

No. 12505

Supreme Court of Illinois

Coughlin.

vs.

People.

71641  7

STATE OF ILLINOIS,
COUNTY OF COOK,
CITY OF CHICAGO, } SS.

PLEAS

BEFORE THE

HONORABLE ROBERT S. WILSON,

Recorder of the City of Chicago, and Presiding Judge of the Recorder's Court of said City, at a Term thereof, began and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday of, it being the Sixth day of April in the year of our Lord One Thousand Eight Hundred and Fifty Seven and of the Independence of the United States the Eighty first

PRESENT: HON. ROBERT S. WILSON, Recorder of the City of Chicago.

Charles Hare States Attorney.

John S. Wilson Sheriff of Cook County.

ATTEST: PHILIP A. HOYNE, Clerk of said Court.

Be it Remembered, to wit, on the Sixth 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 figures following, to wit:

The Sheriff of Cook County returned into Court the Venue issued in due form of law for a Grand Jury served by summoning the following persons to wit

Nathaniel Sawyer, W. A. Baldwin, N. J. Benton Reuben Taylor, George W. Cosby, M. L. Keith A. F. Bradley, A. W. Burley, H. F. D. Wolf, James Puffy, Edward Hammeire, Henry Fuller, W. W. Panenbower, Thomas R. Ferris, Enos Myers, Franklin Baker and Ebenezer Jay and J. C. Barrett, C. J. Briggs, C. C. Flint, Jas Beck, Harry Pankas, W. D. French not found who upon being called answered to their names as follows and gave their attendance at the Term to wit:

H. F. D. Wolf, James Puffy, Edward Hammeire Henry Fuller, W. W. Panenbower, Thomas R. Ferris, Enos Myers, Franklin Baker & Ebenezer Jay,

For sufficient reasons made known to the

2
Court Nathaniel Sawyer, N. J. Benton and W. A. Baldwin
are excused from attendance to this Term.

Ordered by the Court that an attachment
issue for the bodies of Reuben Taylor, George W. Cobb,
M. L. Keith, A. F. Bradley, and A. W. Bailey they having
been duly served with process, returnable on Wednesday
morning at nine o'clock

Ordered by the Court that a special Venue
issue for nine good and lawful men to complete the Panel
of the Grand Jury returnable instantter which was duly
returned by the Sheriff of Cook County executed by
summoning the following named Persons to wit:

George W. Cobb, E. W. Litten, P. W. Bigelow
W. A. Feltow, James Turner, Michael Burns, A. J.
Willard, J. T. Mc. Master and Moses Hogan, who
upon being called severally answered to their names
and whom together with H. F. D. Wolf, James Duff,
Edward Manierre, Henry Fuller, W. W. Danenhower,
Thomas R. Ferris, Enos Cress, Franklin Parker
to Ebenezer Day were duly sworn in as a Grand
Jury in and for the body of the City of Chicago in
said State and County and the Court having appointed
Henry Fuller one of their number, as Foreman of the
said Grand Jury and they having received the
Charge of the Court retire to consider of their
presentments.

And afterward to wit. on the thirtieth day
of April in the year last aforesaid it being of the

3
term of Court aforesaid the Grand Jury came into
Court and among other presentments made the follow-
ing presentment endorsed at true bill to wit

The People of the State of Illinois

108 is against with a deadly weapon
Dennis Coughlin which said Indictment is
in the words and figures following to wit

State of Illinois

City of Chicago

Cook County } Of the apud term of the Recorder's
Court of the City of Chicago in said State and County
in the year of our Lord One thousand Eight hundred
and fifty seven

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 Dennis Coughlin
late of said City on the third day of March in
the year of our Lord One thousand Eight hundred
and fifty seven in said City of Chicago in the County
and State aforesaid in and upon one Floyd
Higgins in the peace of the said people then and
there being, with a certain Club which he the said
Dennis Coughlin, then and then in his hands
had and held the same Club being then and
then a deadly instrument did then and

11
then unlawfully make an assault with intent
then and then to inflict upon the person of him
the said Floyd Higgins a bodily injury no
considerable provocation for the said assault
then and then appearing contrary to the Statute
and against the peace and dignity of the same
People of the State of Illinois. Carlos Hareu
State Attorney

Which said Indictment is endorsed in the words and
figures following to wit: P Gen No 1549 - Recorder's
Court of the City of Chicago - April Term 1857 - The
People of the State of Illinois vs Dennis Connelley
Indictment for assault with deadly weapon
At June Bile Henry Fuller Foreman of the
Grand Jury. Witnesses Floyd Higgins W H
Demary John Harrison H H Maccham O S
West - Ker a Johnson P Hayland J V Smith
O Morrison Louis Dodge Atterple J K Hyde
H P Moses S H Ince A Hitchcock P W Doran
John Gillespie Sam Rugg A C Cluthorpe Wm
C Noble Thomas Cox M Smith
Filed April 13 1857 P A Haynes Clerk

And afterwards to wit on the Twenty third day
of April in the year last aforesaid, it being of the
term of Court aforesaid. the following proceedings

6
come the said People by Messrs Haven and Arnold,
and the said defendant being three times solemnly
called comes not nor any one for him but herein fails
and makes default: and Michael O'Shaughnessy
Security of the said defendant being three times
solemnly called to produce the body of the said
defendant into Court but failing herein

It is Ordered by the Court that
the default of the said defendant and his
Security be entered, that the said Recognizance
be taken and declared as forfeited and that a
Bene Facias issue returnable to the next term of
this Court requiring the said defendants then
and there to appear and show cause if any they
have why the People should not have execution
of the said Recognizance according to the force
and effect thereof

It is further Ordered that a
Capias issue in this cause returnable instantly

And afterwards to wit on the Twenty fifth
day of April in the year last aforesaid at being of the
term of Court aforesaid. the following proceedings
were had and entered of record in said Cause which
proceedings are in the words and figures following to
wit

7
108 The People of the State of Illinois
@ Against with a deadly Weapon
Dennis Coughlin And now again comes the said
People by Messrs. Hann and Arnold and the
said Defendant as well in his own proper person
as by his counsel Messrs. R. S. Morris, Thos. Heywood
and J. B. Bradwell, also come and issue being joined
It is ordered by the Court that a jury come, thereupon
come the jurors of a jury of good and lawful men
to wit-

O. Smith a J. Person, D. A. Gage &
L. Barclay Francis Rattle John J. Doyle H. B.
Stewart Philander Eddy & B. Conroy.

Thereupon It is ordered by the Court that
writs of attachment issue against those who
were duly served with process as jurors for Contempt
of Court for non attendance, and that the
further consideration of this Cause be postponed
until the coming on of the Court on Monday morning
next at Nine O'clock,

And afterwards to wit on the twenty seventh
day of April in the year last- aforesaid at being
of the term of Court aforesaid the following proceedings
were had and entered of record in said Court on this
Cause: to wit

8
118 The People of the State of Illinois
" against with a deadly Weapon
Dennis Coughlin This day again comes the said
People by Messrs Hawn and Arnold and the said
defendant as well in his own proper person as by
his Counsel Messrs Heyne Morris and Braden
also comes and the jurors aforesaid also come &
Phelps A J. P. Sam D. Lago J. S. Barclay Francis
Rattle John J. Floyd H. L. Stewart Philander
Eddy and S. B. Tomery. and Benjamin F.
Carrar W. A. Neef and E. W. Spears also come
who being duly elected tried and sworn call and
truly to try the issue joined between the parties
according to law and the evidence. and they hearing
a portion of the evidence adduced on the part of
the prosecution as well as the defense

It is Ordered by the
Court that the further consideration of this cause
be postponed until tomorrow morning at
nine o'clock.

And afterwards to wit on the Twenty Eighth
day of April in the year last aforesaid it being
of the term of Court aforesaid, the following
proceedings were had and entered of record in
said Court in this cause to wit.

9
108 The People of the State of Illinois
vs Against with a deadly weapon
Dennis Laughlin This day comes the said
People by Messrs Hawn and Arnold and the said
defendant as well in his own proper person as
by his counsel Messrs Hogue Morris and
Bradwell also come and the jurymen aforesaid
also come, and they hearing further evidence
adduced and the arguments of Messrs Morris
and Hawn

It is ordered by the Court that the
further consideration of this cause be postponed
until the coming in of the Court tomorrow morning
at Nine O'clock

And afterwards to wit on the twenty Ninth
day of April in the year last aforesaid it
being of the term of Court aforesaid the following
another proceedings were had and entered of
Record in said cause which proceedings are
in the words and figures following to wit;

The People of the State of Illinois
108 vs Against with deadly weapon
Dennis Laughlin and now again
comes the said people by Carlos Hawn and
Chaas Arnold Esquires and the

Said defendant as well in his own proper person
as by his counsel Messrs Morris Hogue and
Bradwell also come and the jurors aforesaid
also come and they having heard further arguments
from Thomas Hogue and Isaac W Arnold Esquires
and the instructions of the Court retire in charge
of a sworn officer of the Court to consider of
their verdict and afterwards come into Court
and say One of the Jury find the defendant
guilty in the manner and form as he is charged
in the indictment - but in view of the circumstances
recommend him to the Clemency of the Court

And now comes the said defendant
by his counsel and moves the Court for a New
trial and also in arrest of the Judgment
in this Cause

And afterward to wit on the first day of
May in the year last aforesaid it being of the term of
Court aforesaid the following among other proceedings
were had and entered of Record in said Court in said
Cause which proceedings are in the words and
figures following to wit

The People of the State of Illinois

108

vs

Against with a deadly weapon

Demas Coughlin This day comes the said

11
People by Carlos Aaron State Attorney assisted
by Isaac W. Arnold Esq and the said defendant as
well his own proper person as by his Counsel Messrs
Hymn Morris and Bradwell also come and now
now on the motion for a New Trial and on arrest
of Judgment heretofore made in this Court the Court
having heard the arguments of Counsel thereon
and having fully deliberated and advised
himself fully on said Motion Orders that the
same be reversed to which reversing by the
Court the defendant by his Counsel appeared
then and there excepts

And now neither the said defendant
nor his counsel for him saying anything further
why the judgment of the Court should not now
be pronounced against him on the verdict of
guilty heretofore rendered in this cause

Therefore It is Ordered and
adjudged by the said Court that the said
defendant Dennis Coughlin be taken from
the bar of this Court to the Common Jail
of Cook County from whence he came and the
said Jailor is hereby required and commanded
to take the body of the said defendant
and confine him on said Jail in
safe and secure Custody for and during

the term of Sixty days from and after the date hereof And it is further

Ordered by the Court that the said defendant be fined the sum of Two hundred and fifty Dollars and the Costs of this prosecution and that he stand committed to the Custody of the Sheriff of Cook County until said fine and Costs are duly paid, and that afterwards he be discharged.

The following is a true copy of the motion filed in the cause for a new trial and on arrest of judgment herein.

Demetri Coughlin

advs } against &
The People } The defendant moves the Court for a new trial upon the grounds following to wit

1st That the verdict of the jury is against law and the evidence in this case

2^d That the Court ^{erred} in giving the several instructions as asked for by the State Attorney and in each and every part and branch of said several instructions

3^d That the Court erred in allowing the State to give evidence of the manner and circum-

stances of Harnam's arrest prior to the
 time Higgins made his appearance at or in
 the Court at the time of the arrest
 H^d That the defendant has been fined already
 for this ^{same} offense \$100 before Justice Grant which
 was not known to Spts attys

Hayne Morris for Spt

And afterwards to wit on the first day of
 May in the year last aforesaid & being of
 the term of Court aforesaid the following
 bill of Exceptions was duly filed in said Court
 which said Bill of Exceptions is in the words and
 figures following to wit;

Recorder's Court of the
City of Chicago

114

Be it remembered that on the trial
People of the State of Illinois of the above entitled cause that the
Prosecution introduced on the trial
Dennis Coughlin the following named Witnesses
in the order hereafter named who
being duly sworn respectively testified as
follows viz:

Harrison

John Harrison — being duly sworn
Testified as follows, viz: — I acted as an
officer at the City Election in March last.
I went to the Fifth Ward Polls immediately
after dinner on the Election Day.
I saw an attack made on a team after Sheriff
Wilson took off Mr Sampson, we were called
upon to close up to the carriage in which
Sampson was. — Captain Connell gave
orders to make way in the crowd for a
team that was trying to get along the
Street. — There were some men backing
the horses. — one with a club striking
the horses, — I stepped up & asked them if they
would not stop it — a man struck me
with a club — the man had his club up
to strike again — I drew my Revolver —
turned round & told him I was an
Officer — the man then dropped his club

P.

The crowd fell back, & raised the cry -
 a man with a Revolver in his hands.

I was then caught by Mr Coughlin & Mr
 Heneberry & another man - I do not know
 who the other man was - they took away
 my Revolver & arrested me. There were
 2 or 3 hundred persons around - 2 or 3
 persons making the attack upon the
 wagon - there was a great deal of noise.
 Capt. Connett gave some order about
 clearing the way for the team.

I had been struck once before I drew
 my Revolver - Coughlin wrung the Pistol
 out of my hand - a number of persons
 were pushing & kicking me.

Coughlin told them to fall back -
 as I walked along, I saw Mr Higgins
 he stepped backwards & asked me what
 the trouble was & where I was going. I told
 him that I was arrested & so step aside
 Higgins told the Officers that had me
 under arrest, - that I was an Officer
 & that they ought not arrest me -

I told Higgins to get out of the way &
 let me go along - somebody kept
 kicking me from behind - Mr Coughlin
 had a club - It did not look like
 a Policeman's club.

PX

16 9

it was longer - of a light color - & looked as if it was nearly cut & barbed.

Higgins stepped to the right - Coughlin said something to Higgins dont know what he said - After Higgins went Dor I stepped forward. Coughlin drew his arm out of mine & struck Higgins - Can't say what direction Higgins' face was from Coughlin at the time he struck him the blow. -

hit Higgins on the head - that was all I saw. I cannot tell whether Higgins fell or not - a crowd was pushing me along - I was about half a block from the wagon when Higgins was struck.

I was taken down to the Watch-house & my name put upon the book there

On the Cross Examination said Willett testified that we made no stop. I was anxious

to get along from the crowd, who were pushing & kicking me from behind.

I saw the blow - it was aimed at the head of Higgins - I cannot tell where it hit him - I cannot say positively whether it hit Higgins or not. The blow

I saw was raised up & partly brought down - the other two persons that arrested me with Coughlin came along with me. Coughlin did tell the crowd several times

the blow

page 28

chub.

17 ~~83~~
to keep back & let me alone — but the crowd did not mind him. I am sure that Poughlin is the man that took the pistol away from me — I or 3 pushing me at the same time — I am sure ^{that} I did not swing my Revolver round 2 or 3 times. to the crowd & tell the crowd to keep back, before I was arrested. — I do not know the reason of the attack on the wagon. I went to relieve the wagon — there were several persons there with clubs one club was thrown in the air & dropped at my feet — I do not know that I was much excited — there was a good deal of excitement there — I was anxious to get out from the kicks I received from the crowd behind — I cannot know name any one that I saw there. — there was a very large crowd there & both parties were much excited — can't say that Higgins told the Officers not to take me away — but he did say that they ought not to take me.

9
I was trying to clear the way for the team when I was arrested. I think I was not out of the crowd — did not see whether others had a club or not. It was between Des-Plains & Halstead Streets that Higgins met us. I think the crowd was pretty close on us at

18

that time. I am under the impression that I saw a club swung — but can't be positive. Know that Coughlin had a club because I saw him brandishing it. I cannot say what kind of a club the man had who struck me — I am sure I did not wave my Revolver several times before I was arrested to the crowd. The crowd were pulling the horses when I interfered. (Some one jumped into the wagon & was jumbled back. I think I can't be mistaken as to Coughlin being the man who struck Higgins. I saw the motion of the blow, but did not see it hit Higgins. I suppose it hit Higgins. Coughlin drew his arm out of mine to strike the blow direct — resumed — I have no doubt Coughlin is the man who struck Higgins — but I did not see the club touch Higgins.

Coughlin
struck the blow

The Prosecution then called Mloyd Higgins as a Witness who being duly sworn said.

(Higgins)

I am the complaining Witness in this case — I reside in the City of Chicago — I have lived in Cook County ^{Liberty} one year — I have known the Deft. Coughlin for the past 6 or 7 years. I saw Coughlin on the day of our last Charter Election. I was called by ^{our} Deputy Sheriff to preserve order.

officer
12505-120

19

- went up to the Benth Ward at 15 minutes past one o'clock P.M. Saw several people get in trouble but kept out myself.

P I saw Sheriff Wilson take away Sampson in a carriage. I saw Coughlin & Heneberry taking off Harrison - Coughlin had hold of his right arm & Heneberry had hold of his left arm. I thought it very strange they should be taking him off - he was a neighbor of mine. I followed the crowd & run round - took hold of Harrison's coat & asked what was the matter.

9 + + Harrison said - "It is no matter Mr Higgins, I am arrested - let me go along - I have got to go now - go back & attend to the Polls & I will go on. Coughlin said to me go away, we are Officers - do not interfere with us - we are doing our duty - go away, or I will split your head.

P One Blow P As soon as I let go of Harrison I was struck on the back of the head with a club - I think Coughlin struck the blow. It knocked me in the ditch - the crowd rushed on & got me up against the fence. The next thing I remember some one handed me a Pistol - & told me to shoot them - I shot the Pistol off in the air. This was after I was struck.

20

P

Coughlin said at the same time 'get away.'
& then struck me. Coughlin & myself have
had trouble some years ago. I had
Coughlin taken up & bound over to keep
the peace. I was stunned by the blow
from Coughlin. I don't know that
Coughlin struck me after I was down.
but several persons did jump on me
when I was down & some man struck
me 2 or 3 times on the face when I got up

Same
blow

P

2 blow

On Cross Examination — said Witness said — I said
I had Coughlin arrested & ~~that~~ I had
already got my revenge. (Coughlin was
bound over to keep the peace. I will not
be positive I had Coughlin taken up to
keep the peace 3 or 4 years ago. I stated
I had my revenge at that time. I did
not state on the examination before the
Judge that I would be revenged of
Coughlin, nor did I make such a
statement to any one. I will have to
state that I did not see Coughlin

P

x

P

not positive strike me — my eye was not on him
did not see when he struck. I feel sure he did
hit me. I am certain that I went up
& put my hand on Harrison & asked what
they were doing. H. H. Meacham appointed
me to office.

I was not sworn in. I do not know whether Meacham was sworn in or not. I was called for the afternoon.

I live in the Fifth Ward. I was not in the Ninth Ward on Election Day before dinner. I went there after dinner.

I received a Dispatch from White Harrison & Meacham to go to the Ninth Ward.

I did not tell Thomas Hennessy that I would send Coughlin to Alton the first opportunity. Some of my

+ friends said - don't let up on Coughlin & I said I would give him the length of the law. A couple of Police-

+ men said they caught Coughlin on Friday night & said they gave him a good licking - one of them, whose name was Cox

gives money to Police Man for looking Coughlin

Endance arranged in a room money collected

I came to me to day & wanted some money to buy a Pistol with & I gave him 3 dollars. Somebody wanted me to give him 5 dollars. I told him to look after my property. I have attended the Fremont Club Room. Men who got sore heads at the City Election like myself attended to see what evidence they could find against those who were engaged in the late Riots & to try to prosecute the offenders. Men with sore heads gave money there for that purpose.

Some man who keeps a Real Estate Office made a memorandum of names & what could be proved. The Meeting, was called to pick up items - & the subject of the meeting called for Prosecution was talked over at the meeting the paper Harrison & I have had a talk since he was examined. We talked of nothing in particular - I asked him how he got along - I have talked with Moran asked him what he knew. He said he knew a couple of men who cried out "Kill him," when I was down & he was going to point them out to the Judge & that Coughlin had Metalic Knuckles on.

Direct Examination resumed - The Meeting was called for the purpose of seeing who had been hurt - I refer to Coughlin. Cox came to my house since Coughlin had been arrested & said that he wished that they would change his beat as he was afraid of Coughlin or his friends, that they would kill him Cox told me that he arrested Coughlin & that Coughlin resisted & that they had to pound him a good deal.

meacham

The Prosecution then called H. H. Meacham
 as a Witness who being duly sworn - said -
 I have resided in the City of Chicago
 for the past - 15 years. I am Clerk
 in a Lumber Yard. I was a City
 Sheriff on the 3rd of March last.

I went to the Ninth Ward in the forenoon.
 I saw Coughlin in the afternoon. I was
 there when Sheriff Wilson took away
 Sampson. I was in front of the team
 I saw Mr Harrison go towards the team.
 I did not see Coughlin. There was a
 crowd round Harrison & the team.

I saw one man strike Harrison.
 Several persons went to straighten
 the team - saw 2 men have hold of
 Harrison. Harrison was stepping off as
 fast as he could - & the 2 men with him.
 & saw a man at his left striking him.

Shortly after Mr Higgins came up &
 asked what the matter was. At this I
 heard the crowd cry out - Kill him.
 Kill him, Kick him. I saw a man by

the name of Powell strike Higgins as these
 men had hold of him. After I saw
 this man strike Higgins I lost sight
 of him. I heard Higgins cry out - & went
 up towards him.

P.
 Powell
 strikes Higgins

24

P
Coughlin
Strike
Higgins

Some persons struck at him. Shortly after this saw Coughlin step towards Higgins & saw him backing. Coughlin went on towards a Policeman & had a club under his coat & then went up to Higgins made one motion & then another motion & struck in front of the Policeman & struck at Higgins. I didn't recognize Higgins until I saw him up against the fence & a great crowd around him. Heard a Pistol fired & saw the Pistol in Higgins hand.

On Cross Examination said Witness stated - I saw Pettell strike Higgins with his fist on the head & another man in the rear also struck him on the back of the head. All done in a very short time. Shortly after I saw Mr Coughlin come. was walking alone - a Policeman near by raised his club & Coughlin stepped up walked some 10 or 12 feet. The 2 Policemen were standing together - all raised their clubs - I did not see Coughlin strike but once. He struck Higgins on the head with a club. I did not know the man who struck at the time.

I testified at the Examination before the Justice that I saw Higgins struck but that I could not identify the man who struck him. I was much excited at the trial before the Justice more so than I was at the Election & did not like to swear then that I knew the man, but have since seen him & believe Coughlin to be the man who struck Higgins with a club. Higgins had been struck twice in the face, before Coughlin struck him I did not see Harrison. I missed him in the crowd

The Prosecution then called as a Witness H. H. Demarraz, who being duly sworn said - I have resided in the City of Chicago 4 years. I am a Town Constable. I was at the Tenth Ward Polls on the Third of March near the Cor. of Blue Island Avenue & Halsted Streets.

I saw a team come down & a great crowd in the street obstructing the ~~way~~ way.

I heard Capt. Connett say "Boys let us open this street for the team." I saw Harrison come up & draw his Revolver & flourish it before the crowd - saying at the same time stand back Hennebry & some others took the Pistol away from Harrison. Higgins was standing beside the ditch when Hennebry & the others came up

I saw Coughlin raise his club & strike Higgins & then he fell in the ditch.

Coughlin
struck
but one
blow

(73)

26

P
Harrison
knew it
was Coughlin

P

+

The crowd then jumped on Higgins & somebody gave him a Pistol. I did not see Coughlin before the blow was given. I followed the blow back & saw that it was Coughlin who had struck the blow. I heard cries before & after Higgins was struck. The crowd was hallooing Knock the chalk & water out of him — Knock the rope out of him. I was 3 or 4 feet from Higgins at the time the blow was given. Higgins was standing still — some one had hold of him. Just before he was struck; he went in front — he may have put his hand on Harrison. There were from 2 to 4 hundred people in the crying out 'Kill him', I received some blows in the back but do not know who gave them.

On Cross Examination — said Witness testified — I did not see Coughlin have hold of Harrison at any time. Harrison might have been 8 or 10 feet from me. I saw Heneberry & I think Coughlin have hold of Harrison. Powell have charge of ~~Harrison~~ ^{Higgins}. A Policeman had hold of ~~Harrison~~ ^{Higgins} before he fell. I did not see but one blow struck. I could not tell whether Coughlin had hold of Harrison. He might have had hold of Harrison with one hand. I did not see Higgins struck before Coughlin struck him. I followed the blow back to see who gave it. I did not know Coughlin

27

before. The crowd cried out & wanted to take Sampson & I heard Coughlin say "Let him alone — he is in the Sheriff's hands."

The Prosecution then called as a Witness

Thomas H. Hyde.

Hide

P +

who being duly sworn said — I am the keeper of a Grocery in the City of Chicago I know Coughlin by sight. I went to the Tenth Ward Polls after dinner on the 3rd of March last. — I saw 2 Policemen at the South East Cor: of Halstead & Harrison Streets I saw Harrison under arrest in charge of Heneberry & Coughlin. I went out of the street to the side-walk. I got off again on the street & saw Harrison & some men in the middle of the street. I saw Higgins step up behind as if to speak — Coughlin motioned to him to keep back.

The crowd cried out Bad milk! Slope!

+ I saw Coughlin step back & leave Harrison's side. I saw the blow struck & Coughlin

AB

one blow again + P

left with Harrison. My eye was on Higgins all the time & I believe Coughlin struck the blow. Higgins fell in the street.

I could not say that he fell from the blow Higgins went to Genesee & some Policeman took him. Higgins was the only man I knew I was looking at him all the time.

Coughlin was 2 or 3 feet from Higgins.
Coughlin turned about & then went off.

On Cross Examination — said Witness stated —
I said I did not know Harrison — but
that I knew Higgins — Higgins stepped in
between me & Harrison & had some conversation
x with him & Coughlin kept walking along
x & seemed to point his club to let them pass
— no one else with Higgins at the time.

Higgins turned to go away — there was a
great many there at the time, but I did not know them. There was a Policeman

near him. — Coughlin was on his left —
Harrison on his right. The man that

Blue Coat
& cap.

struck Higgins had on a Blue coat,
Blue cap — & curly hair. I think the
club with which he struck was white

Kind of
club.

& longer than a regular Policeman's club,
& looked new as if it had just had the
bark taken off.

First saw Coughlin
to know him a few days afterwards at
Capt. ~~Regents~~ Office & recognized him.
Had on a blue coat & a blue cap & I think
he was dressed the same as he was on
the Day of Election.

29

Coughlin
Identified
by the aunt
of
Harrison

Direct Examination Resumed — I went into
Grant's Office & recognized Coughlin as the
man who struck the blow. I recognized
his features. Coughlin & Heneberry seized
Harrison in front of the horses — The stress
did not aid me in identifying Coughlin —
I was behind them. I saw Coughlin at
the time he arrested Harrison.

The Prosecution then called Mr Paylor as a Witness
who being duly sworn said — I reside on
the West Side. I was at the Gent's Ward on the
Third of March. I saw Higgins & Coughlin there.
There was a team trying to get through the
street. The crowd came in a rush to the
team — Harrison went to the assistance of
the team. Coughlin & Heneberry had arrested
Harrison & was taking him along when Higgins
came up. The crowd said give him
milk & water. I saw Coughlin let go
of the prisoner — I was on the fence — saw
Coughlin — watched his countenance &
face & saw him strike Higgins & I have no
doubt he is the man who gave the blow.
It was a Policeman's club that struck the
blow. There were some 5 or 6 Policeman
there with clubs — some one was urging
them on.

Saw Coughlin
Strike Harrison
P

Policeman's
club —

Let crowd
put into
Club

(17)

30

On Cross Examination said Witness testified as follows: I took more notice after Coughlin struck — I saw the clubs they were Policeman's Clubs. — The Prisoner was one urging them on — Some tried to keep the crowd back. After Coughlin struck the blow, he went for the Prisoner.

Coughlin was on the right hand side of Harrison & I was also on the right hand side of Harrison & Coughlin was between me & Harrison. There was a crowd on both sides of Harrison. He & those with him were over one side of the street.

I did not know Coughlin before that time. When they raised Higgins up I was so near to him that I could lay my hand on his head. I could not be mistaken in the countenance. The next time I saw Coughlin it was at the Examination before Grant. He had on a different dress from what he had on the day of Election. He had on at Grant's, a dark colored frock coat & newer than the one he had on before & not quite so blue. I think Coughlin wore a cap on the Election Day — I did not see him have any cap before the Justice. The Club Coughlin had on Election Day. was of a dark color not

Hyde says, X
had same

White

3 p.

512505247

78
31 P

quite so dark as this club - but larger.

I have not attended any of the
Bremont-Club Meetings for the purpose
of getting up evidence for this trial.

Direct Examination Resumed - When I went

Ident

P X

before Justice Grant I recognized Coughlin
from his face. I know him to be the
man.

The Prosecution then called P.W. Moran as a Witness
who being duly sworn testified as follows: viz:
I reside in the Fifth Ward - I know
Coughlin's countenance - I saw him at
the Fifth Ward. I went there first that
day about 10 o'clock A.M. Coughlin was an
acting Policeman that day. I was at the
Fifth Ward in the P.M. at the time the
rush was made on Higgins - I rushed up
& the first man I noticed was Coughlin.

The crowd cried out Shin him! Kill
him! Coughlin was twenty feet from
Higgins. He turned round & said

"Boys follow me" - follow me" & he
rushed up. He had a pair of Metalic

Metalic Knives Knuckles on one hand & a club in the
other. Coughlin was twenty feet from
Higgins & turned & said - Boys this way.

(J. W. Doran

During his testimony pointed out
persons in the Court who were in the crowd
and cried "Kill him," "Kill him" and one
of these persons was called as a witness and
testified for the defendant.

all that is going to follow me - Come on!
I saw the Knuckles on one hand when
Coughlin addressed the mob.

The crowd said "Kill him, - I see the
man now in this Court Room that cried
Kill him! - This is all I know about the matter

On Cross Examination said Witness said. Coughlin
made a straight line for Higgins.

I kept my eye on him till he got to
Higgins - then the crowd got so thick
that I could not see him.

I did not see Harrison until after that,
but think I saw Harrison after that -
will not swear I did. I am certain
that I saw ^{Coughlin} Harrison with Metallic Knuckles
on one hand & a club in the other
rushing at Higgins twenty feet ahead of
him.

Direct Examination Resumed - I next saw Coughlin
at Brant's Office - I knew Coughlin when I
saw him - I am very hard of hearing - quite deaf
I have a very bad cold which makes me worse than
I was on the Day of Election. I could not hear very
well then.

The Prosecution then called Jesse Morrison as a Witness
who being duly sworn testified as follows - viz:
I was at the Ninth Ward Polls on the 3rd of March

I know Higgins — he is a neighbor of mine. I know
know Coughlin. I was peddling tickets & I do not
know ~~that~~ I saw him do anything to Higgins

Prosecution rested here.

The Defendant introduced on the trial
the following named Witnesses in the order here-
after named who being duly sworn respectively
testified as follows, viz:

The Defendant first called John Henneberry
who being sworn said — I was a Policeman & was
on duty there on the Election Day, the 3rd of
March last — at the 10th Ward Polls.

I was standing on the side walk. There was a
great crowd in the street & I saw a team trying
to make its way through the crowd. I saw
Harrison go up to the crowd where the team
was & draw a Revolver — wave it 2 or 3 times
to the crowd & cried out — I will make room here,

P

There was a great crowd around. I arrested
Harrison & Coughlin & some other men
assisted one in arresting him. We were
taking Harrison off — had got some distance
from the team. When Higgins came up & spoke
to the Prisoner — Prisoner said he was arrested
by the Policeman. Higgins said he should
not go with the Policeman & that we should not

Lake Harrison. Coughlin had hold of Harrison with one. I think Powell was there. Coughlin was on the right of Harrison. I saw Higgins as he was falling in the ditch.

P.

My eye at that time was on Coughlin & I am sure that he did not strike Higgins.

100 per cent
negative

I will swear that Coughlin did not strike Higgins. We brought Harrison down to the Watch House. I have been in no meeting or Office to compare notes with other witnesses.

The Defendant then called William Powell, as a witness who being sworn testified as follows. I was at the Fifth Ward Polls on the 3rd of March last. I have been in Chicago since 1848. I was a Policeman last year. I was on duty as Policeman at the Fifth Ward Polls at the last Charter Election. I saw a team trying to get through the crowd. I saw Harrison take out a Revolver & wave it to the crowd. The Revolver was taken from him & given to the Captain of Police. (Henneberry & Coughlin arrested Harrison. I think Constable McCarthy helped them. I do not think Mr Quirk assisted Coughlin — had hold of Harrison on the right & Henneberry on the left. As they were taking Harrison off — Higgins came up & put his hand on Harrison & said we must

P.

McCarthy

not take him. Coughlin said he must not interfere with us, but to go away — we were doing our duty. I saw Higgins struck with a club & he fell in the ditch. Coughlin did

& The man who really struck the blow { not strike him. My Brother George was the person that struck Higgins on the head with a club. I saw him strike Higgins with the club — it was one that he showed to me in the morning & said he had made it for me. I did not want it. It was larger than a regular Policeman's club — was made out of a stick & was not turned, looked as if the bark had been taken off. I saw my Brother George Powell last yesterday — I can't tell whether my Brother George wore a blue coat or one of a shade darker on Election Day. — he wore a cloth cap.

I am sure that I should have seen Coughlin strike Higgins if he had done so. It was my Brother George that struck him.

The Cross Examination said Wilcox said — I heard cries at the time Higgins was in the ditch, some cried take him down — strike him — bad milk & dope — there was a great crowd rushing on — I tried to save Higgins from the crowd who rushed at him when he was down. —

Cross of Mr Powell

P Coughlin had his club up & I dont say whether
Higgins came against it or not
probably he might. I cant pass an
opinion whether he did or not.

I did not see Higgins put his hand
on Sampson He could have done so
When I was turned round to the crowd
I could not tell whether Coughlin was struck.

& in defending Higgins I received one kick that was aimed at him. I did all I could to keep peace there. My Brother George is about seventeen years old. He is tall & slim of his age. He struck Higgins over the head of a Policeman & then dropped down behind him. They went off with Harrison & I stopped to keep the crowd from Higgins.

The Defendant then called W. H. Price as a Witness who being duly sworn said - I was at the Ninth Ward Polls on the 9th of March last. I saw Coughlin there. I did not know him until that day - I had talked with him in the morning - I saw Harrison under arrest - I saw Higgins come up - I saw a slim young man strike Higgins with a club on the back of the head - he raised up & struck over some one's head & after he struck the blow he squatted down - there was one man between him & Coughlin. I am sure that Coughlin did not strike Higgins. I think I should recognize the young man that did strike him if I should see him again. I think the man that struck the blow had a cap on. As soon as I heard of the arrest of Coughlin for striking Higgins with a club, I said that they had got the wrong man.

The man who struck Higgins

20
negate

24 37 On Cross Examination said Witness stated, I have had no conversation with Coughlin about this trial. I was not a Witness before the Justice. I told some of Coughlin's friends that I knew & I suppose that they have told him.

There was a great excitement after the stopping of the team. I saw, I think as many as a dozen clubs

The Defendant then called as a Witness John McCarthy who being sworn said - I was at the Fifth Ward Polls on the Third of March.

I saw a team trying to get through the crowd saw Harrison go to the team & draw a Revolver & wave it back & forth before the crowd. Saw him arrested.

Heneberry, Coughlin & myself, I think were the persons who arrested him. Higgins came

up when we were taking Harrison off & put his hand on his shoulder & said Harrison should not go

Coughlin told Higgins to go back & not to interfere with us, that we were Officers & were doing our duty

There was a great crowd behind us rushing on which pushed me on towards Higgins & to save myself I took hold of Higgins & turned him one side.

On Cross Examination said Witness stated - The first man that arrested Harrison was Heneberry & Coughlin helped him.

+ I stood to the South of Coughlin — if Higgins was struck it was after we passed him.

J. Henneberry, Coughlin & some others had hold of Harrison. Coughlin did not let go of Harrison's arm but kept along with us.

I went along with them three blocks to Clinton Street during this time I am sure, that Coughlin did not let go of Harrison's arm & could not have struck Higgins. I saw George Powell there at the time we passed Higgins with a club in his hand

The Defendant then called Benjamin Keef as a Witness who being sworn said — I was at the Gent's Ward Polls on the 9th of March last. I was a Police Officer. I saw a team coming the street & a crowd blocking up the street. I saw Coughlin, Henneberry & Mc Carthy walking along with Harrison.

+ I came up & met them going East — while I was going West. I saw a man strike Higgins on the back of the head with a club, if I should see the man again I think I should know him.

+ It was not Coughlin. The club with which he struck was a light-colored club & larger than a Policeman's club. Coughlin had gone by some 10 feet — at the time Higgins was struck

with the Club. I am sure that Coughlin did not strike Higgins

The Defendant then called Captain Connett as a Witness who being duly sworn said - I was at the Polls of the Ninth Ward on the Third of March. I was Captain of the Chicago Police at that time. I went there about 12 or 1 o'clock. I saw several of my Policemen there. I ordered the street to be cleared of the crowd for a team to pass by that was coming along. One of my Policemen came running to me with a Pistol that had been taken from a man in the crowd which he gave to me - I do not now remember which one it was.

There was a great crowd there - it was impossible to do anything with them.

So much noise & excitement - that you could not hear yourself think. I tried to get where I understood Mr Higgins was, but the crowd was so great & so much excited that it was impossible.

+ Coughlin was acting under my orders as Captain of Police. I saw them take Harrison off. I was not at the Police Office any more till evening.

The Defendant - then called John Quirk as a Witness who being sworn said - I was at the

Genth Ward Polls on the Third of March
I helped make the arrest of Harrison.

+ I was acting as a regular Policeman.

I was on the left of Harrison & Coughlin was on
the right. Heneberry had hold of Harrison

in the rear of me & was trying to get Harrison
+ along. I saw Higgins come up in front.

I did not hear Coughlin speak to Higgins

I am sure that Coughlin did not let go of
Harrison. I saw Higgins struck with a

club on the back of the head & see him
fall in the ditch.

+ I will swear that it was impossible for
Coughlin to have struck him as Higgins was
as much as 10 or 20 feet in the rear at
the time he was struck. I did not see
McCarthy there.

The Defendant then called as a witness Stephen
Blake who being sworn said - that I was at
the Genth Ward Polls on the Third of March
last. I saw Coughlin & Heneberry have hold

of Harrison & saw Higgins come up & put his
hand on Harrison - I heard Coughlin tell

Higgins to keep off. I saw Higgins fall in
the ditch. I was right in front of Coughlin

& could see him - my eye was on him.

I will swear that Coughlin did not strike Higgins

+ Coughlin was about 10 feet ahead of Higgins at the time he was struck.

The Defendant then called Jeremiah Lorden as a witness who being sworn said — I was at the Charter Election in the Ninth Ward on the Third of March last.

+ I saw the crowd there, saw Higgins go up to Harrison & saw Coughlin push him off one

+ side & pass along — a young stripling

Saw the of a man then struck Higgins on the back
man who of the head with a club — did not look
struck like a regular Policeman's club.

Higgins — I can't say whether Coughlin had a club. He was at the right side of Harrison & had a blue coat on.

On Cross Examination said Witness stated I did not know the Officer McCarthy or Mr Quirk. I did not notice Mr Powell at the time. I do not know Capt. Connett.

The Defendant then called George Anst as a witness who being duly sworn said — I was at the Ninth Ward Polls on the day of Election. I did not see the arrest of Harrison. I know nothing of this matter.

The Defendant then called as a Witness Michael Ahearn who being sworn said. I was at the Ninth Ward Polls on the day of Charter Election — I saw the arrest of Harrison — saw Higgins come up & say something to the Officer who had him in charge. could not tell what it was. I saw Coughlin Henneberry & Harrison, at the time that Higgins was knocked down in the ditch. They were in the middle of the street & in such a position that it was impossible for Coughlin to have been the man who struck Higgins.

The Prosecution then called as a Witness Edward Powell who being sworn said — I am a Brother of George Powell. George boarded with me till 3 or 4 days ago. He was at my house on Sunday last. He is working a Plumbing in the City. I saw my Brother William Powell last night after he was called as a Witness at home.

Saw the witness Powell at home

I saw him about 10 o'clock this morning sitting on the steps on the Cor: of Canal & West-Randolph Street on the West Side I do not know where he now is. This Witness William Powell was several times called in open court during the trial

Courts amendments

413
after he was sworn & had testified & before the evidence was closed, but did not appear upon application of counsel for the people in open court — an attachment was issued for him & returned in open court that said witness could not be found.

After the evidence was closed & after the arguments of counsel & before the jury retired. The Court at the instance of the counsel for the Prosecution — then gave the following instructions to ^{the} jury —

1. If the jury believe from the evidence that Hyde, Gaylord and Demary, were in a position to see Higgins when he was struck, and that they are candid and truthful witnesses, and that they swear positively to the fact that defendant did strike Higgins as a fact which they personally know and saw, this is entitled to and should receive more consideration than any mere negative testimony in the case.
2. If the jury believe from the evidence that Higgins, Meacham, Harrison, Hyde, Gaylord and Demary, are truthful witnesses, and that they swear positively to the fact that defendant struck Higgins, such positive evidence should receive more consideration than any negative evidence there may be in the case.
3. If the jury believe from the evidence that the witnesses Henneberry, Quirk, Powell, McCarthy, or any other witness on part of the defendant with the defendant in arresting Harrison and attacking Higgins and exciting the crowd against them and that such arrest and attack was made not to keep the peace but to gratify the personal illwill or private objects of defendant, such facts are proper to be considered in determining as to the credit to be given such witnesses.
4. If the jury believe from the evidence that Powell, since he left the stand, has secreted himself or kept out of the way of the officers to prevent being recalled as a witness in this case, such fact, if proved, should be considered in determining as to the credibility of Powell's statement.
5. If the jury believe from the evidence that defendant and the witnesses Henneberry, Powell, Quirk and McCarthy were, at the time the blow was struck (if struck,) acting together not to keep the peace, but to arrest and carry away from the polls such as they wished to get rid of, and that these among other witnesses testified as partisans to screen the defendant and exculpate themselves, these and all the other circumstances of the case given in evidence should be considered in determining as to the credibility of such witnesses so engaged.

Mr. Engaged

*See Certified Copy
of Substantive
Entered by G. H. Arms*

The Defendant by his counsel excepted to the giving of these instructions.

The Court at the instance of the counsel for the Defendant gave the following instructions to the jury

1. It is the duty of the prosecution to prove the guilt of the prisoner beyond a reasonable doubt, and if from all the evidence in the cause the jury are satisfied that such discrepancies or inconsistencies exist in the evidence on the part of the prosecution as cannot be reconciled consistently with the theory upon which a conviction is asked and the defendant is to be found guilty, they should acquit the prisoner, unless there is other evidence in the cause to prove his guilt beyond any reasonable doubt.
2. Though the general rule is, that affirmative testimony is of greater weight than negative, yet negative testimony may be equal to positive, in cases where witnesses have equal opportunities to listen to or observe the same fact or circumstance; and it then becomes a question for the jury to determine to which they will give the most force or weight under all the circumstances.
3. If the jury believe from the evidence that the witnesses for the prosecution disagree in their accounts of the transaction, so as to make it difficult to reconcile them consistently with the prisoner's guilt, that should weigh as a circumstance in favor of the prisoner, since it is the duty of the prosecution to establish the guilt of the prisoner beyond a rational doubt, upon some rational hypothesis which shall admit of no other conclusion than that he is guilty.
4. If the jury believe from the evidence that Higgins, Meacham, Harrison, Hyde, Gaylord, and Doran testify only to their own conclusion or belief of the identity of the prisoner, as the man who struck the blow, that is not the positive testimony to which the greater weight is to be given, as against the negative testimony of witnesses with equal opportunities of observing the same facts.
5. It is for the jury to judge from all the circumstances testified to, whether the witnesses who have sworn to the identity of the prisoner were mistaken, and if they believe that a rational doubt exists of the identity of the prisoner as the person who struck the blow with which defendant is charged, they should acquit the prisoner.
6. If the jury believe from the testimony in this case that another person named Powell struck the blow in question, and that the witnesses for the prosecution have mistaken the identity of the prisoner, they should acquit the prisoner.
7. If the jury should believe from the evidence that there is a reasonable doubt, arising upon the whole evidence in the cause, that the prisoner was the man who struck the blow in question, they should acquit.
8. If the jury should believe from the evidence that though the witness Powell keeps out of the way, he keeps out of the way to screen his brother from detection, that is a circumstance which should not operate against the prisoner.
9. If the jury should believe from the evidence that the witness William Powell has not concealed himself, but simply absented himself ~~from~~ the trial from the court house, and that there is evidence showing that he is about the city at ordinary places of public resort, this should not operate against the prisoner, or against the testimony of any witness.

The jury having returned their verdict finding the Defendant guilty, the Defendant by his Counsel moved the Court for a new trial upon the following grounds, to-wit: {here the clerk will copy the grounds on file} which motion the Court overruled, & the Defendant by his Counsel excepted to that opinion of the Court. & prayed the Court to sign & seal this his bill of exceptions which is accordingly done in due form —

R. S. Wilson (Seal)
Recorder, &c

(see page 12
& 13 for grounds
for W S —)

State of Illinois }
 County of Cook } ss
 City of Chicago } I Philip A. Horney Clerk
 of the Recorder's Court of the City of Chicago
 in the County and State of said Do hereby
 Certify that the above and foregoing is a true
 Copy of the Record and proceedings had and
 entered ^{in said Court} in the Cause wherein the People of the
 State of Illinois are Plaintiffs and Dennis
 Coughlin defendant, as appears from the files
 in my office

In Witness whereof I have hereunto
 set my hand and affixed the Seal
 of said Court this Eleventh day
 of May A.D. 1857

Philip A. Horney
 Clerk Recorder's Court of
 the City of Chicago



State of Illinois }
 Cook County } ss

I do hereby certify that the
 foregoing Record contains a full and true
 history of the proceedings on said trial in my
 opinion. Given under my hand this 11th day of
 May A.D. 1857.

C. Haver
 State's Atty

Supreme Court of Illinois

Dennis Coughlin

vs.

The People of the State of Illinois

} Error to Reorder Court
of the City of Chicago

And the said Dennis Coughlin
assigns for error to his prejudice in the foregoing and
annexed Record as follows to wit.

- First That the Court below erred in each and every of the several
instructions given as asked by the States attorney, and in every
branch & part thereof.
- Second That the Court erred in giving to the jury the first instruction as asked
by the States attorney and in every part thereof.
- Third That the Court erred in giving the second instruction
as asked by the States attorney.
- Fourth. That the Court erred in giving the third instruction as asked by
the States attorney; and in every branch & part thereof: as there
was no evidence warranting it as given.
- Fifth. That the Court erred in giving the fourth instruction as asked
by the States attorney. as there was no evidence warranting it.
- Sixth. That the Court erred in giving the fifth instruction as
asked by the States attorney, and in every branch & part thereof
as there was no evidence tending to prove the facts implied
by said instruction: which misled the jury.
- Seventh. That the Court erred in ~~giving~~ refusing to grant
Coughlin a new trial as asked for by him.
- Eighth. That the verdict of the jury & judgment of the Court are
generally against law and evidence - Wherefore said
Coughlin prays a supersedeas & that said Judgment may
be reversed &c. By Morris & Hoque his attys.

Harrison
 Wyss
 Leachman
 Bayford
 Hyle
 Stram

Dennis Doughlin,

res.

The People of the State
of Illinois

Record From Records
Court of the City of Chicago

Filed May 13 1857

L. Leland
Clerk

\$6000

Horneberry -
 Powell -
 Pearce -
 McCarty -
 B. Rags -
 Turk -
 Blake -
 Lorden -
 Arnot -

Perscho

Edwin Powell

[Faint, mostly illegible handwriting in cursive script, likely bleed-through from the reverse side of the page. Some words like "Doughlin" and "Chicago" are faintly visible.]

State of Illinois } Third General Session
Supreme Court, April Term, A.D.
1857,

Dennis Caughlin } Forinder in Error

vs
The People of the State }
of Illinois - }

And now
came the People of the State of
Illinois by Carlos Hann and
W. Burdett State Attorneys, and
say that there is no error or
warranty of error in the record
and proceedings herein. Wherefore
they pray that the judgment
and proceedings herein may
be affirmed. Carlos Hann
W. Burdett
State Attys.

Supreme Court

Divine Laughlin
is
The People of

Justice in Law

Filed May 18, 1857

L. Leland
Clerk

Dennis Coughlin

vs,

The People of &c.

Plffs abstract

Dennis was indicted & found guilty of an assault with a deadly instrument with intent to inflict a bodily injury on Floyd Higgins.

Plea not guilty.

Peoples witnesses proved - that Dennis was a policeman. On city election day he assisted in arresting Harrison (another officer) & carried him to the watch house. At time Harrison was arrested he was flourishing his Pistol at a crowd of several hundred men in the street already much excited by a fight just passed off - Harrison trying to make room for a wagon to pass -

On their way to the watch house, the crowd following, till they met Higgins, who Refused to let Harrison go further - but Harrison, Dennis & others told Higgins to go away. Higgins then turned away & behind Harrison & Dennis towards the gutter near the side walk - Here he was struck with a club on the head & fell into the ditch or gutter - Harrison was near the middle of the street - Dennis had him by the right arm - Hanberry had him by the left arm -

Harrison & those with him made no stop when Higgins was struck down - the crowd stopped with Higgins crying & wts give him rope & milk, kill him &c.

Harrison says he saw Dennis' club raised & coming down within a few inches of Higgins Head - did not see it strike Higgins - believes it did. Saw him fall - Dennis did not have his side over one

one step - kept by his side to the lock up,
felt his arm withdrawn when Higgins was struck,
Higgins says, he saw Dennis flourishing
his police club - He had it up when he
turned away & soon it fell on his head -
he did not see it strike him, but has
no doubt it did hit him - That the first
blow felled him into the ditch by the side
walk.

The other witnesses of the People say they saw
the blow that felled Higgins & that they did not know
him, but identify him as the man who struck
the blow, in a crowd of several hundred strangers
the blow was with a light colored stick longer
than a Police club - saw some 10 to 15 clubs
up at the time ^{of} the blow -

Meacham says Dennis came back &
struck Higgins on the head while two other
officers with clubs up standing by Higgins
side - that he knows Dennis when he sees
him on the street - tho not personally
acquainted with him - but he says he
saw one of the Powells strike Higgins the
first blow before he fell, with his fist - &
then Dennis came up & struck with the
club -

That Higgins was struck by ^{persons} several
times after he fell

Dennis witnesses (from 4 to 7) swear positively that the blow was struck by one Geo. Powell - that they were present & know such to be the fact - that at the time Higgins was struck he was standing on the side of the gutter or ditch near the side walk - & at that time Dennis was with Harrison away from Higgins in the middle of the street & some ten to 15 feet from Higgins going on towards the watch house - and they state that Dennis did not strike Higgins with the club - That Dennis did not leave Harrison's side from the arrest to the watch house - or until after Higgins was knocked down into the gutter -

William Powell states positively that he saw his brother George strike Higgins the blow with a white new made club longer than a Police club - that he offered to him in the morning the refused to take it - that he had heard his brother George give the reason why he struck Higgins & offered to tell it but it was objected to.

That his brother is in the city & has promised to be there in court to testify - they had hunted for him but could not find him - That he (William) left Dennis & Harrison when he saw George knock Higgins down into the gutter and went to Higgins protection & kept the crowd back who were crying kill him, given him Lope & Milk - &c. That someone gave Higgins a Pistol to shoot - he told Higgins to fire it off into the air & he did so.

I give this as the chief or substance of the evidence upon which the Court gave the following instructions for People

I "If the jury believe from the evidence that
"Hyle, Gaylord, & Demary were in a position to see
"Higgins when he was struck - and that they are
"Candid and truthful witnesses and that
"they swore positively to the fact that the
"Defl. did strike Higgins as a fact they
"personally knew & saw. This is entitled to
"and should receive more consideration
"than any mere negative testimony in the
"case".

Then are 2 objections to this instruction,

1st It is assumed if he struck Higgins, that
he struck with a deadly instrument.

2 It assumes the fact, that said witnesses
did ~~swear~~ ^{positively} they personally know
~~from~~ the fact saw the Defl. strike
Higgins, ~~and that he struck him with~~
a club or deadly instrument.

3 It assumes the fact that Dennis
struck the only blow - whereas Higgins
was struck by several persons, as
those witnesses proved; ^{one that Geo. Pratt}
^{struck Higgins the first blow.}

4 It assumes all the other evidence
in the case was negative evidence

5. The court erred in then telling the jury that the evidence
of these 4 witnesses of the People was "entitled to & should receive
more consideration than any other in the case,
Had the court have said, than any who merely swear
that he did not see Dennis strike Higgins at all -

The jury understood the negative evidence as applying to
all the evidence given by the witnesses for Dennis - hence
the verdict, as one of the jurors informed me, after
the verdict was found.

2^d "If the jury believe from the evidence that
"Higgins, Meacham, Harrison, Hyde, Gaylord,
" & Demary are truthful witnesses and
"that they swear positively to the fact
"that the deft struck Higgins, such
"positive evidence should receive
"more consideration than any negative
"evidence there may be in this case,"

Some objections urged to the
first instruction hold good against
the 2^d. More strongly so as all the people's
witnesses are specially named in the
2^d. instruction.

3^d "If the jury believe from the evidence
"that the witnesses Hambery, Quirk, Powell,
" McCarty or any other witness on the part
" of the deft, ^{were engaged} with the defendant in arresting
" Harrison and attacking Higgins and
" exciting the crowd against them, [Harrison
" & Higgins] and that such arrest & attack was
" made not to keep the peace, but to
" gratify the personal illwill or private
" objects of deft. Such facts are proper
" to be considered in determining as to
" the credit to be given such
" witnesses,"

1st This assumes, there is evidence in the
case showing or tending to show, that
said witnesses were engaged with deft in
arresting Harrison & attacking Higgins, exciting
the crowd against Harrison & Higgins, that make
to keep the peace, but to gratify deft's illwill
or private objects. When there is not a
particle of any such evidence given in the
case.

authorities

The court will grant a new trial if they believe the jury acted capriciously or ignorant as to the credibility of the witnesses. 2 Court 323, Butler vs. Sullivan

~~If the jury misapprehended or misunderstood the evidence in a new trial will be granted. 2 Court 367 2 May 23~~

Instructions which assumes that if a witness is believed then the party has a right to recover is bad.

14 Ill. 154

It was the duty of the court to sign a bill containing the evidence & if the parties could not agree upon ^{what was} the evidence, the judge should have corrected the ^{bill with the} evidence but lights he possessed (this was done)

Superior right to expect our opinion ought not to prejudice that right &c. 2 Leam. 256.

4. If the jury believe from the evidence
"that Powell, since he left the stand,
"has secreted himself, ^{or} kept out of
"the way of the officers to procure
"bring recalled as a witness in this
"case. Such fact, if proved, should
"be considered in determining as
"to the credibility of Powell's statement."

1. There is no evidence tending
to show for any such purpose or
reason - ~~on that~~

2. This instruction had the effect to ^{weaken if not wholly} exclude Powell's ^{for Dennis} important evidence.
~~it is therefore error -~~ ^{B. see 11 Ill. 483.}

Authorities.

If the Court instructs the jury upon a state of
facts which do not appear in the
evidence, a New Trial will be granted

Betham vs. McCarty 7 Geo. 139

or assumes there was such evidence.

11 Ill. 483

or inapplicable to the evidence, 2 Sam. 68.

this is in point.

They should not assume or presuppose
a fact which is proper for the
jury to consider. 1 Dana 273.

12 Ill. 392 in point

3 A.K. Marsh. 86, 103

13 Ill. 143 in point

"The instruction should not assume or presuppose a
"fact proper for ^{the consideration of} the jury." such as, "that Powell
had left the Court room, secreted himself or
kept out of the way of the officers to prevent being recalled as
a witness."

1 Dana 273. Lightburn vs. Cooper

3 A.K. Marsh. 86.

13 Ill. 140. 143 in point

"It is not sufficient that it was qualified by one instruction
that may be found to have been given for the deft."

11 Ill. 193 in point

11 — 177 same case

5 B. Monroe 473.

12
18505-497

5th If the jury believe from the evidence
"that the deft. & the witnesses Humbery,
"Powell, Quirk, & McGary, were at the
"time the blow ~~was~~ struck (if struck)
"acting together not to keep the peace,
"but to arrest and carry away from
"the polls such as they wished to get rid
"of, and that these among other witnesses
"testified as partizans to screen the
"def't, and exculpate themselves, these
"all the other circumstances of the
"case given in evidence should
"be ~~given~~ considered in determining
"as to the creditability of such witnesses
"so engaged."

1st There is no evidence tending to prove
any such thing

2nd This instruction assumes there is such evidence,

3rd It assumes that the witnesses acting together not
to keep the peace, but to arrest & carry from
the polls such persons as they wished
to get rid of, and that they testified as
partizans.

Saw.
authorities } "If the court instructs the jury upon a state of facts
"which do not appear in the evidence, a
"new trial will be granted."

Bethune vs. McGary 8 Geo: 39 117.

~~The court has no right to ^{instruct} the jury on
the weight or strength of certain evidence
when it is the province of the jury.~~

9 Court. 110

where they are abstract & have a tendency to make
erroneous impression on the jury, new trial will be
granted.

11 Wend. 83, Benbow vs. Cary.

"Instruction that does not leave to the jury all the facts the evidence conduces to prove, is erroneous."

3 Dana .66. Sullivan vs.

Instruction saying the "might" find so & so, is equivalent to saying they "should" or "shall". 3 Court. 398.

That the court has no right to instruct the jury on the weight or strength of the evidence - this is for the jury

9 Court. R.1.

III.

Verdict is against law & evidence

The rule, that new trials will not be granted in a case when there is a conflict of evidence, is not applicable to a case when the weight on one side is disregard or counteracted by evidence from its nature, ought to have little effect.

6 Court. 486. Johnson vs. Scribner

"Nor is it so in criminal cases, for then the court will weigh the evidence, and if it preponderates against the verdict, will grant a new trial." Leake vs. The State &c. 10 Humph. 144.

The errors assigned are that the court erred in giving the several instructions as asked by the People's atty, and in each part and branch thereof also in over ruling the motion for a new trial. That the verdict is against law & evidence.

By the act of 1857 making it lawfull to take
exceptions to the opinions over ruling motions
for new trials in criminal cases in the
Circuit courts, applies to the Recorder's
Court -

Because, ~~by~~ the act of 15 Feb. 1853
the inferior courts now or which may be
established in cities in this State shall conform
to the rules of practice in the circuit courts
of the county see Purples Sts. p. 334.

2. Jan.,
11. Ill. —
12. —
13. —
14. —

Breese 232

1. Jan.
3 — 66.
3. A.K. Mar.
5 B. Mon.

1. Wind. 83
9. John

6. cont. 186
9 — 1

2 Bay 23.
8 Geo. 117. 13. Thence to Long

Dennis Coughlin

Mr.

The People &c.

Pfys. Brief Valstrait

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

Recorder's Court of the City of Chicago
TO THE CLERK OF THE CIRCUIT COURT ~~FOR THE COUNTY OF~~ *Calumet* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit Court of~~ *Recorder's Court of the City of Chicago* County, before the Judge thereof, between *The People of the State of Illinois*

plaintiff, and *Dennis Boughtlin*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

. Boughtlin as we are informed by *his* complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *first Tuesday after the third Monday in April* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *13th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*Seven*

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

W. Leland
Clark

Instructions

14 Mc 163

2 Sil 285

4 Sil 127

20 Com 68

11 368

13 Mc 78

1 Sil 14

1 Com 407

3 Sil 381

1 Bruce 231

Defence

3 Com 5

5 Sil 298

12 Mc 76

5 Sil 723

13 Mc 341

2 Com 365

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

Error to the Recorder's Court of the city of Chicago.

DENNIS COUGHLIN vs. THE PEOPLE OF THE STATE OF ILLINOIS.

ABSTRACT OF THE RECORD.

This cause arises out of an indictment for an "Assault with a deadly weapon, with intent to inflict a bodily injury upon the person of one Floyd Higgins, where no considerable provocation appeared," which was found and tried at the April term of the court below, A. D. 1857.

No motion was made to quash.

The jury found the defendant guilty and judgment was rendered upon the verdict, fining the defendant \$250 and imprisoning him in the county jail 60 days.

The defendant moved for a new trial, *which was overruled.*

A bill of exceptions was taken,

1. To the instructions asked by the people, (all of defendants instructions having been given as asked.)

2. To the overruling of the defendants motion for a new trial.

The defendant sued out a writ of error and supersedeas from this court, upon the record aforesaid at the present term of this court.

The errors are numerous, but in substance are,

1. The giving of the people's instructions.

2. Overruling defendant's motion for a new trial.

The defendant, having failed to file abstracts in this cause in compliance with the rules of this court, the said people, in pursuance of the first rule of this court, (unnumbered) reported in 17 Illinois Rep. on one of the fly leaves, submits this abstract in preference to asking another writ of error and supersedeas, by which the rights of the people may be postponed.

The states attorney deems it unnecessary to set out the facts contained in the bill of exceptions, because *there is no statement in the bill of exceptions that the bill contains ALL of the evidence in the cause.*

W. BUSHNELL,

States Attorney of the 9th Judicial Circuit.

CARLOS X. HAVEN,

States Attorney of the 7th Judicial Circuit.

5 Sil 723 Section 1240 - New Trial

13 Mc 341 2 Com 365 = 363. 3 Sil 214-16

3 Sil 644-667 10 Com 110-128

4 Com 455 5 Sil 572

3 do 185 3 Sil 310, 20 Com 506
2 do 256 5 Sil 302. 1 Sil 401

12 Mc 76. 4 Decm 205-460-
2 Decm 380 4 Decm 60.

18 Ju 84 3 Decm 97-8 Sic 569.

13 Mc 88. 3 Sic 482.

Reply 5 Sic 298

Notes 1836 334

No witness of death

10 Murphy 144

14 Mc 154

8 Decm 117

11 Mc 83

11 Mc 100 as brief summary of Blum

ABSTRACT OF THE RECORD.

DEINIS COUNTEIN OF THE PEOPLE OF THE STATE OF ILLINOIS

Attorney at Law, 2 Court of the City of Chicago.

April Term, A. D. 1821.

STATE OF ILLINOIS' SUPREME COURT

Brought in
proper

~~201~~ = 20

John Clerk ~~201~~ ~~201~~ ~~201~~
County Court of
Dennis. O'Connell

4 RD,
The People of the State
of Illinois

857

12505

1857
Green

O'Connell
v
People