

## *James W. Preston*

CALIFORNIA

**T**HE man wore a mask covering the lower part of his face. He walked quietly into the room where Mrs. Dick R. Parsons was playing the piano. She was alone in her home at 906 West Fiftieth Street, Los Angeles.

"Stick 'em up, I want your diamonds," said a voice, and she turned in fright to face the robber. She raised her arms and screamed. Speaking abusively, the robber ordered her to keep quiet. He took the rings she was wearing and demanded that she turn over any others she had in the house.

In the confusion she was unable to remember instantly where she had left the rest of her jewelry and, accompanied by the robber, she looked in several places around the house but found nothing.

The robber became angry at the delay and threatened to kill her if she did not stop stalling. They went into the den to search. The shade on one of the windows was raised. It was dark outside and anyone passing the house could look in and see what was going on in the den.

This thought apparently occurred to the robber and seemed to infuriate him. His abuse became more violent and the menace of his revolver more dangerous. Mrs. Parsons, fearing that he would carry out his threat, made a dash for the door. The robber fired and she fell with a bullet in her back, as the robber fled.

While still in bed in a hospital, Mrs. Parsons was interviewed by the police. She described her assailant as a man about five feet six inches tall, weighing 130 pounds. She said he wore a soft hat, a mask, and had particularly piercing blue eyes—the eyes seem to have impressed her deeply—and she said they would narrow to "slits" when he looked at her.

The police searched for clues at Mrs. Parsons' home. They discovered that the robber had entered through a window on the first floor, and on the dust of the screen fingerprints were found.

The robbery and shooting occurred on the night of Oc-

tober 18, 1924. A few days later one James W. Preston was arrested by the Los Angeles police for wearing a naval uniform illegally. His fingerprints were compared with those found on the screen. They were not the same. The Los Angeles newspapers, however, carried stories saying that Preston had been identified as Mrs. Parsons' assailant through the fingerprints. The source of this misinformation could not be determined.

Mrs. Parsons read these accounts, and when Preston was brought to her bedside she identified him as the man who had shot her, and saw in him the eyes of the robber which had narrowed so peculiarly when he looked at her. She also assured the police that Preston's voice, which was admittedly a peculiar one, was the same as the voice that had ordered her to "stick 'em up."

On January 30, 1925, an information was filed against Preston charging him with burglary, robbery, and assault with intent to murder. On March 11 he went to trial. The prosecutor appears to have been extremely doubtful of the strength of his case, for on the first day he asked counsel for the defendant—George A. Benedict, Deputy Public Defender—if his client would plead guilty to one of the charges. Mr. Benedict refused and the case was continued until the next day. Again the prosecutor repeated the question, received the same answer, and Judge Carlos S. Hardy ordered another continuance until the next day. On the third morning the prosecutor went so far as to say he would dismiss all three counts against Preston if Preston would plead guilty to simple assault.

Mr. Benedict consulted his client on this offer. He told Preston that simple assault carried a maximum sentence of six months, whereas should he go to trial on the three felonies with which he stood charged, the minimum would be eleven years and the maximum, life.

"I didn't do it, and I will not plead guilty to anything," Preston told Benedict immediately. The case went to trial on the felonies.

The only witness offering direct evidence against Preston was Mrs. Parsons. She said on the stand what she had said

at the hospital concerning his general appearance, his eyes, and his voice.

Preston took the stand in his own defense and denied every allegation in the information. He said that he had been at Long Beach, twenty-two miles away, at the time the crime was committed; and the defense produced a young woman who testified that she had been with Preston at the beach during this time. Due to her embarrassment, apparently, she was somewhat hesitant in her replies and seems to have raised some doubt in the mind of Judge Hardy as to her honesty; he personally cross-examined her at length.

The prosecution introduced Preston's previous record, and this, perhaps, more than anything else prejudiced the jury against him. He had been convicted of vagrancy, deserted from the army, been dishonorably discharged from the navy, and was finally arrested for wearing the naval uniform illegally. He explained this latter offense by saying that he had been discharged from the navy only a short time before his arrest, that all his clothes had been stolen by a sailor, and having no work or money he had to wear the uniform until he could get civilian clothes.

And, finally, the prosecution showed that he had been in jail during the time that he told the court he had been elsewhere, and this appears to have discredited all his previous testimony.

Not once was the subject of fingerprints introduced, and nothing was presented by the prosecution to show that the fingerprints found at the Parsons home were not Preston's.

It does appear, however, that someone informed Judge Hardy of the fingerprints confidentially during the trial, but the information conveyed was construed to mean that the prints found on the screen were similar to Preston's.

Mr. Benedict knew nothing of the fingerprints, nor that information concerning the dissimilarity was in the state's files. Nor did he know of what Judge Hardy had been told. The jury likewise was in complete ignorance of this important factor in the case.

On March 14 (Saturday) Preston was found guilty of burglary and robbery as charged. The third count—assault

with intent to murder—the jury ignored and found against Preston on the lesser charge of assault with a deadly weapon.

On Monday, Preston was brought before Judge Hardy for sentence, and there occurred a most extraordinary proceeding.

Judge Hardy submitted Preston to a searching cross-examination, going into many details of his life and conduct and expressing opinions that indicated a bitter prejudice against the defendant.

The following is a fair example of the Judge's sentiments and of this peculiar extrajudicial inquisition preceding sentence.

The Court had been urging Preston to admit that he was Mrs. Parsons' assailant.

**THE COURT:** Despite the fact that your fingerprints were there, and despite the fact that fingerprints are the one infallible identification, still you insist you were not there?

**PRESTON:** Yes, sir.

**THE COURT:** Well, the jury did not have that evidence, which the court had before it at the time. I suppose the jurors will probably be glad to know the court had the evidence that you were identified by the fingerprint system. But I think that the identification of you was ample and complete. There are two elements about you that would make it impossible for any person to be mistaken. One is your eyes, as the witness said, or victim; the other is your voice. Any one listening to you testifying on the stand there would be able to identify you in the middle of Africa or in the darkest night. You have a voice that not one in ten thousand has, possibly, or one in one hundred thousand. You are a young fellow yet. You may be able to train out your voice so that you can get rid of certain peculiarities that identify you and always will identify you, in my judgment; but you will never be able to train out your eyes. You committed one of the most serious crimes that can be committed, showing not only an abandoned disposition, to begin with, but a vile and wicked heart, when you shot the poor victim in the back. Well, young fellows like you are doing things of that kind around here, holding people up and shooting them, and expecting to get away. They don't get away. Any legal cause to show why judgment of the court should not be pronounced?

Preston's counsel offered no objection, but it seems that the judge was not quite ready to pronounce sentence. An afterthought occurred to him, and he questioned Preston

further as to his education and whether he had ever learned a trade and then offered him the following advice:

THE COURT: Better keep your hands out of your pockets. You have made the threat that you will never be taken to San Quentin, so the officers will be prepared, and you need not try to start any funny work. You are going now to be sentenced, and you better take your medicine and try to learn your lesson. You are young, and despite the fact that you are going up there for long sentences, just the same you need not abandon all hope. You can look forward to regenerate yourself in your mind and your soul, and then try to come out and make restitution to society by right living. . . .

The sentences ran from eleven years to life and were to be served consecutively. Preston entered San Quentin, March 21, 1925.

SERGEANT H. L. BARLOW, fingerprint expert of the Los Angeles Police Department, doubted Mrs. Parsons' identification of Preston from the time that he learned the fingerprints on the screen were not Preston's. As the months following Preston's conviction passed, he carefully compared the fingerprints of all persons arrested with those taken from the Parsons' screen.

In May, 1926, Earl M. Carroll, known as "The Weasel," was arrested on suspicion in connection with several burglaries in Los Angeles. Carroll's fingerprints matched exactly those on the screen. Sergeant Barlow at last had his man.

While being questioned by the police, Carroll expressed the utmost contempt for fingerprint identification and said: "Listen! If I told what I knew about fingerprints an innocent man would be released from San Quentin tomorrow."

Carroll was then confronted with the findings of Sergeant Barlow as to the identity of the fingerprints and was urged to admit his guilt, if guilty he was, so that Preston might be freed.

He was silent a moment and then exclaimed: "I will neither admit nor deny I was on the Parsons job. It's up to you guys to convict me if you can prove I was there. That's what you're paid for."

The detectives proceeded to earn their salaries and in so doing brought about the conviction of Carroll for the Parsons crime.

Preston was granted a full pardon by Governor Richardson, September 2, 1926, after serving eighteen months for another man's offense. A group of public-spirited citizens attempted to obtain indemnification for Preston under the California law, but failed.

The last heard of Preston was on the occasion of his appearance in Oakland Police Court on a charge of vagrancy. His wife accompanied him to court.

Said Preston: "I don't like to say the prison record damned me. What it did was to throw me out of step. I don't seem to have much confidence any more."

Said Judge Edward J. Tyrell: "Society owes you a debt. I don't see why you should be prosecuted. I'll release you to the custody of your wife and wish you good luck."

. . . . .

It is hard to excuse the prosecuting officials for withholding from the jury the vital fact that the fingerprints of Preston did not fit those found on the screen. It is unfortunate that the defense knew nothing about the fingerprints. Judge Hardy, who later acquired unfavorable notoriety in connection with the case of Aimée McPherson, apparently became completely convinced of Preston's guilt by the erroneous information, privately conveyed, that the fingerprints were Preston's. Who it was who gave this information, and for what purpose—for it was not placed before the jury—it is difficult to say. Judge Hardy did not disclose the name of his informant, though we may be justified in inferring that it was someone connected with the prosecution. The same source may have been responsible for the newspaper stories that the fingerprints were identical. At all events, it cannot be doubted that the newspaper stories exerted a powerful influence upon Mrs. Parsons to identify Preston as her assailant, though she professed to establish the identity by voice and eyes. What doubtless weighed heavily against Preston was his previous record of delinquencies, though he had

never committed a major offense. Had the fingerprints been kept out of the case altogether—instead of being so maliciously used—it is probable that the Judge would have been more impressed with Preston's striking refusal to plead guilty even to simple assault, which would have given him merely a six months' sentence. Whether knowledge of this fact got to the jury is not known. Mr. Benedict is one of the ablest public defenders and doubtless did the best he could. But he could not overcome the prejudicial factors against Preston, and especially the positive identification of the victim, whom a jury is always prone to believe. But even if the fingerprints did not insure Preston's acquittal, as they should have done, they did at least ultimately effect his pardon and vindication, for Carroll's guilt was irrevocably determined by them. Just why Preston did not get the compensation to which California law entitled him is not known, for he would seem to come fully within the terms of the statute.

#### BIBLIOGRAPHY

1. Certified copy of the Information and Sentence, in the case of *California v. James W. Preston*, No. 24297, from the records of the Clerk of Los Angeles County.
2. Copies of affidavits executed in June, 1926, by H. L. Barlow, T. D. Robinson, M. M. Moran, and Mrs. Dick R. Parsons, from the records of the Clerk of Los Angeles County.
3. Copies of letters dated in July, 1926, written by the District Attorney, the Chief of Police, and Judge Hardy, from the records of the Clerk of Los Angeles County.
4. Photostatic copy of the original pardon.
5. Correspondence with Hon. G. A. Benedict, Deputy Public Defender, Los Angeles, California.
6. *Los Angeles Daily Times*, September 3, 1926.
7. *Detective*, August, 1926.