

INTER-PERSONAL VIOLENCE – NSW
1810-1819

Indictment, Informations and Related Papers, 1796 - 1815, State Records N.S.W,
5/1146- 65

R. v. Luttrell

Court of Criminal Jurisdiction

Bent J.A., **13 March 1810**

[65] In the Fiftieth Year of the Reign of our Sovereign Lord George the Third of the united Kingdom Great Britain and Ireland King defender of the faith.

New South Wales To wit

Be it remembered that Ellis Bent Esquire Judge Advocate of our Sovereign Lord the King for the Territory of New South Wales who prosecuteth for our said Sovereign Lord the King in His behalf, in his proper Person, cometh here into the Court of Criminal Jurisdiction holden in Sydney in the said Territory, for the Trial of all and all manner of Felonies and misdemeanors and other offences whatsoever on Monday the twelfth day of March in the Fiftieth year aforesaid, and for our Lord the King, Giveth the Court here to understand and be informed that **EDWARD LUTTREL** late of Parramatta in the Territory aforesaid. Gentleman, on the nineteenth day of February in the Fiftieth year aforesaid, which force and arms at Parramatta aforesaid, in the Territory aforesaid in and upon a certain Native of the Territory aforesaid, called or known by the name of **TIDBURY** in the peace of God and our said Lord the King then and there being willfully and violently did make an assault, and that the said Edward Luttrell with a certain Gun then and there loaded and charged, with Gun Powder and one leaden Bullet or a piece of lead, which Gun the said Edward Luttrell in both his hands then and there had and held to, against, and upon, the said Tidbury then and there did willfully maliciously shoot and discharge and that the said Edward Luttrell [66] with the leading Bullet aforesaid out of the Gun aforesaid then and there by force of the Gunpowder, Shot, and discharged as aforesaid, the aforesaid Tidbury in and upon the mouth of the said Tidbury willfully and maliciously did strike penetrate and wound, by means whereof the said Tidbury became weak and distempered and continues so, weak and distempered for a long space of time, to wit, from thence, until the day of the taking this Inquest, and other wrongs to the said Tidbury then and there violently and maliciously did, the great damage of the said Tidbury to the evil example of all others, the like case offending, and against the peace of our said Lord the King his Crown and dignity.

Witnesses for the Crown

1. Hannah Conaway
2. George Kayley
3. James Wise
4. James Milham

Bent J.A., 13 March 1810

Source: Court of Criminal Jurisdiction Minutes of Proceedings, 1810-1811, State Records N.S.W, 5/1119 - 1

[1] Edward Luttrell brought before the Court charged with an assault upon one Tidbury (a native) and wounding him by discharging a Gun loaded with leaden bullet at him.

Plea Not Guilty. I free joined.

SUSANNAH CONWAY sworn, says: she lives at Parramatta is acquainted with Mr Luttrell by sight. Knows also Tidbury by sight. That near six o'clock on the 19th of February, she went into her garden, and heard a noise towards the bushes, near Mr Luttrell's. She looked and saw a Black man and woman quarrelling, about 10 minutes after she saw Tidbury come up to the Garden where she was. That while she was talking to Tidbury and another black man, she saw Mr Luttrell was standing about 60 yards off. He had a gun in his hand. He had it levelled towards the black. She saw him fire off the gun. She saw Tidbury fall and that afterwards he got up and ran away. Before the accident she heard one of the other Luttrells for the father was there also, called out "damn your bloods do not fling your spears here."

Questioned by the defendant. Says, that she did not see Mr Edward Luttrell the defendant, and Tidbury at the same time that she saw Mr Edward Luttrell fire and looking immediately after saw Tidbury fall. She does not know anything that might have occurred between the defendant and Tidbury before the accident. Says that she never had quarreled with defendant or his family and has no reason to bear any of them malice. Tidbury, she believes, had some spears in his hand when he came up to her garden.

GEORGE KALEY sworn Says: he lives at Parramatta; that about an hour before sundown, on the afternoon of the 19th February, he saw Tidbury sitting down on the ground about 300 yards from his Garden. He was bleeding and that his upper lip was perforated. Witness opened Tidbury's mouth and observed it much lacerated. That he saw Tidbury after several efforts take out a ball which was produced to the Court.

Questioned by defendant. Say he had given the natives arms to go a Shooting with.

[2] **JAMES WISE**, sworn says: Lives at Parramatta. That He Knows Tidbury and his Wife. Says in the same afternoon before the accident he saw Tidbury come out of Thomas Eckle's house, next door to the Witness, very much intoxicated. His wife he saw nearly in the same state. That Tidbury and his wife were quarrelling very much and he saw her run away. That Tidbury was left in the kitchen. That witness heard the report of a gun immediately after he saw Defendant with the gun in his hand. That she then saw near Mr Luttrell some smoke about five minutes after witness saw Tidbury. Saw him led by one Peter a Black along the field and afterwards saw him sit down. That he was wounded in the upper lip. That he saw Tidbury take a ball from the inside of his mouth. Saw the ball that in about ten minutes he assisted in taking Tidbury away to Kaley's house.

Questioned by the defendant. In about half a minute after hearing the report of the gun, he saw Mr E Luttrell.

Mr **MILEHAM** sworn says: he is assistant surgeon at the Hawkesbury. He believes he visited Tidbury a day after the accident. He saw the wound which appeared to him a Gun Shot. It had punctuated the upper lip. That it appeared to him that it had been inflicted by a spent ball.

Mr Luttrell in his defence says that the day before he had heard that certain natives had threatened to assassinate some of his family. That on the 19th while he was at tea two persons called out that the natives had speared his sister. Upon that he rose and went out with his gun and shot Tidbury as he was running away.

ELIZABETH ANSTRY sworn, says: that on the 19th February, she gave the defendant the alarm that the natives had thrown a spear at his sister. That while she and the defendants servant were in the garden, speaking to a Black woman at the bottom of it, Mr Luttrell's younger sister came out, and she saw Tidbury who was coming up at the time with several spears heave one very forcibly at Mr Luttrells

sister which went within an inch of her head. This spear fell in the yard. The spear produced which she swore to be the one thrown by Tidbury at defendant's sister.

THOMAS NUGENT sworn, says: he is servant to the hospital at Parramatta. Says he was present when he saw Tidbury throw a spear at Mr Luttrell's sister.

[3] **LOUIS PETER**, a native of India and Roman Catholic sworn says: that he is servant to Mr Edward Luttrell. Says he was present in Mr Luttrell's garden on the 19th on the afternoon with Elizabeth Anstry. That when the child came out he saw Tidbury the black fling a spear at it. The spear shewn to him says it is the one thrown at the child.

Verdict – Not Guilty.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction Minutes, 1811-1813, State Records N.S.W, 5/1120-329

R. v. Fitzgerald

Court of Criminal Jurisdiction

Bent J.A., **16 March 1813**

[329] **CATHERINE FITZGERALD** brought to the Bar, charged upon statute 43 Geo. 3 ch. 50 with malicious and unlawfully cutting one **ELIZABETH HENRY**, (a Subject of his Majesty) on her cheek with a sharp instrument with intent to murder, disable or do grievous bodily injury to the said Elizabeth Henry at Sydney on the 7th day of March Instant.

The Prisoner being arraigned, pleaded Not Guilty, on which plea issue is joined.

Elizabeth Henry. Sworn says: I am the wife of **WILLIAM HENRY**. He generally resides in Sydney. On Sunday week last, I was in Sydney Gaol; I was there under sentence for an assault. The Prisoner Catherine Fitzgerald was also confined in Gaol on the same day, in consequence of having taken some things clandestinely from my house. Prosecuted her. On Sunday week last between nine and ten o'clock in the morning, my husband came down to see me at the gaol. I was let out to see him. Saw him in the front gaol yard inside the gate there. We sat down together on a log of wood. Catherine Fitzgerald was ordered out for the factory. The women were getting ready for the factory. As she passed me by I perceived a peach and knife in her hand. She was peeling a peach. She made a blow at me in the face. I cannot tell with the hand in which she held the knife or not. She hit me on the right cheek. My cheek was cut, I think by the knife. I cannot tell. It was a heavy blow and know she meant to hit me with her fist in consequence of what she said after. I have done what I thought not to have done. I did not intend it. But as it is done it cannot be helped. She threw the knife down.

[330] The testimony given by the witness is so totally in contradiction to her examination before the Magistrate that the Court order her to be taken from the Bar, and committed to his Majesty's Gaol.

GILBERT BAKER. Sworn says: I am a Constable usually stationed upon duty in the Gaol. I was in duty in the Gaol on Sunday week last the 7th March. The prisoner, Catherine Fitzgerald, was then in confinement in the Gaol. Elizabeth Henry was also confined in the Gaol at the same time on Sunday the 7th March about ten o'clock in the morning, **JAMES WIRMBROW** a Constable came to me for three prisoners that were going to the factory. The Prisoner at the Bar was one. The Prisoner at the Bar was the first to come to the gaol gate. Elizabeth Henry was standing inside the gate. The Prisoner at the Bar was eating a peach on a bit of bread with a knife in her hand.

She turns to Mrs Henry and says you bloody whore, or Bloody Bitch take that for an old Grudge. She then struck Elizabeth Henry with her hand. I will not be certain whether or not with the hand which held the knife. I saw the blood come from her right cheek. I suppose it must be with the knife as the blood came. The knife produced is the knife the prisoner held in her hand at the time she struck the blow. I did not hear Elizabeth Henry make use of any provoking language to the prisoner before she struck the blow. I should have heard her if she had. I thought at the time the prisoner had struck her with the knife. I did not think she intended to strike her with the knife at first but when saw the blood come I thought that was her intention. Somebody was sent for Mr Wentworth. She bled a trifle. The cut was very small. It was a state. The expression she used was used at the instant of striking the blow.

[331] The Judge Advocate reads from bench of Magistrates second Book; the second of the convictions of the Prisoner for the Petty Larceny of the prosecution of the said Elizabeth Henry, on the 4th day of March Instant and the sentence of the Magistrates thereupon.

The Prisoner in her defence states that she was influenced by sudden passion, and did not mean to cut the Prosecutrix.

The Court for their own satisfaction, call

DARCY WENTWORTH, Esq., Who being sworn says; I am principal surgeon of this Colony. I was passing by the Gaol door at the time this affair happened. Was called in and saw the wound immediately after it had been inflicted. It was still bleeding quite fresh, when saw it. I have not the least doubt that the wound was inflicted by some sharp instrument. It was a superficial wound, two or three inches long but not deep.

The Prisoner declined asking this witness any questions.

This witness withdrew.

The Prisoner says she has nothing further to say in her defence, nor any witness to call.

The Court having fully understood and maturely considered the premises doth adjudged that the said Catherine Fitzgerald is not Guilty of the Felony in manner and form as she hath been charged and do therefore discharge her of and from the same.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction, Informations, Depositions and Related Papers, State Records N.S.W., SZ784 COD 444

Court of Criminal Judicature

Wylde J.A., **14 August, 1818**

[301] Police Office Sydney

JOHN HEMSHAW and JOHN SPEARS charged with violently assaulting and ill treating two of Commissary Allan's Sons, and certain of the Native Blacks.

Fully committed.

For trial 14th August 1818.

[303] David Allan the Company General of the Forces lay duly sworn deposeth. This morning as I was on the race course during the time the troops were bade Arms, I saw several Boys throwing Stones at [?] for Henry Allan, and pursuing him towards [?] or Enquiry, I ascertained that he was thus pursued in consequence of being pelted with stones by a number of Boys. I immediately went to the Boys and I saw the Boy John Henshaw who appeared to be a leader of men who took No apart my sons as aforesaid. I took hold of him and conveyed him before the Superintendent

of Police. On searching him and Spears a stone in his Pocket similar to that with which my Family had been before assaulted.

Sworn to me this 12th August. R Allan.

[signature]

Robert Allan Son of the preceding Deponent sworn with. I saw the Boys John Henshaw throw stones [305] at my Brothers. Several other Boys did the same but Henshaw offended and be there leader. My Brother Henry was obliged to run home for Protection. I saw my father seize the Boy Henshaw, on which he dropt three stones from his hands.

R. Allan.

Sworn before me the 12 Aug

[signature]

Committed for Trial

Robert Allan the Preceding Deponent being sworn further saith – the Boy John Spiers, now present was also a Leader of the Boys who threw Stones (as deposed to by me in the Preceding Deposition) at my Brothers and the Blacks.

R. Allan.

Sworn before me the 12 August.

[signature]

Committed for Trial

[307] To be exhibited ...

The King

Against

Henshaw and [Others]

Fully Committed.

14th August 1818.

[309] In the Fifty eight year of the Reign of our Sovereign Lord George the third by the Grace of God of the United Kingdom of Great Britain and Ireland Kings Defender of the Faith.

New South Wales

to wit.... } Be it remembered that John Wylde Esquire Judge Advocate of our Sovereign Lord the King for the Territory of New South Wales and its Dependencies who for our said Lord the King prosecutes in his behalf in his own proper person Came into the Court and Criminal Jurisdiction at Sydney in the said Territory for the Trial of all and all manner of Felonies Misdemeanours and of other offences committed within the said Territory or its Dependencies or within any part thereof on Tuesday the fifteenth day of September in the fifty eighth year aforesaid and in the year of our Lord one thousand eight hundred and eighteen and for our said Lord the King gives the said Court to understand and be informed that John Henshaw late of Sydney in the Territory of New South Wales Labourer and John Spears late of the same place Labourer on the twelfth day of August in the year of our Lord one thousand eight hundred and eighteen, with force and arms at Sydney aforesaid in the Territory – aforesaid in and upon **Robert Allan and Henry Allan** in the peace of God and our said Lord the King then and there being did make an assault and therein the said Robert Allan and Henry Allan, there and [?] did beat bruise wound and ill treat so that their lives were greatly despaired of and other wrongs to the said Robert Allan and Henry Allan then and there did to the great damage of the said Robert Allan and Henry Allan and against the peace of our said Lord, the King his Crown and Dignity,

[312] 16

The King

against
Henshaw and Spears
Information
Witnesses:

David Allan
Robert Allan

At instance of Mr Allan the [?] Deponents swore
... but reprimanded and destroyed by the Court.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the
Division of Law Macquarie University