

MURDER---FIRST DEGREE

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| | |
|-------------------------|---------|
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|------------------|---------|------|
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LOOK 'EM UP

opening statement for the deense. Evelyn McElhanev, he said, was only twenty-one years of age, a daughter of Joe Preiss. Since early childhood the defendant had helped to support her family. At the age of seventeen she had married McElhanev, and shortly afterward he went to war. During his absence she had to make her own living.

Mr. Mitchell traced the Anderson-McElhanev affair from its inception, his version of the story being as follows: Miss Myda Virdie had come to Alliance and rented a room in the McElhanev establishment. Tom Lovett was a regular caller to see the Virdie woman, and on one of his visits he brought Anderson. Anderson promptly fell in love with Evelyn, and had asked her to divorce McElhanev and marry him. She had refused, but he would not take a negative answer. According to the attorney, Anderson would get drunk, then come to see her and had many times threatened to kill her if she did not marry him.

Plea of Self-Defense.

The defense sprung the big surprise of the trial in its version of the meeting in the alley back of the Joe Smith pool hall, which resulted in the killing of Anderson. The claim self-defense is based on the following version of the events that transpired. As Mr. Mitchell saw it, there had been some argument, and Anderson jumped on Evelyn and struck her. Melick, who was also present at this meeting, separated the two. Anderson assaulted Mrs. McElhanev a second time, drew a gun and threatened to kill her. He held one hand to her throat, and with the other pressed a revolver against her abdomen. In some manner she gained possession of his revolver, and with her hand on the trigger, in the excitement and under a great nervous tension, she pressed the trigger, discharging the bullet that killed Anderson.

Dr. G. J. Hand was the first witness called by the state. He stated that he was called about 1:20 on the morning of the murder, and requested to come to the Alliance Billiard Parlor. Arriving there, he found Anderson lying near the front pool table. He was alive, his heart beating faintly. His clothes were opened and the wound had evidently been examined. The doctor was present when Anderson died. Following the death, Dr. Hand, with Officer Stillwell and Attorney Eugene Burton, went to the Wilson rooming house, where they found Myda Virdie and took her to the city hall. Eugene Burton, Charles Hill and Miss Virdie, known as "Mike," went back to the rooms in an effort to get information. The second time they went back there the gun with which the shooting was done was located in a sideboard in Mrs. McElhanev's room. Dr. Hand testified that he was present when the empty cartridge was found, and produced it

from his pocket.

Charles Hill stated that about 1:30 he had noticed a crowd at the city hall. He had gone to the alley with Sheriff Miller, County Attorney Baye, Oscar Reed, former chief of police, and Dr. Hand. He told of finding the revolver in a sideboard in the northeast corner of Mrs. McElhanev's room, under some linen. Hill unloaded the revolver, finding seven cartridges in the magazine and one in the barrel. The gun's capacity was nine shells.

Cesar Reed, former police chief, testified that he learned of the death at 2 a. m., and with Sheriff Miller and others aided in searching the house. He had looked for the empty shell in the alley and found it on the east side near the corner. He said that he then returned to the city hall and talked with Evelyn. She asked him if they had found the—and crooked her index finger expressively. He told of the finding of the gun by Charles Hill and of examining it.

Gale Weeks, clerk at the Newberry Hardware company, testified that Evelyn McElhanev had been in that store the Saturday previous to the killing. She had purchased a light bulb, and asked for an automatic revolver. She asked for a .38 caliber, but they had nothing larger than a .32 in stock.

A. T. LeSage, clerk at the Rhein Hardware, was next called to the stand. On December 4, he stated, Mrs. McElhanev came in and asked for a .38 caliber automatic. They had nothing larger than a .32, and she purchased this. He identified the gun as serial No. 345116. She told him that she was buying it for an engineer friend, and wanted a box of shells, telling him to send a box with the gun. He did not do so, and later a colored woman came and bought the shells. Attorney Mitchell, in cross-examination, attempted to show that Mrs. McElhanev's companion on the shopping trip had negotiated for the purchase of the gun, but without success.

Dr. C. E. Slagle told of examining Anderson's body at his office Thursday evening to locate the bullet by means of the X-ray. The bullet was located in the right side, four or five inches below the wound.

Officer Stillwell was the first witness called Thursday afternoon. His attention had been called to the shooting about 1 p. m. He first saw Anderson lying in the alley. Two men assisted in carrying the body to the pool hall. Following Anderson's death he had found Evelyn McElhanev a hundred feet north of the pool hall, so told him that she had killed Anderson, and they started for the city jail. After going a few steps, she stopped and asked why she was being taken to jail, saying: "I haven't done anything." She told him that she had been "kidding" when she admitted the murder. On the way to the jail she again admitted that she had killed him, but again denied it before they had reached the jail.

Tom Gray was then called. He stated that he had known Anderson four months. On the morning of the murder, he had been proceeding up Second street at 1:20, on the south side, just across the street from the alley where the murder was committed. He saw Fred Melick, Anderson, Mallett and Evelyn in the alley, and cut across the street diagonally. He stated that he heard Mrs. McElhanev say: "I've told you and to'd you and told you not to do that." He had gone only a block and a half, west when he heard a shot. He turned and ran to Harvey's cafe past the alley entrance, where he saw Anderson lying on the ground. He called for Dr. Hand, and then returned to the scene of the killing. He saw Evelyn at the Rodgers Grocery corner. He testified that she said to him:

"Tom, I guess if this man d'es I'll be held for murder. I shot him."

Frank Lowry, colored porter at the Woods barber shop, told a straightforward story, which the attorneys for the defense were unable to shake. He had gone to a dance with Ralph Jones, he said, and then had gone to West Lawn. He was on his way back to town and shortly after 1 o'clock came down the south side of Second street, across from the alley. He stated that he saw several persons in the alley, recognizing Anderson. He heard

someone say, "Wait," heard a shot and then said: "We wanted on. He recognized Fred Melick and Mrs. McElhanev." As a result of the present, Anderson was about twenty feet away from Evelyn, he said, and declared that Anderson had nothing in his hand and had made no threatening motion. He heard Mrs. McElhanev say: "Let's get a doctor," to which Melick replied: "No, let's go on." Melick and Evelyn then ran across the street. Attorney Mitchell made a strenuous effort to controvert Lowry's testimony, and was finally admonished by the court to confine his questioning to the case.

A. L. Grubbs of Whittman, was the star witness for the prosecution. He told a plain story, and could not be shaken in the slightest on cross-examination. He testified that he was on his way home from Edgemont, and was killing time while awaiting a train. He was out for a walk and was going east on Second street. As he neared the alley, a man and a woman came up behind him. He saw reflected in the light of a street lamp a man. As they came up behind him, a shot was fired, and turning, he saw the pistol in the woman's hand. He identified the woman as the defendant. He stated that Anderson had nothing in his hand, and that he made no motion. The man and the woman crossed to the corner, and separated. Later, when they came back, he testified that he heard Mrs. McElhanev say to a bystander: "Tom, is he dead? If not, I'll give him another one."

In the cross-examination, Attorney Mitchell attempted to show that Grubbs had not seen anyone on the other side of the street. Grubbs admitted this, but said later that he had not been looking for anyone, his mind was occupied with other matter, and that there might have been a number of people there. The attorney for the defense shot his questions at Grubbs so fast that Attorney Prince appealed to the court to allow Grubbs time to answer. The court suggested that the witness be given a chance.

John Barrett of Newcastle, Wyo., night clerk at the Western hotel, stated that he saw the defendant at 1 p. m. in front of the hotel. He asked her if someone was shot, and she answered "Yes." He told of another conversation near the Smith pool hall shortly afterward. Barrett asked who did the shooting. "I did," Mrs. McElhanev answered. "What for?" Barrett asked. "O, nothing very much; me for the hoosegow," Mrs. McElhanev is said to have replied.

Rudolph Lauer of Gillette, Wyo., 20 years old, testified that he heard Mrs. McElhanev say, in front of the Rodgers grocery, that she had shot Anderson.

Lester E. Westbrook, clerk at the depot, testified that he saw Mrs. McElhanev at the scene of the murder. He heard a shot, but at first thought it an automobile backfiring. He heard her ask if he was dead, and say that if he wasn't, she'd shoot him again. He said he saw something in the defendant's hand, but could not say what it was. He said that he was with John Boyer and P. M. Scott.

John Bayer, Burlington brakeman, testified that Evelyn said: "If the man isn't dead, I'll give him another one." He said they suggested taking the body to the Wilson rooms, but she said: "No, take him to the Western hotel." He said he saw something in Evelyn's hand, but wasn't sure what it was.

In cross-examination, Attorney Mitchell attempted to show that Bayer had "it in for" the defendant. He had seen a childhood friend, a playmate and later a rival or her hand. Mr. Mitchell failed to secure an admission from him that he had borrowed to have illicit relations with her. This testimony, which was among the most damaging submitted, closed the case for the state.

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