries that had been inflicted upon the defendant? A No, sir.

Q Didn't anybody ask or question him as to the blows that had been struck the defendant? A The police officer did, yes.

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Q No one else? A No, sir.

Q Wasn't Mr. Johnson trying to explain to those persons, before the police officers arrived, how this man came by his injuries? A There was nobody present but myself.

Q Well, do I understand that, after you saw all these people running over to the stairway, that preceded you, that none of them went downstairs except you? A Only Mr. Reid, the Assistant Manager of the hotel.

MR. HOWE: That's all.

BY THE COURT:

Q Is there any doubt whatever, in your mind, that this is the man that you have been talking about? A None, whatever, sir; absolutely none, sir.

GEORGE A. FERGUSON, of the 26th Precinct, Detective Division, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Officer, was your attention directed to the Hotel Bristol, on the evening of October 13th of this year? Just answer yes or no, officer? A Yes.

Q And did you go to the Hotel Bristol? A I did.

Q When did you get there? A About 8:20. And I was directed downstairs to the lavatory, and I went down there, and I saw the complaining witness, Mr. Arthur Johnson, sitting inside of the lavatory. He was covered with blood, and he had a handkerchief partly to his face (illustrating).

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He was outside of the lavatory, in a kind of hallway where there was a platform. The defendant sat there on a chair.

Q When you say the defendant, whom do you mean, officer?

A This man McDowell (indicating the defendant). He sat there with his head bent over, that way (illustrating); and the ambulance surgeon said that he would attend to Mr. Johnson first. He said he didn't want to be sewed up, because he said he would get a physician to do that afterwards, and so, he attended to him temporarily.

Q And what did the defendant say or do? A He asked me for a glass of water, and drank half of it, and I wanted to take it away from him, and he grabbed it, and drank the other half of it.

Q Did you question him? A I asked him some questions, but he didn't reply.

Q Did you ever see this instrument before, officer, (indicating People's Exhibit 1)? A Yes. Mr. Johnson gave that to me at the time I got there.

CROSS-EXAMINATION BY MR. HOWE:

Q Now, when Mr. Johnson gave you this instrument, and the defendant was taken to the hospital, what did you do with it?

A I brought it to the station house.

Q Did you have it examined to see whether there were any fingerprints on it of any kind? A No, sir; I didn't.

Q You handled it after Mr. Johnson gave it to you, I suppose?

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A Yes.

Q And you never had it examined by any of the experts of your Department, to determine whether anyone else had handled it, except Mr. Johnson and the defendant? A No, sir.

Q The defendant was in the hospital how long? A Why, I think about eight or nine days, before I brought him down here.

Q How many abrasions did you notice on his head? A Well, to tell you the truth, that night, I didn't look at his head at all.

Q Was he covered with blood? A Oh, yes, he was bleeding pretty bad.

Q His head was all covered with blood; was it not? A Well, he had his head over that way (illustrating), and the blood was running from his head and nose.

Q And didn't you notice that most of the blows, Officer Ferguson, were on the back of his head? A No, sir. I didn't give him an examination. The ambulance surgeon had decided then, from the search we had made of his clothing, etc., that he would take him to the hospital.

Q And he was in such a physical condition, you say, that he couldn't respond to your questions? A No, sir; he wouldn't give me any information as to himself. But he asked me for a glass of water, and I gave it to him, and he drank the water, and I searched him and found upon him --

Q No, never mind about that. This case did not come before a Magistrate; did it? A No, sir.

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Q It was presented direct to the Grand Jury? A Yes, sir.

MR. DONOHUE: The People rest.

MR. HOWE: I make the usual motion to dismiss the indictment, and discharge the defendant, on the ground that the People have failed to make out a case.

THE COURT: Motioned denied.

MR. HOWE: Exception.

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THE DEFENSE.

LOUIS McDOWELL, of 262 West 46th Street, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOWE:

Q Now, Mr. McDowell, if you will try to answer the questions put to you in such a tone of voice that all the jurors can hear you, I would like it. A Very well, sir.

Q Where were you living at the time of your arrest, Mr. McDowell? A 262 West 46th Street.

Q What sort of a place is that? A It's a rooming house.

Q A furnished room house? A Yes.

Q And how long had you lived there? A I had been living there for several weeks.

Q A couple of weeks? A Several weeks.

Q Several weeks? A Yes.

Q How long had you lived in New York City? A Since -- well, I came back here in 1906.

THE COURT: You must keep your voice up. It is very important to you to have the jury hear what you say, and they complain that they cannot hear you.

THE WITNESS: In 1906.

THE COURT: Now speak out loud, so that the jurors may hear you. You are anxious, I suppose, that they should hear you.

THE WITNESS: All right, sir.

BY MR. HOWE:

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Q In 1906? A Yes.

Q And how old are you, Mr. McDowell? A Forty-eight.

Q Forty-eight? A Yes.

Q Mr. McDowell, you have been convicted of crime heretofore; have you not? A Yes, sir.

Q Now, will you state to his Honor and the gentlemen of the jury, the first time you were convicted of a crime, and what the offense was? A The first time was in 1896, I believe it was -- I am not sure of the early date -- I was convicted three times, but I am not sure of the early date.

Q What was the charge in that case? A Swindling.

Q What? A Swindling.

BY MR. DONOHUE:

Q Swindling? A Yes; or grand larceny, or whichever you call it.

BY MR. HOWE:

Q And what was done with you? A I was sent away to the Penitentiary.

Q You were sent to the Penitentiary? A Yes, sir.

Q And that was in what year? A 1896, I think. I am not sure of the date.

Q Now, after you served your term for that offense in the Penitentiary, when were you convicted again? A In 1900.

Q And what was the charge in that case? A Swindling, or some such thing. They made it grand larceny.

Q And what was your sentence on that charge? A In the

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Missouri Penitentiary.

Q In the Missouri Penitentiary? A Yes, sir.

Q Did you serve your sentence on that charge? A Beg pardon?

Q (Question repeated) A Yes.

Q And, upon your release, how long after that were you again convicted? A I was brought back here to New York, and sent to Sing Sing from here.

Q What year was that? A 1903.

Q What sentence did you receive? A Three years and three months.

Q And what was the charge in that case? A Grand Larceny.

Q What was the next time, if any? A The only time I was ever arrested since then was for the possession of drugs, which the doctors gave me.

Q I understood you to say that the last conviction was for the possession of narcotic drugs? A I wasn't convicted.

Q Well, I asked you about convictions? A The last conviction was in 1903.

Q 1903? A Yes, sir.

Q I see. Now, you have used drugs; have you? A Yes.

Q For how long a period of time? A For twenty-eight years.

Q For twenty-eight years? A Yes.

Q Are you using drugs now? A No, sir.

Q When did you stop the use of drugs? A In February of this year, ten months ago.

Q Ten months ago? A Yes.

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Q How did you come to stop the use of drugs? A They arrested me for possession of drugs, and I just made up my mind to stop, and stopped. I went to the hospital, and took the cure, and stopped.

Q Where did you go to take the cure? A The Philadelphia General Hospital.

Q And did you then receive a discharge from the hospital?
A Yes.

Q Now, you have been in prison since the 13th day of October, the date of your arrest on this charge? A Yes, sir.

Q And how long have you been in the Tombs Prison? A All the time, except eight or nine days I was in Bellevue.

Q During the period of your confinement in the Tombs, have you received any drugs, or treatment, through the hands of the Tomb's physician? A None whatever, from anybody.

Q Now, we will go back to the 13th of October, the date of this alleged offense. Were you in the Hotel Bristol on the early evening of that date? A Yes.

Q What time did you go in there? A I don't know the exact time. It was after I had had my dinner.

Q Why did you go in there? A I went down there to urinate.

Q You went down there to urinate? A Yes.

Q How far is the Bristol Hotel from your home? A About two blocks and a half.

Q Where did you eat your dinner, that evening? A In a restaurant, next door to the Bristol.

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Q What is the name of that restaurant? A It is a bakery and lunch room. I don't know the name of it.

Q And, after you had finished your repast there, you say you went into the Hotel Bristol, to go into the toilet?

A Yes, sir.

Q How did you get into the toilet? A I went through the lobby, and down the stairway to the toilet. I didn't get down as far as the toilet. I only got down as far as the wash-room.

Q Now, from the time that you got to the head of the stairs, and proceeded to go down into the toilet proper, I want you, in your own way, to tell this jury all that occurred, all that you did and all that happened, after you reached downstairs and in the toilet. Now speak out loud, so that the jury can hear you. A I went down the stairs, and, after you get down to the bottom of the stairs, there is a little platform, and then there is an entrance to the washroom, and you have got to go through the wash-room to get into the urinals. As I got down into the washroom, a man rushed out of the urinals, and gave me a blow on the jaw, and knocked off my hat, and struck me on the head with some instrument, and I started to run, and hollered for help; and then I got another blow on the head, and went down, unconscious, and that is the last I knew until I found myself in Bellevue, with fourteen separate and distinct cuts on my head, and they are all on the back of my head, but two (indicating).

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Q The complainant has testified, of course, that he struck you not more than three times. Now, will you stand up please, and turn around? Now these scars that are on the back of your head, are the scars from the blows that you received while you were in the toilet? A Yes.

Q Now, are there are there any on the top of your head? A Yes.

Q Yes, I see four. How many in front? A Three in front there (indicating), and the others are on top; on the back of my head.

Q Altogether, how many scars are there? A Fourteen scars.

Q Fourteen scars? A Yes.

Q Now, at the time you were in the hotel, or went down into the toilet, did you have this instrument which I show you, and which is in evidence (indicating People's Exhibit 1) in your possession? A No, never.

Q When did you first see this weapon? A The first time I saw it was when I was over in the hotel. They asked me what it was.

Q Now, describe that occurrence in the hotel? A They called me over to the desk there, and asked me what that was, and I said, I didn't know, and they said, "That's the wrench that you were hit with".

Q Who asked you those questions? A The nurse in the hospital. It was on the desk, and the nurse was the one

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who called my attention to it. I don't know who had it at the time.

Q Had you passed through the swinging doors leading into the toilet before you were struck? A No, sir; I was struck first in the washroom, and I ran to the platform. The first blow knocked off my hat, and I stooped to pick up my hat, and I was hit again.

Q Did you see the man who struck you, before he struck you? A No, sir; I don't even know where he came from.

Q Did you see anybody leaving the toilet. A Yes. The man who ran out first hit me on the jaw. He hit me in the jaw, and ran upstairs. He didn't hit me with that (indicating the exhibit).

Q I mean the man that struck you. Did you see in which direction he went? A He ran upstairs.

Q And was it then that you were struck? A Yes, immediately after. He hadn't got more than three feet away from me before another man struck me on the back of the head with this instrument (indicating the exhibit).

BY THE COURT:

Q Two men struck you? A Yes.

Q One with his fist and the other with this instrument?

A Yes, sir.

BY MR. HOWE:

Q Now, Mr. McDowell, in all the crimes that you say you have been convicted of, did any of them involve an act of

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violence on your part? A No, sir.

Q In your criminal career, have you ever been arrested for assault, of any kind? A No, never been accused of any act of violence in my life, never in my life.

Q And at the time you went into the toilet, you were in full possession of your faculties? A As near as I can be.

Q You were not under the influence of any drug? A No, none whatever.

Q And you say that you had given that up about ten months prior? A Yes, about ten months ago, and I had been cured of it.

Q You have been in the Hotel Bristol before; have you not? A Yes, I used to live there.

Q What was that? A Some time ago.

Q How many years ago? A About three or four years ago.

Q How long did you live there? A Why, perhaps five or six months. I have lived at hotels in that neighborhood for a great many years.

Q But, at the time of this occurrence, you were living in a furnished room? A Yes.

Q Now, have you told all that you can recollect of this occurrence? A Yes.

Q When was the first time that you saw this complaining witness, to your knowledge? A This morning, when he came into court here, and they called me up, and asked me if I knew him, and I said no.

Q When did they call you up, and ask you that question?

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A Before I was brought up for trial.

Q You saw the complaining witness brought up? A No, he was standing over here (indicating), and he walked down the aisle, over here (indicating), and they asked me if I knew him, and I said no.

Q And that is the first time you say, you ever saw him?

A Yes.

Q You realize the seriousness of this charge; do you not?

A Yes.

Q And the necessity of telling the truth? A Yes.

Q And you realize that your liberty is at stake? A Yes.

Q And you realize the handicap of your criminal career?

A Yes, absolutely; more than anybody else.

Q And are you telling the truth? A Yes.

CROSS-EXAMINATION BY MR. DONOHUE:

Q Well, have you told us all the convictions that were had against you? A I believe I have.

Q Well, don't you remember? A Well, in my earlier days, I was arrested several times, but I have told the convictions, I think.

Q In 1896 you were convicted of grand larceny? A Yes, in Rochester, New York.

Q And in 1901 you were convicted of grand larceny, and sent to the Jefferson City Prison for three years? A Yes.

Q And you escaped from that prison? A No, sir; I escaped from the train.

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Q While under control of the guard? A Yes.

Q And you were afterwards convicted in Washington, as a fugitive from justice? A No, I was picked up there, and taken back to Jefferson City.

Q And you were also convicted of grand larceny, in Wilkes-Barre, Pennsylvania? A I was not.

Q And weren't you sent to the Monroe County Jail for eight months, as a swindler? A No. At Rochester.

Q I am talking of Wilkes-Barre, Pennsylvania? A I was taken back from there. I never committed any crime in Wilkes-Barre. I was taken back to Rochester.

Q Now, by the way, what names did you use in connection with these convictions? A Here in New York, J. Pierepont Morgan, Junior.

Q And you were a swindler; weren't you? A Yes, sir.

Q And what other names did you use? A Oh, the names of prominent men in the towns I was in.

Q Yes, you always picked out the name of the most prominent man in the city in which you worked your game? A Yes.

Q Now, what have you been doing for a living during the last six months? A I haven't done anything. I have been looking for a job right along.

Q Now, up to this time, Mr. McDowell, you had not worked for months; had you? A I hadn't worked since I came from the hospital, in February.

Q How did you get along then? A I had money from my

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sister and brothers.

Q And you were actually in need of money on October 13th; were you not? A No more than I was for ten months before.

Q You didn't have any money when you were arrested; did you? A Yes, I had two dollars and something.

Q Now, between what avenues did you live? A Between Seventh and Eighth Avenues.

Q And do you say you went around from your house to this hotel, for the purpose of urinating? A No, sir. I had been to the restaurant, next door to the Bristol, to eat my dinner, and then I went into the hotel to urinate.

Q You never saw Mr. Johnson, you say, before this morning? A No, sir.

Q And you never had any quarrel with him? A No, sir.

Q There was no bad feeling whatever between you and him? A No, sir.

Q And there is no reason, so far as you know, why he should come here and tell the story he did? A No, sir.

Q Do I understand you to say that an unknown man punched you? A Yes, a man that came out of the toilet.

Q Did you chase him? A No.

Q You didn't make any attempt to get him? A No, sir.

Q Did you call out for help? A Yes, after I was hit with that (indicating the exhibit).

Q With what? A With that iron thing.

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Q Well, you said before that the first time you saw this instrument, was in the hospital? A Well, they said there it was what I was hit with.

Q Did you ever see it before you saw it in the hospital?

A No, sir; I didn't.

Q You didn't have it; did you? A Never.

Q Do you remember talking to the police officer that day?

A When?

Q At the hotel? A No.

Q You have no recollection whatever, of that? A No, sir. The last I remember is when I got the second blow.

MR. DONOHUE: That is all.

MR. HOWE: That is the defendant's case.

MR. DONOHUE: If you Honor please, I don't think the jurors will care for any summing up on either side, the facts are so clear and simple, it seems to me. Will you submit on the Court's charge?

MR. HOWE: Yes, certainly.

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THE COURT'S CHARGE.

TALLEY, J.;

Gentlemen of the Jury:

The defendant, Louis McDowell, was indicted by a Grand Jury of the County, charged with Assault in the First Degree, and Assault in the Second Degree, there being two counts in the indictment, one charging each of those degrees of Assault.

I charge you, gentlemen, that you are not to infer or assume from the mere fact that an indictment was found against him, that he is guilty of the crime charged in the indictment, because the indictment is nothing more than an accusation in writing, which is filed with the Court, and has for its main purpose, the idea of bringing a defendant into Court, and of apprizing him of the details of the crime with which he is charged. It has no other importance in this, or any other case, than that.

You, gentlemen, are the exclusive judges of the facts in this case, and you are just as supreme in that domain as the Court is supreme in the domain of the law. You are as much judges as the Court is, only you have to do with the facts, and the Court has to do with the law.

In the performance of his duty as a Judge of the law, the Court denied the motion of the defense to take the case from the jury and advise the jury to acquit, and you are not to infer from that ruling on a matter of law that the Court entertains any opinion whatever, as to the guilt or

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innocence of the defendant.

Every defendant in a criminal case is entitled to certain safeguards of the law. One of them is that he is presumed to be innocent until his guilt is proven, and another is that his guilt must be established to your satisfaction, beyond a reasonable doubt. When we say that a man is presumed to be innocent until his guilt is proven, it means substantially this, that, under our form of law, being charged with crime, a defendant is not required to prove his innocence, but the People must prove his guilt by competent evidence, and the People are required to prove his guilt beyond a reasonable doubt.

A reasonable doubt means about what the words indicate. A reasonable doubt is a doubt that arises in reason, a doubt that you can give a reason for, if one is required. It is the kind of doubt that you, as intelligent men, are likely to have, every day, about some important matter in your business or domestic life; and the law is, gentlemen, that, if you have a reasonable doubt as to the guilt of the defendant of the crime with which he is charged, you must acquit him; and, on the contrary, if, after seriously considering the entire evidence in this case, you have no reasonable doubt that he did assault the complaining witness with this weapon -- in other words, if you have no doubt in your own mind that he is the man who, for one reason or another, did use this weapon, this piece of

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iron, as it appears to be, upon the head of the complaining witness, if you are satisfied beyond a reasonable doubt that he committed this assault, then, gentlemen, it is your bounden duty as citizens and sworn jurors, in this case, to convict the defendant.

The defendant has taken the stand in his own defense. He was not required to do it. Under our law, he could have remained silent, and the Court would have been required to charge you, at the request of his counsel, that you must indulge in no presumption against him because he did not see fit to take the stand. But he has taken the stand, and, having become a witness in his own behalf, his testimony must be regarded in the same way as you would regard the testimony of any other witness, and you must apply to it the same tests that you apply to the testimony of any witness.

So that there is a simple question of fact for you to decide. The complainant, Mr. Johnson, says that, on the 13th of October, 1921, he was grievously assaulted by the defendant, and that he recognized him at the time of the assault, and that he turned, and saw him with this instrument in his hands, and that he got the instrument away from the defendant, and, in turn, assaulted the defendant. A witness for the People, Mr. Flanigan, says that he came downstairs into the lavatory, and saw at the entrance of the lavatory, Johnson, with his head bleeding

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from his injuries, and saw this instrument in his hand, and saw this defendant without his hat, as Mr. Johnson testified he was, after he had struck him with this instrument.

Assault in the First Degree, which is charged as one of the two counts in this indictment, is committed by a person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, assaults another with a loaded firearm, or, any other deadly weapon, or by any other means or force likely to produce death. Such a person is guilty of assault in the first degree, if guilty at all.

Now I will repeat that, so that it may be clearly understood by you. Assault in the first degree is committed by a person who assaults another, with intent to kill, or with an intent to commit a felony upon the person or property of the one assaulted. You note the two elements of assault in the first degree, the element of an intention to kill, or the element of an intention to commit a felony, and I charge you that, if you find from the evidence that this assault was committed with an intent on the part of the defendant, assuming that it was committed by him at all, to rob or take from the person of the complaining witness money or other property, that that would be a felony.

So that the two elements that you must find, in order to determine the degree of crime committed by the

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defendant, if you find that he committed any crime, are, first, whether the assault was committed with intent to kill, or, second, with the intent to commit a felony upon the person or property of Mr. Johnson.

Now, Assault in the Second Degree, is thus defined: A person who, under circumstances not amounting to the crime of Assault in the First Degree, wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm, is guilty of Assault in the Second Degree.

In Assault in the Second Degree, the two elements that I spoke of, a moment ago, and which apply only to Assault in the First Degree, are absent. Assault in the First Degree imports either an intent to kill or an intent to commit a felony upon the person or property of the one assaulted, whereas Assault in the Second Degree may be committed without an intent to kill, it may be committed without an intent to commit a felony upon the person assaulted, and it may be committed by one who wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm.

I leave it to you to say whether the instrument alleged to have been used in this case, and which has been made an exhibit in the case, is a weapon likely to produce grievous bodily harm or not. So that your province, gentlemen,

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is to do exact justice in this case to the defendant and to the People. And let me say this to you. The defendant has admitted that he has been previously convicted of crime. I charge you -- and you must regard this instruction sacredly -- I charge you that you are not to convict this defendant of the crime for which he is now on trial, because he has been previously convicted of crime. You may consider his previous criminal record as bearing upon one fact only, and that is, his credibility as a witness in this case. You may consider whether or not a man with a previous criminal record, a record of one, two or even more convictions, is likely to tell the truth upon the stand. You may put that in the scale in which you weigh his testimony, and you may consider whether he is entitled to as much credit with regard to the truth of his story as is a man who has hitherto led a blameless life, without having run afoul of the law. That is the only purpose for which you may consider his previous criminal career. Bear that in mind, gentlemen, lest injustice be done.

Your verdict, gentlemen, in this case, must, of course, be in accord with the evidence. It must not be influenced by prejudice for or against the defendant, or any other person in this case. It must not be influenced by sympathy for him or prejudice against him. Prejudice and sympathy are human emotions, but they have no place in a court room or in a jury room, and they must be entirely eliminated in any case in which you may sit as jurors. Your

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verdict will be either guilty of Assault in the First Degree, or guilty of Assault in the Second Degree, or, Not Guilty.

Are there any requests, Mr. Howe?

MR. HOWE: None, your Honor.

THE COURT: Any requests, Mr. District Attorney?

MR. DONOHUE: No, sir.

THE COURT: Gentlemen, the case is in your hands.

(The jury retired to consider of their verdict,
at 3:10 P.M.)

(The jury returned to the Court Room at
3:30 P.M., finding the defendant guilty of Assault in
the First Degree)

MR. HOWE: If your Honor please, may I reserve all motions
in this case until the day of sentence?

THE COURT: Yes. The defendant is remanded for a week,
for sentence.

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COURT OF GENERAL SESSIONS OF THE PEACE
CITY AND COUNTY OF NEW YORK, PART I.

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-----X

THE PEOPLE :

v. : Before:

LOUIS McDOWELL : Hon. Alfred J. Talley, J.

-----X

Indicted for Assault in the First Degree.

Indictment filed October 17th, 1921.

APPEARANCES:

Assistant District Attorney James E. McDonald, for the People.

B. L. Mitnick, Esq., for the Defense.

THE SENTENCE:

THE DEFENDANT: If your Honor will allow it, I would like to have Mr. Mitnick appear for me instead of Mr. Howe.

THE COURT: Certainly; you may have any counsel that you desire.

MR. MITNICK: May I, at this time, if your Honor please, so that the rights of the defendant may be preserved, may I make such motions, as I may be advised, on the record?

THE COURT: Yes, certainly.

MR. MITNICK: I ask your Honor to set aside the verdict of the jury on the ground that the verdict of the jury was contrary to the evidence, and was against the weight

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of evidence, and contrary to law, and on all the grounds set forth and made and provided for in the Code of Criminal Procedure, and upon all exceptions that may appear in the case.

I did not appear in the case, and therefore I am not in a position, sir, to make any comment upon the evidence.

THE COURT: No, there is no need for comment in the motion that you have made, and the motion, as made, is entirely sufficient to protect the rights of the defendant.

MR. MITNICK: And the motion is denied?

THE COURT: Yes.

MR. MITNICK: And we except.

As to the sentence, if your Honor please, I must urge that so far as I have heard the evidence was, there is no motive whatever for the commission of this crime. He had never seen the complainant before, and he was an entire stranger, and he had no motive whatever for attacking him.

THE COURT: I disagree with you. I gather from the evidence, that this defendant must have, in some manner, trailed the complainant around. It was curious that he picked out and assaulted a man who happened to have three thousand dollars in his pocket at the time. This defendant probably knew about that, and that is why he picked him out, but he picked out the wrong man.

MR. MITNICK: The defendant says-- if your Honor

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will bear with me further-- the defendant says the complainant was in the toilet when he came down there, and that some one did assault the complainant, another man, and that he ran out after the assault, and the complainant grabbed him, the defendant, thinking he was the man who assaulted him, and would not give him time to explain that the man who assaulted him ran out into the hotel.

THE COURT: No, this is the man that assaulted him. Don't worry about this shadowy person. He was created solely for the purpose of the defense in this action. This is the man that committed the assault. Anything more?

MR. MITNICK: No, sir.

THE COURT: Louis McDowell, the fact that you have been before convicted many times, in many jurisdictions, of crime, is affected to a great extent in your favor by the consideration that you are not a young man, and that you have been a drug addict during most of your life, if not all of it, and will cut your sentence in half.

The sentence of the Court is that you be confined in State Prison for the period of five years.

MR. MITNICK: May the execution of that sentence be delayed for ten days?

THE COURT: No.

I hereby certify that the foregoing is an accurate transcript of the stenographic minutes of the entire proceeding in the trial of the case of The People vs. Louis McDowell.

Frank S. Beard,
Official Stenographer.

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