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OSSENKOP MURDER CASE STARTS

State Opens With Number of Witnesses--Great Interest Is Shown in Proceedings

From Friday's Daily.

Immediately upon securing a jury in the Ossenkop case yesterday afternoon Judge Travis excused the remainder of the panel until they were sent for, the several members not drawn on this jury being permitted to return to their homes.

Attorney I. J. Doyle of Lincoln who is present at the representative of the family of Mr. Byrnes, made the opening statement for the state. He contended that the State expected to prove the fact of the picnic, and the use of the words "I have my opinion of a man who will go to a picnic and leave his wife and family at home" and that Byrnes replied "You are no gentleman." That thereupon Ossenkop assaulted Byrnes and the two fell from the walk to the ground. Byrnes underneath. That Ossenkop beat him in the face and kicked him causing his death and dislocating his neck and fracturing his skull. This in brief was his opening statement.

Attorney Gering for the defense made a brief opening statement which did not clearly indicate the line of defense, leaving it an open question whether the defense contemplated self-defense or some technical defense.

By agreement of attorneys all witnesses were to be excluded from the court room during the progress of the trial.

Otto Kettlehut was the first witness called by the state and he made an excellent witness. He testified that he lived near Eagle in Lancaster County and knew both parties to the affray. He saw them in Eagle on the day of the picnic and on the night of the unfortunate occurrence, he was close to them when the trouble occurred. He heard the remarks quoted by attorney Doyle in his opening statement and saw the men clinch, falling from the walk to the ground. He saw Ossenkop on top of Byrnes and saw him administer several blows to him with his fists on the face and head. He then saw Ossenkop rise and kick the deceased several times in the face and head. His testimony was very damaging to the defense apparently and he was not shaken by the severe cross-examination by Mr. Gering.

Rose Winter was called last night and her testimony was to the effect that she had gone to school with the Ossenkop's and knew them. On the night in question she saw Ossenkop and Byrnes going along on the sidewalk, some two feet separating them. She was within a few feet of the men when she saw Ossenkop grapple with Byrnes and strike him several times, knocking him from the walk some two and a half or three feet above the ground. She testified that Ed. Ossenkop had urged his brother on and that after the affray was over, she heard Fred Ossenkop, the defendant, make remarks to the effect that "He had enough" or similar remarks. She testified there was light enough to see plainly all that took place. Gering's cross-examination failed to shake her testimony.

Henry Clear was the next witness called. He lives west of the town of Greenwood and on the day in question, he was in attendance on the picnic at Eagle. He was acquainted with the Ossenkop's and saw them there on the day in question. At the time of the affray he was on the sidewalk within some six feet of Ossenkop and Byrnes who passed him together talking. He saw Ossenkop seize Byrnes by the shoulder and arm and the two grappled falling from the walk which was elevated about two or three feet above the ground. As they fell Byrnes was underneath and Ossenkop commenced raining blows on Byrnes' head and face. Then Ossenkop arose and kicked Byrnes several times on the head and face. The witness left before the defendant did.

At the session this morning when court opened the attendance was not as large as on the preceding day, the cold weather apparently sutting down the attendance. The first witness called was the witness Clear, who was on the stand yesterday afternoon. The object of his recall

was to obtain information as to the lights in the drug store and hall. He testified that lights were burning in both places. At this time Attorney Gering and the court clashed, the former being too vigorous in his objections.

After Clear was excused Henry Snoko was called and his testimony was strongly against the defendant. Snoko testified in effect that he was within twenty-five feet of the affray. That he saw Ossenkop knock Byrnes down and after he was on the ground kick him several times on the head and face. Gering made a desperate effort to shake Snoko's testimony as regards the identification of Ossenkop, but was unsuccessful, in fact strengthening it by securing from him a statement to the effect that he knew Ossenkop to be the man whether he knew the man or not. Gering made a desperate effort to shake the testimony as to Snoko's opportunity of seeing the affray from where he stood, seemingly trying to show that from the point of view he occupied, he could not look over the sidewalk to the ground a distance of some two and a half feet, and see Byrnes' body. He also bitterly attacked the witness for meeting with the county attorney and discussing the case with him. Attorney Doyle made a strong argument against this line of cross-examination and objected. Attorney Gering insinuated that he had information that "certain things" had taken place although he did not specify what they were nor where. The county attorney made a strenuous denial of any wrong doing on his part. Gering denied any attack upon the county attorney but insinuated that the testimony of the witnesses had been changed since the preliminary examination. The court ruled an inquiry along that line might prevail for awhile. The witness could not recollect Otto Kettlehut being in the county attorney's office when he was there but he did recall most of the other witnesses being there. He tried to bring out mistakes in the testimony taken at the preliminary examination by an objection by Attorney Doyle this was ruled out.

Henry Kettlehut called, knew the defendant and saw the deceased and defendant together on the night of the affray. Ossenkop made a remark to the effect that "I have my opinion of a man who will go to a picnic and leave his wife and family at home." Byrnes walked off a few feet and remarked "You are no gentleman." At this Ossenkop followed deceased up and the two grappled, Ossenkop grabbing defendant by the arm and whirling him about. Byrnes and the defendant fell to the ground from the walk with Byrnes underneath. He was close to the men and saw Ossenkop strike Byrnes in the face several times the defendant then rising and kicking him in the face and head. He testified that his brother-in-law lit a match to see Byrnes' face. Mr. Gering for the defense made a strenuous effort to shake the witness' testimony as to the position of Byrnes' head and body but he was unsuccessful. He also attacked the witness' testimony as to the darkness of the night, and sought to show the reason for lighting the match, the object being to weaken the evidence of the other witnesses. Witness had seen Byrnes drink some of both beer and whiskey, and he had also seen Ossenkop do likewise. Had never heard of trouble between deceased and defendant. Did not think Byrnes was known as a drinking man. Witness was on the ground and saw the men fall in front of the team which stood facing the walk. Witness thought possibly Ossenkop had hit the neck-yoke of the team with his heel as the two men went off the walk. The team was frightened. Witness differed from others as to the kicks administered placing them on the other side of the face from the majority.

Dr. I. C. Munger was called as a medical witness for the state and his testimony was highly unsatisfactory in that it was as much for the one side as the other. He stated that he made an examination of the body of

the deceased on September 19, the killing occurring on the 16th. The body was exhumed for this purpose at Lincoln where it had been buried. He failed to find any abrasions on the left side of the face which is regarded by counsel for the defendant as a significant feature of the case as the majority of the witnesses so far examined have testified that the kicks were administered on that side of the face. The doctor, however, stated that there were two fractures of the skull which might have been caused either by a direct blow or by a blow delivered directly opposite the point of fracture. It was sought to show for the defense that the fracture must have been produced by a kick or blow administered at the base of the skull where the fracture existed. This was not shown as the physician's testimony indicated that the fracture could have been caused in two ways as above indicated. The physician testified that involuntary turning of the head in a case similar to this, could not well have happened and that any motion made by the deceased in seemingly trying to avoid the kicks were voluntary. This witness was examined by Attorney Doyle for the state. A recess was had from 12 noon to 1:30 p. m.

Dr. Munger retailed stated the medical definition of a broken neck, illustrating his technical description by a skull which he had with him. He was cross-examined by Mr. Gering. A dislocation would have to be caused by a blow of considerable force. A hypothetical question by Mr. Gering as to a dislocated neck being caused by a kick, Dr. Munger stated it depended on the distance in which the foot would be drawn back. Mr. Gering also illustrated his idea by having Ossenkop stand up and show the jury where his leg would be when drawn back two and a half feet and he also had Dr. Munger state his judgment as to whether such a blow would cause dislocation. He stated that it might possibly. Dislocation would not result if blow was delivered in face with head turned.

Attorney Doyle drew out that dislocation would be fatal. Doyle also showed that with the head in a certain position a blow on the face would produce dislocation. Dr. Munger and Mr. Gering agreed that the head must be in a certain position, illustrating it, so that a blow in the face would dislocate the neck. It developed that the neck could be dislocated by either direct force or from contact opposite the point of dislocation.

Mrs. A. Glebenath called next lived near Eagle and attended the picnic in the evening. Did not know either party. She saw the two men quarreling, repeating the language they used with a variation from that quoted by other witnesses. She hurried to her husband as the big man of the two pushed her back, she thought Ossenkop who pushed her. She went to her husband as she wanted to get away. Ossenkop jumped on the little man. She saw the two men in the street but that was all as she was scared and excited. On cross-examination Gering developed that the night of the affray, was not a very dark one. Gering also inquired as to changes in her testimony today from the preliminary examination. He read from former testimony showing Ossenkop pushed Byrnes off the walk, but his severe questioning elicited nothing which would shake her testimony.

Orville Prouty, a young man from near Alvo, testified to being in attendance on the picnic. He saw the trouble between the men. The team which had been testified to by others was his and another man's. He ran to the team which jumped back when the men fell. His testimony as to the blows corroborated that of all other witnesses who had testified before him. He did not hear anything further between the men. Later he heard one of the Ossenkop's say "Keep the crowd back." This witness made an excellent one on his direct examination which was conducted by Mr. Doyle.

Mr. Gering's cross-examination developed the witness was seventeen years old.

On cross-examination Prouty admitted that he was scared and when the men fell into the street he ran back to tie up the hitching strap of his team. He stood the cross-examination splendidly and was absolutely unshaken. His testimony was a strong point for the prosecution. Juror C. C. Wescott made a number of inquiries touching the location of the men as regarded the team when they fell from the walk. In reply to another of the jurors he stated

the team was several feet from the walk. He stood by the horses' heads, and stepped back with the horses facing the men. Mr. Gering sought to show that something besides the mere falling of the men in front of the team would not cause them to jump backwards, but the witness could not say. He knew the team to be gentle. The witness was an excellent one throughout.

Charles Denara of Alvo, was with the witness Prouty at Eagle on the night of the trouble was corroborated him in his testimony so far as it related to the men grappling and falling from the walk. The witness was on the north side of the team just getting ready to tie the team to a hitching post when the men grappled and fell. He jumped into the buggy and with Prouty drove away. On cross-examination he testified the big man pushed or threw the smaller man off the walk. He heard them fall. The men never hit the team in falling, they scared hit the two men falling alone. He only saw the small man go off the walk and not the big man, this in answer to a question of Juror Wescott. The witness gave a very clear and lucid account of the affair so far as he saw it and made an excellent witness for the prosecution. His memory for distances and events was very good, and his testimony impressed all who heard it for its evident fairness.

Emile Aberle called. He was from near Eagle and knew the parties. He was in Eagle on the day of the picnic but did not recall seeing the parties during the day. He saw the occurrence in the evening. Witness heard noise like hitting or kicking and saw Ossenkop leaving the body. He went up and saw Byrnes body on the ground but did not know him. He was all over blood. Cross-examination failed to elicit anything favorable to the defense.

Saturday's Session.

The trial of Fred Ossenkop came to a standstill this morning when Judge Travis adjourned court until Tuesday morning in order to make an investigation into the report of small-pox in the families of Ed. and Fred Ossenkop. Ed. Ossenkop is a very material witness for the defense and his presence is considered necessary for their case. As shown elsewhere Attorney Matthew Gering stated that he had telephone information from Dr. Wilson of the state board of health that this witness has small pox in his family and that he was under quarantine and his attendance at this time would be impossible. This Mr. Gering stated he would incorporate into an affidavit of Dr. Wilson and also one of Dr. Dye.

With the adjournment until Tuesday, the members of the jury were placed in the custody of the sheriff and will so remain until court reconvenes. While it is a hardship on the members, it was thought best to take this step by Judge Travis to prevent any possible effect of public opinion upon their minds.

It is possible that the report of Dr. Hay who was selected as the physician to make the examination of the facts in the quarantine, will be such that the case will be continued over the term as an establishment of a quarantine against so important witnesses would make any trial had and a verdict rendered subject to reversal by the supreme court. This cannot be determined, however, until his report is in which will likely be by Monday next.

The attendance at the Ossenkop trial yesterday afternoon was much larger than it had been during the morning session. There were a great many ladies present in the audience which was composed very largely of farmers from the surrounding country. Deep interest in the outcome of the case is manifested.

George Oberle was placed upon the stand immediately following Emil Oberle, and his testimony was largely similar to that of the witness who had preceded him. It was in fact quite corroborative of it in most particulars and added little to the facts already drawn out.

William Hobson, an embalmer at Eagle, was next called and testified to the condition of the body of Byrnes when he was called upon to examine it. He testified that the neck was broken and to the bruises and contusions on the face and head. On cross-examination he developed a great amount of ignorance concerning the anatomy and weakened the value of his testimony by being unable to intelligently explain the reason for his considering the neck dislocated. In fact, the cross-examination made

his testimony well nigh worthless. Hobson was one of the poorest witnesses put on the stand during the day and in his manner of testifying showed great weakness and uncertainty.

H. W. Beaver of Elmwood called. Was in Eagle on the day of the affray. Mr. Gering objected to the testimony on the ground that his name had been endorsed on the information after it was filed. He did not know the parties except Ossenkop by sight. Beaver heard a racket on the street and saw a team backing up and two men on the ground. Saw one man down and another one acting as if he was kicking him. About all he saw. Witness could not identify Ossenkop as the man doing the kicking. Body was on the ground head to the south and face up. The man doing the kicking stood south-east of the body. He did not see what became of the man doing the kicking. He saw the man on the ground move his head sideways.

On cross-examination witness testified the night was a star lit one and he was some sixty-six feet away across the street. He was half way across the street and saw the kicks. Beaver insisted on his testimony although Gering tried hard to shake it.

Harrison Hudson, marshal of Eagle was called and testified. Knew Ossenkop but not Byrnes. Was at Eagle the night of September 16.

An interruption to proceedings was caused by the explosion of a parlor match or something similar in the room but Judge Travis did not stop proceedings on that account.

Hudson was some sixty or seventy feet away and thought he heard a fight. He ran to where the crowd was and saw Ossenkop on the edge of the walk with Byrnes body lying on the ground. Byrnes body lay a little south and east, face up. Hudson had a flash light with him. Byrnes' lips all puffed up and a small cut under his eye. He did not examine Byrnes' head. Body was two and a half feet from the walk. There was a lighted street lamp at the corner, it was a gasoline light rather powerful. Thought he heard someone striking or kicking something.

Mr. Gering on cross-examination developed that witness did not recall whether he had testified to not hearing blows at the preliminary examination. He did not consider night very dark. He used his flash light to make the night lighter. He could not recall testifying that it was kind of dark and couldn't see without taking a light. He persisted that he heard the sound of blows and kicks about one hundred feet away. Under cross-examination the witness developed a great loss of memory as to distances, being unable to tell just how far he was from the scene of trouble when it commenced.

Juror Lloyd wanted to know the distance from the gasoline lamp on the corner to the affray. The distance was fixed at one hundred and thirteen feet.

The session this morning, the third day of the trial, opened to a small and scattering attendance of spectators. The defendant came in early and does not appear in the least worried over the probable outcome of the case. He is looking well and hearty and takes the damaging facts as developed in the trial with the utmost sang froid. From a conversation with attorneys connected with the case it is believed all the evidence in the case will be in by Wednesday night and that arguments in the case will likely open on Thursday. The case will probably go to the jury by Thursday night or Friday at latest.

Court was late in assembling owing to Judge Travis being detained by other business and it was almost half past nine before Deputy District Clerk Miss Jessie Robertson called the jury roll.

Harrison Hudson was recalled and testified to the condition of the street at the place that he, in company with one Harley Price, had smoothed down the street with a grade or float. Mr. Gering for the defense endeavored to show the presence of beer bottles or other like articles in the street but failed signally. Mr. Gering wanted to illustrate the impossibility of this witness hearing the sound of blows at one hundred feet. For this purpose he took the defendant to the rear of the court room and was to deliver blows to his body. On objection by Mr. Doyle the court ruled the illustration out. Mr. Gering then offered to prove his contention.

Frank Harty called and testified that he was acquainted with both

parties. He was a special policeman and saw both parties during the day and evening.

Witness testified to meeting Byrnes in the front of the saloon and traced his movements to his team which was tied northwest of the hardware store. He left Byrnes on the corner east of where his team was tied. He did not see the affray. He did not see Ossenkop before the affray but did see him by Byrnes' body just after the trouble. Witness testified that he observed no stones or other obstructions in the street.

On cross-examination witness testified there was a great deal of drinking going on that day, and at times he had observed beer bottles in the street, but not on that day. This was true after dances and the like on that night. He testified he had made no examination of the streets either that night or the next day. The witness and Mr. Gering had a protracted argument over the float used in grading the streets would reach the gutter at the side. The witness made a clear and lucid explanation of the use of the drag. A number of jurors questioned the witness as to the rise of the ground at the sidewalk line which the witness explained to them.

This witness made an excellent impression by his general bearing and intelligence.

Fred McGinnity was the next witness and knew both parties. He was in Eagle on the evening of September 16 at the picnic and saw Byrnes. He, also, located Byrnes' team the same as the witness Harty. Later he saw Byrnes' body on the walk. He went and got Byrnes' team after the death. He saw Byrnes seated in the saloon on a bench or chair.

On cross-examination witness testified that the night was neither right light nor dark nor could he remember whether the moon was shining or not.

Osa Hendricks of Bennett, Neb., was called and testified to being in Eagle on the night when Byrnes was killed. He was in the barber shop across the street. There was a light in the barber shop.

Wm. Irey of Eagle was the next witness. He was in Eagle on September 16, and was a special policeman after eight o'clock at night. He saw Ossenkop about nine o'clock in the saloon. Ossenkop had a conversation with the witness but on objection by Mr. Gering the court ruled it out.

Mrs. Charles Byrnes, widow of the murdered man, was next called to the stand. She is a woman of apparently 30 years of age and was dressed in deep mourning. Her several small children who have been present in the court room throughout the trial, were placed in charge of relatives, who occupied seats within the bar. She testified that she lived in Lancaster county near Walton. She was the widow of deceased who was a man 33 years of age, about five feet nine inches tall and weighed about 155 pounds. The last she saw him alive was on September 16 at 10 o'clock a. m. He left home that morning for Eagle. He was well at the time and had no chronic disease never having a doctor. She next saw him on Thursday, the 17th, at Eagle in the undertaker's room when he was dead. At this point tears came to the eyes of the witness. In detail she described the cuts and bruises on the face and head. They lived about nine miles from Eagle. The witness did not know of any difficulty or trouble between her husband and the defendant. An attempt to show that a difficulty between the deceased and the father of the defendant was made by Attorney Doyle, but on objection by Attorney Gering it was ruled out. Mr. Gering wanted the jury instructed not to consider the attempt of the County Attorney to introduce evidence of trouble between the elder Ossenkop and Byrnes. Judge Travis stated that he considered the jury fair minded enough to consider the offer in its proper light.

The state rested at 10:45 a. m. Mr. Gering then stated he had a telephone message from Dr. Wilson, state health officer that he had quarantined Ed. Ossenkop and family on account of small pox. He had affidavits from several doctors on the road, and he asked a continuance.

He presented a motion to have the court direct a verdict of acquittal of the defendant of the charge of murder in the second degree, and also to direct an acquittal of the charge of manslaughter. These mo-

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