0458

BOX:
72
FOLDER:
806
DESCRIPTION:
Kelly, Edward
DATE:
07/14/82

806

WITNESSES.

Morris Slack
18 West Street

Bulldog
~~Henry J. Cutter~~
~~787 Longfellow Ave~~

No bail

John H. McKeel
81 Cedar St
Bx. Nov 6/57 –
104th S.P.
F.S.

2095

Day of Trial,
Counsel, J. H. McKeel
Filed 14 day of July 1882
Pleads Not guilty

THE PEOPLE

vs.

Edward Kelly

Felonious Assault and Battery.

JOHN McKEON,
District Attorney.

A True Bill.

Foreman.

Bur. Oct. 31st 1882.
Tried & Convicted 1st Count 2d 3d.

0460

COURT OF GENERAL SESSIONS OF THE PEACE

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
Edward Kelly

The Grand Jury of the City and County of New York, by this indictment, accuse Edward Kelly of the CRIME OF "Assault and Battery upon another with a deadly weapon with intent to kill," committed as follows:

The said Edward Kelly late of the City of New York, in the County of New York, aforesaid, on the first day of July in the year of our Lord one thousand eight hundred and eighty-two with force and arms, at the City and County aforesaid, in and upon the body of Patrick Foley in the peace of the said people then and there being, feloniously did make an assault and him the said Patrick Foley with a certain knife which the said Edward Kelly in his right hand then and there had and held, the same being a deadly and dangerous weapon, wilfully and feloniously did beat, strike, stab, cut and wound with intent him the said Patrick Foley then and there feloniously and wilfully to kill, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

SECOND COUNT.

And the Grand Jury aforesaid, by this indictment, further accuse the said Edward Kelly of the CRIME OF "Assault upon another, without justifiable or excusable cause, with a sharp dangerous weapon, with intent to do bodily harm," committed as follows:

The said Edward Kelly afterwards, to wit, on the day and in the year aforesaid, at the City and County aforesaid, with force and arms, in and upon the body of the said Patrick Foley then and there being, wilfully and feloniously did make an assault and him the said Patrick Foley with a certain knife which the said Edward Kelly in his right hand then and there had and held, the same being then and there a sharp, dangerous weapon, wilfully and feloniously, and without justifiable and excusable cause, did then and there beat, strike, stab, cut and wound, with intent to then and there wilfully and feloniously do bodily harm unto him the said Patrick Foley against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

JOHN McKEON, District Attorney.

0461

590

Police Court 1 District.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Michael Kelly
459 Pearl St
Edward Kelly

2

3

4

Offence, Felonious Assault

BAILED,

No. 1 by

Residence Street,

No. 2, by

Residence Street,

No. 3, by

Residence Street,

No. 4, by

Residence Street.

Dated July 25th 188 2

Michael Kelly Magistrate.

Officer.

Clerk.

Witnesses, Christopher Black
No. 2 Pearl Street Street,
Thomas Attack
No. 18 Water Street, Street,
John Allen
No. 18 West Street Street,

$ 1500 to answer

Thomas Street
18 West St

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Edward Kelly

guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of Fifteen Hundred Dollars, and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated July 18th 188 J. W. Power *Police Justice.*

I have admitted the above named

to bail to answer by the undertaking hereto annexed.

Dated 188 *Police Justice.*

There being no sufficient cause to believe the within named

guilty of the offence within mentioned, I order h to be discharged.

Dated 188 *Police Justice.*

0462

Sec. 198—200.

1 DISTRICT POLICE COURT.

CITY AND COUNTY OF NEW YORK, } ss.

Edward Kelly being duly examined before the undersigned, according to law, on the annexed charge: and being informed that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him if he see fit to answer the charge and explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiven cannot be used against him on the trial,

Question. What is your name?

Answer. Edward Kelly

Question. How old are you?

Answer. Twenty one years of age

Question. Where were you born?

Answer. New Jersey State

Question. Where do you live, and how long have you resided there?

Answer. No. 21 West St. 15 years

Question What is your business or profession?

Answer. Tailor

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation?

Answer. I am not guilty. I waive all further examination there

Edward Kelly

Taken before me, this 10th *day of* July 188 2

J. D. Patterson Jr. *Police Justice.*

0463

(9)

Form

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

POLICE COURT—FIRST DISTRICT.

Patrick Foley

of No. 477 Pearl Street, being duly sworn, deposes and says, that on the first day of July 1882 at the City of New York, in the County of New York, he was violently and feloniously assaulted and beaten by

Edward Kelly

now present.

who did wilfully and maliciously attack deponent with a butcher knife he, said defendant, had in his hands, thereby cutting off three fingers of deponents right hand and cutting and wounding deponent on the left arm with the blade of said knife

Deponent believes that said injury, as above set forth, was inflicted by said

Edward Kelly

and

with the felonious intent to take the life of deponent, or to do him bodily harm, and without any justification on the part of the said assailant:

Wherefore this deponent prays that the said assailant may be ~~apprehended, and~~ dealt with according to law.

Patrick his X mark Foley

Sworn to, before me, this 1st day of July 1882

Police Justice.

0464

Form 9.

1st ~~Ninth~~ District Police Court.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

Christopher Brady

of ~~No.~~ 27th Precinct Police ~~street~~, being duly sworn, deposes and says,

that on the First day of July 1882

at the City of New York, in the County of New York,

Edward Kelly, on the
did feloniously cut, stab
and wound one Patrick
Foley on the right hand
and left arm with the
blade of a butcher knife
which knife the said Kelly,
then had in his hands.
That said injured man
identified said defendant in
deponents presence as being
the person who inflicted
upon him the injuries afore-
said, and by reason of
which injuries said Foley
is now confined in his
residence 477 Pearl Street
and is unable to appear
in Court.

Sworn to before me this 3rd day of July 1882

Christopher Brady

A. D. Patterson Police Justice

Form 9. 1st

POLICE COURT—~~SIXTH~~ DISTRICT.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Christopher Brady

vs.

Edward Kelly

AFFIDAVIT.

Larceny $ over $13.

Dated July 5th 1882

Patterson Magistrate.

Brady 27 Officer.

Witness

Morris Stack

18 West St.

Ex July 5th

2½ P.M.

Adjd to July 10/82

at 2½ P.M.

July 5/82 Affidavit of Complaint for Larceny filed

July 10/82 at 2½ P.M.

Adjd to Wednesday

465

VI

STATE OF NEW YORK.
Executive Chamber,
ALBANY.

May 18, 1888.

Sir:

Application for Executive clemency having been made on behalf of **Edward Kelly** .....who was convicted of **Assault to kill** .....in the county of **New York** .....and sentenced **November 6, 1882** to imprisonment in the **Sing Sing Prison** .....for the term of **ten years** ..... I am directed by the Governor respectfully to request that, in pursuance of Section 695 of the Code of Criminal Procedure, as amended in 1884, you will forward to him a concise statement of the facts and circumstances developed upon the trial, or upon the preliminary examination, or before the coroner's jury if no trial was had, together with your opinion of the merits of the application. Will you also inform the Governor of any other matters having a bearing upon this case which have come to your knowledge since conviction?

It is particularly requested that each letter of inquiry from the Executive Chamber should be separately answered.

I am,

very respectfully yours,

William G. Rice,
Private Secretary.

Hon. F. Smyth,
Recorder of the City of New York,
New York City.

New York General Sessions

The People &c
against

Edward Kelly

Appellants

John H. McCarthy
Counsel for
Defendants
291 Broadway
Room 10
M. Kelly

(filed Nov. 6. 1882)

Court of General Sessions of the City & County of New York.

The People
agst
Edward Kelly

Indicted for Felonious assault with intent &c

City & County of New York ss: John H McKinley being duly sworn deposes & says that he is & was one of the Counsel for the above defendant upon the trial of said defendant on Tuesday Oct 31st 1882 in part two of the Court of General Sessions in & for the City & County of New York whereof upon such trial the Hon. Frederick Smyth the Recorder of said City & County was the presiding Justice.

And deponent says that upon said trial deponent offered various Evidences and testimonies ~~on behalf~~ to said Court and the Jury then & at that time duly selected & Empanelled to try the above defendant And which said Evidences & testimonies were excluded & refused to be permitted to be presented to said Court & Jury by the said presiding Justice, & to which exclusion & refusal this deponent Entered & had recorded his deponent Exceptions as will more fully appear by the Minutes of the said testimony and proceedings & defendants bill of Exceptions

herein –

And deponent also further says that this deponent as the Counsel for the said defendant proposed numerous questions to witnesses both for the prosecution & the defence & which said questions were excluded and refused to be put to, or answered by said witnesses by the said presiding Justice as will more fully appear by the minutes of said trial as taken by the official stenographer of said Court and defendants Bill of Exceptions herein.

And deponent further says that he was present at the time that the jury in said case were sent to their room to consult upon their verdict in said matter. And that during the time said jury was confined in their room under the charge of an officer of this Court duly sworn to take the care & custody of said jury this deponent remained, most of the time that said jury was in deliberation, in the immediate vicinity of said jury room ~~& took especial care to locate and~~ with the view to observe that no one should obtain

access to or unlawfully communicate with said Jury during their deliberation or that said Jury should not obtain access to, or unlawfully communicate with any person during their deliberation & discussion of the manner or kind of verdict they were to render in this case, ~~that~~

And deponent says that while the said Jury was confined in their said room under the charge of the said officer duly sworn & charged with their custody, this deponent heard a rap at the inside of the door to their room, that immediately after said rap, the said officer unlocked & opened the said door & received from some one of said Jury a note or communication written upon paper, that said officer took the said note, paper or communication & handed the same to another officer of this Court; that said second officer took said paper note or communication the said officer immediately entered the Court room of this Court & was followed closely by this deponent, that deponent took his seat at the Counsel table in the said Court room & saw the said second officer hand, to & deliver the said note

note to the Hon. Frederick Smith Recorder & presiding Justice in this Case as aforestated. That said presiding Justice did thereupon open & read said note paper or writing as this deponent verily believes & there after commanded & did write thereon or upon some other note or paper an answer, reply or recommunication thereto, after which he, said presiding Justice did hand & give to the said second Officer so as aforesaid, his, so as aforesaid answer, or reply to the note, paper or communication from the said Jury first mentioned. That as said Officer started to leave said Court Room this deponent arose from his seat & followed said Officer & saw him give hand deliver said note, paper or communication of the said presiding Justice as aforesaid to the said Officer who as aforestated had said Jury in his charge & who did, then & there after first knocking upon the door of said Jury Room & being ~~& con~~ unlocked the same & hand said paper note or communication to some one of the Jury then & at that time

Confined in said Room, & thereupon closed & relocked the said door.

And deponent says that he was not informed of the contents of either of said two notes, papers or communications nor was the said Jury brought back into the Court to communicate with the said presiding Justice; nor was the defendant or prisoner, or deponent, in any manner called to the bar of said Court to have said communication note or paper from the said Jury to the said presiding Justice or his said answer, reply, or recommendation read to them. All of which deponent believes were in contravention of the defendants rights & in violation of the statutes in such cases made & provided.

Sworn to before me this 20 day of November 1892
John A. O'Brien
Notary Public
NY Co No 33

John H. McKinley

New York General Sessions

The People &c
against

Edward Kelly

Affidavits

John H McKeily
Counsel for
Defendant
291 Broadway
Room 10
M Daly

(Filed Nov. 6. 1872)

0474

FORM 4.

NIGHT MESSAGE

MUTUAL UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS not at any only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Night Messages at reduced rates, beyond a sum equal to ten times the amount paid for transmission, nor in any case where the claim is not presented in writing within thirty days after sending the message.

This is an UNREPEATED NIGHT MESSAGE and is delivered by request of the sender, under the conditions named above.

JOHN G. MOORE, President. THOS. C. PURDY, Gen'l Manager. CHAS. F. PECK, Secretary.

NUMBER.	SENT BY	REC'D BY	CHECK
3	W	Hy	2 6 Paid 2 9/2

Dated Burlington Vt 188 2

Received at Sept 18

Mr Donnelly
Shrf Clerk Dist Attys Office
NY

Kindly permit Case of Edward Kelly on Bail felonious assault to go over the term
Shall return by October first and will be at Syracuse Thursday

John H McKinley
Counsel

READ THE NOTICE AT THE TOP.

0475

Telegram to
Donnelly

0476

St. Vincents Hospital
July 5th 22

This is to certify that Patrick Foley is a patient in this institution and that he is not able to appear in court.

E. Boacklow

0477

Certificate of
Doctor

0478

W. L. Shine, M. D.
No. 7 BROADWAY.

New York, July 2nd 1882

Patrick Foley was brought to my office July 1st suffering from a deep clench wound of the hand, severing tones of three fingers, necessitating their amputation, it is probable that he may get back the remaining two fingers,

Jno. J. Crimmins M.D.

0479

℞

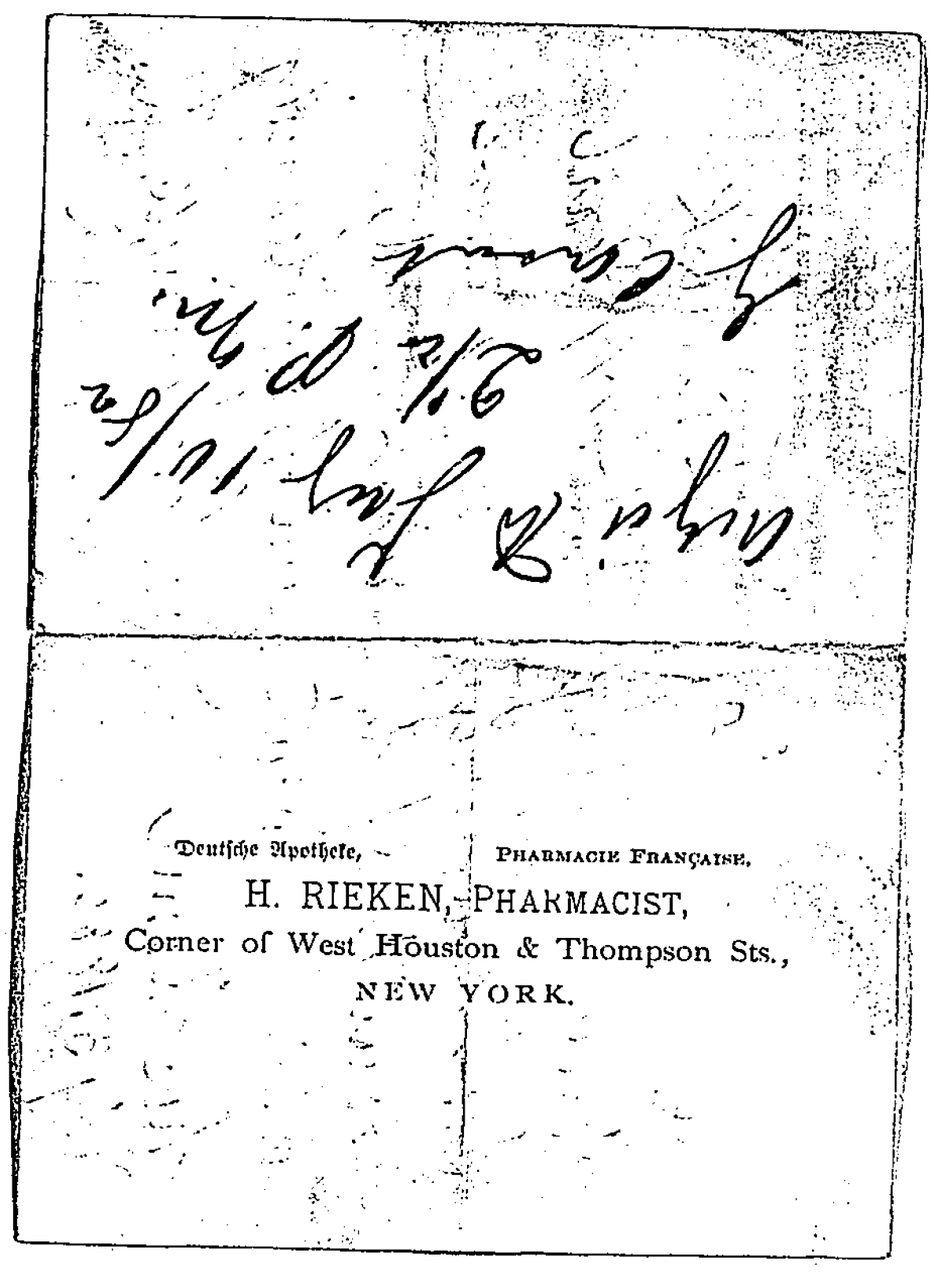
DR. THOMAS C. FINNELL, SEN.
132 WEST HOUSTON STREET.
OFFICE HOURS: Until 10 A. M., 3—5 P. M.

This is to certify that Patrick Foley, residing at No. 477 Pearl St. is suffering from a severe wound of the right hand, which prevents him from leaving his home

July 3, 1882.

Thos. C. Finnell M.D.
132 W Houston St

0480


Deutsche Apotheke,
PHARMACIE FRANÇAISE,
H. RIEKEN, PHARMACIST,
Corner of West Houston & Thompson Sts.,
NEW YORK.

Answered
July 25/88
J. R. F.

VI

STATE OF NEW YORK.
Executive Chamber,
ALBANY.

May 18, 1888.

Sir:

Application for Executive clemency having been made on behalf of **Edward Kelly** .....who was convicted of **Assault to kill** .....in the county of **New York** ,... and sentenced **November 6, 1882** to imprisonment in the **Sing Sing Prison** ..... for the term of **ten years** .....I am directed by the Governor respectfully to request that, in pursuance of Section 695 of the Code of Criminal Procedure, as amended in 1884, you will forward to him a concise statement of the facts and circumstances developed upon the trial, or upon the preliminary examination, or before the coroner's jury if no trial was had, together with your opinion of the merits of the application. Will you also inform the Governor of any other matters having a bearing upon this case which have come to your knowledge since conviction?

It is particularly requested that each letter of inquiry from the Executive Chamber should be separately answered.

I am,

very respectfully yours,

William G. Rice,
Private Secretary.

Hon. John R. Fellows,
District Attorney of New York County,
New York City.

District Attorney's Office.
City & County of
New York.

~~That in the absence of deliberation or~~

1 That the evidence does not support the first Count of the Indictment — to Kill —

2 That the jury are confined to the question of assault to do bodily harm — —

3 That there is no evidence of premeditation or malice. And without both there can be no homicide, and the same elements enter into all Crimes.

4 The character of the injury inflicted is not to be considered by the Jury — an assault is not battery, and the fact of personal injury having been the effect of the assault is not to be considered to magnify the Crime charged —

5 — If the Foley had been Killed and the evidence showed that the offense was committed without intent — the prisoner would be acquitted — And in case of a less offense and the guilty intent is wanting — acquittal must follow —

6 – That the Complainant requires to be Corroborated, when his testimony is Contradicted by the Prisoner and his Brother –

7 – The Jury are at liberty to consider the good character of the Prisoner and it is their duty to do so – as

The People
v
E. W. Kelly
Charges of forgery

Ellsworth
Cumpston

Stack had right to eject disorderly character from his premises. & also had the right to use the proper amount of force necessary to do so.

but having accomplished this act he is not permitted to become the aggressor & utter threats of what he would further do — & having made such threats he became the aggressor —

If the weapon was seized in hot blood under the ~~the~~ excitement of the moment, then that could be taken into consideration in ~~mitigation of the offence~~ - reaching a conclusion as to the greater or lesser offence

Oct Term 1882

The People

v.s.

Edward Kelly

Charge

The People &c
v.s
Edward Kelly

Recorder's Charge.

Gentlemen of the Jury:

There has been a great deal of unnecessary excitement in the trial of this case and many things have been said by Counsel with which you have nothing to do.

The punishment which may follow a conviction under either count of this Indictment is a matter with which you have no concern.

Your duty is to determine the guilt or innocence of the Defendant of the charge preferred against him upon the evidence which has been given in the case and you are to deal with the evidence and draw your own conclusions therefrom uninfluenced by any opinion the Court may entertain or express, upon any question of fact, arising upon the evidence.

It is my duty however to call your

attention to such portions of the evidence which may be necessary to enable you to apply the rules of law, by which you will be guided, and in doing so, it is not my intention to influence you in the slightest degree, upon any question of fact and I charge you that you are not to be influenced by any opinion which I may express (if I do express any opinion) upon any question of fact.

The Indictment contains two counts. The first charges the defendant with having made an assault upon the complainant with a deadly weapon with intent to kill.

The second charges the defendant with having made an assault upon the complainant with a sharp, dangerous weapon with intent to do bodily harm.

And under this indictment you have the right if the offences charged in the first or second count have not been established by the evidence beyond a reasonable to convict the defendant of a common Assault and Battery provided the evidence satisfies you beyond a reasonable doubt that he is guilty of that crime.

Before you can convict of the crime charged in the first count of the indictment you must be satisfied.

First: that an assault was committed by the prisoner upon the Complainant,

Secondly: That there was an entire absence of justifiable or excusable cause for the assault,

Third: That the assault was made with a knife or other deadly weapon and,

Fourth: That the assault was made with intent to kill the complainant,

The failure to establish each and all of these propositions beyond a reasonable doubt by the prosecution must result in the acquittal of the Defendant of the charge contained in that Count of the Indictment,

You must also be satisfied before you convict under that count, that if death had ensued, that is if the complainant had died of the injuries inflicted upon him by the Defendant, he (the Defendant) might be convicted of Murder in either the first or second degree,

Murder in the first degree is the killing of a human being with premeditation

and deliberation - it must be an intentional killing preceded by deliberation and premeditation. Although no specific length of time is necessary to deliberate and premeditate upon the act of killing yet it must be shown that there was a sufficient length of time to deliberate and premeditate upon the act of killing before inflicting the wound which caused the death of the person killed.

In this case does the evidence satisfy you beyond a reasonable doubt, that if death had ensued by reason of the assault made by the Defendant upon the complainant he would be guilty of murder in that degree.

Murder in the second degree is the intentional killing of a human being, without deliberation and premeditation.

The distinction between the two degrees of Murder is this,

In the first there must be deliberation and premeditation preceding the act of killing.

In the second there must be a well formed intent to kill without deliberation and premeditation followed

by the act of Killing.

If a man armed with a deadly weapon makes an assault upon the person of another, and kills him a jury would have the right to infer (in the absence of proof to the contrary) from the nature of the weapon used, the manner in which it was used, the part of the body it was used against, and the nature of the wounds inflicted that the person intended the ordinary and natural consequences of his act.

In this case the defendant concedes that he made an assault upon the person of the complainant, with a sharp, deadly weapon and it seems to me that there can be no question that prior to the assault the complainant had five fingers upon his hand and that three of them were lopped off with the knife with which the defendant made the assault — and that he also inflicted two other wounds with the same knife upon the person of the Complainant.

The prisoner claims that this assault was justifiable and excusable and that

it was made in self defence.

The rules of law by which you are to be governed in deciding whether or not the defence has been sustained, I will now read to you.

"One who is without fault himself when attacked by another may kill his assailant if the circumstances be such as to furnish reasonable ground for apprehending a design to take away his life or to do him some great bodily harm, and there is also reasonable ground for believing the danger imminent that such design will be accomplished although it may afterwards turn out, that the appearances were false and that there was in fact no such design nor any danger, that it would be accomplished."

But this will not justify one returning blows with a dangerous weapon when he is struck with the naked hand and there is no reason to apprehend a design to do him great bodily harm."

My recollection of the evidence bearing on this defence or claim of

the Defendants is substantially this. The complainant having been paid his wages, went to the store of Mr. Strach at No. 18 West Street in this City. He and the brother of the prisoner drank together at the bar, the prisoners brother asked the complainant to pay him $10. which he had loaned to him - the complainant replied that he had given it to the prisoner to be by him handed to his brother. At or about this time the prisoner was passing the store, he came into the store, the place where the complainant and his brother were standing, his brother remarked to the prisoner this man (the complainant) says he gave you $10 for me to which the prisoner addressing the complainant, replied "You are a God damned liar" and struck at the complainant. The prisoners brother put his hand upon a revolver, which he had in his pocket, and abusive language was used by some or all of these persons.

Mr. Strach who had come into his

store during the discussion came from behind his bar and thrust both the prisioner and his brother out of the store, the complainant remaining where he was standing.

Strach in substance said that he did not want any fighting or disturbance in his store before he put the Defs. and his brother out.

The prisoner on being put out by Strach went into the Butcher's shop next door armed himself with the knife which has been described rushed into Strach's store intending as he says to assault Strach and injure him. Strach seeing the prisoner coming towards him with the knife, got away to avoid as he says the threatened assault.

The prisoner then turned upon the complainant who was unarmed saying "I will kill you any how" and immediately made the assault upon him with the knife and inflicted upon his person the wounds which have been described).

The complainant says that he has done nothing to the prisoner to justify or excuse him in making any

assault whatever upon him.

The prisoner says that the complainant called him a thief and made use of other abusive language towards him, that he did intend to injure Strach that he got the knife and returned to Strach's store for that purpose and that as he passed the complainant for the purpose of carrying out his design to injure Strach the complainant held up his arm, and he the prisoner inflicted upon him the wounds.

He also says that before or at the time he was put out of the store that he Strach said that he would get a pistol and club and beat in his skull in which statement the prisoner is corroborated by his brother. Strach denies that he made any such threat and says that he was unarmed.)

If the prisoner and his brother were engaged in the commission of a breach of the peace or threatened to engage in breach of the peace in Strachs store, Strachs had the legal right to eject them from his premises and to use all the force that was

necessary to do so, after requiring them to leave or desist and upon their refusal to comply with his requirement and the prisoner would not be justified or excused in returning to Stadeh store for the purpose of assaulting him nor would an assault made by Stadeh upon the prisoner be any justification or excuse whatever for the prisoner making an assault upon the person of the complainant.

It is for you to determine whether the prisoner has brought himself within the rule, which I have read to you and by which you are to be governed in determining whether or not he was justified or excused in making the assault, which he admits he did make upon the complainant, whether such a state of circumstances existed at the time he made the assault, as to furnish reasonable grounds for his apprehending a design on the part of the complainant to take away his life, or to do him some great bodily injury and that there was also reasonable ground for his believing the danger imminent that

such design would be accomplished.
If the case as disclosed by the evidence comes within this rule the prisoner would be justified in defending himself even by the use of a dangerous and deadly weapon.
But you must recollect that this rule does not apply to the case of a person who resorts to the use of a deadly weapon who is merely struck with the naked hand and when there is no reason to apprehend a design to do him great bodily harm.
If you are satisfied that the Defendant assaulted the complainant without justifiable or excusable cause with a deadly weapon, and with intent to kill him and that if death had ensued he might be convicted of murder in either of its degrees as I have defined it, it would be your duty to convict him under the first count of the indictment.
If you are not satisfied that the evidence in this case would warrant a conviction under that count it will be your duty to consider and determine upon the evidence whether he should

he convicted under the second count of the Indictment, which charges an assault upon the complainant with a sharp, dangerous weapon with intent to do bodily harm and if the evidence satisfies you that an assault was made by the prisoner with a sharp dangerous weapon, without justifiable or excusable cause with the intent to do the complainant a bodily harm and that in pursuance of that intent the prisoner did with a sharp dangerous weapon inflict upon the person of the complainant bodily harm it will be your duty to convict the Defendant under that count of the indictment.

And if you are of the opinion upon all the evidence in this case that the defendant should not be convicted of either of the offences charged in the first or second Count of the Indictment it will be your duty to determine whether or not the defendant has been guilty of a common assault and battery.

A common assault and battery may consist of any unjustifiable

violent act, such as a blow with the fist, or in the use of more force than is actually necessary to repel an assault, which is being made by one person upon another.

In determining the question of the guilt or innocence of the prisoner you must consider with all the other evidence, the evidence introduced by the prisoner tending to show good character and you will give to that evidence such weight as you think it is fairly entitled to

The prisoner is also entitled to the benefit of every reasonable doubt which arises upon the evidence in this case. In other words the prosecution must satisfy you beyond a reasonable doubt that he is guilty of some one of the offences of which he might be convicted under this indictment. If you entertain such a reasonable doubt it will be your duty to acquit him, and if a reasonable doubt exists as to the grade of offence it will be your duty to give him the benefit of that doubt and convict him of the minor instead of the greater offence

Your verdict will be either guilty of an assault with a deadly weapon with intent to kill under the first count of the Indictment. Guilty of an assault with a sharp dangerous weapon with intent to do bodily harm under the second count of the Indictment. Guilty of Assault and battery or not guilty as you believe the facts and circumstances of this case will warrant.

0503

BOX:
72

FOLDER:
806

DESCRIPTION:
Kennedy, Michael

DATE:
07/07/82

806

No 10 13

Counsel

Filed 7 day of July 1882

Pleads Not guilty

THE PEOPLE

vs.

P

Michael Kennedy

Att. of RAPE.

39

A 375 10th

JOHN McKEON,

District Attorney.

A True Bill.

Edward Kavanaugh

Foreman.

July 13/82

Pleads guilty

S.P. 5 years.

0505

COURT OF GENERAL SESSIONS OF THE PEACE

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK
against
Michael Kennedy

The Grand Jury of the City and County of New York, by this indictment, accuse Michael Kennedy of the CRIME OF an attempt at RAPE, committed as follows:

The said Michael Kennedy

late of the First Ward of the City of New York, in the County of New York, aforesaid, on the twenty fifth day of June in the year of our Lord one thousand eight hundred and eighty-two, at the Ward, City and County aforesaid, with force and arms in and upon one Marie Larson wilfully and feloniously made an assault, and the said Michael Kennedy her the said Marie Larson then and there by force and with violence to her, the said Marie Larson and against her will, did wilfully and feloniously attempt to ravish and carnally know, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity. John McKeon District Attorney

~~And the Grand Jury aforesaid by this indictment further accuse the said~~

of the CRIME OF ASSAULT WITH INTENT TO RAVISH, committed as follows:

The said

late of the Ward, City and County aforesaid, afterwards, to wit, on the day and in the year aforesaid, and at the place aforesaid, with force and arms, in and upon her, the said wilfully and feloniously made an assault, with intent her the said against her will, and by force and violence, to then and there wilfully and feloniously ravish and carnally know, against the form of the Statute in such case made and provided, ~~and against the peace of the People of the State of New York, and their dignity~~.

~~JOHN McKEON, District Attorney.~~

0506

Police Court 5 **District.**

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Mary Carter
22 West 4th Street
Alleged Rape

2
3
4

Offence, Attempted Rape

Dated 26 June 188 2

Police Magistrate.

Freeman Officer.

Clerk.

Witnesses, Freeman

No. 12 Pleasant Street,

No. Street,

No. Street,

Michael Kennedy 16 Chatham Street

Freeman

BAILED,

No. 1, by _____

Residence _____ *Street,*

No. 2, by _____

Residence _____ *Street,*

No. 3, by _____

Residence _____ *Street,*

No. 4, by _____

Residence _____ *Street.*

RECEIVED JUN 28 1882 DISTRICT ATTORNEY'S OFFICE

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Michael Kennedy

guilty thereof, I order that he ~~be held to answer the same and he be admitted to bail in the sum of~~ _____ ~~Hundred Dollars, and~~ be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated 26 June 188 2 Andrew J. Walsh *Police Justice.*

I have admitted the above named _____ to bail to answer by the undertaking hereto annexed.

Dated _____ 188 _____ *Police Justice.*

There being no sufficient cause to believe the within named _____ guilty of the offence within mentioned, I order h to be discharged

Dated _____ 188 _____ *Police Justice.*

0507

Sec. 198—200.

DISTRICT POLICE COURT.

CITY AND COUNTY OF NEW YORK, } ss.

Michael Kennedy being duly examined before the undersigned, according to law, on the annexed charge: and being informed that it is h[illegible] right to make a statement in relation to the charge against h[illegible]; that the statement is designed to enable h[illegible] if he see fit to answer the charge and explain the facts alleged against h that he is at liberty to waive making a statement, and that h[illegible] waiver cannot be used against h[illegible] on the trial,

Question. What is your name?

Answer. Michael Kennedy

Question. How old are you?

Answer. 39 years.

Question. Where were you born?

Answer. In New York City. (Harlem).

Question. Where do you live, and how long have you resided there?

Answer. 137 Pleasant Avenue.

Question. What is your business or profession?

Answer. Laborer.

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation?

Answer. About 10½ o'clock I met this woman. We went into Mt Morris Park together. and fooled with each other. And she wanted to go and live with me. We left the park together. when she ran away and screamed and the Officer arrested me

Taken before me, this 26 *day of* June 188[illegible]

Michael Kennedy

[illegible] *Police Justice.*

0508

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.

POLICE COURT, FIFTH DISTRICT.

Mary Larson

of No. 50 East 124th Street, being duly sworn, deposes and says,

that ~~on the~~ about 10.30 pm on ~~day of~~ 25 June 1883

at the City of New York, in the County of New York, Michael Kennedy

now present. followed deponent in the street. put his arm around her and pulled her into Mt Morris Park. thrust his hand under her clothing and upon her naked private person threw her upon the ground. indecently exposed his private person. and attempted to have carnal intercourse with her against her consent. he placing his hand over her mouth, and threatened to kill her if she made a noise.

Mary Larson

Sworn to before me, this 26 day of June 1883

Geo. H. Welsh
Police Justice.

0509

BOX:
72

FOLDER:
806

DESCRIPTION:
Kunkle, Wendel

DATE:
07/07/82

806

No 17

(I)

Counsel,

Filed 7 day of July 188 2

Pleads, Arraigned (10)

THE PEOPLE

vs.

P

Wendel Thickle

H. D.

INDICTMENT.

P. Larceny from the Person.

JOHN McKEON,

District Attorney.

A True Bill.

Edward Van Wagenen

Foreman.

July 10/82

Tried & Convicted July 12/82

S.P. 18 months

WITNESSES.

05 11

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Wendel Dunkel

The Grand Jury of the City and County of New York, by this indictment, accuse

Wendel Dunkel

of the CRIME OF LARCENY (from the person)

committed as follows:

The said Wendel Dunkel

late of the First Ward of the City of New York, in the County of New York, aforesaid, on the second day of July in the year of our Lord one thousand eight hundred and eighty- two, at the Ward, City and County aforesaid, with force and arms one pocket book of the value of ten cents, one ring of the value of ten cents, divers promissory notes for the payment of money the same being then and there due and unsatisfied, and of the kind known as United States Treasury Notes of a number and denomination to the Grand Jury aforesaid unknown, and of the value of nine dollars, and divers silver coins, of the United States of America of a number and denomination to the Grand Jury aforesaid unknown of the value of one dollar and fifty cents

of the goods, chattels and personal property of one Ulrich Stutz on the person of the said Ulrich Stutz then and there being found, from the person of the said Ulrich Stutz then and there feloniously did steal, take and carry away, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

JOHN McKEON, District Attorney.

0512

563

Police Court 2 District.

THE PEOPLE, &c.
ON THE COMPLAINT OF
United States
vs.
Wendle Kunkle
2
3
4

Offence, Larceny from the person

Dated July 16 1882

Lewis B. Smith Magistrate.

Connor 16 Officer.

Clerk.

Witnesses, Michael Connor

No. 16th Precinct Street.

Complaint received this 16 day of July 1882 at 8 o'clock P.M.
Lewis B. Smith
Police Justice
$300 to answer Gen Sess
Bond

BAILED,

No. 1 by _____ Residence _____ Street,

No. 2, by _____ Residence _____ Street,

No. 3, by _____ Residence _____ Street,

No. 4, by _____ Residence _____ Street.

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Wendle Kunkle

guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of Ten Hundred Dollars, and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated July 16 1882 Lewis B. Smith *Police Justice.*

I have admitted the above named _____

to bail to answer by the undertaking hereto annexed.

Dated _____ 188 _____ *Police Justice.*

There being no sufficient cause to believe the within named _____

_____ guilty of the offence within mentioned, I order h to be discharged.

Dated _____ 188 _____ *Police Justice.*

0513

Sec. 198—200.

2 DISTRICT POLICE COURT.

CITY AND COUNTY OF NEW YORK, } ss.

Wendle Kunkle being duly examined before the undersigned, according to law, on the annexed charge: and being informed that it is his right to make a statement in relation to the charge against him, that the statement is designed to enable him if he see fit to answer the charge and explain the facts alleged against him that he is at liberty to waive making a statement, and that his waiven cannot be used against him on the trial,

Question. What is your name?

Answer. Wendle Kunkle

Question. How old are you?

Answer. Forty six years

Question. Where were you born?

Answer. Germany

Question. Where do you live, and how long have you resided there?

Answer. 69 10th St. Two years.

Question What is your business or profession?

Answer. Shoemaker

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation?

Answer. I am not guilty

Taken before me, this 26 *day of* July 1882

Solon B. Smith W. R. Kankel

Police Justices.

0514

2 District Police Court. **Affidavit—Larceny.**

CITY AND COUNTY OF NEW YORK, } ss

of No. 1018 First Avenue ~~Street~~, 42 years Baker

being duly sworn, deposes and says, that on the 24 day of July 1882

at the premises 142 West 27th City of New York,

in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, and from his person in the day time

the following property, viz:

One pocket book containing one ring of the value of ten cents and one lawful money of the United States of the amount and value of Ten dollars and fifty eight cents and in all of the value of Ten dollars and sixty eight cents

Sworn before me this 24th day of July 1882

Police Justice.

the property of Deponent

and that this deponent has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen, and carried away by Wendale Kunkle (now here) for the reason that deponent was in company with said Kunkle and he missed said pocket book from his pants pocket the said pants being at the time upon his body and person. Deponent is informed by Officer Conner of the 16th Precinct Police that he found the above described pocket book in the possession of said Kunkle which contained the above described ring and one dollar and thirty cents in silver coin, and which was in said pocket book when stolen from deponent by said Kunkle.

Ulrich Stutz

0515

Michael Connors 37 years of age an officer of the 16th Precinct Police being duly sworn says that on July 2d 1882 he arrested Wendle Kunkle (now here) having in his possession the within described pocket book which contained one dollar and thirty cents and one ring which was identified by Ulrich Stutts as his pocket book and ring and the money as part of the money that was in said pocket book when it was stolen from him.

Michael Connors

Sworn to before me this 2d of July 1882

John J. Smith Police Justice

District Police Court.

THE PEOPLE, &c.

ON THE COMPLAINT OF

vs.

AFFIDAVIT—Larceny.

Dated 188

Magistrate.

Officer.

WITNESSES:

DISPOSITION

Testimony in the case
of
Wendell Kurtkle
filed July
1882

The People
vs.
Wendell Kunkle

Court of General Sessions. Part I
Before Judge Cowing. July 10. 1882

Indictment for larceny from the person.

Ulrich Stutz, sworn and examined through the interpreter testified: On the night of the 2nd of July I was in this city in Twenty sixth St; I cannot tell if it was between third, fourth or fifth avenues. What did you lose? Ten dollars and 52 cents and a ring; it was in a pocket book. I had it in the right hand pantaloons pocket. It was in the night time about half past twelve or one o'clock the prisoner came to me in Twenty sixth St. and asked me if I would treat him with a glass of beer, saying that he was a German also. I agreed and went and paid for a glass of beer. Then he requested me to treat him to another glass; then he was talking to the salon keeper and I was leaning on my hand and commenced to sleep. I am a baker. Then I saw the defendant pull the pocket book out of my pocket. I felt it, and he immediately left the salon. I did not see when he left. There was nobody there but the defendant. I ran four or five blocks and gave it up, I thought I could not find him; then I saw him and I called a poli[illegible]an and the policeman who is

here. Then I ordered the policeman to arrest this man. I made a charge that he took my money. Then you did not lose it, you had it in your pocket, it was taken out of your pocket? It was taken out of my pocket. Cross Examined. What time in the day did you first meet this prisoner? It was about 12½ or one o'clock. Where did you meet him? In Twenty sixth St. I am not well acquainted around there. I do not know if it was between Fourth and Fifth or Fifth and Sixth aves. How long did you and he stay in the saloon together? About a quarter of an hour. He took two glasses of beer and I took two glasses of beer. How many glasses of beer did you have before you went to that saloon on that night? I drank some but not much that evening. I was not drunk. Where do you live? First ave. between Sixty first and Sixty Second sts. It was about ten or eleven o'clock when I left home. I had two glasses of beer before I left. After I left home I went to a summer garden in Second avenue about Eighth St; there I had one glass of beer I had only five glasses of beer altogether. When I left the summer garden I intended to go out by the front door. I missed my way and went

out by the rear entrance and I found myself in Twenty sixth St. I have been in this city fourteen months. I am more acquainted in Yorkville and Harlem than I am in the lower part of the city How do you know this ~~policeman~~ man took your money? The policeman found it with him. Was there not a woman in this barroom with you in Twenty seventh St.? No.. Micheal Conner sworn and examined, testified as follows: You belong to the Sixteenth precinct officer? Yes sir. Do you know the defendant here? No sir. You know him to see him? I know him to see him now, Yes sir. Is that a pocket book you have? Yes sir. Did you find this in his possession? I found it in his pocket. Ulrich Stutz recalled by Mr. O'Byrne. Is that your pocket book and that your ring? (pocket book and ring shown to the witness) Yes sir; one coin and the paper money is missing. Micheal Conner recalled by the Court. What did the defendant say when you arrested him? I could not understand him. You found it on his person? Yes sir In his pocket you said? Yes sir. I found it in his pocket.

Wendell Kunkle, sworn and examined, testified through the interpreter as follows:

By Counsel Kunkle, did you steal this pocket book and money from the complainant in this case? I did not. Now I want you to explain to the jury how you got it? I found it when I was going home in Twenty seventh St. on the sidewalk between Sixth and Seventh avenues. You found it on the sidewalk? Yes sir. Did you know at the time you found it to whom it belonged? I did not. Cross Examined. Were you drinking with this man here that lost the money and the book? One glass of beer we had. Was he in the house in Twenty seventh St. with him taking a glass of beer? He came accidentally there; he came in. Did he leave the house before the witness? Yes sir. By Counsel. Have you ever been arrested before? No; this is the first time. What is your business? Shoemaker. Who left the saloon first you or the other man? I left first; there was another man with the girl inside. The jury rendered a verdict of guilty. The prisoner was remanded for sentence.