

Jefferson County Circuit Court
Case Files - Criminal
September 1876

Box 36 Folder 16

State

vs,

Swan, Gordon

Felonious assault

Assaulted Ernest Delf with
a spade; depositions

State of Missouri } ss.
County of Jefferson }

This day came personally before the under-
signed a Justice of the peace within and for said
County of Jefferson, Franklin Howard, who, being
by me duly sworn, on his oath states, that, on the
10th day of June 1876, at and in the County of
Jefferson in the State of Missouri, Gordon Swan,
of said County, in and upon Ernest Delf, then and
there being did feloniously make an assault,
and with a spade, which he the said Gordon
Swan in both his hands then and there had and
held, (the said spade being a deadly weapon)
him the said Ernest Delf, then and there, did
feloniously
strike, beat, and wound, with the spade afore-
said, in and upon the left side of the head
of him the said Ernest Delf, with intent
to kill him the said Ernest Delf, - giving him
then and there a dangerous wound upon his
head, likely to procure death, or greatly dan-
gerously harm. Frank Howard

Subscribed to and
this 10 day of June 1876

Wm. H. H. H.

Justice of the Peace

affiant
for
State Warrant
by
H. Howard
of justice fees 35.

SUBPOENA A FOR WITNESS-J. P.

THE STATE OF MISSOURI, To

You are Hereby Commanded, to be and appear personally before me
John H. Hatcher, one of the Justices of
 the Peace within and for the Township of *Franklin*, in the County of

Jefferson State aforesaid, on the *14th* day of *June* A. D.
 187*4*, at the hour of ten o'clock in the forenoon of that day, at my office in the Township and County
 aforesaid, to testify on the trial of a cause wherein *State of Missouri*

Plaintiff, and

Defendant, on behalf of the

And hereof fail not at your peril. And the person or officer serving this Writ is commanded to have
 the same at the time and place aforesaid, certifying thereon his return.

WITNESS my signature, this *15* day of *June*, 187*4*.

John H. Hatcher
 Justice of the Peace.

SUBPOENA FOR WITNESS.

State of
Missouri

Pl'ff.

vs.

Gordon Swan, Def't.

BEFORE

Wm. H. Walker, J. P.

WITNESSES:

Franklin Howard
J. B. Smith
Wm. P. Lane

Constable fee \$1.65

Fee, \$

J. E. Starnes
Constable

RETURN.

I hereby certify that I served the within Writ in the County of Jefferson Township of Central
and State of Missouri, on the 15th day of June 1876, by
reading the same to the within named

State of Missouri }
County of Jefferson }

State of Missouri } Before
vs. } William
Gordon Swan } Mockbee
a Justice of the
Peace,

Prosecution for assault with
intent to kill,

Franklin Howard, of lawful
age being duly sworn, deposes and states
as follows; On the 12th of June 1876

I was at Sandy Church in Jeff. Co
Mo. and Ernest Jeff commenced
teasing Gordon Swan about R. C.
Mockbee running him out of the field
and Swan said Albrecht had
knocked Jeff down with an iron
wedge and stamped him - when
Jeff said he was a d-m. liar -
Gordon Swan was lying on a bench
when he got up and picked up
a spade and started at him,
and Jeff started toward him
and stepped up and ^{hit} him behind
the left ear with the spade
and knocked him down
and Jeff was stunned by the blow.

and unable to get up - he got up twice and staggered and fell down. - he cut his ear pretty bad it bled a good deal - there was no one present but Jeff, Swan and myself. -

This was at Candy Church Jeff. Co. Mo. - I went to Mr White and to get some water and Joe White came back with me, Robert Mockbee was hauling lumber there, and he took him home in his wagon. -

Jeff laid there all afternoon until Mr Mockbee took him home. - immediately after Swan struck Jeff he left. -

Jeff & Swan were both engaged in clearing off ground for a brickyard. - Swan went off and did not come back to work any more at the brick yard. - I did not

~~hear~~ hear Jeff make any threats towards Swan - and did not see Jeff with any weapon in his hand - and he did not make ^{any} effort to

to strike Swan, ~~as~~
I saw a black handle
knife lying by the side of
Deff after he was knocked
down. — I was two or three
feet from Deff when he was
knocked down. — if he had
had the knife in his hand
~~I could~~ at the time I ~~could~~
have seen it. —

Sworn to and Frank Howard
Subscribed before me
This 15 day June 1876
Wm Mockbee
Justice of the Peace.

D. S. Smith. — of lawful
age being duly sworn. deposes
and says. — I was down at
the brick yard, on the 12th of
June 1876. until about dinner time
when I and George Mockbee left
and went to my house for din-
ner. — while we were waiting
for dinner Gordon Swan came
up and Mockbee asked him
what he came for. ~~He said~~ we
had a chunk of a row down

there — myself and Jeff — I
asked him what it was about
he said that Jeff was debating
him about Mr Mockbee running
him, and called him a son of a
bitch and that he trampled him.
I asked him what he hit him
with and he said a spade
and I asked him if he hurt
him much, and he said he
guessed he was dead by this
time, as he looked back and
saw him kicking. — and I
said that the law did not
tolerate such things, and then
went in to dinner and when
I came out he had gone.
I and Mockbee then went down
to the Church where Jeff was
and saw Frank Howard, Joseph
White, and several others there —
and ~~End~~ Adams daughter
came up with a needle and a
thread and by ^{Mr.} directions
Joseph White sewed up the
wound. Jeff was lying
on the floor and seemed
quite nervous and excited.

and I thought it was a pretty bad wound, and sent for a Doctor. — He seemed to be very much hurt and ~~in~~ in his mind. — Dr. ~~Swan~~ got there about 5 o'clock that evening. — I examined the Spade that he was struck with, and found the lower corner of it ~~that found it~~ contained ~~stain of blood and hair.~~ The Spade was an ordinary Spade. Swan brought the Spade up to my house and left it there. — I did not see Swan in the neighborhood after this occurred. —

About a week before this occurred I heard Swan say that if Jeff ever got to troubling him about Mockbee running him that he would hurt him. — That he would slap a knife in to him and spill his blood for him. — The wound was a little back of the left ear of Jeff. — About an inch and a half long, with a cut up and down the head and one across, at right angles. — D. S. Smith

sworn to and Subscribed before
me this 15 day of June 1876 Wm. Hookbee
Justice of the Peace

Dr Wm P. Adair - of Lawrence age
being duly sworn deposes and says - I got to Sandy Bluff
about six o'clock on the 12th of
June 1876, and found Mr. Jeff
lying down on the floor on
his right side, and his neck
much swollen, he appeared
to be very much excited, ^{& nervous} -
I examined the wound, and found there
was a ~~cut~~ perpendicular cut about an
inch ~~at~~ a quarter back of the ear and ~~at~~
^{at right angles with this about an inch long, and}
cut, ~~an~~ an abrasion ~~at the lower end at right~~
~~angles, extending to the lower edge of the~~
^{on} ear, - By placing the spade on his head, I
judged the spade struck with the upper
part on the upper part of his head, and
that it was the lower end of the spade
that made the two cuts as stated, - The
wound was I think three quarters of an
inch deep, - The wound I judge is a
very dangerous wound, - as the blow on

the upper part of the head may have fractured the skull, or may produce extravasation of the blood, on the brain and thereby produce death.

Sworn to and W^m P Adair Esq
Subscribed before me this 15 day of June 1876
State of Missouri W^m Mockbee
County of Jefferson } Justice of the Peace

The prisoner being informed of the nature of the charge against him, and that he was liberty to make a statement of the matter concerning the charge, and to have counsel if he desired it, declined to make any statement,

The above and foregoing being all the evidence in the trial of the above case, -

State of Missouri
County of Jefferson

I, W^m Mockbee one of the justices of the Peace within and for the County aforesaid do certify that the said Gordon Swan was brought before me and charged before me with feloniously ^{making an} assault with intent to kill one Barnes & self and that the said Gordon Swan was distinctly

informed by me of the charge made
 against him and that he was at
 liberty to refuse to ~~answer~~ any questions
 put to him and the said Gordon Swan
 refused to ~~answer~~ ^{answer} any questions ^{put to him and} the 'Exam-
 ination of Franklin Howard, I B
 Smith and W P Adair Witnesses were
 by me taken and reduced to writing
 the day and year aforesaid
 Given under my hand this 15 day
 June 1876 J M Mockbee
 Justice of the Peace

State

vs.

Gordon Swan

Depositions

17.40
 09.9
 08.01
 89.6
 02.4
 82.84

Filed June 20 1876

C. H. McHenry

Clk

State of Missouri. }
County of Jefferson. } 33.

Be it remembered, that on the 15th day of June 1876, at the County aforesaid, William P. Adair D. S. Smith and Frank Howard of the County of Jefferson, State of Missouri. - Came before me, a Justice of the peace within and for the County aforesaid, and, in his proper person, acknowledged themselves indebted to the State of Missouri in the sum of fifty dollars, each to be levied of his goods and chattels, lands and tenements, upon condition that if he shall personally appear before the Circuit Court, on the first day of the next term thereof, to be holden for the County of Jefferson, then and there to testify and give evidence in behalf of the said State, against a certain Gordon Swan, on a certain charge of "Assault with intent to kill" wherewith the said Gordon Swan is charged, and shall not depart the said Court without leave.

then this recognizance to be void
otherwise of full force.

Approved this 15 day Frank Howard
of June 1876

D. S. Smith
Wm Mockbe W^r P. Adair Jr
Justice of the Peace

State
1876

Gordon Swan

Bond
of

Wm Mockbe

Justice of the Peace 1.03-

The State of Missouri } Before William
vs. } Mockbee, Justice
Gordon Swan } of the peace,

On the Affidavit of Franklin
Howard, I issued a warrant ^{on the 15th of June 1876} for the ap=
prehension of Gordon Swan, charged with
an assault on Ernest Delf, and striking
him with a spade with intent to kill
On this June 15th 1876, said Swan being
arrested and brought before me, the
undersigned Justice of the peace, and
being ready for trial, I proceeded to
hear the evidence in said case, and
after a full hearing of the evidence
in said case, the Justice finds that an
offense has been committed, and that there
is just cause to believe the prisoner, Gor=
don Swan, guilty of said offense, in ma=
king a felonious assault, and striking and
wounding the said Ernest Delf, with a dead=
ly weapon, to wit, a spade, with intent
feloniously to kill him, said Ernest Delf.

The Justice therefore required the said
Gordon Swan, to enter into a recogni=
zance in the sum of two thousand dol=
lars, for his appearance at the next
Term of the Circuit Court of Jefferson

County Missouri, on the second Monday of
 September 1876, and said prisoner fail-
 ing to enter into such recognizance
 with good security, a warrant of com-
 mitment was issued, and he was com-
 mitted to the jail of said County,

Given under my hand this 15 day
 of June 1876

Wm Mockbee
 Justice of the Peace

A Bill of the Costs in the above case,
 Justices fees,-

Affidavit, 35 ^c - Warrant 35 ^c =	\$ 0. 70	
writing depositions, 2000 words at 15 ⁰⁰ pr =	3. 00	}
Taking recognizance of witnesses	1. 03	
swearing 3 witnesses	. 13	
Certificates of 3 affidavits	. 43	
Docketing & indexing	. 20	
Warrant of commitment	. 33	
Subpoena	. 33	
Certificate to depositions	. 33	}
Fragment	. 50	
Justices costs		\$ 7. 10

Marshall, Davis, bringing prisoner to Hillsboro -	4. 00
--	-------

Constable fees, Louis Adams, -	
For serving subpoena, 3 witnesses -	. 75
mileage for one, witness	. 20
Serving warrant	. 75
Taking prisoner to Jail -	1. 00
Total Constable fees	\$ 3. 20

Ant, Carried forward \$ 14. 30

Am't of Costs brought forward — \$ 14.30
Witnesses,

D. S. Smith, Day - 50[¢] - and 1¹/₂ mile, @ 6[¢] 70 = 1.20
Franklin Howard, Do, - 14 miles, @ 5[¢] 70 = 1.20
Dr. W. P. Adair, Do, 10 Do, @ 5[¢] 70 = 1.20

Total Costs — \$ 17.90

I Certify that the above is a
correct Bill of the Costs
in said case, - This 13th of June 1876
J. M. Mockbee
Justice of the Peace

State
vs,
Gordon Brown

Transcript

INDICTMENT.

STATE OF MISSOURI, }
 County of *Jefferson* }^{ss.} { In the Circuit Court of *Jefferson* County, Mo.,
September Term, A. D. 187*6*.

The Grand Jurors for the State of Missouri, summoned from the body of
Jefferson County, empannelled, charged and sworn, upon their oaths, present that
Gordon Swan late of the County aforesaid, on the *12th* day of
June, 187*6*, at the County of *Jefferson*
 State aforesaid, did *with force and arms, in and*
upon Ernest Delf then and there being,
feloniously wilfully and of his malice
aforethought, did make an assault, and
him the said Ernest Delf, with a large
spade which he the said Gordon Swan
in his ~~right~~ both of his hands then
and there had and held, (The said spade
being a deadly weapon) feloniously,
wilfully, and of his malice aforethought,
did strike, beat and wound, in and
upon the head of him the said Ernest
Delf, with intent him the said Ernest
Delf, then and there feloniously, wilfully
and of his malice aforethought, 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.

A true bill:

W H A Thomas
 Circuit Attorney
 Prosecuting attorney

Foreman of the Grand Jury.



INDICTMENT

AGAINST

Gordon Swan

CHARGED WITH

Felonious Assault

September Term,

Jefferson Co. Cir. Court.

A.D. 1876

A True Bill

S. A. Gorman

Filed September 12th 1876.

C. H. H. H. H.

Clerk.

Witness

600 605 610

over 15

" 15

15 - 1007
Cash & goods

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To *Robert Mockbee - William Mockbee*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, ~~on the forthwith~~ day of _____, 187____, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *The State of Gordon Drann* is Plaintiff, and _____ is Defendant, on the part of *Sept* _____; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the
seal thereof hereto affixed, at office, this *13th* day
of *September* A. D., 1876.

C. Tho' Horine, CLERK.

Wm Mockbee
Rob mockbee

State
vs
Gordon Swan

Rob Mockbee 13

J D Moss Sheriff's fees \$1.00

Filed Sept. 15th 1876
G. W. Horine clk
by C. Marsden Def

I signed the within Subpoena at Jefferson County
Missouri on the 14th day of September 1876 and Robert Mockbee
appeared before me in his presence and
bearing

J D Moss Sheriff's
By W W Moore Esq

We the Jury find the defendant
guilty as charged and assess
his fine eleven (11) at three months
in County Jail and fine of one
thousand dollars

John Williams Foreman

State
of
Iowa

Filed Sept 13 1876
Chas. Horine
Clerk

The State of Missouri }
or
Gordon Swan }

The defendant hereby petitions the Court to be released from payment of the costs adjudged against him in said cause, and prays that he be not held in default of such payment, and states that he is the owner of no property, either real personal or mixed of any goods chattels or of any property of any kind whatever =

I Gordon Swan do swear that the foregoing is true and that I have not at any time or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself or my family or in order to evade the payment of the costs for which I am detained in prison

Sworn to & subscribed

before me this 14th

day Sept 1876

Gordon ^{his} Swan
mark

C. H. Horne

State
vs
Gustav Swan

Dec 14 1896
C. H. Hering
Clerk

2
The court instruct the jury that
if they believe from the evidence
in the cause that defendant
within three years before the finding
of this indictment at the County
of Jefferson in the State of Missouri
wilfully, feloniously and of his
malice aforethought made an
assault on Ernest Self with
a knife with the intent to kill
him they should find him, said
defendant guilty, and assess his
punishment at imprisonment
in the Penitentiary for a period of
not less than two nor more than
five years or by imprisonment
in the County jail not less than
six months, or by both of the not
less than one hundred dollars, and
imprisonment in the County jail
not less than three months or by a
fine not less than one hundred
dollars.

2
The word wilfully in the above
~~advisedly~~ as instruction means in
intention ~~also~~ not accidental

Given No 3

State
Swan If the Jury believe from
the evidence that the defendant had
reasonable cause to apprehend a design
on the part of ~~deceased~~ Ernest Delf to commit
a felony upon defendant, or to do him
some great personal injury, and
that there was reasonable cause to
apprehend immediate danger of such
design being carried out, and he
struck Delf, ~~and~~ with the spade to
prevent the accomplishment of such
apprehended design, then the striking
was justified upon the ground of
self-defense and the Jury should
acquit.

It is not necessary to this
defense that the danger should have
been real or actual, or that the danger
should have been impending and
about immediately to fall.

If you believe defendant had
reasonable grounds to believe these facts
and he struck, as he believed, to
prevent such expected harm, then
you should acquit.

But before you acquit on
the ground of self defense

you ought to believe that defendants
cause of apprehension was reasonable.

Whether the facts constituting
such reasonable cause, have been
established before you by the evidence
in the case. You are to determine

And unless the facts constituting
such reasonable cause have been
established, you cannot acquit
even though you may believe that
defendant really thought his cause
of apprehension reasonable

Jury

State }
Sworn } Before the Jury can find
the Defendant guilty they must
believe from the evidence that he
struck Delf. as charged in the
indictment. with the intent to
kill him, and unless they so
find they must acquit

State
Swan

If the jury have a reasonable
doubt of defendants guilt. you should
give him the benefit of such doubt
and acquit him

But such doubt. does not
mean a mere possibility of defendants
~~guilt~~ innocence, but a rational
and substantial doubt touching his
guilt

Given

Malice in the Law signifies such
a state of disposition as shows
a heart regardless of social
duty and fatally bent on
mischief

State
v.
Barn

Mr the Jury find the defendant
not guilty.

Forman

4322

Slab
to
Gordon Swan

Assault with
intent to Kill

Disposed of
Sept. 1876
"