The Confederate States } Before the Military
vs } Court Martial Corps
Jack Davis - Private 3d Mo. Battery

I respectfully suggest on the part of the accused, that the 4th Charge, and the specification thereon, are not triable by a Military Court -

Also that the subject matter of the 1st Charge, and specification thereon, are embraced in and prosecuted on the charge under the 99th Article of War, and as there is a charge and specification upon that article, there can be no finding or sentence against the accused except upon that charge -

I submit on the part of the accused that the whole evidence makes out only a case of drunkenness on duty, and that the aggravations, of abusive language to an officer, and efforts to evade arrest, are in a great measure due to the irregular and inconsiderate conduct of the officer himself -

In the first place there was nothing more than the fact of being drunk and noisy, chargeable to the accused up to the time that the officer attempted in person, to

seize him — this too without any necessity, for it appears that many men with muskets, of Cole Taylors immediate command were just at hand, within a few feet of accused, by whom the arrest could have been effectually made without injury to the accused — ~~In~~ the regulations are full of injunctions to officers to treat soldiers mildly & gently the works on drill, officers are cautioned not to lay hands on the men, even for the purpose of putting them in proper attitudes, and this is doubtless from a tender consideration for the soldier, who is exposed to such severe penalties by resistance to an officer — It ~~is~~ being of course highly desirable, that even the most remote provocations, to such collisions or resistance, should be removed.

How very different would have been the result, had the officer simply called to some officer in command of the infantry near by, ordering the arrest. or informed his own officer, who was near at hand, and called his attention to the propriety of arresting and confining the accused?

No case would have been before the court, and we should have been spared the bad example, of abusive language by an inferior to his superior on the one hand, and the spectacle of

a severe injury inflicted on ~~a~~ drunken ~~enlisted man~~ soldier, by an officer of rank, not from a view to the promotion of the interests of the service, but prompted by the desire to revenge an insult, and executed in a moment of passion, & with the party intent at the time, to kill!

It may be said, that this is no defence to the accused, but I respectfully submit that though drunkenness is not an excuse, yet the fact that strong and unnecessary provocation is used to a drunken man, is some excuse for passionate conduct on his part. Upon the testimony adduced by the prosecution, the provocation would seem to be slight, but the court will consider the fact, that Colonel Taylor as he himself says, was in a passion, the other witnesses were his followers, and partook perhaps somewhat of his feelings. Yet one of them says that the accused cried out at the moment that the Colonel advanced on him, "you cant ride over me, you d-d son of a bitch" or "you cant arrest me you d-d son of a bitch" — he is almost positive the latter were the words — If so how came he to use ~~or make any statement~~ of the former? No one suggested them to witness —

Colonel Taylor says he rode at him to sieze him by the collar - Capt. Duncan ~~whose name I forget~~, says he rode at him with hand extended, to sieze him by the collar - Corporal Davenport, and Phillips, both say he rode at him, as if to ride over him - But I submit to the court that these circumstances, taken with Rush's statement, (in our argument) that the accused cried out, "You want ride over me" &c, are more persuasive to show, that his manner did convey that purpose, and the fact that the accused turned the bridle, and forced the horse back, is a more eloquent commentary on the evidence in this point of view, & without purpose or significance in any other - If this were the fact, the act was only self defence - ~~Good~~ Col. Taylor was not in the execution of his duty, in trying to trample him down, & "self defence", would be an answer - Suppose he had shot him while about to strike the blow? Self defence would have protected him - Upon the whole, considering the sanity of the accused,

causing some bleeding, and confinement for 10 or 11 days. I hope the Court will conclude that he has been sufficiently punished already –

Respectfully submitted
Henry C. Semple
Mayor of City P.A.C.S.
Counsel for Accused