

King's Testimony

P.C. 9-5 Elbery was holding the neck of the bottle in a threatening gester yelling.

P.C. 9-7 Who was he holding the bottle towards in that gesture?

P.C. 9-9 Well he was waving it back and forth. He waved it towards Jeff, Jeff ran over to the phone, and waved it around, and then he threw it down on the floor and ran out the door.

P.C. 9-13 Did he waive it in your direction at that time?

P.C. 9-15 He waived it all around. The bar is a horseshoe shaped bar.

P.C. 21-16 Sir, were you placed in fear by the beer bottle that Mr. Elbery had in his hand?
-20 The distance between us, no. He had thrown it down.

Cross-Exam – Aloise

P.C. 53 –11 Now after Mr. Elbery had either broken the bottle on the side of the bar or on the bar or on the pole, he stood up from his seat, his stool, and left via the front door?

A. Yes, sir.

P.C. 54-1 Well, he already was up from his seat after smashing the bottle, and he immediately went out the door, didn't he?

-4 A. Yes, sir.

P.C. 54-18 I just kept my eyes on Mr. Elbery right out the door and went right after him.

P.C. 76-15 All right. And do you recall telling Mr. Salloum that in fact in your opinion he did not , Mr. Elbery did not , wave the beer bottle at you to the point where you felt you were assaulted?

P.C. 76-19 He as I testified to, Mr. Elbery waved the beer bottle in everybody's direction so__

P.C. 76-22 Right. But do you recall Mr. Salloum, because he had just had a conversation with me, being concerned about that particular issue and asking you, and perhaps out of your presence Mr. Schlener, whether or not Mr. Elbery had assaulted you with the beer bottle, and you indicated to Mr. Salloum the answer was no?

77-5 Well, with the distance, there's no way he could have got to me with the beer bottle.

G.J.- 6 Neck of bottle in his hand made jabbing motions at Jeff and then at me and other patrons.

Judge at P.C. 76-2 I thought he (king) said he never saw it? I thought he said he never saw it?

Trial Direct Exam-Ball

T.R. 192-11 He was holding it in his hand like this . (indicating).

-13* Are you indicating in front of him?

-14 In front of him, Yes.

-15 At what portion of the bottle was sticking up at the point?

-17 the broken jagged edges.

-23 He was waving it in the direction of Mr. Schlener and the rest of us patrons.

TR 194-21 How long did he stand there holding the beer bottle, waiving that broken beer bottle in the direction of the other people in the bar?

A. Approximately **30 seconds**.

TR 195-3 Yes, he was making gestures towards everybody.

TR 195-8 He turned and ran out the bar and threw the neck of the beer bottle down.

-10*On the inside of the bar?

-11 I believe so, yes.

Cross-Exam- Aloise

TR 308-17 ...After you saw Mr. Elbery standing there with the beer bottle you indicated that he was int there for a very short period of time, seconds, and then he went out the door; Am I right?

-22 Yes.

TR 309-3 ...Isn't it a fact, sir, that you indicated at the probable cause hearing, that in fact Mr. Elbery after the bottle was smashed threw the bottle down to the floor?

-7 Before he ran out the door, yes, sir.

TR 310-2 Probably 15 feet, 20 feet (Distance between Elbery and King).

TR 310-7 You were asked by the prosecutor, Line 16, "Sir, were you placed in fear by the beer bottle that Mr. Elbery had in his hand? Answer , "was I placed in fear?" Yes? "the distance between us, No. He had thrown it down"; Am I right?

TR 310-14 He threw it down when he ran out the door.

-15 I am sorry?

-16 He threw it down when he was running out the door. I misinterpreted his question. I thought he meant when he was down on the street.

TR 311-10 You said, "The distance between us, No. He had thrown it down." That is what you said?

TR 311-13 Yes, sir, that is what it says.

-14 And that was throwing it down before Mr. Elbery ever moved to go outside? He was standing next to the bar stool; Am I right?

-18 No. he did not throw it down while he was standing next to the bar stool.

-20 That is what you said at the probable cause hearing...

-22 The way I interpreted the question.

-24 That is the way I interpreted the question.

TR 329-1 And Mr. Elbery after he had thrown or dropped the bottle , went directly out the door, did he not?

-7 Threw the bottle down as he went out door.

(Aloise gives up and King gets up and King gets in the last words)

TR 340-3 You in fact were not placed in fear by Mr. Elbery, were you?

-7 A. No immediate threat, No.

-12 A. Because it was enough distance between me and him and the broken bottle.

Schlener's Testimony Bottle Incident

P.C. 82-24 Glass bouncing off me, I was 15 feet away and it was bouncing off of me at that time.

P.C. 83-11 And where...in what direction was he pointing the jagged end of the bottle?

-13 It was more or less you know in a general direction. It was not in...at any specific person I don't think.

-18 Well, I was the one who was behind the bar, and he was pointing it kind of towards the bar area.

P.C. 112-2 It was a random breaking of a bottle.

P.C. 112-9 Well, looked at everybody like this , with bottle and ...(witness indicating with body).

P.C. 112-12 Then he went out the door, right?

-13 Right.

P.C. 137- 2 Do you have a collection of telling Officer Perma, either directly or in conjunction with other officers being there, that Mr. Elbery broke a beer bottle and waived it at you?

-11 I would say yes.

-But that didn't happen did it?

-Well he waived it __ it was not in my direction, it was __

P.C. 137-18 But in effect later on, you did tell A.D.A. Salloum that it did not happen?

-21 Right, I did tell Attorney Salloum that it was more general, right.

Direct Exam – Trial- Ball

TR 588-21 *When you say Elbery ran out, you were holding your hand in front of you. Did you notice if he had anything in his hand at the time?

-23 The broken beer bottle.

-24 *You saw jagged edges of the beer bottle held, and it was gripped by the neck of the bottle then?

TR 589 -3 Yes.

-4 *jagged edges were pointed towards him?

-5 general direction.

-6 All right. General direction of whom?

-7 Toward me.

-9 I was the only one behind the bar. It was kind of like that (indicating)

-11 Did you see him do anything else__ did he hold it just straight or what was he doing with it?

-14 Just like that (indicating) and then he went out the door.

-16 Can you describe what he was doing?

-17 he was waving it.

TR 590-6 Did he have anything with him as he was going out? (door)

-8 He still had the beer bottle in his hand.

-12 *You are indicating he was going out backwards?

-13 Right

-14 *And facing the people in the bar holding the beer bottle . Correct, the broken beer bottle?

-16 yes

-17 *And then you saw him go out the door?

-18 Yes.

Cross-Exam-Aloise

TR 624-8 And would you tell us whether or not you initially told the police that you were assaulted by Mr. Elbery? Do you remember telling us telling the police that?

-14 Why would I say that? I doubt if I said that.

TR 624-20 Do you recall describing the breaking of a bottle as quote, " A random breaking of the bottle"?

-23 Nope.

TR 625-3 I know what I said. I said a random waiving of the bottle , broken bottle. (Aloise shows Schlener the P.C. transcript)

-15 I am asking you whether or not you said it?

-17 All right.

TR 630-1 Now. When the glass shattered initially, you saw or you described Mr. Elbery back out and then turn around and go out the entrance way onto Shrewsbury St., right?

-5 A. Yes.

TR 645-7 Do you recall telling Officer Perma that you were assaulted by Mr. Elbery with a beer bottle?

-10 No I don't. I may well have said that .

TR 646-7 I am saying that is what you said, isn't it?

-9 yes.

TR 646-16 And you didn't tell Officer Perma that he waved the portion of a bottle in a general direction at no one in particular, you told him he waived it at you?

-20 Probably did yeah.

TR 647-17 Did you tell __ Do you recall telling Attorney Salloum, A.D.A. Salloum, that it was more general, that it was not specifically directed at you?

-21 yes. I did say that.

TR 648-3 Isn't it a fact, sir, that you did not see Mr. King ___ Mr. Elbery wave any beer bottle at Mr. King?

-6 Yes.

TR 648-10 And do you recall when you were asked that on December 3rd, 1992 by A.D.A., you told him King was not assaulted by Mr. Elbery with that beer bottle; Am I right?

A. Yes.

TR 648-20 And just as you have done now, you admitted then that you told Officer Perma something that wasn't so, and you corrected it with Mr. Salloum sometime before the probable cause hearing just as you have done now, right?

A. Yes.

Re-Direct Exam Ball.

TR 667-14 *Sir, You did see the defendant waiving the broken beer bottle in the barroom, correct?

-16 Yes.

-17 *He was waiving it in the general direction of the people in the barroom, correct?

A. It was in the general direction towards the bar where I happened to be...I was the only one in line. Not that it was specifically pointed at me.

TR 668-1 *But he was waving it around the bar, right?

-2 Yes

-3 *In the bar at the time also was Thomas King, correct?

-5 Yes.

-6 *And you never said that the defendant never waived the broken bottle at you, did you, to anybody?

-9 I don't know to be honest with you.

TR 669-12 How would you describe his posture as he was backing out the door with that broken beer bottle?

-15 Offensive posture, like come and get me.

-19 ...* As he was just backing up he was waving the hand around correct?

-21 yes.

RE-Cross-Exam Aloise

TR 673-22...you did tell A.D.A. Salloum that the waiving of the bottle was general, not at anybody in particular?

-23 yes

-24 Am I right?

-25 yes.

-26 __ After the bottle broke, Mr. Elbery almost immediately as you testified before, was backing those few feet out the door and then turn and ran?

-10 Yes.

RE-Direct - Ball

TR 674-17 *When you say he was waving it in general, that means he was waiving it at everybody, correct? A. Yes.

Object-strike allowed –leading

TR 675-1 *What do you mean by waving it in general? At whom? When you say waiving it in general, at whom do you remember he was waving it?

-4 At everybody in the place.

TR 675-7 (court) – At the time of the general waiving as the gentleman was backing out the door, where was Mr. King positioned?

-11 he was in his seat.

Taraskiewicz – Bottle Incident

TR 497-2 Well, he was standing like I said to protect himself and backing out the door we then went after him. I don't know what happened to the bottle , but it wasn't in his hand when we finally got to him.

Chris Mann – Bottle Incident

TR 178-10 I saw it . (breaking bottle)

TR 178-14 Didn't see him do anythingelse with the bottle.

Dennis O'Connor – Bottle Incident

TR 753-20 I saw Mr. Elbery leaving the bar.

TR 753-21 Did he have anything in his hand at that time?

-22 I did not see anything in his hand. I believe not, no.

TR 754-3 He was on his way out the door.

TR 753-4 You didn't see him throw the beer bottle down?

-5 No I didn't.

X-Exam - Aloise

TR 781-7 Now, at what point when the glass breaks, your initial attention is drawn to the two women, or to Mr. Elbery?

-10 Initially to Mr. Elbery.

-11 Mr. Elbery is standing?

-12 Yes

-22 In what manner did he walk from his __ or of he did walk from his bar stool out the front door or out the door here?

TR 782-2 Did he turn, walk, walk fast?

-3 he seemed to walk briskly.

-6 With his side to the bar. I believe he walked out with his __ front, partial front to the bar and left.

-10 Now when you got outside, obviously that took a matter of seconds, right?

-11 Yes.

Depasquale – Bottle Incident

P.C. 196-16 All right. What happened after the bottle smashed?

-20 I saw Elbery standing there. Mr. Elbery was obviously distraught or something, was yelling and screaming.

P.C. 197-8 Then what happened?

-9 Michael left, Michael walked out.

X-Exam

P.C. 217-15 Did you see Mr. Elbery hold the beer bottle up. The broken beer bottle towards people?

-17 I didn't see him pointing it towards people, no.

-19 What did you see him doing with it?

-20 By the time I turned to look at him, I saw him drop __ he dropped it and he headed for the door.

P.C. 219-18 And what did you see Mr. Elbery doing immediately following the breaking of the bottle?

-21 He was already on his feet at that point, and as far as I could see, he was still holding a part of it in his hand.

P.C. 220-1 And then what?

-2 And then I recall him dropping the bottle that he had and ...

-4 Dropping it next to him?

-5 Yes.

-6 And then he walked out the door?

-7 Yes.

Direct Exam - Aloise

TR 706-4 ...After you heard the breaking glass?

-18 And then what happened?

-23 Then Mr. Elbery headed out the bar.

TR 707-2 In a quick walk on his way out.

-5 He baked up first, and then he turned and went out the door.

TR 721-17 Before he left. After the bottle __ you heard the glass shattering of glass. Before he went out the door, what did you see him do, if anything, with the bottle?

-21 He dropped the bottle

-22 Did you see him do anything else with it?

-23 No, I didn't.

X-Exam (Ball)

TR729-4 the defendant was standing there with the broken bottle in his hand, correct?

-6 yes he was.

-7 The jagged edge was pointed up, right?

-8 yes

-9 he was holding it in front of him?

-10 Yes

TR 729-11 He was facing other people in the barroom, correct?

-13 yes, he was.

-14 He was moving it back and forth , wasn't he?

-15 That I didn't see.

TR 730-11 Now when you first saw him holding the beer bottle , the broken jagged beer bottle, how far from the door was he?

-14 he was still at his seat. He was still standing next to his seat.

TR 731-1 But you do know he still had the broken beer bottle as he was standing at the door, right?

-3 Yes.

-4 So he carried it at least from where he was standing back to the door, right?

-6 When I returned I looked at him, he was on his way out the door. I don't recall seeing the beer bottle in his hand.

Sawyer – Bottle Incident

PC 233-9 The glass went flying, and Mike , I believe he stood up at the time, kind of backing towards the door or the entrance.

PC 234-9 And did you observe the activities of Mr. Elbery after the glass went flying?

PC 234-11 The glass went flying, and all hell kind of broke loose, I guess. People were flying up from Chairs, and I know that he backed out or went out through the door.

Ball Opening Statement

TR 111-20 They saw the defendant standing there with this beer bottle, and he is waving the broken beer bottle now, he is waving this beer bottle at all of the people in the bar.

TR 115-17 He did swing the broken beer bottle, not only at the girl, King is named as a victim where the bottle was swung at him.