

Supreme Court State of Illinois
April Term A D 1859

David Dubois

Plaintiff in Error } Error to recorders
vs } Court Chicago
The People & Co Defendants in Error

And now comes the said plaintiff in error
by John C Miller his attorney and says that
in the record and proceedings and judgement
aforesaid there is manifest and material
error appearing of record in this

1st The Court erred in giving the first second
third fourth fifth sixth seventh eighth and
ninth instructions as asked for by the people

2nd The Court erred in qualifying the third instruc-
tion asked for by Plaintiff in error and giving
the same as qualified

3rd The Court erred in overruling the motion of
Plaintiff in error in arrest of judgement

4th The Court erred in overruling the motion for
A new trial

5th The Court erred in refusing to give A third
instruction asked for by Plaintiff in error
as the same was asked for

6th The Court erred in rendering the judgement
aforesaid

John C Miller
for Pff in Error

State of Illinois }
County of Cook }
City of Chicago }

Shew before the Honorable Robert S
Wilson Judge of the Recorder's Court of said City at a Term
begun and held at the Court House of the City of
Chicago County and State aforesaid on the first Monday
of, it being the fourth day of April in the Year of our Lord
One Thousand Eight Hundred and Fifty Nine and of
the Independence of the United States the Eighty Third
Present: Now Robert S Wilson Recorder of the
City of Chicago.

Charles Bacon States Attorney
John Gray Sheriff of Cook County
Attest: Jos H L Forrest Clerk of said Court.

Be it remembered that, on the fourth day of April
in the Year last aforesaid, it being the Term of Court aforesaid
the following among the proceedings were had and Entered
of Record in said Court, which proceedings are in the words
and figure following to wit:

The Sheriff returned into
Court the Venue issued in pursuance of law for a Grand
Jury returned executed by summoning the following
named persons to wit:

S B Finley

S L Darrow

Robt Sheppard

John Turner

G H. D'Eering

Elias Ayres

Eli Bates

Austin Hines

W H Carter

Ludwig Meighen

W. T. Barker

Ebenezer Day

Nathl Jackson

J A Howe

Jos Hillard

G. W. Spear

J S Spear

Hiram Jay A H Lee W R Normood
D R Wait M P Reardon S Dalliba

Who upon being called answered to their names and gave their attendance at this Term and were duly sworn in as a Grand Jury for the body of the City of Chicago in the County of Cook and State of Illinois and the Court having appointed of it some one of their Number as Foreman and they having received the Charge of the Court retire to consider of their presentments

And afterwards to wit: on the fourteenth day of April in the Year last aforesaid, it being one of the days of the term of Court aforesaid, the following Among the proceedings were had and Entered of Record in said Court, which said proceedings are in the Words and Figures following to wit:

The Grand Jury came into Court and made (among) others the following presentment Endorsed true Bill to wit:

People

2374

vs

David Du Bois &

Philip Paul

assault with

deadly weapons with intent

Which said Presentment is in the words and Figures following to wit
State of Illinois }
City of Chicago } ss
Cook County }

Of the April Term of the Recorder Court of the City of Chicago in said State and County in

the Year of our Lord One Thousand Eight Hundred
And Fifty Nine.

The Grand Jurors Chosen selected and
Sworn in and for the City of Chicago in the County of
Cook and State of Illinois in the name and by the
Authority of the People of the State of Illinois upon
their oaths present that David DuBois and Philip
Paul late of said City on the Twenty second day of January
in the Year of our Lord One Thousand Eight Hundred
And Fifty Nine in said City of Chicago in the County
and State aforesaid in and upon one Thomas Williams
in the Peace of the said People then and there being unlaw-
fully did make an assault and the said Thomas Williams
with a certain Club of the length of Eighteen inches and
of the thickness of two inches the same Club then and
there being a deadly weapon and which said Club they
the said David DuBois and Philip Paul then and
there in their hands severally had and held at upon
and against the head face and right Eye of him
the said Thomas Williams unlawfully did strike beat
and pound with the intent then and there to inflict
upon the person of him the said Thomas Williams a
bodily injury no considerable provocation for the said
assault then and there appearing contrary to the Statutes
and against the Peace and dignity of the same
people of the State of Illinois

And the Grand
Jurors aforesaid in the name and by the Authority
aforesaid do further present that the said David

On Bois and Philip Paul on the Same day And
Year aforesaid in the City, County And State aforesaid in
and upon the said Thomas Williams in the peace of the
said People then and there being unlawfully with a certain
instrument and thing to wit; a Policeman Club of the
length of Twenty inches and of the thickness of Two inches
the same instrument and thing then and there being a
deadly instrument and thing and which said instrument
and thing they the said David Du Bois and Philip
Paul then and there in their hands had and held,
did make an other assault with the intent then and
there to inflict upon the person of the said Thomas Williams
a bodily injury no considerable provocation for the
said assault then and there appearing contrary to
the Statute And against the Peace and dignity of the
Same people of the State of Illinois

Charles Haven
States Attorney

Endorsed

At True Bill J. A. Howe

Foreman of the Grand Jury

Witnesses

Thos Williams

John Fable

Friend Noy

Richard Lappen

Frederick Bezzant

Dr Gerhard Paoli

And afterwards to wit; On the Sixteenth day of April
in the Year aforesaid it being one of the days of the
Term of Court aforesaid the following among the
proceedings were had and Entered of Record in said Court

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which proceedings are in the words and figures following
to wit:

The People of the State of Illinois } assault with
vs } deadly weapons with intent to
David Dubois + Philip Paul }

This day comes the People
by J. H. Haven State Attorney And the said defendants
by their counsel also. Come and they having been furn-
ished with a copy of their indictment and the list
of the Jurors and Witnesses and they being now duly
arraigned for plea, severally say that they are not guilty

And now issue being joined it is
ordered by the Court that a Jury come; thereupon
comes a Jury of good and lawful men to wit;

G. W. Dexter

W. S. Harris

S. R. Albion

Austin Smith

Ch. Avery

W. L. Johnson

J. Smith

W. E. Prouty

W. O. Keill

Lewis Dennis

Andrew Torrens

Isaac Speer

Who being duly Empannelled and sworn and
they hearing the testimony of Witnesses and the
proof of adjournment having arrived it is ordered
by the Court that the further consideration of this
Cause be postponed until the coming in of the said
Court next Monday morning

And afterwards to wit
on the Eighteenth day of April in the Year aforesaid
the following among the proceedings were had

and Entered of Record in said Court
People

vs

David Du Bois + Philip Paul

This day again comes
the parties with their Counsel, and the Jurors aforesaid
also come and they hearing the arguments of Counsel
the following instruction on behalf of the People were
given them by the Court

Instruction for the People

- 1 The Jury in this case should determine the guilt or innocence of the Deft' upon the facts and circumstances actually in proof and should not indulge in presumptions and inferences which do not reasonably arise from the Evidence in the case.
- 2 If the Jury believe from the Evidence that the Deft or either of them assaulted Thomas Williams with a deadly weapon as charged in the indictment and the Jury further believe from the evidence that the natural and ordinary result of such assaulting was to cause and produce bodily injury then the Law presumes that such bodily injury was intended by the person or persons making the assault.
- 3 The Law presumes that a person intends the natural and ordinary consequences of his own acts and holds

them responsible therefor

4 Although the Jury may believe from the Evidence that the arrest of Williams was lawful in the first instance yet if the Jury further believe from the Evidence that the Defendants or either of them afterwards unlawfully assaulted and beat the said Williams as charged in the Indictment then the burden of showing the necessity and the justification of such assault is devolved upon the defendants

5 Although the Jury may believe from the Evidence that the Def^t had the said Thomas Williams under arrest for drunkenness yet such fact would not justify the Defendant ~~or~~ either of them in using a deadly weapon upon the person of said Thomas Williams with the intent in such a manner as to cause a bodily injury Even if such violence was necessary to retain the said Thomas Williams in their custody for ^{the alleged} offence of drunkenness.

6 Although the Jury may believe from the Evidence that the said Thomas Williams was lawfully in the custody of the said Defendants or either of them yet the said Def^t were not justified in using a deadly weapon upon the said Thomas Williams in the manner and with the intent as charged in the Indictment to prevent a mere escape of the said Williams from their custody he the said Williams being in their

Custody be the said Williams being in their Custody for the offence of Drunkenness if the Jury believe from the Evidence that said Williams was in their Custody lawfully for said alleged offence of Drunkenness; And if the Jury believe from the Evidence that the said Williams was in their Custody as aforesaid and the Jury further believe from the Evidence that the defendants or either of them assaulted and beat the said Williams in the manner and form as charged in the Indictment then it is incumbent on the Defendants to show by Evidence the necessity and justification for such assault.

7 The Jury in determining whether the Instrument called a police man's club was a deadly weapon should take into their Consideration the manner in which the same was used as shown by the testimony and the injuries inflicted thereby as shown by the testimony.

8 The Jury should take into their Consideration all the facts and circumstances proved in determining the guilt of the Defendants or either of them. And if the Jury believe from the Evidence that Paul was present with Du Bois and aided, advised, encouraged or assisted Du Bois in the arrest and subsequent assault of Williams as charged in the Indictment the said Deft Paul is equally guilty in the law as the party who struck the blow which destroyed the Eye of said Williams. If the Jury believe from

the Evidence that the Eye of Williams was destroyed by a blow from either of the said Def.^s at the time and in the Manner as Charged in the Indictment

- 9 The Jury in determining whether the defendants Paul aided, abetted, Encouraged assisted the defendant Du Bois in the assault upon said Williams should take into their Consideration the declaration and statement of the said Defd^t Paul as to the Manner in which he, said Paul broke his Club if the Jury believe from the Evidence that said Paul made statements and declarations as to the Manner in which he broke his Club.

To the giving of each and every one of which said instructions the said Defendants by their Counsel then and there Accepted. And the Court further instructed the Jury aforesaid on behalf of the prisoner as follows

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1 If the Jury believe that either of the Witnesses produced by the people have in any material

facts wilfully stated "an untruth they may reflect the whole Evidence of such Witness or Witnesses"

2) If the Jury from the Evidence have any reasonable doubt that the defendant or either of them made an assault upon Thomas William with a deadly weapon With the intent to inflict upon the person of him the said Thomas William a bodily injury to him the said Thomas William they will find the defendants not guilty, the intent under the indictment being the gist of the offence.

3) A Deadly Weapon or instrument is a weapon or instrument the ordinary and natural result of the use of which is death and unless the Jury find that the Policeman Club was an instrument or weapon the ordinary result of the use of which is death they will find the defendant not guilty
By the Court

The above instruction No 3 is to be taken and considered in connection with the 1st Instruction ^{given} for the People

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4) If the Jury believe from the Evidence that the Witness Thomas William was legally in the Custody of the defendant as Police officer and that the said Thomas William resisted such officer and attempted to escape then the officers were justified in using such force and means as were necessary to retain him in

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Custody and if the Jury believe further that the Club was necessarily used only for the purpose of retaining the prisoner in his Custody and meeting such resistance without any intent to do a bodily injury to the said Williams they will find the defendants not guilty.

That the substantive Charge under this Statute covers three points which must be affirmatively proven by the Prosecution viz:

First That the assault was with a deadly weapon

Second That there was no considerable provocation

Third That it was with the intent to inflict bodily injury

Whereupon the said prisoner by their Counsel Excepted to the qualification annexed by the Court to their third instructions and thereupon the Jury retire to consider of their verdict and afterwards return into Court and for verdict say "We of the Jury find the Defendant David DuBois Guilty and find the Defendant Philip Paul Not Guilty"

Thereupon comes the said Defendant David DuBois by his Counsel and moves the Court in arrest of Judgment which Motion is in the words following to wit
"The said Defendant David DuBois by Miller & Stuart
his attorney moves the Court in arrest of Judgment
and for the reasons following - to wit -

"The Indictment against the Defendant is defective
"in not averring that the alleged assault was made
"with the intent ~~to~~ ^{in so doing}, "or by means thereof"
"or words of similar character importing that an ass-
"ault was committed, by means of which the accused
"intended to commit a bodily injury etc and which
said motion was overruled by the Court and to which
overruling by the Court the Counsel then and there
excepted

And thereupon again comes the Defendant
by his Counsel aforesaid and moves the Court for new
Trial herein which motion is in the words following
to wit! And now comes the said David Out Bois by
Miller & Stuart his attorneys and moves the Court
for a new trial ~ and for reasons assigns the following
to wit! Because the Court erred first

"In refusing to give the third
"instruction asked for by the Defendant as the same was
"proposed"

Second "In answering to, and giving the said
"third instruction with the qualifications"
"put as to render the legal proposition obscure
"contradictory inconsistent indefinite &
"uncertain to the minds of the Jury & not by
"them to be plainly apprehended"

Third "In giving the instructions asked for the
People"

Fourth "The verdict is against the law and
"evidence"

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and which motion was also overruled by the Court
and to which overruling by the Court the counsel then
and there excepted.

And afterwards to wit: on the
Nineteenth day of April in the Year aforesaid the
following among the Proceedings were had and Entered
of Record in said Court.
People

vs
David DuBois
implicated with Ph Parcel

Assault with deadly weapons

This day again comes the People
by Louis Haven State Attorney and the Defendants with
his Counsel also comes and now neither the said Defendant
nor his Counsel for him saying anything further why the Judg-
ment of the Court should not now be pronounced against
him on the Verdict of guilty heretofore rendered herein

Therefore it is ordered and
adjudged by the Court that the said Defendant David
DuBois be taken from the bar of the Court to the Common
Jail of Cook County and from thence by the Sheriff
of said County within Ten days from the date hereof to
the Common Bridewell of this City, and be delivered
to the Keeper of said Bridewell, and the said Keeper
is hereby required and commanded to take the body
of the said Defendant and confine him in the said
Bridewell at labor for and during the term of
six months from and after the delivery hereof

It is also further ordered

that the said Defendant David Dubois be fined
in the sum of Five Hundred Dollars, and that he pay
one half of all the Costs of these proceedings and that
he stand committed until said fine & costs are paid
and that he be thereafter discharged.

Testimony

Thomas William

Produced and Sworn on behalf of the
People Certified as follows. I am a Carpenter by occupa-
tion. I have lived in Chicago Seven Years. I reside at 239
Ohio Street in this City. I have known Frederick Bezant since
last fall we work in the same shop. I have a family.
On the Twenty second day of January last we engaged
by Sewell and Whyte; I worked that day till noon. did
not work in the afternoon. Went down to shop after dinner
about two o'clock met Bezant at the gate, we went
down to the river; spent the greater part of the afternoon
on the ice, went from the river to the shop, Bezant
had some blocks of wood, a hammer, and screw-driver;
we took them to my house. Staid at my house all the
Evening until about Eleven o'clock. We then went to a saloon
on Clark Street kept by Foley; It might have been later
than Eleven

Bezant's house was on Clark Street near Huron
 three blocks north from mine. Stopped at a saloon
 on Clark Street on the way up. Staid at the saloon
 three quarters of an hour perhaps an hour. From
 the saloon we went to Bezant's house. I observed two
 policeman at the door of Bezant's lodgings. Bezant
 went ahead of me. I went in went up stairs and
 delivered the tools to Bezant. I may have gone
 up the stairs five or six steps. A policeman took
 hold of my collar with his left hand and asked
 me where I lived. I said I did not know as it
 was any of his business. He drew a club
 and knocked me down. I was beaten by two of them.
 I cried "Fred" rang out "Fred" and I cried
 Murder when they were pounding me. Bezant came
 down Du Bois told the other officer to arrest him (Bezant).
 "Bezant" was arrested by Paul & I was taken down
 Clark to Ohio Street. I identify Du Bois as the
 man that took hold of me. He took hold of
 me first. On the way down I wanted to know
 what they were going to do with me, may have
 had more struggle on the way down Clark Street.
 He struck me. I cried out. People interfered.
 I gave him my name and residence. I was taken
 to the lock up at the Armory. My face and eyes
 were filled with blood, I was struck with a
 Policeman's club. Got four or five blows
 when I was down on the side walk by Bezant's
 door; was rendered pretty much senseless by the

First blow; was in pain all the morning was under a Doctors Care six weeks. I believe I was delirious three or four days was well before the arrest, my Eye was sound and well then. Had been drinking but knew what transpired. Offered no resistance to the Officer, offered no ^{violence} resistance. Intended to go home with Bezant. Do not recollect seeing any one else at the door of Bezants or about there except those I have mentioned. Do not know Bezants, Bezants landlord. The Witness right Eye was put out and destroyed the result of the blows received on the night of his arrest.

Bezant's house where the assault was made is in the City of Chicago.

Upon being Cross Examined by the defendants Counsel the said Thomas Williams testified as follows.

I did not work all day because it was very cold, that after dinner he went to the work shop with Mel Bezant that near three o'clock they went together to the Ice Near Rush St Bridge where they repaired sledging and amusing themselves by three or four hours that while there they drank whiskey once in a saloon near the Bridge on the south side. That they went home to Williams house to supper, that during the evening they twice drank not totally mixed & given them by Williams wife, that

about Eleven o'clock they left McLeains house
 for there way to Bezants house they stopped at
 Foley's Saloon on Clark Street & drank twice, that
 they remained there from three quarters of an
 hour to one hour & then left to go home with Bezant
 to his house on corner of Clark & Harmon Street; that
 witness carried the tools belonging to Bezant which
 were a Hammer saw & screw driver; that Bezant carried
 a small piece of board & three or four pieces of blocks
 of kindling wood, that he accompanied Bezant
 home only for the sake of keeping him company,
 not because he was too drunk to go alone - that he
 went to help him carry home the tools; that as they
 got to Bezants door near the corner of Clark &
 Harmon Street he saw two Policemen standing to-
 gether by the door of Bezants lodgings are up stairs
 over Butlers house from whom he rents the entrance
 is a close stair case from the side Walk with a space
 inside only large enough for the door to swing on

That there was no body there when they came up
 that he saw but the two Policemen, That Bezant
 went first into the door & witness followed that he
 went up the stairs about four or five stairs & then
 handed the tools to Bezant who went up the stairs
 before him; that the police man seized him him
 while standing on the first or second stair &
 struck him a blow on the head with his club
 which knocked him senseless that the Police
 Man was behind him & witness face was towards

the stairs that after knocking him down the Policeman Du Bois dragged him out of the Stew
Wry upon the side walk & threw him down & both of
the Policemen clubbed him with their clubs that they
struck him four or five or more times with their clubs
on his head, that Du Bois then took him off &
Paul arrested took off Bezant also. That while
he was going up the stairs after Bezant he met a
man Dable on the stair case coming down. That
it was not either on the threshold of the door nor on the
side walk where he was seized & struck by the Policeman
That he said nothing to them nor they to him except
to ask him his name he told them it was none of their
business and something was said by some one about
Bezant. That he was attended by Dr Paoli the City
Physician whom he told that he did not know who
struck him ~~that he did not then know who struck him~~
that he did not then know Du Bois by name but
knows him now.

Frederick Bezant. The next witness sworn & examined
for the prosecution testified that
he was a Carpenter by trade, had a family & lived in
Bibber's house in Huron Street near corner of Clark
that on 22nd January last after dinner he went
with Williams from the Shop where they both

worked, to the Ice near Rush St Bridge that they
 went about three o'clock & staid till supper time,
 that they drank Whiskey once in the afternoon that
 he went home with William & took supper with him
 at his invitation; that they spent the Evening to-
 gether at William's house till about Eleven o'clock
 that they drank twice of hot toddy mixed & given
 them by William's wife, that he had some tools & some
 blocks for kindling wood at William's house that
 William started to go home with him & carried the
 tools, a hammer, saw & screw driver & witness carried
 a small piece of Board for a sled & the blocks;
 that they stopped at Foley Saloon & drank twice, staid
 there about an hour then started to go to witness
 home on Huron Street, that when they got to the
 house he saw Betner & Du Bois the Policeman stand-
 ing by the house & near the door to witness' lodgings
 talking together; that when he came up Betner
 summoned him for his rent & he told him it was not
 due till the 25th. That he went up stairs &
 William followed him & on the stairs handed him
 the tools & as he received them bid William "Good
 Night" that he went to the head of the stairs & laid
 them down on the landing & as he took hold of the
 door knob, at the head of the stairs, leading to his
 room he heard some words - that he went down
 & found William talking with the Policeman Du
 Bois on the side walk that William told him
 that the officer wanted to know his name & he told

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him to tell him his name & then bid him good
night again & went up stairs. When he got to the
head of the stairs he heard him cry "Fred" "Fred"
& murder then he ran down & saw Williams lying
on the ~~the~~ side walk lengthwise of the street, near
the edge of the side walk. That he witness was
immediately arrested at the door by Paul & taken
off to the Armory. That he saw no blows struck by
any one. On his Corp Examination the witness
said that there was no scuffle & no one struck
on the stairs or in the stair way that he saw - that
if there had been he would have seen it. That he
saw no blows & struck anywhere. That he was exam-
ined as a witness before the examining Magistrate
that he may have said that he might have in-
quired he saw some one lying on the side walk that
he ~~would~~ not now swear that he saw Williams
or any one lying on the side walk - that on the
way down he was with Paul that he witness went
along peacefully; that on the corner of Indiana &
Clark Paul stopped & rapped with his club on the
side walk for assistance that this is half a block
from the corner of the alley on Clark between
Indiana & Ohio Street that he saw no blows
struck there, nor heard anything said, nor heard
any one cry or noise, nor saw any collection of
people, that he did not hear or see anything of the
rob or any disturbance on Clark Street nor any
where else after the first arrest, that other officers

Came after the alarm of the Policeman & they went with them after they came up to the Armory.

Just as he was going up the stairs he met Fable on the stairs about the middle of the stairs case, this was the first time I was going up stairs.

John Fable

A Witness Inform & Examine

For the prosecution said — That on the night in question he went from a dance with a girl who lived over Bitner's house (up the same stairs that Bezant lived) about twelve o'clock at night; that before reaching the house he saw William & Bezant coming along Clark Street, that he went up stairs & left the girl at the door of her lodgings & was going down stairs & met Bezant on the stairs about half way that he also met William lower down, that he heard Bezant open the door of his room before he witnessed Fable to the foot of the stairs & heard William throw the book he carried, down on the floor at the landing at the head of the stair case — that Bezant then bid him good night & William descended the stairs behind Witness; that he was immediately behind Witness may be a second or two behind, that when William came to the door Bitner asked him what his name was & William replied it was none of his business, Bitner then said he would

he would not have him go up in his house, that
 time of night & spoke about his being there one
^{evening they were talking when his child was dying}
 Night Making a noise & breaking down stairs, at
 this Bezant came down stairs again & said to
 Bitner It was none of his business, he paid his rent
 & he could take whom he pleased up stairs, then
 Du Bois told them they had talked enough on the
 side walk, told Bezant to go in & Williams to go home
 Williams said they could talk inside.

Bezant started to go up stairs & Williams attempted
 to follow him. That Du Bois took Williams
 by the collar & jerked him down & struck him with
 his Club inside of the door & dragged him out on
 the side walk & then gave him a good whaling
 with his Club, at this time the Policeman Paul was
 standing on the side walk on Clark Street about
 half a block off, three buildings off. Williams
 hollered Fred & Murder & Bezant came down
 stairs again, Paul then arrested Bezant & took him
 off, Williams had then gone off with Du Bois.

On the Cross Examination this Witness said that
 after he came down stairs he stood on one side
 of the door & Bitner on the other in front of his
 harness shop, that he heard Bezant open his door
 at the head of the stairs & heard Williams lay down

his tools on the landing at the head of the stairs before he & Betsey got down stairs, after they had passed him on the stairs. Heard nothing said by the officer before he seized & struck Williams only that he told him he had talked enough & that he must go off & go home. That after they had gone off with Williams & Bezant & Betsey went up stairs with Betsey and staid there half an hour or so then went home he saw nothing more of the parties that night.

Dr Gerhard C. Paoli

A Witness produced

& sworn for the Prosecution

Said in substance that he was called on Sunday Morning the 23^d January last to the Armory to see the Witness Thomas Williams, that he found three ~~wounds~~ wounds, two on his head & one on the right cheek bone that the ball of the right eye was lacerated below the center through the Cornea; the lens had protruded, the eye was running out; he directed him to be removed to his house; attended him for six weeks till he recovered with the loss of his eye; a Policymans Club was shown the witness who stated that he thought the injury might have been inflicted with such an instrument; and that it would require a pretty hard blow to produce the injury of the eye as he found it. That Williams face, eye and head were all cured

With blood, Coagulated blood; That while Williams was under his Charge, for the first week he was very much out of his mind.

Samuel Ellis.

Was next called as a Witness for the Prosecution who testified that he was a Policeman, that on the Night of the 20 January last he was on the beat East of that, on which Du Bois & Paul were stationed that between twelve & one o' Clock at Night he was attracted to Clark Street by a Police Alarm that he came to the Corner of Indiana & Clark Streets & found Paul there, standing with Bezant that he asked Paul what was the matter he replied that Du Bois wanted help. that he went up the block to the alley, about midway of the Block found Williams on the side walk leaning on his Elbow & Du Bois standing by him, that Williams face was bloody & there was blood on the side walk that he & Du Bois got him up put the Corne a loop on him & took him to the Armory together, that on the way Williams made resistance & tried to get away from them that he told him he had better come along peaceably that he should think he had got Enough of it. That Williams said he would go along, that he had got Enough but he deserved what he got that he ought to have behaved himself.

That when he came up to Paul he noticed that his Club was broken; On his return from the Army with Paul he asked him how he broke his Club, he replied that Williams kicked at him that he struck at his legs with his Club as he was lying down & struck over & the Club hit the side walk & broke it

On the Crof. Examination the witness said that when conversing with Paul he told him they had arrested Williams on the complaint of Bettes & that Bettes said they had before that one Sunday night been up in Bezant's lodgings drunk & noisy & broke the plastering down over his Child when it was lying in the room below That Williams & Bezant were both drunk; that he had all he could do to get Williams along with Du Bois who was on the other side of him

Richard Lappen A Witness called & examined for the Prosecution testified that on the night of the Twenty second of January he was in Foley Saloon on Clark St between Indiana & Ohio that sometime about twelve he heard a cry of Murder in the street. That he ran out and on the side walk near the Alley he saw the Witness Williams lying on the side walk his face was all bloody and there was blood on the side walk, Du Bois was standing near him. That he asked Du Bois what was the matter and he replied that was

None of his business; that witness remarked that it was a bad job and Dubois replied "that is the way we will make your Irish blood fly" that other citizens came up and two other officers

That William said his name was Thomas Williams that he lived 239 Ohio St and wanted to go home and that Williams was taken away by the officers.

Being Cross Examined he said that he had been in the drinking saloon about an hour had drank ale but was not drunk was a witness before Justice Milliken at the preliminary Examination and might have testified he was drunk on the night of the 22^d, that he was not so drunk that night as he was at the time he testified before Justice Milliken

Direct resumed

Lappen said he had a building he was watching that night and had taken something to drink, a glass of ale but was not drunk

Henry Betner

A witness produced and sworn for the defendants testified that he owns the house in which Bezant lives, that witness lives in the lower story of said house, has a wife

and one child, that one child died in the last part of December. That Bezant had lived since the 25th of November last in the upper part of the House, that on the night of the 22nd Bezant and William came to the house about twelve

Witness was standing talking with John Fable that Du Bois and Paul were standing near them ^{that Bezant started to go up stairs and William started to follow him} that Witness asked William what his name was William replied that it was none of his business Witness said he did not want him to go up stairs

Bezant said that he paid his rent and would take who he chose up stairs, that Du Bois then laid his hand on William. Shoulden asked him where he lived and told him he had better go home, William replied "Kiss my ass". Bezant then started to go up stairs and William started to follow him Du Bois took William by the collar and William punched him. They were then arrested and taken away. William was not knocked down with a club by Du Bois or by any one nor was he thrown down. No blows were struck with a club by any one as he saw. If any such thing had taken place then he would have seen it, that William was not at any time lying on the sidewalk as he saw; after the officer went down Clark Street with Bezant and William Witness and Fable talked a moment at the door and went away that he did go up stairs with Fable

Being cross
Examined he stated that William & Bezant were

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not arrested upon the complaint of Witness that he did not ask or direct the officers to arrest Williams that he asked Williams his name and said he did not want him to go up stairs that time of night that when the officer asked him where he lived and told him to go home he told him (officer) to kick his ass and that he arrested him.

Mary Jane Perry

A Witness produced and sworn for the defendants stated that she resided in a two story frame house on the corner of the Alley between Indiana and Ohio on Stark Street that about twelve in the night of January 22 she heard a cry of Murder in the Street, that she raised the window of her room that she saw Williams lying on the side walk and Du Bois standing over him with his club in his hand as she thought about to strike Williams.

She said to Du Bois

don't strike him again you have killed him already Williams said yes he has killed me has broke my head, Du Bois did not strike him. She saw no blows struck. Williams was bloody and there was blood on the side walk and remained there for two weeks that Williams and the officer were directly under her window which is in the second story Room ten or twelve feet above the side walk. That the night was very light and very cold

That she saw and heard all that took place after she looked out until the officers and Williams went away, that she saw Richard Lapping there. Did not hear Du Bois say "any one say" that is the way he will make your Irish blood flow that if such a thing had been said she would have heard it.

Williams told the officers his name and place of Residence Ohio Street & also the number & wanted to go home They then took him away

The prosecution then offered in Evidence a police man club such as the prisoners had on the night of the arrest an instrument about 16 inches long of Hickory and an inch & half thick

It was admitted by the State Attorney that William H Price on the morning of the 23^d January went to the premises of Bezant and looked for traces of blood that there was no blood on the stair case leading to Bezant's room nor on the side walk in front of the building

It was also admitted by the State Attorney & made part of the Evidence upon the trial that hitherto the defendants had uniformly borne a good Character for integrity and

humanity among those who had known them and
that hitherto they had discharged their duty as Police
officers with fidelity and had been careful and
humane in the use of their authority as officers.

I hereby certify that the foregoing is a true state-
ment of the evidence in this case.

Charles Haven
State Attorney

State of Illinois }
County of Cook } ss
City of Chicago. }

I Robert S Wilson Judge of the
Recorder Court of the City of Chicago do hereby certify
sign and settle this Bill of exceptions pursuant
to the statute in such case made and provided, and also
certify that the foregoing Bill of exceptions is a
true history of the proceedings on the said trial above
mentioned and a true and correct history and state-
ment of all the evidence and proceedings herein

In Witness Whereof I have hereunto set my
hand and seal this 19th day of April in the April
Term A.D. 1854 of the Recorder Court of the City of Chicago
at Chicago in the County of Cook aforesaid

R. S. Wilson
Recorder City
of Chicago

State of Illinois 3
County of Cook 3
City of Chicago 3

I, Joseph H. Forrest Clerk
of the Recorder's Court of the
City of Chicago, County and State aforesaid do
hereby certify that the above and foregoing is a
full and true transcript of an Indictment and
of the Instructions proceedings entered of Record
in this Court in the Case of the People vs. Plaintiffs
and David Du Bois Defendant



In Witness whereof I have
hereunto set my hand and
affixed the seal of this Court
this 21st day of April ad 1859
Jos. H. C. Forrest
Clerk

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David Dubois
Plaintiff in error

"

The People
Defendants in error

Record -

Filed May 24, 1859
L. Leland
Clerk