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1907.

103

Vancouver Fall Assizes.

07

Rex v. Walsh.

(Unlawful assembly, &c.)

Crown Brief.

23 Oct. 1907

Before Irving J. - Macken for Crown - J.A. Russell for prisoners - Verdict - Not guilty

ATTORNEY GENERAL'S DEPARTMENT VICTORIA B.C.

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada.

Province of British Columbia,

City of Vancouver:

The information and complaint of G. A. Murray, of City of Vancouver, taken the 9th day of September, in the year of our Lord one thousand nine hundred and seven, before the undersigned, A. Williams, Esq., Police Magistrate and one of His Majesty's Justices of the Peace in and for the said City of Vancouver, who says that at the said City of Vancouver, on the ~~8th~~ 7th day of September, A. D. 1907, James Walsh, being tumultuously and riotously assembled, to the disturbance of the public peace.,with more than three other persons, unlawfully and with force, damaged a building in the said City of Vancouver. Contrary to the form of the Statute in such case made and provided.

"G. Alvin Murray."

Sworn before me theday and year first above mentioned, at said City of Vancouver,

"A. Williams,"

Police Magistrate.

"Committed for trial."

"A. Williams,"

"P. M."

STATEMENT OF THE ACCUSED:

Canada,

Province of British Columbia,

County of Vancouver:

James Walsh stands charged before the undersigned, A. Williams, Police Magistrate, of His Majesty's Justices of the Peace in and for the County aforesaid, this 11th day of September, in the year of our Lord one thousand nine hundred and seven, for that the said James Walsh, on the 7th September, at City of Vancouver, being tumultuously and riotously assembled to the disturbance of the public peace, with more than three other persons, unlawfully and with force, damaged a building in the said City of Vancouver.

Contrary to the form of the Statute in such case made and provided.

And the said charge being read to the said James Walsh, and the witnesses for the prosecution, Chief of Police, Chamberlin; Constable Kuner; and Chief of Fire Department Carlisle; being severally examined in his presence, the said James Walsh is now addressed by me as follows:-

"Having heard the evidence, do you wish to say anything in answer to the charge ? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you at your trial.

"You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat." Whereupon the said James Walsh saith as follows:-

"Nothing to say."

Taken before me at Vancouver, theday and year first above mentioned.

"A. Williams."

POLICE COURT.

(Before A. Williams, Esq., P. M.)

Vancouver, B. C., September 11th, 1907.

JAMES WALSH, charged on the information of G. Alvin Murray, for that he the said JAMES WALSH, at the said City of Vancouver, on the 7th day of September, A. D. 1907, being tumultously and riotously assembled, to the disturbance of the peace, with more than three other persons, unlawfully and with force, damaged a building in the said City of Vancouver.

MR KENNEDY, APPEARED FOR THE PROSECUTION.

MR. POTTENGER, APPEARED FOR THE DEFENCE.

G. ALVIN MURRAY, SWORN AS STENOGRAPHER.

COURT:- "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a Jury at the next Court of Oyer & Terminer & General Gaol Delivery, to be held at the said City of Vancouver, on or about the 1st day of October, next, as the Lieutenant-Governor in council may appoint?"

Mr. P.:- He takes trial by a Jury.

CHIEF OF POLICE, CHAMBERLAIN, CALLED ANDnSWORN.

DIRECT-EXAMINATION BY MR KENNEDY.

Q. You are the Chief of Police? A. Yes sir.

Q. On the 8th of September, you were on duty, at night? A. Yes sir.

Q. I want you to describe to the Court, the circumstances under which you saw this young man, Chief? A. I cannot identify this young man at all.

Q. You can not identify this man? A. No sir.

Q. Do you remember seeing Officer Kunner? A. I do.

Q. That night? A. Yes sir.

Q. Do you remember him make the arrest of this young man? A. Yes I do remember him making an arrest.

Q. What Officer? A. Kuner.

Q. Did you see what the man that Officer Kuner had arrested, had done? A. I Did, sir.

Q. What had he done? A. Three men were running along Pender St.

Q. About what time would this be? A. about between 11:00 and 12:00 O'clock at night. I could not tell you the exact time of night. This man kicked in a window as he run by.

Q. The man Whom Kuner arrested kicked in a window? A. Yes. And I grabbed him about the same time Kuner did. He kicked in a pane of glass in a low window on Pender St.

Q. Well, how could he kick this window, about how high up is it? A. It is a very low window? A. They came running right along, and as they passed this one man kicked it, and there were three of them altogether. They kicked in windows as they ran along. And when I saw this I gave chase, and I caught him just before he came to the

railway track.

15– Q. What kind of houses were these windows in? A. Well, I could not describe to you.

16– Q. Well, this young man had been breaking the windows, did you notice in which kind of houses? Did you notice who seemed to be occuping these houses? A. Well, they had been breaking windows all along, and these three men ran along, and the one of them put his foot through the window. And this man, I never lost sight of him all the time he was running. He just stopped for a moment and he kicked the window and then he ran along with the others.

17– Q. He was with three others? A. Two others.

18– Q. There had been a big crowd, did you clear out this crowd? A. Yes, but sraggglers got in on us, and ran through. But there has been a big crowd.

19– Q. There had been a crowd? A. Oh, yes, there had been a big crowd.

20– Q. About how long before? A. Perhaps an hour before.

21 Q. What had this crowd been doing? A. Smashing windows and acting in a very disorderly manner.

22– Q. What kind of windows had they been smashing? A. A great variety of windows.

23– Q. What class of windows? A. Oh, in Chinese houses.

24 Was that the Chinese quarters? A. Yes, in the Chinses quarters.

25– Q. Did you see them break any other kinds? A. No.

26–m Q. There had been a crowd, and you had put them all out but a few stragglers? A. Yes. We did not have enough Officers to get them all out.

27–m Q. Did you see this man? A. Yes, he ran up Pender street going West.

28– Q. And you grabbed him about the same time that Officer Kuner did? A. Yes, I do not recognize this man, but if this is the man that Officer Kuner grabbed, he is the one who sent his foot through that window.

CROSS-EXAMINATION BY MR. POTTENGER.

49- Q. They were srrested were? A. Somewhere near the corner of Pender street, and the Railroad track. I do not know what you would call the name of that street; it is near to Pender street.

50- Q. And they were runnign West? A. Yes sir.

51- Q. How far from the point where this window was kicked was he arrested? A. About 150 or 200 feet.

52- Q. And they were running along? A. Yes sir.

53- Q. And is that all the people ehat were there? A. Yes, that is all, there were just the three of them.

54- Q. Was there not a crowd of people down there throwing stones at the windows? A. Well, therewas a crowd of people further down the street, there was a crwwd.

55- Q. Big crowd? A. Yes fairly big.

56- Q. And the smashing was going on down there? A. I all directions.

57- Q. And this window that you spoke of is one that was low down? A. Yes.

58- Q. And it was pretty dark? A. Well, there was no light. The only light was the reflection from the light on the corner of Carrall and Pender Streets, which shows up that way.

59- Q. How far away from this were you? A. Perhaps 150 or 200 feet. I would not care to estimate exactly how far away it is.

60- Q. You kept your eye on this boy? A. Yes, and I was on the streeta as they were running along the sidewalk , and after he kicked the window in, I ran after him and caught him. I ran onto the sidewalk.

61- Q. Were you in uniform that night? A. No sir.

62- Q. You could see him kick the window? A. Yes, and I never lost sight of him at all.

63- Q. But you could not identify him? A.

43- Q. ---- A. No sir.

44- Q. It was not possible for these three to change as they ran along? A. No sir, I watched him all the time.

45- Q. It is not possible that as these three ran along, one of them might shoved another of them in to the window? A. No, he deliberately stopped and set his foot through the glass, and them ran on. He was only about 40 feet from me, and I saw him stop and kick his foot t through the window.

46- Q. And the others did not do anything? A. No. I did not see them doing anything.

47- Court:- Did you see Kuner arrest more than one man at that time? A. No, that is the only one arrested. We took him down the street and called and Patrol Waggon and brought him in.

RE-DIRECT-EXAMINATION BY MR. KENNEDY.

48- Q. What have you got to say about the disturbance of the public peace at that time? A. They were certainly causing part of the disturbance,

49- Q. Was it enough to alarm the people in that vicinity? A. Yes.

50- Q. The peace was being disturbed? A. Yes sir.

POLICE CONSTABLE, 42 KUNER, CALLED AND SWORN.

DIRECT-EXAMINATION BY MR. KENNEDY.

51- Q. You were on duty that night, officer, the night of the 8th? A. I was.

52- Q. Now, ---- it was the 7th? A. Yes, Saturday night.

53- Q. Mr. P:- What night was this? A. The 7th Saturday night.

54- Q. Saturday night? A. Yes, Saturday night.

55- Q. What time? A. Between 11:00 and 11:30 P. M.

Mr. K:- Your Worship, I ask to amend this information to read the 7th

Court:- All right. Oh this is not material, if they are taken by surprise they have the right to have an adjournment.

Mr. P:- It is all right, I have no objection.

56- Q. About what time was this on Saturday night? A, Between 11:00 and 11:30.

57- Q. You recognize this accused? A. I do.

58- Q. You heard the evidence who was in the box? Who as intthe box a moment ago? Was he present when you arrested this boy? A. Yes sir, he was there.

59- Q. Just explain to the court, all about this arrest and why he was arrested in the first? A. Between 11:00 and 11:30, Saturday night, Your Worship, during the Asiatic Riot, I was in plain clothes duty in Chinatown, I was standing near the railway track, on Pender street, and I saw the prisoner coming along with two or thre others.

60- Q. Were there others, how many do you say there were there? A. Four I think there were.

61- Q. Well, go on? A. Awell when I saw them first, they were running in the direction where I was standing from Carrall Street, they were on the North side of the Street. And I saw the prisoner kick the window or strike it with some missile, and I saw the Chief chasing him. I was going to chase him too, but I noticed he was coming right towards me. And I grabbed him, and the Chief grabbed him at the same time. And I did not know it the Chief at that time.

Q. You say that he ran right into your arms? A. Yes sir, I was standing at the end of the bluff.

Q. Were you around the corner? A. No, I I watchings there movements and I saw him kick the window.

Q. And you say the Chief made a grabb for him about the same time you did? A. Yes sir, and he then handed him over to me, and he went off for the Patrol, and we brought him to the station.

Q. What were these four doing when you saw them first? They were running along the sidewalk.

Q. Were they throwing any stones or anything like that? A. Well, the prisoner there kicked in the window or did it with some missile.

Q. Was anything done before that? A. Oh I think so, I think there had been some rioting all through there. But Chinatown had been cleared, with the exception of a few stragglers.

Q. Had you seen these four do anything previously? A. No.

Q. Well, did you see them break any windows at all? A. Well, yes, when he kicked it with his foot, or else he threw something. When he made the move, I could tell whether he kicked or whether he threw something at it.

Q. Did you find anything in his pockets? A. No, nothing.

CROSS-EXAMINATION BY MR. POTTENGER.

Q. You do not know whether he kicked this window in, or whether he threw a stone? A. No, but he had broken the window.

Q. You are sure the window was broken? A. Well, I could not swear I could swear he broke it, but it might have been damaged before.

Q. How far away were you from this man as the window was being broken?

A. About 100 feet probably.

74- Q. And where was the prisoner? A. About No. 9 or No. 11 Pender Street

75- Q. And how can you swear that this fellow broke the window? A. Well, as they passed this place where the window was broken, his companions were on the outside of the sidewalk. And the prisonermwas up close to the window. But I could not see whether he kicked or put a rock through it.

76- Q. The only reason you have is because he was the closest to window? A. Well, I saw his movements.

77- Q. What were his movements? A. Well, I saw his arms go.

78- Q. How, just show us? A. Well, I could see the reflection in the light at the corner. He just went like this-----

79- Q. Did you see him stop and turn and kick the window? A. Oh yes.

80- Q. And saw him do both? A. Yes sir. He did not have any idea that there was anybody waiting for him.

81- Q. And he trew the rock and he kicked the window? A. Yes sir.

82- Q. There were four men in this crowd? A. Well, I could not swear for there were the Chief and his friend, and myself, and I could not tell just how many the boy had with him. I guess there were three of them.

83- Q. You are sure of that? A. No, I could not be positive.

84- Q. The only thing you are positive of, is that the boy broke the window? A. Yes I saw that.

85- Q. And were the other boys breaking any of the windows? A. I could not say as to that.

86- Q. And all the other boys you say were running down the street? A. Yes sir.

87- Q. And this boy kicked the window and threw the rock too? A. Yes sir.

88- Q. You are sure that this was Saturday night? A. Yes sir.

89- Q. Mr. K:- You heard the window being smashed? A. Oh yes.

Mr. K:-

90- Q. Was anybody with you atall? A. No.

Mr. K:-

91- Q. Does Officer Carlisle know anything about this? A. I think so, I do not know, he was there all the time.

92- Q. Was it you who hit the boy over the head with the club? A. No.

93- Q. Who did? A. I do not know, I would not swear that anybody did. I was in plain clothes.

94- Q. Did the Chief have a club? A. I could not say. I did not see one.

95- Q. Did thid other man with the Chief have one? Did he hit the boy with a club? A. No sir, it is Chief Carlisle of the Fire Department.

96- Q. Did he have a club? A. No sir.

97- Q. And did the Chief hit him? A. No sir, he did not.

98- Q. Did you hit him? A. No sir, I did not have a club. I was not in iniform. I was in plain clothes. I had been in the show. And I had just come out. And when I got back, I saw that there was trouble and I went down.

99- Q. There was another Officer at Carrall, and the Chief and yourself? A. Yes. I was standing on Pender Street.

100- Q. And the only three there were the boy, and the Chief, and Carlisle and yourself? A. Yes sir.

101- Q. And you took him to the station? A. Well, we took him into a Chinese building. He was yelling recue and I did not want the crowd to come and take him away from me. And we put him the Patrol waggon.

102- Q. Oh did the Patrol waggon come down? A. Yes sir.

103- Q. And did you see anybody hit him as he went in to the patrol? A.

No Court:-

104- Q. There was a riot? A. Yes sir.

CROSS-EXAMINATION, BY MR. POTTENGER.

105- Q. Well, you did not see any riot you just came from the show? A. Yes. well, I had seen some of it.

106- Q. Well, now, why do you tell me that you saw this riot when you just came from the show? If you just came from the show, how would you have any chance to see the riot? A. Well, I saw the riot, I could not help but see.

107- Q. Well, where did you go, what show did you go to? A. To the Orpheum

108- Q. And where did you after you came from the Orpheum? A. I stood on the corner of the street.

109- Q. Then you did not see any of the riot? A. Yes, I had been down. Acting Sergeant Perry told me to stay there until he came back.

110- Q. Did you come straight from the Orpheum to this corner of not? A. Oh, not just straight to this corner.

111- Q. Well, did you stand at this corner? A. Certainly not. I went to that corner from Chinatown. And I had been there quite a while.

112- Q. Did you see the crowd? A. Yes sir.

113- Q. Where? A. Hastings Street.

114- Q. You had been down there? A. Yes sir.

Court:-

115- Q. I understand that you had been out of the show forabout an hour before you went to this place? A. Yes Your Worship. I went up to the street where this riot had taken place.

RE-DIRECT-EXAMINATION BY MR. KENNEDY.

116- Q. I understand you to say that there were three besides yourself, and the Chief and the Chief's friend? A. Yes sir.

117- Q. Three in the crowd of which this boy was one? A. Yes sir.

CHIEF OF THE FIRE DEPARTMENT, CARLISLE, CALLED AND SWORN.

DIRECT-EXAMINATION BY MR. KENNEDY.

118- Q. You are the Chief of the Fire Department? A. Yes sir.

119- Q. Were you with the Chiefoof Police on Saturday night last? A. I was

120- Q. Do you remember him making the arrest of this boy? That night in your presence? A. I do.

121- Q. Have you ever seen that center boy before? A. I have.

122- Q. Is that the boy? A. Yes sir, I think it is.

123- Q. Officer Kuner, do you remember seeing him that evening too? A. I could not recognize him.

124- Q. Will you give your description of what happened at the time that the Chief gave the orders that this boy would be taken in? And previous to this time? In connection with this boy? A. The Chief and I were walking up Pender Street, from Carrall West, and about half up to the track, the railway track, there were three young men coming along, and one of them threw something at the window, and the Chief of Police ran and caught him just at that time, and just after one fellow threw something at this window the boy put his foot through another window. And I ran at the same time. And the Chief caught that man. And some Officer, I do not know who he was, came along, and assisted to arrest him.

125- Q. Then amongst these three boys, there was something went through the window, something like a stone, or perhaps it was a stone? Did he break the window? A. Oh yes. He smashed the window.

126- Q. Were they running or just walking? A. Just walking along when

I first saw hhsm.

127- Q. What kind of a window was this, belonging to what kind of a house? The first window that was broken,,the one that was kicked? A. Yes, it was a Chinese House.

128- Q. This window which was kicked in do you know kind of a house that was? A. Chinamen, again.

CROSS-EXAMINATION BY MR. POTTENGER.

129- Q. Is this the boy who,kicked the window in? It was another boy who threw the rock at the window, it was not the same window? A. No, I am sure it was not the same window. It was not the same glass anyway. It was not the same window.

130- Q. This is a different boy? A. Yes sir.

131- Q. And the same boy did not kick the window and throw the rock too? A. No.

132- Q. The boy that kicked the window was the nearest to the wall, is that right? A. Yes.

133- Q. You were on the road? A. Yes, I was on the Street.

134- Q.Now, this boy that kicked the window was he closest to you or was he further away from you? A. They were walking one ahead of the other.

135- Q. They were not running? A. No.

136- Q. One ahead of another? A. Yes.

137- Q. And another was throwing too? A. Yes I think there was all right.

138- Q. Will you tell us the order in which these boys were walking? Was he the first or the second or third? A. He was in the center.

139- Q. Well, you are sure of this part of it? A. Yes. Yes, I took particular notice to him after he was arrested.

140- Q. You are sure that this is the boy? A. Yea sir to the best of knowledge. It is the boy.

141- Q. Well, you are not quite sure? A. To the best of my knowledge this is the boy.

142- Q. You will not swear this is the boy? A. Well, to the best of my kn knowledge this is the boy.

143- Q. And this boy was in the center, to the best of your knowledge? A. Yes sir.

144- Q. Well, you did not see this fellow throw the rock, another of the boys threw the rock, did they not? A. Rock, stone or what ever it was.

145- Q. Is that right? A. Well, this boy was in the center, and he kicked the window about the same instant.

146- Q. About how long after? A. Not more than two minutes after.

147- Q. And what happened then? A. They started to run, and the Chief ran after them and caught this boy.

148- Q. And they all ran in the same order, do they? A. Well, I could not say,

149- Q. You kept your eye on this boy all this time? A. Yes sir, I did, and when the chief caught him I said,----

150- Q. You had your eye on this boy? A. Yes sir.

151- Q. You do not know whether they changed their places or not? A. No. I do not know.

152- Q. Well, the Chief caught this boy, and are you sure that the boy the Chief caught, was the one who broke the window? A. Yes sir.

153- Q. It was pretty dark there? A. Yes sir, it was but I could see.

154- Q. You got a look at him, and just ran, and you did not need to take your eye off him to see where you were going? You did not fall over something as you were runnung and looking at the sidewalk? A. I ran in the same direction.

155-Q. And you kept your eye on him all the time? A. Yes sir.

Q. Did you have to run fast? A. Yes, -- for me. I cannot run very fast.

Q. And you ran up this dark street, and yoy kept your eye on him? A. Yes, I.was running after him.

Q. You were not opposite them, you were after them? A. I jumped on to the sidewalk, and I ran after them.

Q. You do not know whether they kept order or not? A. No.

Q. But you kept your eye on this man all the time? A. Yes.

Q. And ran after him? A Yes sir. We all ran after them.

Q. And you are not quite sure this si the boy? A. Well, its to the best of my knowledge, or recollection.

Q. Well, if this boy was charged with murder, and you saw something murder somebody else, would you swear that this was the boy who did it, just from whatyou thought was the fact? When you would go into the box, would you swear this is the boy that did the murdering, if you just saw a fellow murder another man, and this boy was charged with the murder? Yes, I think I would.

Q. To the best of your knowledge? A. Yes, I Would.

Q. Court:- Hane you any doubt in your mind this is the boy? A. No.

Mr. K:- No doubt but that the boy whom you arrested, is the one who broke the window? A. Yes, that is the boy.

DEFENCE.

COURT:- "Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and maybe given in evidence against you at yourntrial?

be given in evidence against you at your trial ?

You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat."

Mr. P-: He has nothing to say.

COURT: I hold that this evidence is sufficient to put him on his trial.

COURT: Do you wish to give any evidence ?

Mr. P-: No, I don't wish to give any evidence.

COURT: I order him to be committed for trial.

(Stenographer's Certificate),

"A. Williams,"
Police Magistrate.

"G. Alvin Murray,"
Stenographer.