

(6)

Pat Sullivan

v.

The State of Tennessee

Filed Nov. 5th 1843

10th Criminal

Received I [unclear] v. [unclear] if he does not
appear. When he appears reverse & take bond
for appearance below

Montgomery

Ent. p. 280

24, 4309

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Caption

State of Tennessee

Be it remembered, that at a regular
term of the Criminal Court begun
and held for the County of Mont-
gomery at the Court House in Clarksville Tennessee
on the second Monday in
November in the Year of our Lord
One Thousand Eight Hundred
and Seventy Two when being present
and presiding the Hon J. H. Smith
Judge &c the following proceedings
were had and entered of record
in said Court to-wit

Venire

Irwin Brammatt Esq
High Sheriff of Montgomery County
returned into Court the Statute writ
of Venire facias which is in words
and figures as follows to-wit.

State of Tennessee

Montgomery County To the Sheriff of said
County Greeting

Summon the following per-
sons to attend at the Court House in
said County on the second Monday

of November AD 1872 as a venire from
which to select jurors and have
you then and then this writ with
your return endorsed thereon

No 1 J W Fort and Filcox No 2 J D
Bunnfield M E Wilson No 3 Ed Johnson
H W Aiken No 4 Geo C White Wm Edwards
No 5 D Grant M Haygood P W Herring
No 6 Ben F Hill Geo Bradshaw No 7
J H Tandy W H Smith No 8 John Dodd
Am Perrett No 9 Nathan Allen Squire
Lorrey No 10 J N Patrick Norton Cooksey
No 11 J W Swift No 12 Am Searcy W
Roach W H Campbell No 14 Tom Starnes
No 15 L W Paw No 16 Jas Blackford
No 17 Sol Hunt J L Haile No 18 M L
Sundberg No 19 W H Powell No 20 Nathan
Rowland

And these two constables
to wait on the Court, Geo R Martin
Kenny Whitfield

Witness my hand
this Sept 5th 1872 and 96th year

of the independence of the U, S, of
N. America

(Signed) J. H. King Judge &c
Endorsed, & paid this Sept 5th 1872.
Came to hand same day if paid and
executed in full Nov. 11th 1872

(Signed) Irvin Brammatt Shff

Grand Jury

And thereupon the Court
Empanelled proceeded as the law directs to em-
panel a grand jury from among
the persons so summoned as afore-
said to act for Montgomery County
at this term of this Court, whom
were elected D Grant J. D. Emm-
field J. H. Fort L. H. Pace M. L. Saunders
M. Haygood Jno Bradshaw R. H.
Herring Wm Searcy W. F. Campbell
and H. H. Powell, And it appearing
to the Court that a sufficient number
of the persons summoned as afore-
said do not appear to form the grand
jury, thereupon the Court proceeded
to complete the grand jury from

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among the bystanders, ^{where} of the Court
appointed Stephen Lee and R M
Clifton to complete the ~~the~~ ^{the} ~~aforsaid~~
grand jury, And of the said
grand jurors to-wit, D Grant, J
D Penningfield J H Fort, L W Pace, M L
Saunders, M Haygood Jno Bradshaw
R H Haring Wm Searcy W F Campbell
W H Porrell Stephen Lee and R M Clifton
all good and lawful men Citizens
of Montgomery County, the Court ap-
pointed D Grant foreman and the
said grand jurors having been duly
elected, empanelled, sworn and charged
by the Court to enquire in and for
the body of the County of Montgomery
return to considered of indictments
and presentments, And the other
persons summoned on the venire were
discharged by the Court, And Jno R
Martin a constable of Montgomery
County was sworn in open Court
as an officer to wait upon the grand

jury at this term of this Court.

And at the same term
of said Court but afterwards to-wit,
on the 19th day of November 1872
where being present and Presiding
the Hon J M King Judge &c the fol-
lowing proceedings were had and
entered of record in said Court,
to-wit,

Bill of Indictment	State of Tennessee	vs	Herbert K Butler
	Pat Sullivan	With intent to kill	

This day the grand
jury returned into open Court in
a body with a bill of indictment
against the defendant which is
in the words and figure as fol-
lows to-wit,

State of Tennessee Montgomery County
Criminal Court November term
1872.

The grand jurors of the State
of Tennessee duly elected and empanelled

sworn and charged to enquire in and for the body of the County of Montgomery aforesaid in the State of Tennessee, on their oath aforesaid present that Pat Sullivan and Ellen Morrissey on the 14th day of November 1872, in the State of Tennessee and County of Montgomery aforesaid feloniously and of his malice aforethought assaulted and beat our John Morrissey with a drawn Pistol with intent then and there him the said John Morrissey wilfully maliciously deliberately and premeditatedly to kill and murder and thereby commit Murder in the first degree,

And the grand jurors aforesaid upon their oath aforesaid do further present and say that on the day and Year last aforesaid in the State and County aforesaid that Ellen Morrissey was present aiding and abetting the said Pat Sullivan

(7)

in the said felonious assault and
battery with intent to unlawfully mali-
ciously deliberately and premeditatedly
to kill and murder contrary to the form
of the Statute in such case made
and provided and against the Peace
and dignity of the State of Tennessee

(Signed) F O Anderson

Attorney General

Which is endorsed A true bill. D.
Grant former grand jury. Tom
Morrissey Prosecutor. Tom Morrissey
sworn in open Court and sent before
the grand jury to testify on this bill of
indictment, This 19th day of Nov: 1872

(Signed) Chas D Bailey Clerk

Whereupon the Court ordered that Copies
thereof be made.

And at the same term of said
Court but afterwards, to-wit; On the 2nd
day of December 1872 when being present
and presiding the Hon F W King Judge of the
the following proceedings were had

and entered of record in said Court
to-wit;

State of Tennessee
vs. Assault & Battery with
Pat Sullivan Intent to Commit Mur-
der in the first degree.

Order up- It appearing
printing Atty that the regular Attorney General
Kent, Pro tem, fails to attend, the Court appointed
H K Linton Esq an attorney of this
Court as attorney General Pro tempore
to prosecute this defendant. And
the Court ordered that all the oaths
required by law be administered
to him as such Attorney General
Pro tempore, in open Court, which
Continuance was done. And by consent this
Cause is Continued to the next term
of this Court.

Order fixing And the Court ordered
bail bond that the defendant be admitted
to bail in this Cause in the sum
of Five Hundred dollars, And

Recognizance thereupon the defendant and McSullivan as his surety each for himself in a sum Court agreed to pay the State of Tennessee the sum of Five Hundred dollars under the defendant (Pat. Sullivan) personally appears before this Court at its next term on the fourth Monday in January next (1873) and from day to day thereafter at the Court House in Clarksville to answer the State of Tennessee on a bill of indictment here pending against him for assault and battery with intent to commit Murder in the first degree and does not depart without leave of the Court.

And at a regular term of said Criminal Court begun and held for the County of Montgomery at the Court House in Clarksville on the fourth Monday in January in the Year of our Lord One Thousand Eight Hundred and Seventy Three when being present and presiding

the Hon J. H. King Judge &c the following proceedings were had and entered of record in said Court to-wit:

State of Tennessee }
 vs } Assault & battery with
 Pat Sullivan } intent to commit
 Murder in the 1st degree

This day came the Atty Genl pro tempore on behalf of the State and the defendant appeared at the bar of Antioch the Court And by consent of parties this cause is continued to the next Order fixing term of this Court, And the Court ordered bail bond that the defendant be recognized with securities in the sum of Five Hundred Recognizance Dollars, And thereupon the defendant together with ~~and~~ M Sullivan as his surety came and they each. for himself in open Court agreed to pay the State of Tennessee the sum of Five Hundred dollars unless the said Pat Sullivan personally appears before this Court at its next term to be held for the

County of Montgomery at the Court House
in Clarksville on the fourth Monday
in April next (1873) and from day to
day thereafter to answer the State of
Tennessee on the bill of indictment
here pending against him for assault
and battery with intent to commit
murder in the first degree and does
not depart without leave of the Court.

And at a regular term
of said Criminal Court begun and
held for the County of Montgomery
at the Court House in the City of
Clarksville on the fourth Monday in
April in the Year of our Lord One
Thousand Eight Hundred and
Seventy Three, when being present
the Hon. Jas. E. Rice Judge of the 10th
Judicial Circuit of the State of Tennessee
who presided by special interchange
with the Hon. J. H. King Judge &c the
following proceedings were had
and entered of record in said Court,

on the 30th day of April 1873. to-wit:

State of Tennessee

vs

Pat Sullivan & } Assault & Battery with
Ellis Morrissey } intent to commit mur-
der in the first degree

This day came the

attorney General on behalf of the State

and the defendants appeared at the

Motion to

Quash

bar of the Court, and the defendants

by attorney moved the Court to quash

the indictment against them, which

motion was overruled by the Court. And

Plea

the defendants were arraigned and

charged upon the bill of indictment

here against them for assault and

battery with intent to commit murder

in the first degree, to which they plead

not guilty and for their trial put

themselves upon the Country and the

Att. Gen. doth the like. And there-

Jury

Empanelled

upon came a jury of good and law-

ful men, Citizens of Montgomery County

to-wit, F. H. Majors D. H. Elliot J. R. Coulter

L. H. Crotty, M. C. Northington, J. B. Osborn
 Mrs. Dougherty, L. Shepherd, Nat. Hall
 Joe Smith, W. R. Jewell and M. D. Yates
 who were duly elected, tried and sworn
 the truth to speak upon the issue joined
 to Ellen Morrissey. And thereupon the Attorney General
 with the assent of the Court entered a
 Nolle Prosequi in this cause as to the
 defendant Ellen Morrissey, whereupon
 it is considered by the Court that said
 defendant be discharged from cus-
 tody that she go hence without day
 that the State of Tennessee pay her own
 costs in this behalf expended as to her
 and that a copy be certified to the
 Comptroller for payment.

And it appear-
 ing to the Court that there is not time to
 finish the trial of this cause to-day, by
 Consent of the Attorney General and
 of the defendant and his counsel, the
 further trial thereof is continued until
 tomorrow morning at ten o'clock, and

the jury were placed in charge of J. A. Schuy a deputy of the Sheriff of Montgomery County, who was in open Court sworn to keep them separate and apart from other Citizens

And at the same term of said Court, but afterwards, to-wit: on the first day of May 1873 when being present and presiding (by special interchange as aforesaid) the Hon. Jas. E. Rice Judge &c the following proceedings were had and entered of record in said Court to-wit:

vs Assault & battery with intent
 Cat Sullivan to commit Murder in the
 first degree

This day came again the Attorney General on behalf of the State and the defendant appeared at the bar of the Court. And in custody of the sworn officers came the jury heretofore empanelled in this cause. And it

Continuance

appearing to the Court that there is not time to finish the trial of this cause today by consent of the Attorney General and of the defendant and his counsel the further trial thereof is continued until tomorrow morning at Ten O'clock and the jury were placed in charge of J. H. Kehy deputy Sheriff sworn as aforesaid.

And at the same time of said Court but afterwards, to-wit; on the second day of May 1873 when being present and presiding (by special interchange as aforesaid) the Hon Jas E Rice Judge &c, the following proceedings were had and entered of record in said Court to-wit,
State of Tennessee

vs Assault and battery
Pat Sullivan with intent to commit
Murder in the first degree

This day came again the Attorney General on behalf of the State, the jury

heretofore empanelled in this cause in
 custody of the sworn officer and the
~~Continuance~~ defendant in person, And it ap-
 pearing to the Court that there is not
 time to finish the trial of this cause
 today, by consent of the Attorney Gen-
 eral and of the defendant and his
 counsel the further trial thereof is
 continued until tomorrow morning
 at nine o'clock and the jury were
 placed in charge of J. H. Achey
 deputy Sheriff sworn as aforesaid.

And at the same term of
 said Court, but afterwards, to-wit;
 on the third day of May 1873, when
 being present and presiding (by special
 interchange as aforesaid) the Hon-
 orable J. R. Briggs &c, the following
 proceedings were had and entered
 of record in said Court to-wit,

State of Tennessee

vs

Assault & battery with
 intent to commit

Pat Sullivan

Murder in the first degree

This day came again the Attorney General on behalf of the State and the defendant in custody of his bail, And the defendant by attorney moved the Court to exclude from the jury all that part of the testimony heard in this cause as to the defendant having shot and wounded the Prosecutor, which motion was overruled by the Court, And thereupon in custody of the sworn officer came the jury heretofore ^{to try the issue joined} empaneled in this cause, who upon their oath do say the defendant is guilty of an assault and battery upon the body of Tom Morrissey with intent to commit murder in the first degree in manner and form as charged in the bill of indictment, and that for said offense he be confined in the Penitentiary at Nashville for the period of three (3) years.

And thereupon the defendant

Motion to
exclude
testimony
from jury.

Verdict
of jury.

Motions in by attorney moved the Court in arrest of
 Arrest & for judgment and to grant him a new
 new trial. trial in this cause, which motions
 were upon argument of counsel over-
 ruled by the Court,

Sentence
 of the
 Court.

And thereupon it
 being demanded of the defendant if
 he has any thing further to say why
 the Court should not proceed to
 judgment and execution thereupon
 the verdict of the jury, nothing said, than
 as before he hath said, Whereupon it is
 considered by the Court that for said
 offense the defendant, (Pat Sullivan)
 be confined in the penitentiary at
 Nashville for the period of three (3) years
 from this date in accordance with the
 verdict of the jury, and that he pay the
 costs of this prosecution for which ex-
 ecution may issue

Appeal

And thereupon the de-
 fendant prayed an appeal to the next
 Supreme Court at Nashville, and

tended his bill of exceptions to the action of the Court, which was signed and sealed by the Court and ordered to be made a part of the record and the appeal Order being was granted. And the Court ordered that the defendant be recognized with bail bond security in the sum of One thousand dollars conditioned for his appearance before the ~~the~~ Supreme Court at its next term to be held in the City of Ashburn on the first Monday in December next and from day to day thereafter to abide by and perform the judgment of said Supreme Court in this cause.

Recognizance And thereupon the defendant to appear and M. Sullivan as his surety came, before Spence and they each put himself in open Court. Court agreed to pay the State of Tennessee the sum of One thousand dollars unless the defendant (Pat Sullivan) personally appears before the Supreme Court of the State of Tennessee at its next term to be held in the City of Ashburn on the

first Monday in December next and from day to day thereafter to abide by and perform the judgment of said Supreme Court in this cause, and does not depart without leave of said Court.

Bill of
Exceptions

The Bill of exceptions filed by the defendant is in words and figures as follows to-wit.

State of Tennessee

vs

Ellen Morrissey } In this cause after the
Patrick Sullivan } selection of the jury
the defendant by his
counsel moved to quash the indictment in this cause for this reason, that the defendant Ellen Morrissey was the wife of the prosecutor and that consequently Thomas Morrissey could not testify against his wife nor any one who was indicted jointly with her, neither could he act as prosecutor in such case, and that as Thomas Morrissey was the only witness who

went before the grand jury, ^{to testify,} the indictment must fall; and also that the means & weapon used was not changed, which motion to quash after argument from both sides the Court overruled, to which said ruling the defendant excepted, whereupon the jury were sworn to try the issue joined between the State of Tennessee plaintiff and Patrick Sullivan and Ellen Morrissey defendants the witnesses were then sworn and put under the rule in charge of an officer. Then the Attorney General called Thomas Morrissey to testify when defendant asked the witness if he was not the husband of defendant Ellen Morrissey witness stated he was, defendant then by his counsel objected to his testimony which objection the Court after argument sustained. The Attorney General then moved the Court to allow him to enter a nolle prosequi as to defendant Ellen Morrissey, to which motion defendant

objected and asked the Court for a jury and
 Verdict upon the issue joined, but after
 argument the Court allowed the Attorney
 General to enter a nolle prosequi as
 to the defendant Mrs Ellen Morrissey
 to which action of the Court the de-
 fendant excepted. The Court then or-
 dered the defendant Mrs Ellen Morrissey
 to be discharged from custody, when she
 was sent out of the Court House. The
 Court then ordered the Attorney General
 to proceed with the trial when the
 Attorney General asked the witness Thomas
 Morrissey to tell the Court and jury all
 about his being shot by the defendant
 Patrick Sullivan, to which question the
 defendant by his Counsel objected and
 asked the Court to confine the State to
 the proof of the case charged, it being
 a case of assault and beating with
 a drawn pistol there being no charge
 of shooting which motion the Court
 after argument overruled and allowed

the witness to answer the questions and enter into the proof of shooting, to which proof defendant by his counsel objected.

On the trial of this case the following evidence was submitted to

Testimony of the jury.

Thomas

Morrissey.

Witness for the State. Thomas Morrissey the prosecutor was first called and after being sworn deposed as follows

That on the night of the difficulty he was at a neighbors house by the name of Mrs. Lott, that shortly after he got to the neighbors house his little daughter came up from his house ^{him} after, and delivered him a message from Jo Morrissey and Pat Sammonds to come down to his, Tom Morrissey's house as they wanted to see him, defendant by his Counsel here objected to any thing that the witness' daughter had said, and the Court sustained the objection but allowed the witness to say that he received two messages, One message by his daughter

Mollie Morrissey, and one message by
 Mrs Joe Morrissey, witness then said after
 receiving the first message he left Mrs
 Loretta Jones and went down to his own
~~house~~ where he found sitting in a
 room, Patrick Sammonds and Joe Morrissey
 who were drinking when he got there,
 witness then went into his house and
 after sitting there a few minutes he re-
 ceived the other message by Mrs Joe
 Morrissey, after receiving the message
 witness, Mrs Joe Morrissey, Patrick Sammonds,
 and Joe Morrissey started from witness'
 house and went up to the house where
 Joe Morrissey and his wife Mrs Mat
 Morrissey and Mrs Ellen Morrissey the
 wife of witness all lived, witness then
 stated that when they arrived at Joe
 Morrissey's house before they opened the
 door Joe Morrissey told witness to go
 into his Joe Morrissey's ~~house~~ room as
 there was no one in there except Mrs
 Ellen Morrissey, defendant by his Counsel

here objected to any thing that Joe Morrissey
 said not in the presence of the defendant
 but the Court overruled the objection
 and the evidence went to the jury to
 which the defendant excepted, witness
 then said that they opened the door
 and went into the room, where they
 found Mrs Ellen Morrissey, Shank
 Morrissey and the defendant all sit-
 ting around the fire, witness then said
 that he and Joe Morrissey went across
 the room and sat down on a bed and
 Mrs Mat Morrissey and Pat Sammonds
 took a seat near the fire, witness then said
 that after sitting on the bed for a short
 time Joe Morrissey handed witness a
 large tin cup with some whiskey in it
 and told witness to take a drink which
 witness did and after drinking the whiskey
 witness set the cup up on the windows-
 ill, from which the cup fell on the
 floor and broke all to pieces, witness
 then said that after sitting on the bed

a few minutes, being in fear of his life all the time witness got up and started towards the door, and that when he, the witness, got up from the bed, the defendant also got up from his chair and put his hands in his pocket and drew a pistol, witness then said that he started to open the door and go out as quick as he could, but after opening the door and getting all of his body out except his right leg Mrs Ellen Morrissey and Frank Morrissey shut the door and fastened his leg in the door, from which he was unable to extricate his leg, and that while thus fastened in the door the defendant shot him through the crack of the door and hit him in the forehead, witness then showed to the jury the scar made by the bullet, and also a hole through his hat made by the bullet, and also a scar on his leg ~~made~~ where the door had clamped it, witness then said that the bullet had knocked

him entirely senseless and that he knew nothing that occurred until he found himself lying in the street near a negro church about one hundred yards from the house where witness was shot, witness then said that after coming too he came up town and saw Dr. Thomas Johnson who dressed his wound for him, Witness was then asked by the attorney General if the defendant had not attempted to assassinate him several months before this difficulty by shooting him in the night time through a window defendant by his counsel objected to the witness answering the question and asked the Court to confine the State to proof of the charge then on trial, after argument the Court overruled the objection and allowed the question to be answered to which the defendant excepted, Witness then said that several months before this occurrence and before witness and his wife Ellen Morrissey had ~~parted~~ separated, that while

~~Witness~~ and his wife were in bed about midnight the defendant broke out three pangs of glass and caught the wife of witness by the hair and after pulling her out of the way shot witness in the shoulder the scar of which, witness then showed to the jury, witness then said that he and his wife Ellen Morrissey had separated and had filed mutual bills of divorce before ~~the~~ against each other, which were now pending before the Chancery Court.

Cross Examined

Witness then stated in reply to a question as to how he got shot in the front part of the head stated that after the door was closed against his leg he twisted himself around and brought his face towards the door, witness stated in reply to a question that he was not hit in the head with a bottle by Frank Morrissey but that he was shot by the defendant, witness then stated that he had not told W. F. Ferrell, James Welch, Major S. O. H. Brandon and

Mayor George A. Harris that he had been
 hit with a bottle and had not been
 shot, witness then said that he did
 not say ~~to~~ the above men Ferrell
 et al, that whether this looks like a
 pistol wound or not, it no matter
 what you think it is, Dr Johnson says
 it is a pistol wound, and says the
 ball is right in the back part of
 my head, witness then said he had
 his hat on the back part of his head
 when he was shot, that the bullet
 knocked his hat off ^{down on} ~~on~~ the ground
 that he picked his hat up and put
 it on his head and then went to
 the front gate and turned to the
 left and came as far as the Church
 where he fell, witness was then asked
 if the bullet knocked your senses
 entirely out, how he knew ~~his~~ his
 hat was on and was knocked off
 and that he picked it up and turned
 to the left where he went out the gate.

Witness in reply stated he knew,
 Witness then stated that he did not
 throw the cup down on the floor
 on purpose, and curse the defendant
 at the same time; Witness stated that
 he did not say one word to defen-
 dant all the time he was in the
 room, and stated that he did not
 attack defendant with a knife,
 say he was not put out of the
 room by Shank Morrissey and Mrs
 Morrissey and did not try to get
 back in the room afterwards and
 get his foot fastened in the door,
 say Shank Morrissey did not hit
 him with a bottle, say he was drink-
 ing that night, had taken several
 drinks, Witness was again asked
 if he had not the next morning
 after the difficulty, in the barber
 shop where they were washing his
 head stated to Wm Fennell major.
 Brandon James Welch and George

A Harris that he had been struck with
 a bottle and had not been shot, but
 said that Dr Johnson said he was
 shot and that the bullet was in the
 back part of his head, and witness
 again said that he had not so stated.
 The state then commenced to the Court
 that they were through and closed the
 examination in chief but said they might
 want to introduce some rebutting testimony.

Testimony The defendant then called Mrs Matt Morrissey -
 of Mrs Matt who, after being duly sworn deposed as
 Morrissey follows to wit - that she witness was
 present ^{the night of} at the difficulty between Thomas
 Morrissey and Patrick Sullivan, and
 remembered the same witness stated that
 it was on Sunday evening that she was
 at home and that shortly after dark
 Thomas Morrissey sent his daughter Mallie
 Morrissey, ^{after her} to come down to his home and
 bring him some whiskey, witness refused
 or did not go, and in a few minutes
 Mallie came after her again, and she

witness went down to J. Marney's house
 with her where she found Thomas Morney
 Patrick Sammonds and witness husband
 Joe Marney all of whom were drinking
 witness went in and staid a few moments
 and then tried to get her husband Joe
 Morney to go home with her as witness
 was anxious to get him home as he was
 drinking. witness then said that her
 husband refused to go with her when
 Thomas Morney got up and told witness
 that he would go with her, and that
 Joe, her husband, would follow them.
 witness then started home with Thomas
 Marney, when her husband Joe Morney
 and Patrick Sammonds got up and
 followed them back up to witness's house.
 witness then said that she Thomas Morney
 Patrick Sammonds and Joe Marney all went
 into witness house together that Thomas
 Morney and witness husband Joe sat
 down on the bed in the room and that
 witness and Patrick Sammonds sat down

near the fire place, witnesses then said that
 they were all drinking out of a black
 beer bottle, and a large tin cup, that shortly
 after they got in the room Thomas Moriney
 commenced to throw out his slurs and
 abuse the defendant who was sitting down
 quietly by the fire place, that after a few
 moments they commenced to talk about a
 saw bill, owned by Patrick Sammonds and
 made by one Charles Rast for \$46⁰⁰ when
 Thomas Moriney said to Sammonds he
 would give him \$40⁰⁰ for the ^{saw} bill. Sammonds
 then offered to let him have it at that
 price, when T Moriney told him no, to wait
 untill next morning, when he would find
 him a man that would give him that
 price for it, and then said that the man
 who went to Russellville swore to a damned
 lie, to cheat the poor men out of their money
 meaning the defendant and other men
 who had been to Russellville. witnesses
 then said that Thomas Moriney kept
 abusing the defendant and used words

towards defendant which she witness would
 not like to repeat before the court, witness
 then stated that Jo Morisy handed
 Thomas Morisy who was sitting on the
 bed with him a cup with some whiskey
 in it which Thomas Morisy drank and
 then threw the cup down on the floor, and
 made use of several slurs at defendant
 which she witness did not remember, and
 also said that if he had a wife, he would
 not let his wife stay in such a room as
 this, witness then said that defendant
 paid no attention to the remarks made by
 Thomas Morisy, but quietly kept his seat
 that shortly after Thomas Morisy broke the
 cup he suddenly made a rush at the defen-
 -dant, and witness did not know whether
 defendant was knocked entirely down on
 the floor or not, but thought he was, that
 as quick as possible after Thomas Morisy
 made the attack on the defendant Shank
 and Ellen Morisy caught hold of Thomas
 Morisy and Jo Morisy and pushed them

out of doors that defendant as soon
 as possible jumped up and got on the
 other side of the room where the
 witness caught hold of him by the coat
 and told him to keep quiet, that after
 Thomas and Joe Morisy were pushed out
 of doors they attempted several times
 to push the door open and get back
 in the room, that Shunk Morisy and
 Eben Morisy were standing against the
 door on the inside holding it shut, that
 Thomas Morisy and Joe succeeded in
 getting the door partially open several times
 that while they were thus trying to open
 the door Thomas Morisy put his head
 through the opening of the door when
 Shunk Morisy struck him on the fore
 head with a black beer bottle in his
 hand at the time, that after being struck
 with the bottle Thomas Morisy and Joe
 left and the fuss was all over, witness
 then stated that no pistol was fired at all
 that night by defendant or any one else

that defendant had no pistol that witness knew off, that no pistol was drawn by any one that Thomas Moriney was not shot but was struck with a bottle witness stated that she thought it was about eight or nine o'clock when the difficulty took place.

Cross Examined

Did not go down to Mrs Lerette the night of the affray to ask Thomas Moriney to go with me up to my home. went to Mrs Lerette to get some tobacco. did not go in the house stood at the gate and spoke to her (Mrs Lerette) she was in bed and the door fastened, did not see Thomas Moriney there at all. or hear of his being there, from there I went to Mrs Driscolls got the tobacco and returned home did not see Thomas Moriney the prosecutor at all. I went up after the tobacco to keep my husband Joe Moriney from going up town after it he was drinking. think this was about 8 P.M. it was after that that Mollie Moriney the prosecutors daughter came to my home after me, said her father sent her for me

because my husband was at his house
I did not go until she came the second
time. when I went. I found Tom Morrissey
Joe Morrissey and Paddy Sammons all drinking
they had a black beer bottle with whiskey
in it - my husband Joe Morrissey was pretty
drunk, can't say positively that Tom
Morrissey was drunk. he was drinking -
I begged my husband to go home with
me, he would not go - Tom Morrissey then
said he would go along with us to make
Joe go - we all four then went together
it was only a few steps - Tom Morrissey went
without his hat - can't say whether he
had on a coat. when we got to the house
my husband and Tom Morrissey took a seat
together on the bed still drinking out
of the same bottle. can't know who brought
the bottle along, it was one of them -
when Tom made the rush at ~~defendant~~^{ant} did not
see him have any knife - can't say positively
whether he got to defendant - thinks he
pushed him over. can't say whether defend-

-ant fell to the floor or not, he may then
 just staggered and recovered. Defendant
 moved to one side of the room. Tom and
 my husband were put out as soon as Tom
 pushed defendant - after defendant ^{stepped} stepped
 to one side of the room - I threw my arms
 around him to hold him. I knew he and
 Tom Morisy were not friends, and I was
 afraid if there was any difficulty, my
 husband who was out side with Tom might
 be hurt, the Defendant drew no Pistol
 I saw now, he fired now, Tom Morisy was
 struck on the head with the same bottle
 from which they had been drinking - Thinks
 this took place about 8 P.M. this was
 some time after I went to Mrs Lovells after
 the tobacco it must have been later than
 8. Cant say what time exactly. had no
 watch or clock My husband Joe Morisy
 is the brother in law of Tom Morisy - Shanks
 Morisy is also - Mrs Ellen Morisy (Tom Morisy's
 wife) and Shanks Morisy held the door
 after Tom and Joe were put out - Tom got

his head in twice before Shank struck him -
whereupon the witness Matt Morisy was
discharged and sent out of the court
room

Testimony of
J. J. Willis

Captain Till Willis being sworn
deposed - Live in 60 or 80 feet of the house
when the disturbance occurred. was at home
that night. heard no pistol fire. think I
would have heard it, if any had fired
heard a disturbance and raised my
windows once. I think about 11 PM
heard voices, but no pistol or gun shot
had heard a noise previous to that time

Cross Examination

My son has often told me that ^{he} fired
pistols about the premises at night which
I had not heard - Defendants counsel
objected to any statement made to witness
by his son - Court overruled the objection and
the statement was admitted -

Further this witness deposed not -

Shank Morisy next sworn - deposed -

Testimony of I was at the house of Joe Morrissey the night
 Frank Morrissey of the disturbance. went there before dark
 The defendant came in about dark. I
 remember Tom Morrissey's daughter coming
 after Joe's wife. after which Joe Morrissey
 Tom Morrissey, Paddy Sammonds and Matt
 Morrissey (Joe's wife) all came in the room
 together. I and Pat Sullivan the defendant
 and Ellen Morrissey were in the house at the
 time Joe and Tom sat in the bed. they had
 a black bottle and a tea cup. The defendant
 and Paddy Sammonds sat by the fire
 talking. Tom Morrissey began talking about
 a cow bill. Said the defendant had
 sworn to a damned lie about it at
 Russellville. talked very roughly about it
 some time. called the defendant a damned
 son of a bitch. Joe Morrissey poured some whiskey
 into the cup. Tom took it and drank
 it. then got up and said his wife should
 not stay in any such a damned whorehouse
 dashed the cup down on the floor and
 broke it, at the same time ran towards

defendant. Joe Morisy also jumped up
 at the same time and raised the bottle
 as if to strike - then witness caught the
 bottle and wrenched it out of his hand
 at the same time pushing him towards the
 door. Witness then grabbed Tom Morisy
 and threw him towards the door. Tom Morisy's
 body struck Joe in the doorway - Witness
 and Mrs Ellen Morisy pushed them both out
 and tried to shut the door. Joe and Tom
 both tried to break in. threw themselves against
 the door. Tom Morisy got his head inside, and
 witness struck him over the head with the
 bottle, after that the two men Tom and Joe
 went off - No pistol was fired, none was
 drawn that witness saw. Defendant took
 no part in the fray - Witness and Tom
 Morisy and Joe Morisy and Mrs Ellen
 Morisy were the only parties interested

Cross Examined

That night was the first time I ever knew
 of Tom Morisy going to Joe's house. I hit
 Tom in the forehead with a black ale bottle

after I shoved Tom out he called Defendant
 a damned son of a bitch - when Tom threw
 the cup down he said before he would hurt
 his wife in such a house as that he would
 kill himself - I suppose Defendant retreated
 when attacked. Can't say certainly as I caught
 Joe, don't know who Joe wanted to strike.
 thought it was Ellen Morrissey. when Tom
 started for Defendant Joe jumped up and
 raised the bottle. Tom Morrissey had on no
 hat, and no coat, was bare headed when
 I struck him. I pushed Joe out first
 and he started back into the room, as
 he turned around I threw Tom out, and
 Tom's body struck Joe. I and Ellen Morrissey
 pushed them both out under the porch
 they then returned, Joe got a rock and
 beat in the door. they forced it partly open
 Tom got his head in and part of his body
 up to his shoulder. I struck him and
 he jerked back. I slammed the door and
 locked it. That was all of it - Witness
 was positive no pistol was fired by anybody

that night. Thomas Monsey was only struck by a bottle.

Testimony of W. J. Farrell witness for the defendant was
 W. J. Farrell then called and depose as follows -
 am acquainted with the defendant and
 Prosecutor in this case. I met the Prosecutor
 the morning after his difficulty with the
 defendant at the barber shop. where he
 was having his wound and head dressed.
 the defendant then by his counsel
 asked witness if the Prosecutor in the
 case had not said to him and thus upon
 that occasion that he was struck with
 a bottle and ^{was} not shot, and also stated
 that no matter what he and they thought
 of the wound. Dr Johnson said it was
 a pistol wound and that the ball was
 then in the back of his head. The State's
 attorney then objected to the question, because
 no ground had been laid, and because
 it was immaterial. The Court then ruled
 that as no ground had been laid defendant
 could not ask the question whereupon witness

Furell was sent out, and the prosecutor recalled
 him, and asked if he had not told W^t Furell
 Maj S. Q. W. Brandon Capt James Welsh and
 Mayor George R. Harris in the barber shop the
 morning after the difficulty that he had
 not been shot, but had been struck with
 a beer bottle in the head, and if he had
 not also said no matter what you or I
 think of the wound, Dr Johnson says it is
 pistol wound and the ball is now in the
 back part of my head when the prosecutor
 again said that he had not said any
 such thing and denied it from beginning to
 end the prosecutor was then discharged
 and the witness Furell recalled and asked
 if Thomas Morisy the morning after the
 difficulty in the barber shop had not
 said to him (the witness) S. Q. W. Brandon
 James Welsh and Mayor Harris that he
 had not been shot but was struck by
 a beer bottle and ^{also} said that no matter
 what you or I think of the wound, Dr Johnson
 says it is a pistol wound shot and that

the ball is now in the back of my head to
 which question the State Attorney again
 objected, on the ground that it was immate-
 rial - which objection the court after argu-
 ment sustained and refused to let Witness
 answer the question, to which ruling of the
 court Defendant by his Counsel Excepted
 Witness then went on to say that the
 wound was about an inch wide but
 could not tell how far it extended in
 length owing to the hair, there was no
 powder marks - Witness was then asked
 if it was not a pistol wound or a wound
 from a bottle when the State Attorney
 objected to the witness answering the
 question and the court sustained the
 objection to which defendant Excepted
 witness was then discharged - when the
 defendant by his counsel offered to
 introduce Capt James Welch Major Brannon
 and Major Harris to prove that Prosecutor
 had told them in the barber shop that
 he was not shot but had been struck

with a bottle &c. but the court ruled that evidence was immaterial to which defendant excepted and the witness was discharged

Testimony of Patrick Sammonds witness for the defendant
 Patrick Sammonds was next called and depose as follows
 Witness was at the house of Thomas Morrissey the night of the difficulty in company with Joe Morrissey and Thomas Morrissey, shortly after dark; that they all were drinking but witness was not drunk, that after they had set there a short while Mrs Matt Morrissey came down to the house, and then to get her husband Joe Morrissey to go home with her as some one had proposed to go out to scuff. town and she did not want her husband to go, saying if he went she intended to go with him that after a few moments they all concluded not to go - when witness and Thomas Morrissey Joe Morrissey and Mrs Matt Morrissey all started up to the house of Joe Morrissey

that when they arrived there they found
 in the house Frank and Ellen Morisy
 and the defendant, that witness sat
 down near the fire next to defendant
 Mrs Matt Morisy also sitting down near
 the fire. Thomas and Joe Morisy took a
 seat in the bed, that they all had some
 whiskey in a black ^{beer} bottle that Joe Morisy
 gave Thomas Morisy some whiskey in a cup
 which he drank and after drinking
 mashed the cup against the floor, at
 the same time making some insulting
 remark to the defendant. that shortly
 after the cup was broken witness heard
 Thomas and Joe Morisy talking and
 making a plan to whip the defendant
 witness then whispered to the defendant
 to watch out for himself as Thomas and
 Joe Morisy were going to attack him or
 do him some harm in a moment or two
 after witness had warned defendant
 Thomas Morisy made a rush at defendant
 but witness could not state how ~~who~~ ^{whether}

He knocked him down or not, as quick
 as possible after the attack. Shank and
 Ellen Morrissey pushed Thomas Morrissey
 out of the door and in the struggle
 Shank Morrissey struck Thomas Morrissey
 over the forehead with the black beer
 bottle. Witness could not state whether
 Joe Morrissey was pushed out of the door
 or not, or whether any one but Thomas
 was pushed out, witness then stated
 that the defendant fired no pistol
 or in any manner assaulted Thomas Morrissey
 that no pistol was fired by any body
 that night, that witness saw no pistol
 in any body's hands.

Cross Examined

Witness could not state all the words said
 Thomas Morrissey used against the defendant
 but remembered that Thomas Morrissey offered
 witness forty dollars for a civil bill witness
 owned against one Charles Post for \$46.89
 and when witness went to Defendant to
 get the civil bill from him Thomas Morrissey

said no he would not give him the money
 that night, but would take witness to a man
 in the morning who would give him the
 money on it. Thomas Morrissey then said that
 the man who went to Russellville and sworn
 for Rust has sworn a damned lie, meaning
 the defendant as one of the men, and also
 said that if he had a wife he would
 not let her stay in such a damned ^{where} house
 as this defendant had no interest in the
 house. witness then said in reply to a
 question that Thomas Morrissey had his hat
 on when in the house witness also thought
 he had it on when struck with the bottle
 and that the lick knocked his hat off
 and that Thomas Morrissey picked it up
 and put it on his head after being struck
 witness could not state whether any one
 besides Thomas Morrissey was put out the
 door. witness staid in the house twenty
 or thirty minutes after the difficulty and
 then went out and took a walk down to
 the Old Freight Depot where witness was gone

an hour or two, and then returned back to the house. witness said he would not like to tell why he went down to the ^{freight} depot. witness said that when he returned that Defendant had left the house. Defendant had left the house witness thought before witness went to the depot. Witness went to bed after returning from freight depot and heard no further noise.

Re examined by Defendant
Was drinking that night was not drunk was not certain whether Joe Morrissey was put out of the house when Tom was but thought after studying about it. that he was. witness was of the impression that Thomas Morrissey had on his hat when in the house was not certain. thought Tom had on a hat when struck and that it was broken off and Tom picked it up.

Testimony of Mrs Julia Dalry witness for the defendant
Julia Dalry was next called and deposed as follows -
Witness remembered the night of the difficulty

in question it was on Sunday night
witness was sitting out in front of her door
when she heard the noise of the difficulty
witness lived in a house very near the
house in which the difficulty occurred
it being about one hundred or one
hundred and twenty five feet from the
house in question to witness's house. Witness
heard Joe Morisy's voice and knew it, and
also heard some one pounding on the front
door with a rock, witness immediately
or in a few moments went over to the
house and went in at the back door
of the house. when witness entered
the room where they all were, she found
that they had let Joe Morisy in and
were trying to quiet him, witness went
up to Joe and used her endeavors to quiet
him, Joe being drinking, in a short time
witness succeeded in quieting Joe and got
him to go to bed. when witness went into
the room she found the defendant in there
Witness then stated positively that no pistol

had been firm that night as witness would have been sure to have heard it as witness had been sitting in front of her house for sometime. Thomas Manning was gone before witness arrived at the house

Cross Examined

Witness was in the habit of sitting out in front of her house thinking almost every night, but then in the winter sometimes when witness felt like so doing so; In reply to a question as to what she was in the habit of doing while sitting in front of her house, witness stated that she was in the habit of thinking about and serving her God. - Witness then stated that when she first went into the house when the difficulty occurred she heard Patrick Sammonds going up the stairs witness ~~was~~ knew that it was Sammonds in reply to a question as to how she knew Witness stated that she knew it was him that maybe some one said it was him Witness said that it was either Patrick

Sammonds or his ghost. Witness stated that she did not say that any one said it was Patrick Sammonds. Witness did not know whether Sammonds left the house that night or not as witness returned to her home in a few moments. Witness was the mother of Mrs Ellen Morrissey, and grand mother of Mallie Morrissey. Witness when she returned home left the defendant still in the house. Witness could not state positively as to what time it was when she first heard the noise. But thought it was early in the night. Probably between Eight and nine o'clock. Witness saw Thomas Morrissey the next morning with his head tied up -

Testimony of Joe Morrissey witness for the defendant
 Joe Morrissey was next called and appeared as follows
 Witness remembered the night of the difficulty it was on Sunday night shortly after dark. Witness and Patrick Sammonds went down to the house Thomas

Morrissey's house that just before they got
 to Tom's house they saw Tom coming up
 the rail road from in the direction of
 Mrs Lovitts house, that they waited until
 for Tom until he came up when they all
 went into Tom's house together and sat there
 awhile and all of them were drinking
 in a few moments Thomas Morrissey sent his
 daughter Mollie up to Lois house to tell
 them to send him some more whiskey
 that they all sat there awhile longer
 when some one proposed that they all go
 out to Scuff Town which they all
 agreed to do - when Thomas Morrissey sent
 Mollie again up to Lois house to tell Mrs
 Matt Morrissey to come down and stay
 with Thomas little daughter Mollie
 while they were all gone to Scuff
 Town, that Mrs Matt Morrissey came back
 with Mollie, and when she heard they
 were all going to Scuff Town. she said
 that if her husband did want she
 intended to go too - Witness then stated

that after they had talked a few moments
 longer they all gave up the idea of going
 to Scufftown. witness then said that
 his wife tried to get him to go home
 with her but witness declined to go
 that in a few moments Thomas Morrissey
 and witness wife Matt Morrissey started
 together out of the house to go up to
 witness's house. that thereupon witness
 and Patrick Sammons got up and
 followed them. that all four of them
 went up to witness's house together. witness
 stated that Thomas Morrissey was handcuffed
 as he witness had on Thomas Morrissey's
 hat. and that Thomas Morrissey's little
 son Johnnie had witness's hat in his
 hand running on ahead of them playing
 with it. that all four of them went
 into witness's house together. witness and
 Tom Morrissey took a seat on the bed in
 the room. Pat Sammons and Matt Morrissey
 sat down near the fire, that when they
 entered the room they found the defendant

Shank Morisy and Ellen Morisy that they were all drinking. That shortly after they got into the house Thomas Morisy commenced making insulting remarks about the Defendant. would not state the words remembered hearing Tom Morisy offer Patty Sammonds \$40⁰⁰ for a due bill of \$46⁰⁰ against Charley Post and when Sammonds offered to let him have it at that Price T. Morisy said no he did not want it that night but would take him to a man in the morning who would give it to him. Tom Morisy then said that the men who went to Russellville to swear for Post had sworn to a damned lie and committed perjury, meaning the Defendant as one of the men who been to Russellville. That Tom Morisy also used other insulting remarks which witnesses could not then remember. Witness then went on to say that he poured out some whiskey from the black beer bottle into a large tea cup and gave it to

Tom Morrissey to drink who after drinking
 it got off and threw the glass cup against
 the floor with all of his might. and said
 if he had a wife he would not let her
 stay in such a damned whore house as
 that, that he would die first that
 shortly after Tom Morrissey broke the cup
 he pushed witness on the arm and made
 signs to him to give him a knife which
 he had given to witness down at Thomas
 Morrissey's house and which said knife
 witness had put in his pocket open -
 Witness then stated that he handed Tom
 Morrissey the knife and that immediately
 upon getting the knife Thomas Morrissey
 made a rush at the Defendant and either
 knocked or pushed him down, that witness
 then jumped up and drew the old bottle
 as though about to strike some one -
 witness supposed Mrs Ellen Morrissey as
 they had all had drinks, a quarrell
 and witness was also drinking, that when

witness and the bottle Shank Morisy
 grabbed witness and wrenched the bottle
 out of witness hands and pushed witness
 out of the door and also pushed Thomas
 Morisy out of the door that witness
 and Thomas Morisy then tried to break
 the door open and get back in the
 room. that witness pummed on the
 door with a rock that they got the
 door partially open. that Thomas Morisy
 got his leg and hand through the door
 that when in this condition some one
 on the inside of the door struck Thomas
 Morisy over the head with a black
 beer bottle. that after being struck they
 started away from the door towards town
 that witness asked Thomas Morisy what
 was the matter with him to which
 Thomas Morisy said never mind what's
 the matter you come and go up town with
 me. the witness then asked him again
 what what was the matter and if he
 was hurt to which Tom again said

now you mind him and go up Tom with me. Witness then walked part of the way up town with Tom, and then left him and returned home again and went into the house and went to bed. Witness then stated positively that no pistol was drawn or fired by the Defendant or any body else that night that Thomas Morrissey was struck with a bottle and not shot.

Cross Examined

Witness in reply to a question as to what he was doing with the knife that night stated that witness and Thomas Morrissey down at Tom's house had made a plan to whip the defendant and that Thomas Morrissey had given witness the knife down at Tom's house and told him to keep it until he called for it. Witness could not state whether Tom said anything to him about giving him the knife while they were sitting on the bed but remembered that he pushed him and made signs

to him to give him the knife which Witness understood and gave it to him. Witness was certain that Thomas Morrissey was bartered that night as witness won his Tom's hat. Could not state when Tom got his hat back does not remember giving it to him. Thinks possibly Tom might have taken the hat off his head while they were in the room. Witness did not know that the Defendant was at his witness's home before they entered the house. In reply to a question as to how witness and Tom Morrissey was pushed out of the house witness stated when he witness drew the air bottle. Frank Morrissey wrenched the air bottle out of his hands and pushed him witness out of the room and as witness turned to reenter they pushed Thomas Morrissey out of the room, and Tom's body struck witness as he was pushed out of the door, and knocked witness back off of the porch. Witness could not state who

struck Tom with the bottle. Because
 the person who struck him was on the
 other side of the door from Witness
 but supposed it was Shank Morisy
 as he had ^{taken} the bottle away from Witness.
 Witness after his return after going
 part of the way up town with Thomas
 Morisy went to bed and heard no other
 disturbance in the house that night.
 Witness was sure no other fuss had occurred.
 Witness could not state positively why he
 attempted to strike Ellen Morisy that
 night but remembered that Witness and
 Ellen Morisy had had a quarrel a day
 or two before this difficulty, and as
 Witness was drinking - Witness supposed
 this was why he attempted to strike her
 that night - Witness was now perfectly
 friendly with Thomas Morisy, and was
 at the time of the difficulty with the
 defendant - Witness and Tom visited
 such other as neighbors. Tom was Witness
 brother in law - Witness in reply to a question

if the Defendant did not visit Ellen Morrissey at witness house very frequently. stated not more so than a great many other people only remembered of his being at the house witness now lives at three or four times witness was positive that the Defendant took no part in the difficulty that night and was sure no pistol was fired by any person, and that Thomas Morrissey was not shot but was hit with a bottle that night and further this Argument layeth out — The Defendant here answered to the Court that they were through with their evidence unless it might be some rebutting evidence after the state close —

The Attorney General for the State then introduced Mollie Morrissey aged fifteen the daughter of the prosecutor who testified as follows —

Testimony of
Mollie Morrissey

That she was the daughter of the prosecutor and was at the house of Joseph Morrissey where the difficulty occurred a short time before

it occurred and that the Defendant
 was present at the house at the time
 witness was there. The Attorney General
 then asked the witness if she was not
 sent down to Mrs Lovell's house the
 night of the difficulty by Joe Manning
 and Pat Sammonds to tell her father
 to come up to his Tom Manning's house -
 the Defendant by his counsel objected to
 the testimony on two grounds first that
 it was not rebutting - and second
 that the question should be confined
 as to whether the Defendant had sent
 her after her father which objections
 the Court overruled and told the witness
 to answer the questions to which the
 Defendant excepted - The witness then
 went on to state that Joe Manning and
 Pat Sammonds had sent her to Mrs Lovell
 after her father with a message to him
 to come up to the house. Witness advised
 the message to her father he came when
 witness returned to Tom Manning's ^{house} ^{with} him

Mrs Joe Morris a short time after her father
 and witness arrived at the house came and
 told her father to come up to the house
 that they had some whiskey there. who
 after the nurse started up to Joe Morris's
 house in company with Joe Morris and
 wife and Patrick Sammons. Witness did
 not return back to Joe Morris's house, but
 after her father and the other two mentioned
 started off to Joe's house witness went to bed
 in her father's house and heard nothing
 of the difficulty. Witness then stated
 that her father did not send her up
 to Joe Morris's house that night at all
 after whiskey or any thing else that
 she did not go the second time to Joe's
 house and tell Mrs Kate Morris to come
 down to her father's house witness then
 stated that Mrs Kate Morris did not
 go down to her father's house with her
 The defendant did by his Counsel objected
 as not relevant, but that it was testimony
 to all this testimony in chief which objections
 the Court overruled to which defendant excepted

Cross Examined

Witness stated she heard no pistol fired the night of the difficulty as she supposed she was asleep. Witness did not go to Doc Morrissey's home and tell Doc's wife to bring her father some whiskey. Nor did witness go up after Mrs Matt Morrissey. Witness then stated after Mrs Matt Morrissey came to her father's home after her father to go up to Doc's house, her father Doc Morrissey, Pat Duggan and Mrs Matt Morrissey all started up to Doc's house together and that was the last of witness saw or heard of the difficulty that night. Witness said she knew it was the night of the difficulty because the next morning she saw her father with his head tied up - and further this account with not

Thos Morrissey

recalled -

The Attorney General then recalled Thomas Morrissey the prosecutor. who said that he was not struck with a bottle, but that he was shot by the defendant. that he witness did not send his daughter Mollie

up to Joe's home after whiskey or after Mrs Matt Morisy, but the difficulty occurred just as witness had before stated it and further this argument with not - The Attorney General for the State then introduced Capt Till Willis who deposed as follows - to wit -

Testimony of
T. T. Willis

That witness did not know the character of Joe, Shank and Mrs Matt Morisy well enough to say as to whether he would believe them on oath or not. Witness had known the first three mentioned a long time - but scarcely knew Mrs Matt Morisy at all at all as she had but recently married Joe Morisy and prior to that time had not lived here. Witness had known Thomas Morisy the prosecutor a long time knew no reason to doubt him on oath Defendant objected to the answer until the witness should qualify himself as to whether he knew the character of the prosecutor. The court sustained the

objection when the witness was again asked if he knew the character of the prosecutor the meaning of the word and the requisites having first been explained to him by the court - when witness said he could not say that he knew the character of the prosecutor witness was asked if he did not hear Mrs Ellen Morison threatening the night of the difficulty kill him - kill him - defendant objected to the question which the court sustained and further this argument with not -

Testimony of
Chas Post.

Charles Post was next introduced by the state who asked as follows am acquainted with the character of Joe and Frank Morison and from that character he would not believe them on oath, know the character of Patrick Sammons we have just had a law suit together saying that lawsuit out of the question. I would believe him on oath do not know the character of Mrs Matt Morison

Cross Examination

Stated that he knew the Character of Thomas Morisy and from that Character he could not say that he would believe him on oath though his Character was like the others he had been asked about - and further he says that not

Testimony of
L M Stuart was next introduced by the state and deposed as follows to wit: Witness was acquainted with Thomas Morisy had known him about ten or fifteen years knew his Character and would believe him on his oath from that Character - Could not say that he knew the Character of Joe Morisy ^{and} wife nor Shank Morisy or Patrick Summers remembered the night it was said that Thomas Morisy had been shot, called to see him the next morning - Defendant then objected to any testimony in regard to seeing Thomas Morisy &c as evidence in chief and not rebutting which objection

the Court overruled and Defendant
 excepted - Witness then went on to say
 that he saw Thomas Minsey the morning
 after the difficulty saw the wound
 on his head it was about one $\frac{1}{2}$ inches
 long commencing in the forehead and
 and going back into the hair. Witness
 also saw black marks on Prosecutor's face
 which witness thought were powder burns
 the Defendant here again objected to
 the testimony which objection was overruled
 to which defendant excepted

Cross Examined

Knew nothing of the difficulty only called
 as a friend after he heard Prosecutor had
 been wounded could not state positively
 as to whether the marks spoken of were
 powder marks or not thought they were
 could not state when they were made
 might have been there a long time, and
 further he says not

Mike Driscoll

was next called by the state and deposed

Testimony of
Mike Driscoll as follows - to wit - I have known the prosecutor
Thomas Morrissey the prosecutor at least
twenty years and know his character
and from that character would believe
him on his oath in a Court of Justice

Cross Examined

Know Patrick Sammons has known him
a number of years know nothing against
him except ~~know~~ that he sometimes drank
too much know his character and from
that character he would believe on his
oath in a Court of Justice if he was sober
enough to know what he was saying
know Old Mrs Daly know her character
and from that character ^{he} would believe
her on her oath in a Court of Justice

Testimony of
A B Foster A B Foster was next called by the State
and deposed as follows to wit - Know
Shank and Doc Morrissey have known
them for several years know their character
and from that character witness would
not believe them on oath in a Court of

Justice did not know the character of Pat Sammonds or of Mrs Matt Morrissey have seen them but a few times that that witness knew of

Cross Examined

Have seen Pat Sammonds a few times but did not know his character know nothing against him except that he sometimes drank too much seemed to be a hard working man

Testimony of John D Jenkins was next introduced
John D Jenkins by the State and depose as follows to wit - I am a City Policeman and know the character of Joe and Shank Morrissey and from that character, I would not believe them on oath in a court of Justice

Cross Examined

Do not know the character of Pat Sammonds or Mrs Matt Morrissey don't think they have lived here long -

Dr J D Johnson was

Testimony of
Dr T D Johnson

next called by the State and depose
as follows to wit - I am a Practising
Attorney Physician in this City. I saw
Thomas Morney a few hours after the
difficulty in question and examined
his wound. I found it a contused and
lacerated surface wound of the scalp
(I mean by Surface wound that the
wound was open from beginning to end)
the wound extended from the center
of the frontal bone upwards and back-
wards about two inches and as far
as I could judge the edges were exactly
parallel from entrance to exit and
from their nature witnesses thought could
have been made by nothing but a gun
shot. The wound was not a dangerous
one necessarily, but very dangerous afterwards
on which somewhat endangered the
patients life Defendant objected to all
of above testimony as irrelevant in chief
and not rebuttal which was overruled
by the Court, and excepted to by the Defendant.

Grass Examined

In reply to a question as whether the wound could not have been made by a bottle, stick, or falling against some sharp surface; Witness replied that from the nature of the wound he thought not - and further this Dependant says
Not -

This ~~were~~ all the evidence that was submitted to the Jury in this case. May 3^d 1873

(Signed) Jas Eric Judge &c
Charge of the Court And the Court charged the Jury in the words and figures as follows to wit -

This Defendant is indicted and on trial for an assault upon Thomas Monney with intent to commit Murder in the first degree - the law presumes every man to be innocent until the contrary is fully proven and in all criminal cases the law requires the State to make out its case that is, that is the Burthen of Proof is on the State to establish by testimony the truth of the Charge made against Defendant

before he is required to make offer any testimony
 to show his innocence with these preliminary
 remarks the court instructs you that if you
 believe from the whole volume or body of the
 testimony in the case the Defendant did
 before the finding of the indictment in Montgomery
 County and State of Tennessee willfully, that
 is, of purpose with intent that the assault
 should take the life of Thomas Morris, deliberately
 that is with cool purpose. Maliciously. That is
 with malice aforethought. Wickedly with an
 evil design. Premeditatedly that is a design
 must have been formed in the mind of the
 Defendant to kill Thomas Morris before
 the assault was made he is guilty as charged
 in the indictment, and your verdict should be
 guilty as charged in the indictment. On the
 other hand if the testimony fails to convince
 your mind beyond a reasonable doubt that
 the defendant willfully that is of purpose
 with intent that the assault should take the
 life of Thomas Morris. deliberately - that is of
 cool purpose - Maliciously that is with malice

after thought. Wickedly with an evil design
 Premeditately. That is - a design formed in
 the mind of the Defendant to take the life of
 Thomas Morrey before the assault was made
 You should acquit and the form of your
 verdict should be "Not Guilty"

An Assault is defined to be an inchoate
 violence to another - with the present means of
 carrying the intent into effect - The ~~intention~~ ^{the}
 to do harm is ~~of~~ the essence of ^{the} offence and
 unless the act and the intent concur there
 can be no assault or in other words, an assault
 is an attempt to ^{do} personal violence upon another
 having the means at hand to carry ^{his intent} into
 effect; pointing a pistol purporting to be loaded
 within the distance the pistol will carry
 is an assault, although the pistol be not
 loaded, and if the pistol be pointed at
 another with intent to kill him is an
 assault with intent to commit murder in
 the first degree. If you find from the testi-
 mony that although it be true that the Defen-
 dant did assault, or shoot, or strike, Thomas

Morisy, it was done under the influence of
 passion suddenly aroused by a quarrel with
 Morisy. He is not guilty and you should so
 find. Further if you find that Morisy first
 assaulted the defendant with a weapon
 that was calculated to put him in fear of
 death or great bodily harm, and he (the
 defendant) shot him to repel the assault
 he is not guilty and you should so find.
 Or if you find that Morisy assaulted the
 Defendant or was advancing upon him with
 a weapon and in a manner which was calcu-
 -lated to put him in fear of death or great
 bodily harm and he honestly believed him-
 -self to be in danger of death or great
 bodily harm from Morisy, although in
 point of fact he was not in danger of
 either death or great bodily harm, if he
 honestly believed himself to be so and he
 shot the prosecutor to prevent such result
 he is not guilty of the offense charged
 in the indictment and your verdict should
 be not guilty. But such fear must not

be fatigued but honestly entertained.
 The court instructs you that a reasonable doubt
 exists, when the jury has examined the whole
 of the testimony in the case and it fails
 to bring them to a satisfactory conclusion
 that the charge against the Defendant is
 true that they cannot say from the
 testimony whether it is true or not. in such
 case there is a reasonable doubt and in
 such case the jury should acquit. On the
 other hand if after you shall have examined
 all the testimony in the case you are
 brought readily to the conclusion that it is
 true as charged in the indictment and
 your mind rests easily and satisfactorily
 upon such conclusion and you feel that
 you have no further investigation to make
 but that you have arrived at the truth.
 then in contemplation of law there is no
 reasonable doubt. and you should find
 him guilty and if you find the Defendant
 guilty it would be your duty to assess
 his punishment at not less than three (3)

years nor more than twenty or (21) years confinement
in the Penitentiary of the State -

In Criminal cases when the life or liberty of
the Defendant is in jeopardy. You are not
to decide according to the weight of the test-
imony, but the whole body of the testimony
taken together must satisfy the mind of
the jury of the truth of the charge or you
should acquit - A design to commit murder
in the first degree may be formed in an
instant but the proof must satisfy your
mind that such design or purpose to
commit murder in the first degree existed
before the assault was made or you should
acquit

(Signed) Jas E. Rindge Jt C

Bill of Costs

Bill of Costs

Clerk.	Indictment & plea 25.	Copying indictment into MR 25.	50
	3 dockets 30.	Capias & Order 100	July 50. 180
	Order atty & bro time 25.	5 Continuances 125	150
	3 Orders fixing bail 75.	3 Recognizances 75.	150
	2 motions & orders 100	Judgt final 75.	175
	Judgt Jrd Cost 25.	Appraisal &c 75.	432 fees 130 530
	Filing bill of exceptions 25.	Bill of Cost in docket 50.	75
	Transcript of 1st & 2d trial & Certificate 75.	5 Probates 25	150 4
			2814

Shff

J M Collins Esq & Son

25

Shff

Irvin Quamant. Entry 16 Spas. \$400

Returning 9 Spas. For est

90

For special fund 47 - 15.

705

\$11.95

do

J. H. Achey Entry 11 Spas. 275. 1 spa. For est 10.

285

do

D. Brown Entry 1 Spas

25

do

J. H. Martin 1 spa. For est

10

Atty Genl.

H. H. Linton For

1000

W. H. H. H.

Mrs J. O. Brett 4 days

400

"

Hollis Morrissey 2 "

200

"

Frank Phillips 3 "

300

"

A. D. Foster 3 "

300

"

J. D. Jenkins 3 "

300

"

Wm. Ferrell 3 "

300

\$61.54

State of Tennessee

J. Chas. D. Bailey Clerk

Montgomery County of the Circuit Court for

said County, (by virtue

of which office I am Clerk of the Criminal Court for

said County) do certify the foregoing to be a true and

perfect transcript of the record in the cause of the

State of Tennessee vs. Pat. Sullivan as the same

appears of record in my office. In testimony

whereof I have hereunto signed

my name and affixed the seal of

said Court at office in Clarksville

This 28th day of Octo 1873

Chas. D. Bailey Clerk