

DECLASSIFIED
Authority: E.O. 12958, 12958-2
DATE: 11-11-03

Charles E. Conick, Regt.Sgt.Major, 369th U.S.Inf., was sworn as reporter.

Counsel for defense objects to witnesses already examined, or liable to be recalled, being allowed to go out among witnesses to be called.

^{ak} steps will be taken to prevent this. ✓
The judge advocate states that ~~witnesses to be called~~ ^{are}

Pvt. ^{acc} Julius Bronson, Sanitary Detachment, 369th U.S.Inf., a witness for the prosecution, was sworn and testified as follows: ✓

Questions by prosecution:

Q. Do you know the accused? Do you know the officer?

A. Yes, sir.

Q. Who is he?

A. The lieutenant here (indicating Lieut. Emmett Cochran).

Q. What is his name?

A. I don't know his name at all.

Q. Do you remember the occasion when Private Whittaker was shot?

A. Yes, sir.

Q. What duty were you on that evening?

A. I was ^{at} driver of a sanitary detachment cart.

Q. What sort of a cart was this that you drove?

A. Sanitary.

Q. Open, or did it have a top over it?

A. Open.

Q. How were the seats arranged?

A. Just one little seat big enough for one man.

Q. Where did the lieutenant sit?

A. Just on a corner of the wagon next to the little seat. Just on the corner, in front.

Q. Was he alongside of or behind you?

A. On the right hand side of me.

Q. Where did the rest of the men sit in the wagon?

A. In the rear in the body.

Q. What did they have to sit on, anything?

A Didn't have anything. Had one board across, middle-ways, and the rest sat on the tail-end and on the side.

Q Now, before the cart got to town, were any orders given in your hearing as to what was to be done?

A Why, after the mare had mused over my shoes, the lieutenant says; "Bronson, go straight up in this little town, and don't stop," he says, until he give orders to stop.

Q Now, state what happened when you got to town?

A Well, when we got to town, this bunch came out in a rush, and the sergeant threwed up his hands. So I kept on driving and he jumps out of the way. Whittaker catches hold of the horse's head, so the lieutenant asked him three or four or five times to turn the horse loose. So he didn't and the lieutenant pulled out his revolver----

Q Just a minute. What did Whittaker say to the lieutenant?

A I don't know.

Q Continue?

A So he gets down off the wagon. Soon as he gets down on his feet I started to clean my shoes right away and paid no attention to the lieutenant until the gun went off.

Q Were you looking at either Whittaker or the accused at the time the shot was fired?

A No, sir, no, sir. When the shot was fired I was cleaning my shoes.

Q They had been dirtied ^{by} the dung from the mare?

A Yes, sir.

Q Did you see Whittaker after he was shot?

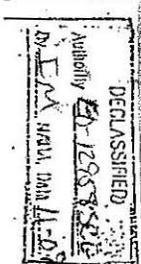
A Afterwards? Yes, sir.

Q Did you take note where he was hit?

A No, sir, I didn't take notice. Somewhere around the left side, somewhere. I don't know.

Q Speak a little louder?

A I can't say. No, sir, just where he was hit.



Q Where did they take him?

A To the first aid station there.

Q Who was in charge of the first aid station?

A Why, it seems a Frenchman was in charge.

Q Where did they take him next?

A Why, an ambulance, American ambulance picked him up and took him in this direction, but I can't say where they took him.

Q Was he alive or dead when he was taken?

A He was living when he went in the ambulance.

Questions by defense:

Q Bronson, did you know why you were going over to this little town?

A No, sir.

Q No one said anything to you about it?

A No, sir. The only orders I got was to bring the lieutenant and his detail down to this little town.

Q Were you driving slowly, at a walk or trot?

A I was jogging along.

Q Was that a walk or trot?

A Just a slow trot. She has got no fast gait.

Q Did Whittaker, or the man who stopped the horse, did he have to use much force to bring it to a stop?

A Stop the horse?

Q Yes?

A No, sir, didn't have to use much strength. He stepped to the side of the horse.

Q Did you notice Whittaker pretty well at the time? Did you have a good view of him?

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A Of Whittaker?

Q Yes, the man who stopped the horse?

A I didn't pay much attention to him.

Q Do you remember whether or not he was armed?

A If I am not mistaken, I think he had a rifle across his shoulder.

Q One or two?

A I can't say one or two or three. I know he had one.

Q Across this way, slung straight on the shoulder?

A I think it was slung straight, if I am not mistaken.

Q That is the best of your recollection?

A That is the best of my recollection.

Q Did you see the lieutenant when he got off the wagon?

A When the lieutenant got off the wagon? Yes, sir, I was sitting right next to him.

Q And you were watching him all the time?

A When he got off the wagon, the right hand side, I was looking right at him when he got off.

Q Did he have a pistol in his hand when he got off?

A Yes, sir.

Q Sure about that?

A Yes, sir.

Q Are you very sure that the pistol was drawn or not?

A Drawn?

Q Drawn out of the holster?

A Why, when he told him again about four or five times to turn the horse's head loose, he didn't do it. So, when he drew his gun out, why, of course, I didn't pay much attention to him, because I thought he was trying to scare the boy away from the horse's head.

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Q Then, you say, you paid no more attention to him?

A No, sir, not a bit.

Q You saw him jump off the wagon?

A He jumped off the wagon. When his feet hit the ground, I reached back under the seat, got out some rags and started to clean my shoes.

Q Then did you hear any conversation at all?

A I did not hear a thing at all, sir, until the gun went off. I wasn't paying any attention to them.

Q How long after the lieutenant got off the wagon was the shot fired?

A I can't say.

Q Well, estimate it how much. You started right away to clean your shoes. How long a time, as you remember, before the shot was fired. Had you gotten one shoe cleaned and started on the other?

A I just started on my shoes and got pretty well on my toe and started back in here (indicating side of shoe).

Q It was a little time then?

A About a minute and a half, as near as I can get.

Q Did you look around when the shot was fired?

A After the shot was fired I did, sir.

Q When did you see that man?

A I couldn't see Whittaker at the time because the rest of the boys were between me and the wagon.

Q Did you see Whittaker fall?

A I didn't see him fall.

Q When you saw him was he down?

A He was sidewise, over like this (indicating by bending over).

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Q How long after the shot was that?

A Well, it was about a few seconds.

Q He was going down then?

A Yes, sir, he was going down, kind of all stooped over.

Q Did you hear him say anything?

A No, sir, I didn't pay much attention to it at all.

Q And the man was shot and you didn't pay any attention to it?

A I didn't pay much attention to what it was. At the time I was driving off, I was going to the Red Cross. When I started to---

Q Who told you to go up there?

A I chased up there myself. At least that is my duty, first aid.

Q And all this excitement going on and you didn't pay any attention to it?

A No, sir, I didn't think anything like that was going to happen.

Questions by court:

Q I would like to ask, did you notice any sign of intoxication amongst the men standing there at the time?

A There was one fellow there which seems he had a good jag on. I didn't know him.

Questions by defense:

Q The only one?

A The onliest one that gave any real show, that is to me.

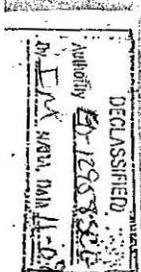
Q This man Whittaker, did he show any signs of intoxication when he stopped the horse?

A Why, I could not tell, sir, because he grabbed the horse, and I didn't know what---

Q What did he say when he grabbed the horse?

A The rest of the fellows were talking there, telling him to turn the horse loose or something. I didn't hear him say anything.

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Q Somebody told him to turn the horse loose?

A One fellow looked like they was drinking seemed to say "turn the horse loose!"

Questions by prosecution:

Q Was the man who appeared to be drunk the same man that was killed?

A This was only one, kind of brown-skinned fellow like I.

Pvt. Percy Parker, Co.F, 369th U.S.Inf., a witness for the prosecution, was sworn and testified as follows:

Questions by prosecution: ✓

Q Do you know the accused? Do you know the officer who is being tried?

A No, sir, I am not acquainted with him.

Q Were you present when Private Whittaker was killed on the 21st of August?

A Yes, sir, I was there.

Q Were you a member of a detail that was sent to this town of Dommartin-la-Planchette that evening?

A Yes, sir.

Q Who was in command of that detail?

A This lieutenant here (indicating accused).

Q But you don't know his name?

A No, sir.

Q Who ordered that detail to go out?

A Well, Major Spencer.

Q Did you hear him give orders as to what that detail was to do?

A He gave me and the rest of the boys orders.

Q What did he say?

A He said that he wanted us to go with this lieutenant here. He says, "I don't want you to take any arms. I want you to go after them and bring them back."

Q After who?

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A After those fellows who were at this place.

Q Why were you going to this place?

A He said they was drinking, the major said.

Q How many were in this detail that you went with?

A There was four of us.

Q What did you go in?

A In a hospital, in a sanitary cart.

Q Now tell what happened when you got to the town, step by step?

A Well, as we drove up in town, more on the right side, at least I was sitting on the right side; as he drove up in town, here was the whole detail out in one place like as they thought if somebody was to relieve them, and as we drove in town why the sergeant he steps across to the head of the horse. He threw up his hands and it seems he didn't stop. So he drove right on and then he replies and tells Private Whittaker to stop the horse. So Private Whittaker he comes up and catches the horse by the cheek of the bit. So the Lieutenant replying back to him to leave the horse alone and let him go, the lieutenant replying back as much as two or three times.

Q What did Whittaker say?

A He said his orders were to stop everybody who came from the 369th.

Q Any further conversation between them?

A No, sir. The lieutenant didn't cuss him and he didn't cuss the lieutenant. There was no quarrel or nothing.

Q Continue. Tell what happened?

A And then the lieutenant replied to leave the horse alone. Private Whittaker continued on holding up the horse, and then after the lieutenant had replied to him three or four times, the

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lieutenant jumps out of the cart. When he goes out, why he takes his gun out, and then Private Whittaker backs back on the street on the right side all the time, and then he replied to the lieutenant, asked the lieutenant did he mean to draw a gun on him and then he had two rifles hung on his shoulder, it seemed to me two rifles, and then he had something under his arm, little packages, might have been candy or cigars, I don't know what they was, I can't say. Then he lays these packages down and a coat he had on his arm. He lays one rifle down and kept one.

Q Kept it? How do you mean?

A He had both slung on his shoulder, but one rifle he kept.

Q What did he do with the other one?

A Kept it in his hand, not in position as if he was going to fire on no one. He had it in his hand all the time.

Q What words, if any, passed between the lieutenant and the man that was killed, Whittaker?

A Well, there was none. The lieutenant didn't have no words at all with him; didn't have no words at all. The lieutenant didn't tell him that he came to arrest him or nothing of the kind.. After that happened, after the boy was shot, the lieutenant tells us, at least he bid none of us to move, this detail and also the fellows down on the ground. So we didn't move. So after he was shot he tells this detail to take this boy up to the dressing station. He say he wasn't hurt very much. We did it.

Q Where were you when he drew the gun, do you remember, in the cart or on the ground?

A I was in the cart.

Q Where was the rest of the detail that came with you?

A They was in the cart.

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Q When did you get out of the cart?

A Got out when I was ordered.

Q Who ordered you to get out?

A The lieutenant, sir.

Q What did he tell you to do when you got out?

A Told us to carry this boy to the dressing station, and we carried him. After we carried him there we came back to him, as we was his detail. He left us standing there and he went to some place, I don't know where he went. When he came back he came back with some more American fellows. I think there was a captain was with him, I think it was. There was I don't know how many privates. Of course they all come back together, and then he tells this detail and those fellows that was down there to all go back there in this American wagon. So all of us got in this American wagon, detail and all, and then he orders us, his detail, to get out, and so we got out, and our sergeant, Emanuel, he posted us then and while the lieutenant was gone and he came on back to the camp and when this sanitary fellow came back, why we came back in the sanitary wagon. We came on back as there was some company come to relieve us, so we came on back with this---

Q What company did the men come from, some other company, or were they white soldiers?

A White soldiers. I don't know what regiment it is the men was, they came on a big truck. That is all I am able to say about it.

Questions by defense:

Q Parker, when you got the orders from Major Spencer do you remember just how he told them to you?

A Yes, sir.

Q Can you remember the words?

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A Yes, sir, I remember as far as I remember.

Q Tell me, as near as you can remember, just the words?

A Well, Major Spencer he told us the duty. He says, "I want you fellows to go down to this place," "I can't think of the name of it. He says there is some fellows up there that are drunk. He says, "I want you to bring them back!" He says, "I don't want you to carry any arms with you. I don't think you will have any trouble, but if you do, get you a club and club them good alongside of the head," and then he laughed. I didn't know what company they was in.

Q Was this a detail down there from your company?

A Yes, sir.

Q Did you recognize Whittaker when he ^{ok} stopped the horse? Did you notice who he was?

A Yes, sir, I know who he was.

Q And you noticed him when you drove up?

A Yes, sir.

Q Did you expect any trouble with Whittaker?

A No, sir.

Q Did Whittaker ever make trouble before?

A Never, since I have been in the regiment he has always been a pretty quiet fellow.

Q How long have you been in the regiment?

A I have been in the regiment since last year. I think it was the 15th of July.

Q Were you with the regiment in New York after the war was begun?

A Yes, sir.

Q Was there any trouble there about ^{ok} September?---

A Absent without leave.

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Q ---that Whittaker was mixed-ip in?

A Only absent without leave.

Q In anything else that you know of?

A No, sir.

Q Did you kind of look for trouble when you saw that it was a crowd of them out there, or a company---

A I didn't think there would be any trouble at all, because I know there has--he has been a kind of quiet fellow. I have seen him drink, at least I have never been out with him in cities or places like that. I have been with him in the regiment. He has always been a quiet fellow as far as I know. I don't think he ever gave any trouble in the company.

Q Did you see, when Whittaker stopped the horse, did you see the two guns plainly?

A Yes, sir.

Q Were they both on the same shoulder?

A Right on the shoulder.

Q On the same side?

A Yes, sir, just like you would take--I mean two guns on one shoulder.

Q They were not across just then?

A No, sir.

Q When Whittaker finally let go the horse and went around to the side, what did he do with those packages?

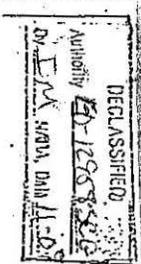
A He laid them right down, and---

Q Right away, quick?

A Yes, sir.

Q And then took the guns off his shoulder?

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A He took off one gun and kept one in his hand.

Q Was it one of the long rifles or carbines?

A Those carbines.

Q But you are very sure you saw him have a gun in his hand and take it off his shoulder?

A Yes, sir.

Q What became of that gun when he fell after the shot?

A When he was shot he had the gun when he fell. He fell with the gun in his hand. He says, "Lieutenant, you shot me and you done nothing but shoot a gun against a good man."

Q How long did he stand after he was shot?

A He didn't stand up very long. He stood up so long that really I didn't think he was shot, because the lieutenant replied back. He says, "He is not hurt." He stooped a pretty good while and then he weakened down and fell. At last he fell with his hands like that with the rifle (indicating arms outstretched with rifle in one hand).

Q Did he have both hands on the rifle?

A Only one when he fell.

Q I mean after he laid the other gun down; the gun he had in his hands. Did he have it by the barrel?

A Yes, mostly he had it by the barrel, by the barrel. What his ideas were I am not able to tell you.

Q But he had it in his hand?

A Yes, sir.

Q Could you kindly give us an illustration^{as} of about how he had the gun when he was shot?

A Yes, that is what I am here for, to speak the truth. I will do it. He had his rifle just like this (indicating with hands on barrel).

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Q You are quite sure both hands were on the barrel?

A Yes, sir, in this position.

Q Would you say that this position was clubbed rifle?

A I can't say. If there had been any trouble it would look much this way, as far as I could see.

Q If a man were to take a rifle in that position to you, would you have an idea he was going to do something to you?

A If he done it for some trouble, yes. The lieutenant and Private Whittaker didn't have no trouble. I didn't see either one--- they didn't have no words with each other, no swearing or cussing.

Q If there was no swearing or no cussing, as you say, did you see or hear about anything that would cause the man to take even that position with the rifle? Could you see where Whittaker had any reason to take that position?

A No. My ideas, as you ask me, my ideas regardless if this man had been drinking, he wasn't taken off his post. We had a right to stop there and let him tell what he was trying to tell. That is good duty if he was taken off his post.

Questions by court:

Q That isn't quite clear.

Questions by defense:

Q I was going to change that question to bring it out. I will ask him another question to bring it out a little clearer. Did you see anything happen that would cause enough trouble to even make a man take that position; you say you didn't hear any swearing or anything, did you see anything---

A Well, I didn't see nothing as I know of. The lieutenant had his gun out before the boy got the position of this gun.

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Q When did he get it out?

A As he got out of the cart on the ground.

Q Did he shoot him after he got it out, right away?

A No, sir, he did not.

Q Where were you, Parker, about how far away?

A Oh, I was in the cart.

Q Oh, that's right; you were sitting on the side that the lieutenant got out on?

A On the right side.

Q Was that the side he got out on?

A Yes, sir, the lieutenant was sitting on the right side.

Q Were you sitting in the bottom of the cart?

A You see, there was a board run cross-ways in the cart, I was sitting on this board.

Q You were up pretty high where you could get a good view?

A Yes, as high as this little sanitary wagon. They are very low, you know. One end of the tail board was rubbing against the wheel a little bit as we were driving along.

Q Then how near to the place where the lieutenant got off was it?

A The distance?

Q Yes. How far away from the wagon had the lieutenant gone before he shot?

A Well, just about two steps and a half from the wagon. That's as nigh as I can judge.

Q How far away was Whittaker from the lieutenant when he shot?

A Here is the driveway like this (indicating). Over here is the street. Whittaker was just on the edge of the walkway, out in the street, like if he was just on the edge of the walkway when he got shot.

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Q How far away from him was the lieutenant?

A Well, he was more to the right ^{side} side, you know, the width of the street.

Q Half way across the street?

A A little over half way.

Q How wide do you think that those streets are?

A Well, I don't know, sir lieutenant, because I don't want to say anything I don't know,

Q Well, is half way across the street the width of this room? This is about twenty feet or under. Just tell me about how far you consider it. The width of this room is about twenty feet?

A Well, I guess this room is over twenty-five cross-ways.

Q Was the lieutenant as far away from Whittaker as across this room?

A Not altogether.

Q I am just trying to get---

A I think it was a little nigh the distance.

Q Little less than twenty feet?

A Yes, sir.

Q Did you hear plainly, were you up high enough so you could hear plainly that order that Sergeant Emanuel gave to Whittaker to stop the horse?

A Yes, sir.

Q You are sure that he mentioned Whittaker's name?

A Yes, sir.

Q Gave him a direct order?

A Yes, sir.

Q Any other men around there?

A The whole detail was there together. There was one fellow, he might have been, he might have been about, well, I say he might have

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been about twenty-five yards away, one fellow, one of the detail, and the rest of them was right there together,

Q But you could hear plainly the sergeant gave a verbal order to Whittaker?

A Certainly. Yes, sir, certainly.

Q And did you hear him give any order to anyone else to do the same thing?

A No, sir.

Q Were those the only words the sergeant spoke?

A Only when we drove up he jumped across the road to stop the horse.

Q Can you remember again just the words the sergeant said?

A How is that?

Q Can you remember just exactly the words the sergeant said to Whittaker about stopping the horse?

A Yes.

Q What were they?

A He said, "Stop that horse!" Those are the words he applied to Private Whittaker.

Q And you are sure that he addressed those to Whittaker by name?

A Yes, sir.

Questions by court:

Q I would like to ask what position Whittaker was in; was he facing the road?

A Yes, sir.

Q Did he face the road?

A Yes, just about two steps. He was facing the road all right. That's the truth.

Q You say about a couple of steps from the lieutenant; he took a couple of steps toward him?

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A Private Whittaker made a couple of steps towards the lieutenant.

Q With the rifle in that position?

A In this position. The lieutenant had fired no gun. Then the lieutenant shot him.

Q That is he took that position before the lieutenant fired?

A Oh yes, sir.

Q Did you see the explosion or his smoke when the shot was fired, were you close enough?

A I don't know about the smoke, it was done so quick.

Q Did you see the smoke or fire?

A I didn't see the smoke or fire, it was done so quick.

Q You say Whittaker was in a menacing attitude when the lieutenant fired?

A Yes, sir.

Q Did he fire while Whittaker was still moving towards him with the half position of clubbed rifle?

A I think it was while he was making those two steps.

Q What position was the lieutenant in?

A The lieutenant was facing him, the lieutenant wasn't moving.

Q The lieutenant stood still?

A Yes, sir.

Q Was Whittaker near enough to the lieutenant so that is he had swung the rifle he would have hit him?

A No, sir, he was too far away to hit him.

Q Was this Whittaker a powerful man?

A It wasn't strength. He was a pretty good man, so far as I know.

Q About how tall?

A He was just about my height, something like that.

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Q How tall are you? Stand up and let us see.

(Witness stands and the judge advocate, who stands back to back with witness, states his own height is 5 ft 6½, and witness is about 5 ft 7½).

Q Where did you say he got this rifle?

A I said he took one off.

Q And he was taking this other off?

A Yes, sir.

Q Was this right at the time he was taking that off you saw his---

A Well, as I said first, he took off one rifle, laid it down on the ground with some packages, and he taken off one rifle and laid it and the packages down on the ground, and taken off the other rifle.

Q How long was it it had it in his hands before the lieutenant shot?

A I don't know.

Q Minute, half a minute?

A I don't know.

Q It was just in that position you have already told us?

A He had taken it off and had it in that position.

Q He had laid the other down?

A Yes, sir.

Q Who was this Major Spencer, Is he a major of the 369th?

A Yes, sure.

Q What battalion?

A Third.

Q Same battalion you are in?

A No, I am in the second.

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Q Was he officer of the day, the commanding officer of that detachment from which the guard was furnished?

A No, sir, I don't think so.

Q He is not the commanding officer of your battalion?

A No, sir.

Q Did you say he sent you down there?

A Yes, sir.

Q Was he the commanding officer of that post or of the troops in that neighborhood?

A I don't know, sir, whether he was or not. I am just stating I don't know whether he was commanding at that time. Two battalions were there.

Q Was he the highest commanding officer in that vicinity, in that regiment in that neighborhood?

A I don't know, sir.

Counsel for defense states that if the Court wishes that point cleared he can inform the Court that Major Spencer was in charge of the provost guard.

The Judge Advocate states that it had better be proved.

Questions by court (continued)

Q Lieutenant Cochran here, Parker, is he a member of your company?

A This lieutenant (indicating accused)?

Q Yes?

A No, sir.

Q Is he of the regiment?

A Yes, he is of the regiment all right.

Q Was he one of the provost guard officers?

A I am not able to tell you, because it wasn't explained. I was in this detail to go with this lieutenant. It was not explained. No words spoken to me by the lieutenant on the way there.