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TOMERLIN TELLS THE TALE

How He and William Brophy Robbed Dominion Gambling House—Second Hand Dealer's Strong Evidence Sold Revolver to Brophy.

The trial of William Brophy was resumed yesterday afternoon, James Tomerlin being the first witness called. He was engaged in the Dominion gambling house as a blackjack booster on the morning of November 15th when the hold-up practically took place. He related the examination of Mart Tomerlin, Magistrate Macaulay. He identified the two revolvers carried by the larger man, the rifle carried by the shorter man, the cap, hat, leggings, coats and masks exhibited as being similar to those worn by the prisoner at the time of the hold-up. Dozier explained the duties of a blackjack booster, but his direct testimony was in no wise shaken. Tomerlin, described by the witness as floor manager at the time of the hold-up, and charged Brophy as taking a part in that robbery. Brophy was the next witness. Nearly two months of prison life has left its mark on him, as he is thinner and does not look much of the florid and ruddy appearance which characterized him when arrested the night following the robbery. Witness and Brophy frequently together during the part of November, both in his room in the Webb block on First street, also in Brophy's cabin on Steele street. On the evening previous to the robbery and at about 10 o'clock Brophy called at the room of Tomerlin, bringing with him a large revolver, a knit cap, piece of black setting, a pad to make himself

lin's preliminary hearing. On backing out of the room the robbers pulled down their masks. They ran some distance and to Juneau Joe's restaurant, both of them talking and laughing. They crossed Second avenue by Joe's restaurant and entered an alley on the other side. They crossed King street near the N. C. warehouses and traveled one block north and one east, where they entered an unoccupied cabin and divided the money in a rough and hurried way. There were five \$100 bills, several of smaller denominations, gold and nuggets, in all \$1401. Tomerlin then left Brophy and went over to E. B. Condon's house, which he crawled under and buried by a sill near the northeast corner of the house the nuggets which they feared could be identified. Brophy likewise hid his share, also his mask, near the same place as Tomerlin, but later Brophy got his mask and concealed it in his coat. On leaving the cabin he hid the blanket Tomerlin had worn on his shoulders under some bushes and put the rifle under the snow. Leaving there they went to the waterfront and Tomerlin took off and threw his leggings into a scow and Brophy hid his share of the swag under the scow. Then each man hid a revolver in the snow, Tomerlin having previously given Brophy the larger of the two. Later they went to Brophy's cabin, where they congratulated each other on having carried out their plans without anyone being injured. Tomerlin borrowed Brophy's pipe and was preparing to go away when he and Brophy shook hands and made a compact that if one of them got into trouble, the other would help him out regardless of cost. Tomerlin left Brophy in his cabin and he returned by a roundabout way to his room in the Webb block where he took a bath and later went out to a restaurant on Queen street and ate a breakfast. About a week before the hold-up Tomerlin accompanied Brophy to the N. A. T. & T. Co., where he purchased a suit of clothes, to the N. C. Co., where he bought a pair of shoes, and to Sargent & Pinsky's, where he purchased a hat. On cross-examination Tomerlin said he was born in Elkton county, Kentucky, ten miles southwest of Elkton and is 27 years old, leaving there when he was very young; witness has not always been known as Tomerlin, having been known by other names. He hopes, by telling the truth, implicating himself as well as Brophy, that he would receive consideration in the way of leniency, that the crown prosecutor had made to him such promise, on the strength of which he had concluded to confess all and tell the truth. Witness has previously been convicted of crime and imprisoned in Canada. The court ruled the question as to whether he had been convicted in the United States out of order. Regarding the woman whom Tomerlin had said to Brophy he would stand good for, the witness said the woman was Lou Tomerlin, a woman with whom he had lived, but was not living with him during the time of the commission of the crime or at the time of planning of the crime; that the woman knew nothing of it; that plans for the crime were made about the 7th and 8th of November, and Lou Tomerlin had left him on November 2nd as the result of a quarrel; she knew nothing of his intending to hold up the Dominion or any other place. Lou Tomerlin knew nothing of Tomerlin's previous career although witness thought she suspected he had been previously convicted of a crime. The woman's cloak worn by Brophy was, Brophy had told him, taken from a barrel in front of a ladies' laundry on Second avenue. When Tomerlin started out to hold up the Dominion he wore a fedora hat and carried a cap in his pocket. They had previously arranged that neither should know where the other planted his "swag," and Brophy did not see him plant his, but he, Tomerlin, saw Brophy put his share under the scow. Tomerlin admitted saying while conducting the hold-up, "I do not wish to make a slaughter-house of this." Tomerlin explained at some length the working of the science of astrology, but said he would have to know the exact minute of a person's birth in order that he, Tomerlin, who is versed in the science of art or astrology, could tell him when to play blackjack with a reasonable certainty of winning. Brophy was not studying astrology under Tomerlin. On re-direct examination, Tomerlin

stated that after making his confession he had accompanied detectives and police to where he had "planted" his swag and dug it up, handing it to those with him. On re-cross-examination Tomerlin was asked if he meant business when he entered the saloon heavily armed and his reply was, "A man usually means business when he goes to hold up a saloon." He said Brophy had been at times known by other names. This closed Tomerlin's testimony and an adjournment was taken until 10 o'clock this morning. At the convening of court this morning the first witness called for the crown was Joseph Alberts. He proved to be the man who saw two men running across Second avenue the morning of the hold-up. He was 40 or 50 feet away from them at the time and it being dark to thought at first they were two Indians. One was tall, the other short, they were both dressed in dark clothes and carried nothing in their hands that he observed. He thought at first they came from Joe's restaurant; crossing the street they disappeared through an open space between Geo. Apple's and the building now occupied by the Klondike Miner. They made no remarks nor said nothing that he heard. John H. Abrams testified to having seen on the morning of the robbery a man going north near Brophy's cabin. He did not recognize him and did not know where he disappeared to. Wm. Whiting was called but knew nothing of the affair whatever. Nicholas Beiler was sworn: Knows Brophy, and was occupying the cabin with him last November. They occupied the same room and the same bed when it so happened they were home together. The morning of the robbery he was awakened by Brophy at an hour that he judges was about 5:30, who told him it was time to get up and go to work. He had never been awakened before at that hour. When he arrived down town he found he had been called too early. Had no conversation with Brophy other than a few words about it being time to get up. Thinks Brophy was smoking a crooked pipe, but could not identify the pipe that was offered in evidence. Shortly before the robbery Brophy had bought a new suit of clothes. His old clothes were described as the coat and vest being dark with a reddish stripe and trousers of different material. Had not seen Brophy from the time of his discharge as a vagrant till yesterday in court. Lady they rented their cabin from also lives in same house, only a thin partition separating their apartments. Conversation in one room could be plainly heard in the other. Mrs. Ellis was the lady from whom Brophy and Beiler rented the cabin. She knew Brophy and identified Beiler as being his room-mate. Her room was separated from that of Brophy's by a board partition against which the head of her bed rested. Remember the morning of the hold-up and Brophy coming home about 5 o'clock. Heard him come in and awaken Beiler who got up and went away. Soon afterward a knock came on the door and another man entered. The two built a fire and cooked their breakfast, after which one left and Brophy appeared to go to bed. Witness started down town about 11 o'clock. Brophy was then up, met him outside the cabin when he asked her for the use of a bath tub. At that moment a carpenter who is a neighbor, coming up told of the Dominion robbery in Brophy's presence. He did not seem much interested in the story. Brophy, the witness said, worked nights, but generally got home about 2 o'clock. Charles A. McKay was the next witness for the crown and proved one of their best. His answers were given promptly and precisely, and his evidence was not in the least shaken by cross-examination. He is a clerk employed in the second hand store of J. R. Hamilton. Knows the prisoner by sight. He first came to the store to make a purchase on Sept. 26. He was looking for a revolver and was shown the stock on hand, he finally purchasing a 44 Colt's, which the witness identified as being the one then in evidence, he recognizing it by certain marks. On cross-examination McKay stated he also knew Tomerlin by sight; had known him since '99. He had not

testified at the preliminary and had only thought of the case within the last three days. Had accompanied Detective Welch to the jail in order to identify Brophy as being the man who purchased the revolver from him. In his re-direct examination the manner in which his identification of the gun was made was brought out. He recognized it by the initials "W. M." scratched on the butt, they being the initials of Wm. Myers, the man from whom the gun was originally purchased. Sergeant Smith, in charge of the town detachment, testified: First came in contact with the prisoner at 5:30 in the afternoon of the day of the robbery. In company with Corporal Piper and Detective Maguire, witness had gone to Tomerlin's rooms over the Comet barber shop in order to search them. They began the search in the front room, but witness soon went to the rear room, leaving his two companions in front. On his return he found a man sitting there in a chair. He was asked if his name was Wm. Brophy and upon receiving an affirmative reply he was told by witness that he had a search warrant for his cabin. They all repaired to Brophy's cabin, which was searched without finding anything suspicious. Not satisfied with the results of his search, being suspicious of Tomerlin and Brophy, the officers again returned to Tomerlin's rooms, leaving Brophy at his own cabin. They walked fast, turned up the alley at the rear of the Bank saloon and entered Tomerlin's rooms from the rear. Upon their arrival they were surprised to find Brophy had preceded them there. Tomerlin was also at home. Witness waited in the rooms a few moments and presently Maguire arrived with J. I. Dozier and Phil Wrenn, who had been present in the room when the robbery took place, to see if they could identify either of the two men. Tomerlin's rooms were again visited about 8 o'clock, at which time Tomerlin was out but Brophy was in. The former soon came in and was placed under arrest and taken to the guard room. On his return up town Brophy was met near Gandolfo's point going towards the barracks. Sergeant Smith then went into detail, telling of the recovery of part of the plunder, the disguises, guns, etc., made possible by Tomerlin's confession. Witness with Detective Welch, two constables and Tomerlin to direct them on December 20 visited the residence of E. B. Condon, where the swag had been divided and concealed. Underneath one of the supports to the floor was found Tomerlin's share of the money. The night of the 24th witness again visited the same vicinity for the purpose of searching for other articles. A man from a cabin near by came out and gave up a rifle which he said he had found in the snow. It was taken possession of. At another place where two scows, one on the top of the other had been made into a stable, the snow was scraped away by Tomerlin's direction and the nuckle plated revolver was found. A few feet away the 44 was picked up. Witness also told of Brophy's arrest as a vagrant, his discharge for want of evidence, of endeavoring to keep him under surveillance, the search for him and finally his second arrest. The most interesting testimony adduced during the forenoon was that of Constable Peter Egan, one of the two who effected Brophy's arrest. He was detailed on the case February 24 and went disguised in civilian clothes to watch the Stockade hotel at 19 below on Bonanza. He remained in that vicinity off and on until the 26th, the day of the capture. On the night in question he left the Stockade at 10 o'clock, meeting Constable McMillan at the Magnet. He soon afterward returned to the Stockade, walking up and down the trail for a half hour or so. He then went to a stable in the rear of the Stockade and crawled under a sleigh close at hand. He remained there 25 minutes and the view he desired not being the best he went to a cabin some 30 feet to the rear of the Stockade. He had watched and waited there for a half hour when he heard some one coming down the trail off the side hill who eventually passed into the Stockade through the rear door. Waiting a few moments witness crawled on his hands and knees through the snow to the rear door of the Stockade, feeling as best he could in the dark to see if the mysterious visitor had left his rifle in the small room at the rear. His bravery was rewarded by finding the rifle, which he quietly took possession of and returned to the stable, where Constable McMillan was waiting. There the cartridges, nine in all, were removed and Egan again crept back to the hotel, placing the empty rifle again in the same position in which he had found it. That done, McMillan and Egan took each a position on the side of the doorway and waited for their man to reappear. The suspense lasted but a few moments when the inner door opened quietly and they heard two men talking in whispers. As they stepped into the rear room witness and McMillan pounced upon them and they all fell inside the door. One who was in his shirt sleeves yelled "thieves" and "help." The noise attracted others from the road house who brought a light. Witness had his man down but did not know who he was. During the fracas the man said, "You sons of b---s, you haven't got me yet," and then witness knew he had the man he was looking for. That man was the prisoner in the box. Witness felt prisoner's left arm being raised as if to draw a weapon and he (witness) pulled his gun and shot him through the side. He continued to struggle for several minutes, but finally desisted. On being asked his name prisoner had said it was John Hogan. Witness told him he was Brophy, that they were policemen and warned him to say nothing or it would be used against him at the trial. Prisoner was handcuffed, made as comfortable as possible and the news of the capture was telephoned Sergeant Smith, who in company with Detective Welch arrived within an hour. To them Brophy had some conversation in witness' presence at one time saying that "he had better be dead than have to lie in jail down town," and that he was sorry he had not been shot. When court convened this afternoon Bento Lee was the first witness called. He is a carpenter and miner. On November 18th, three days after the holdup, he had business about the unoccupied house of E. B. Condon, and while looking around it found a cap, some black crape, and a part of a shirt. As it was soon after the holdup, witness suspected something and reported to the police. Constable Scofield accompanied him to the place and took charge of the goods. The witness, as well as Constable Scofield, identified the articles in court as the same as those found under Condon's house. Francis E. Burton was next called. In last November he lived between Sixth and Seventh avenues and near Duke street. On the day following Thanksgiving he was scraping up snow near his cabin and found a Marlin-Safety rifle, 44 calibre, in the snow. He later gave the rifle to a detective and identified the one shown in court as similar to the one found by him in the snow. When found the magazine and barrel of the rifle were charged. This witness, like the two preceding ones, were not cross-examined. The next witness was constable McMillan who, with Constable Egan, was detailed to make the arrest of Brophy at the Stockade road-house. He briefly detailed the arrest of Brophy and how he and Egan found and took the cartridges from a gun they found in a shed next to the road house, and of how later Brophy came out and they arrested him when he showed powerful resistance; that when they got him inside the house they saw he was Brophy, but he insisted his name was not Brophy but Hague. The prisoner had some bread and canned meat on him when arrested. Constable Cudlip soon appeared on the scene when Egan and witness were scuffling with Brophy in the road house. Cudlip had a revolver in his hand and ordered the bystanders to stand back, telling them that the men in charge of Brophy were members of the police force, though in disguise. At that time Brophy told Cudlip to shoot him, that he preferred being shot than and there to coming to jail. Brophy used some very bad language to his captors at that time. As the crown had but one or two other witnesses, and as it is understood the defense will offer no evidence, it is possible that the case will be ended and a verdict reached tonight. At 2:45 the evidence was all in and Crown Prosecutor Congdon began his address to the jury. All kinds of game at Bonanza Market, next Post Office.

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