

# OSSENKOP CASE DRAWS CROWD

## Great Interest Shown In Progress of Trial

From Wednesday's Daily.

The last witness on the stand yesterday afternoon when the Journal went to press was L. D. Hiatt in the noted trial of Fred Ossenkop for the murder of Charles Byrnes at Eagle on September 16, 1908. Immediately following Mr. Hiatt, Sheriff Quinton was called by the defendant with a view to identifying the photographs of Mr. Ossenkop's neck and head and also to testify as to the custody of the defendant between the date of his arrest on September 17 and the time the photographs were taken on September 20. There seemed to be more or less friction between the sheriff and Attorney Gering for the defense and the testimony of the former was largely doubtful and uncertain. Considerable delay was occasioned at the outset by the inability of the sheriff to recall whether or not Ossenkop was in his custody the day the photograph was taken. The counsel for the defendant asked him to produce his record which he did after some time. The sheriff remembered arresting Ossenkop on the evening of September 17 at his home near Walton. By reference to his record he was enabled to testify that the defendant was in his custody from September 17 to 25, inclusive. The sheriff could not recall the date when he took the defendant to the office of Attorney Gering. He recalled after considerable study having taken him there at some date which he could not exactly fix. He recalled the defendant's counsel calling attention to a cut upon Ossenkop's neck. The photograph which Mr. Hiatt had identified showed a ragged cut along the back of the neck which the sheriff thought looked longer than the one he had seen.

The witness cross-examined by Mr. T. J. Doyle testified that he did not observe any cut on Ossenkop's neck the day he arrested him. The defendant called his attention to it first on the 18th of September. At that time there was a slight scab over the injury. The skin was barely broken and the cut did not extend to much more than below the surface of the cuticle. The memory of the sheriff on matters vital to the defendant was rather poor and he was uncertain as to several different events.

He was followed on the stand by Gus R. Olson, head of the Olson photograph company of this city. Mr. Olson testified to his experience with the photographic business and to the quality of the instruments he used. On Thursday he went to Eagle at the request of Mr. Gering and made a number of photographs of the vicinity of the tragedy. These photographs were gone over in detail by the witness who testified as to the point of view from which they were taken and what could be seen from the several places. These places were supposed to be the same as the several witnesses for the state had testified to having been at when the trouble occurred. He testified to having seen Mr. Gering pick up an iron cam from the street near the scene of the tragedy. This cam lay under the edge of the walk and did not project beyond the edge. It was firmly imbedded in the earth and about half buried. At the time the photographs in question were taken several men took the positions supposed to have been taken by Byrnes and the defendant and the witness was asked to testify as to what he could see of them especially as regards seeing the man representing the defendant kick the deceased. He could not see this occurrence from the point of view he occupied. The defense sought to show by this witness that H. W. Beaver, one of the state's witnesses, could not have seen the crime from where he claimed to have been when it occurred. This Olson testified to. He also was called upon to rebut the testimony of those witnesses who saw or claimed to see, the defendant kick the deceased. This he did asserting that he could not see anything of the kind from where he stood. The witness observed brickbats and rocks in the street and vicinity. The ground near where the affray occurred was somewhat rough and he observed the gutter in front of the hardware store was a little deeper than elsewhere on the street.

The witness was cross-examined by Mr. Doyle and he confirmed the fact that the cam which Mr. Gering had found was imbedded in the earth under the walk. Witness saw bricks imbedded in the ground further up the street. The witness had been located at places where he could see men lying on the ground and ob-

serve the actions of both the prostrate men and the one standing up but the views which Mr. Gering wanted taken were not taken from these points.

M. S. Briggs of this city was the next witness called and he made an excellent one. He was in Eagle the day that Mr. Gering and Mr. Olson were there and he took part in the several experiments they made. He had observed the scene of the tragedy from the several different points and his testimony was very largely corroborative of what Mr. Olson had testified to. He was present when the cam was picked up and had seen it sealed in a bag by Mr. Gering, the cam being turned over to the witness in whose possession it had remained ever since. This witness by the aid of the photographs then explained in detail to the jury the several points of view the pictures were taken from. The members of the jury manifested great interest in this.

On cross-examination by Mr. Doyle, the witness testified that the cam mentioned above was entirely under the walk, the edge of it being some five inches from the edge of the walk. He spoke of a square rock which was a foundation stone for a support to the walk which came out flush with the edge of the walk. Mr. Briggs made an excellent witness delivering his testimony in a clear, lucid and convincing manner.

Jacob Johansen of Lincoln was then called. He was a member of the Lincoln police force. Knew Ossenkop and had met him in Eagle on the day of the picnic when the witness was there as a member of the Havelock tug of war and latter the witness and defendant had an individual tug of war lasting some twenty-five minutes which the witness won. At this time from what he had observed Ossenkop was sober. The cross examination of the witness developed nothing new.

John T. Leisle of Weeping Water called. He was in Eagle on September 16th. And had known Ossenkop for some ten months. He saw the defendant about nine o'clock that evening near the hardware store in Eagle. The witness was examined very particularly on the condition of the street at the point where the tragedy occurred and he testified that he was familiar with the float used in dragging the street. The street was some three feet higher on the west side than on the east. He knew Eads, Price and Hudson, three of the witness in the case who had testified as to the condition of the street. He was unable to describe the float but stated as his opinion that the float could not have gotten into the gutter as the high crossing and a telephone pole standing about a foot from the walk would prevent. He testified that beer bottles could be seen in the streets of Eagle almost any time and place although he could not personally remember seeing beer bottles on Main street. His cross-examination developed that he was not certain on any proposition hardly. He was compelled to admit that the float might be used on the streets and that the only beer bottles he had observed were in the alleys of the town. He did not make much material difference in the case by his testimony.

William English of Bennett, Neb., was called. He was a brother-in-law of the defendant. He knew both the defendant and Byrnes and detailed their relations as he had observed them. So far as he could see they were pleasant. The witness had observed the defendant and deceased together at different times although he could not recall just when and where.

John Mink, a merchant of Prairie Home testified that he knew the defendant and his reputation. It was good so far as he knew. Witness had observed the defendant and deceased many times and thought they were friends. They were standing together near a railing near the hardware store and he observed they were good friends and apparently getting along together nicely.

Cross-examined witness testified that he observed that day in particular as he, the witness was the captain of the tug of war team and the defendant was one of his men. He wanted to know where his men were as it was just before the match. Witness gave his testimony in a straightforward, unreserved manner and evidently just as the reason appeared.

August Spahrle living near Eagle in Otoe County testified he knew deceased and defendant. He was acquainted with the character of defendant and knew it to be good. He saw the parties in Eagle on the day

of the trouble and they seemed to be good friends.

Albert Stang of Bethany called made an excellent witness although his manner of testifying was such to provoke some laughter from the crowd. He is pronouncedly German and used several expressions very odd. This witness saw the Ossenkop in Eagle on the day of the picnic. He was well acquainted with both Ed. and Fred Ossenkop and the deceased Charles Byrnes. He saw the defendant in the saloon during the evening and at that time they had a drink together. He then left and joined his wife who was with Mrs. Ossenkop further down the street. He told her to come on and they would go as the others were coming. He then went on after his team and later he heard that trouble had occurred and he walked to where the crowd had collected. When he got there the trouble was all over and he did not observe any of the difficulty.

Juror Wescott as soon as the defense had concluded with the witness asked to be allowed to question him and developed that witness and defendant had drunk together in the saloon during the afternoon and also in the evening. He investigated closely and found that defendant was in the saloon when the witness went in in the evening. This character of testimony had been heretofore excluded by the defense by astute and careful management but coming from this witness it made a damaging impression.

Cross-examined by Mr. Doyle the witness served merely to confirm his general testimony and reiterated his statement relative to drinking with the defendant.

This was the last witness examined during the day, Judge Travis taking a recess until nine o'clock this morning, as Reporter Earl Travis was worn out with the task of reporting the case. There was fast progress made during the day a large number of witnesses being examined and the trial during the afternoon being conducted with an absence of that friction which had manifested itself during the morning. There were many ladies present during the afternoon session and much interest manifested in the proceedings.

**Wednesday Morning.**  
Court opened this morning before an even larger crowd than usual. Interest in the case grows rather than diminishes as the case progresses. There was a large influx of visitors and witnesses from Eagle, Walton, Bennett and vicinity, most of whom were called by the state for use in rebuttal. Mrs. Byrnes, widow of the deceased, has been a constant and regular attendant being seated within the bar, while Mrs. Ossenkop, wife of the defendant, has also been seated at his side on yesterday and today. She was not present during the former sessions of the court.

The defendant opened by calling Carl Price to the stand. He lived at Eagle for 21 years. Drayman. Testified he didn't know the condition of Main street but did not know the west side of the street was higher especially near the hardware store. The corner lamp had two mantles like ordinary gas mantles. Played in the band on September 16, coming down from the park. He did not see anyone float the street that day. Float worked by throwing dirt toward center of the street. Could not get closer to side walk than about three feet.

Cross-examined witness stated at the point where the telephone pole stood it couldn't get closer than three feet. Witness described location of pole at the northeast corner of the hardware store. Light at corner was powerful enough to allow him to read his notes. He had not worked float on the street.

On redirect examination the defendant tried to show the witness had protested to Hudson against his testifying to floating the street but failed. Witness had also seen rocks and beer bottles on street.

Juror Whiteman wanted to know the distance between the telephone pole and the sidewalk. Witness thought a good two feet.

Juror Wescott elicited the information that witness had never floated the street.

Attorney Doyle and witness had quite a conflict over the question of rocks in the street. Witness had seen pieces of rock as big as his fist in the street. They were pieces of foundation rock. Witness saw them about two weeks ago and everyone was looking for them. Had seen a half brick out in the street about two feet from the sidewalk. Saw cans in the street—sardine cans. Witness had not picked up any of these. Saw beer bottles in the street some two years ago.

Juror Wescott drew out that witness could not remember seeing any of these articles in Main street on the day of the picnic.

Former County Attorney Rawls called testified to seeing the defendant on the day after his incarceration in the county jail. Ossenkop showed him a small scratch on the left side of his neck. Photographs looked like it.

Cross-examined scratch looked as

if made by a hinge or sharp instrument. Did not go under the skin.

Paul Johnson of Alvo, called. Seventy-four years old. In America since April 27, 1867, from Denmark. In Cass County 40 years. Farmer, retired. Knew Ossenkop eight or ten years. Remembered hearing of trouble on September 16. Related circumstances regarding hearing of trouble. On September 18 he examined the ground in front of Spahrle's hardware store and found one brick as big as his fist. Witness' son married Fred Ossenkop's sister. That was not the reason for his making the examination. Could not tell why he made this examination.

Cross-examined by Mr. Doyle, witness detailed what he did at Eagle when he visited there on the 18th and thought he was there about one hour. Did not think he was anywhere but in the restaurant. Witness did not tell anyone at Eagle about the condition of the street or seeing rocks or bricks there. Attorney Doyle had a great deal of difficulty in getting the witness to fix the distance from the edge of the walk to where the brick lay. He finally fixed the distance at a foot and a half. One of the bricks was about the size of his fist and there were probably three smaller ones. They were lying scattered out in the gutter. The bricks lay about in front of the hardware store door.

Grant Hirsch called. Lived at Eagle for 4 or 5 years. Farmer and carpenter. Single. Knew streets at Eagle before September 16. Street high in center and sloped to sidewalk. Photographs of street shown him, good representation of street. Walk at hardware store about 2 1/2 feet above ground. Telephone pole about a foot from the walk. Described the float used on the walk and on streets. Would throw dirt either way toward or from the center.

Witness had seen bottles, bricks and rocks in street at different times. Worked for Fred Ossenkop on September 16. Had been in Eagle a week before. Witness showed by photograph points along the sidewalk where he had seen beer bottles at different times. Went to Eagle with Fred Ossenkop on September 16 about noon. Was at ball game. Then tied up team. Did not see transaction. Helped Hobson handle Byrnes' body, dressed and got it ready. Turned body on side twice to draw the mouth. Did not see any marks. Spoke of the discoloration and Hobson stated the embalming fluid did not take effect at such places. Found no marks on body below neck. No blood on back of head. Right jaw swollen and lips puffed. One mark on right side of head near eye. No cuts or marks on the left side so far as he saw.

Cross-examined by Mr. Doyle. Had never worked on streets. Took beer to dance hall or it was drunk on the streets. Nearly all dances caused beer bottles to be left on streets, as high as half a dozen after each dance. Did not see beer bottles, brick bats or rocks on the morning following the dance on the 16th.

Witness never saw rocks grow at Eagle. Soil ordinary Nebraska prairie. Had seen a "nigger head" on streets as big as his fist about a week ago. Did not know how rocks got in street nor where they came from. Saw crowd looking at rocks Gering and Olson also. Saw photograph taken which included rock. Can in street was taken up. Witness denied having stated "Boys he is not dead. He is all right." Witness admitted he "was pretty well hooked up" at the time. And admitted other parties took him home the night before.

A conflict arose over the line of questions propounded by Attorney Doyle and Judge Travis stated that the State could show the condition of the witness as to affect his ability to remember what occurred.

Witness and Gus Muck assisted Hobson in taking care of the body. Saw no marks on Byrnes' head. He did not put his hand on the head. Witness not present when the embalming fluid was administered. Ossenkop's brother married witness' sister.

John P. Sattler called. Resident of Plattsmouth.

Attorney Gering raised an objection to the presence of Wm. Hobson in the room and Judge Travis ruled the same courtesy would be given Hobson as was given Dr. Cummins.

Witness acting mayor of this city. Embalmer for 22 years. Familiar with the business. Body should be embalmed as soon as possible. Embalming depended largely upon condition of body. A well man should be treated by taking up artery and pumping embalming fluid into artery and draining blood through veins. Cited instances of such work. Blood drawn from jugular vein would have to be forced or pumped. Some blood might remain at some lowest point causing discoloration. Effect of waiting 5 to 7 hours to embalm made blood thicker. If head lower the blood seeks it. Same true of the other positions of the body. Face

could be flushed by forcing too much fluid into the cavities. Knew one fluid which would remove discoloration without removing the blood. Others did not. The more blood removed the better the results.

Attorney Doyle cross-examined witness on his knowledge of the formula of embalming fluid. Witness did not know the formula.

Witness testified the work was largely mechanical but changes in body must be watched to insure good circulation. The breaking of an artery prevented circulation. Attorney Doyle showed by witness that coagulated blood caused by bruises could not be removed by embalming. Blood escaping into the brain from hemorrhage could not be removed by embalming.

Juror Lloyd asked as to the drawing of blood from the jugular vein and was told witness did not use that method.

The witness made a good one and was remarkably fair and clear.

After a short recess at 11 o'clock, George Vanny was called to the stand. Lived near Prairie Home. Farmer. Married. Knew Ossenkop for five years. Knew Byrnes. Was in Eagle on September 16 in the afternoon. Saw the tug of war and Ossenkop on the team. Did not see Byrnes. Was on Main street about 9:30 that night right south of the pool hall door. Defendant went in after coat. Fred and Albert Ossenkop and Albert Stang started south then behind witness. Saw Albert Schroeder. Defendant was going after his wife at the hall. Saw some man grab Ossenkop by the arm and neck. Knew Rose Winters but not Mrs. Gleburnath or Kettlehut. The other man grabbed Ossenkop and they clinched. They struggled toward north. Ossenkop did not grab the other man first. They fell off the sidewalk between the team and the sidewalk. Team reared and jumped back 4 or 5 feet. Witness was about two feet from men. Witness identified photograph as to how team stood. The two men fell to the ground with Ossenkop on top. No sounds of fall. Byrnes made no move after falling. Witness illustrated to the jury by a photograph where he stood. Byrnes never moved either head nor hands. Ossenkop hit Byrnes two or three times in the next two minutes. He was on top of Byrnes but a few moments when he picked up his hat and got up. Photographs were used to show how men stood. Ossenkop did not kick the deceased. Witness was very positive about this. Saw some man come across the street and throw a flashlight on Byrnes. Another man stood back of that man. The affair was over. He observed a scratch on Ossenkop's neck on the left side. There was blood on his shirt and neck. Photographs to show the scratch were also shown. Ed. Ossenkop and another fellow grabbed the team. Team reared and jumped back. There was a buggy tongue in the buggy. Witness did not interfere as the men were big enough to take care of themselves. Witness did not know Byrnes. Thought Byrnes was standing there. The lamp in front of Dr. Deil's office not lighted. The expression "Hit him again" was not used.

Cross-examined witness knew Herman Lau. Not remember conversing with him and remarking "I do not know what they want of me. I was not there, unless they want to stuff a lot of stuff into me to tell." Witness' testimony was flatly contradictory to that of the state witnesses and sought to show Byrnes as the aggressor. Heard no talk between deceased and defendant.

Witness did not know who man was who clinched Ossenkop. Later had hold of man's arms with his hands. At the time Ossenkop was facing southwest and Byrnes southeast. Defendant nearest the edge of the sidewalk. Byrnes went off the walk first. The men did not light on their feet but fell immediately to the ground. Witness could not tell who stood near him. He did not make any statements about the matter and did not get down on the ground. Ossenkop did not say anything during the trouble and hit Byrnes but two or three times. Witness just west of them. Did not speak to Fred at that time. Did not know where Fred went to. Witness went about 15 or 20 feet north where Fred was asked about how he got that blood on him. Others there but could not recall who knew Byrnes was dead at the time. Left Eagle about an hour later with his wife. Brother-in-law left with them. Did not talk to Herman Hudson at the time. Did not remember hearing anyone say "Who did it." Heard people talking about it who did it but no one asked him. Redirect examination, John Vanny, cousin, had been asked what he knew.

There was quite a noticeable increase in the attendance of women at the afternoon session over that of the morning. The usual noon recess was taken from 12 to 1:30 o'clock.

Edward Ossenkop was called immediately on assembling after dinner. He is a brother of the defend-

ant, 34 years old. Lived in Lancaster County 25 years. Nephew of John and William Ossenkop of Louisville. Knew Byrnes, one of his neighbors. Fred farmed his father's farm. Byrnes lived several miles away. Had seen defendant and deceased together quite often. They were schoolmates and friendly. In Eagle on September 16, with his wife and children. Fred did not go with him. Saw Byrnes in Eagle about 3 o'clock. Saw Fred and Byrnes together at the railing near the saloon. They were talking together friendly. Saw Fred in tug of war. Had talked to him before. Saw Johansen and Fred have tug of war. Was in saloon that night about 9:30 or 10 o'clock with Fred. Albert Stang came in. No beer drank afterwards. They followed Stang out. Fred went into pool hall and got his overcoat. Saw George Vanny on street going south as they came out. Met his wife, Mrs. Stang and Rose Winters at the hardware store. His wife sat on a bench facing east. He talked to her, he facing southwest. Brother William north of there. Fred talking to Mrs. Stang. Did not know Byrnes was in the neighborhood. Did not see him in the saloon. When he heard the remark he looked south and saw Byrnes grab Fred by the arm and neck. Fred then grabbed Byrnes. The men were close together. Witness stated several were present. No blows were then exchanged. The men clinched and struggled, falling off the walk. There was a team in the street right east. Three teams were south of there tied up, standing east and west. Witness testified photograph shown him represented correct positions of teams south of where the struggle took place. Also the team east of the plac was correctly stated. Witness was present when these photographs were taken. Witness 6 feet 2 inches in height as was Fred. He was on the sidewalk when men fell and jumped off the walk to catch the team which reared and backed. Did not see Orvil Prouty or Henry Kettlehut. It looked to him as if one man's leg struck the buggy tongue. Byrnes fell underneath and Fred struck him twice that he knew of. Byrnes never moved hands or legs. He laid with his head toward the southeast about two and a half or three feet from the walk. Saw no one to the east of him at the time. Saw Hudson coming from the east after he got on the sidewalk. Hudson used flashlight. Fred got up on walk after picking up his hat. Byrnes had no hat on. Witness was within four or five feet of Byrnes and no obstacles intervened. His brother did not kick Byrnes. Witness never said "Now, give it to him." Got some brandy for Byrnes from the saloon. Did not know who the person was who grabbed his brother. Frances Stang was a little north of witness and Rose Winters was further away. Witness showed jury by a photograph just where he stood at the time of the trouble. Saw Fred's neck the next day, scar or mark on back of left side as shown by the photographs. Did not know the kind of shoes Fred had on.

Cross-examined by Mr. Doyle. Talked to Byrnes on street about 3 o'clock. Saw Byrnes later on the street but did not remember talking to him. Had not been in the saloon long when Stang joined them. The coat defendant had on was an ordinary coat, not an overcoat. Witness did not remember seeing Stang after they parted at the pool hall. Witness could not remember seeing a crowd south of him. He did not hear his brother say anything but he did hear someone speak and he looked toward his brother. No particular reason for looking. He saw someone to witness unknown, grab his brother. He could not say how his brother was facing but he knew his brother's hands were not on Byrnes. Byrnes grabbed his brother at the back of his arm or coat. He could not say how they were facing. Byrnes grabbed his brother with the left hand. Witness was not close enough to see the position of Byrnes' hand on Fred's neck. The men went off the walk in three or four seconds. Witness was about three feet away.

Defendant's shoulders and chest were on Byrnes' chest. Witness thought he saw all the blows, he was north and east of the men. Witness was looking at the men while he was catching the team. Witness knew where the team was and was not looking at it. He did not see the men who drove up with the team and he turned it over to same man who came from the south. He saw Fred strike Byrnes twice and then he turned the team over to the man. Witness went to the sidewalk. Attorney Doyle sought to show the witness was present when Fred hit one William Mamay in the saloon. The defense objected strongly to this and Judge Travis sustained the objection for the present. Mr. Doyle then asked the witness if he had not had several rows during the afternoon. Mr. Gering fought this also vigorously.

Coon Vallery, from near Mynard, was a business visitor in the city yesterday.