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OSSENKOP GETS MANSLAUGHTER

Returns Verdict This Morning After Much Deliberation

NOTE—In connection with reporting a case so extensive and long continued as the Ossenkop case and so much testimony produced, errors necessarily creep in. In this connection attention is called to the testimony of J. C. Mick. Mr. Mick is made to appear to say that he was standing in front of the hardware store at the time of the trouble when it should have read "in front of the saloon." The testimony of Henry Clear makes him appear as saying he saw the defendant kick the deceased, when he said he "did not see defendant kick the deceased." The name of Mrs. Frances Stang is given as Mrs. Frances Stahule. Mrs. Stang is one of the principal witnesses for the defense.

The trial of Fred Ossenkop was reported in the Journal yesterday up to the time when the defendant rested and the state commenced its rebuttal testimony.

The state opened at 3 o'clock.

Dr. I. C. Munger called by the state as the first witness in rebuttal made an excellent medical expert. His testimony served to demonstrate the strength of the state's case from a medical standpoint. As in the case of the expert witnesses for the state, his testimony was largely technical.

Mr. Gering on cross-examination went into Dr. Munger's personal history and reviewed his experience with fractures. He developed that witness had made research into the subject and had consulted authorities in various offices. Witness identified a letter in which he had agreed to come down and see Mr. Gering and give him the findings he made by an inspection of Byrnes' body. He received \$25 for his inspection. He also identified a report he had made to Mr. Gering in which he stated he believed the cause of death to be the fracture at the base of the skull. Witness was severely cross-examined by Mr. Gering on the facts developed at the post-mortem for which he was employed by the county at an expense of \$50. Mr. Gering sought to show that the witness had kept the facts of that post mortem secret. His testimony now was different in part to that given on the former trial. The general trend of the cross-examination was the same as that of other medical witnesses.

Witness then explained that he was called up by Henry Gering who asked him to make an inspection of the body. Witness objected as being unsatisfactory and suggested a post mortem. This was not agreed upon as Matthew Gering was absent. Witness informed Henry Gering such inspection was unsatisfactory. His only opportunity for a post mortem came when the county hired him.

Henry Clear recalled. Testified he knew Albert Stang and was slightly acquainted with his wife. Saw them at the time of the affray where Byrnes was lying and heard her say to her husband "You have got no business in there" and taking him by the coat and pulling him away. She was south of Byrnes' body and that Ossenkop was on the east side of Byrnes' body. Before this witness saw Ossenkop on top of Byrnes' striking him. No cross-examination.

M. W. Spahnle called was proprietor of the hardware store at Eagle. Knew William Ossenkop and saw him at the time of Byrnes' death. Witness assisted Mrs. Ossenkop in holding William Ossenkop to prevent him joining his brother in the fight. His store was lighted by a 500 c. p. gasoline lamp in the center of the store. Knew Fred Ossenkop some 17 or 18 years. Did not know his reputation prior to September 16 as a peaceable, law-abiding citizen.

Cross-examined by Mr. Gering. There were two lights in his store but only one burning.

In answer to Juror Wescott witness stated the light was some 18 or 20 feet back from the front of the store.

Ben Root called. Lived at Eagle for twenty years. Knew defendant and saw him on the night of September 16 when Byrnes was killed. He heard a conversation in which Fred

Ossenkop said "I don't know how it happened. I saw him fall and when I got up there he was dead."

Cross-examined witness thought the conversation was held about 11:30 at night in front of the undertakers' room. Did not know why Ossenkop was there. Ora Shoats said "Some said it was Fred Ossenkop."

Knew defendant for 6 or 7 years. First told Frank Lanning of hearing the talk. Never met County Attorney Ramsey until yesterday. Witness first told Mr. Ramsey of the conversation last night. He was an honest, straightforward and conscientious witness.

John Adams called. Lumberman at Eagle. Lived there 15 years. Knew Ossenkop's reputation as a peaceable, well disposed citizen and it was bad.

Cross-examined by Mr. Gering witness could not advance good reasons for his statement of bad reputation. He cited one case of fighting in which defendant was accused. Defendant referred to intoxicating liquor and drinking as his reason for thinking defendant was not a peaceable and law-abiding citizen.

Mr. Norris called. Lived at Eagle. Knew defendant 5 or 6 years, and knew his reputation as a peaceable, law-abiding citizen was bad.

Cross-examined by Mr. Gering witness testified he had been asked by the County Attorney as to his reputation and it was bad. There was a difference between characters. Mr. Gering got after witness severely on his lack of knowledge of defendant's reputation. Had seen defendant at dances and in saloons. Witness drank some.

George Reitter called. Lived at Eagle. Banker. Knew the reputation of defendant as a peaceable, well-disposed, law-abiding citizen and it was bad.

Mr. Gering cross-examined witness who had heard people talk of defendant's reputation. Had not loaned defendant money. Witness could see no difference between character and reputation.

Frank Clements called. Lived at Eagle. Merchant. Knew defendant and knew his reputation as a peaceable, well-disposed and law-abiding citizen. It was bad.

Cross-examined by Mr. Gering. Had talked to some of his neighbors about him. He had been in the restaurant business when witness came in and mixed up the pickles, sugar peppersauce, etc. He also swore and cursed. Defined general talk about him as bad. Heard of defendant being in jail in Greenwood about a year ago. Witness had never been arrested.

Conrad Wettenkamp called. Lived at Eagle. Retired farmer. Knew defendant and his reputation as a peaceable, well-disposed and law-abiding citizen and it was bad. Witness was like the others and could not distinguish between reputation and character. He was in Eagle on September 16. Witness saw the street and the teams tied in front of the several stores. He saw a team tied in front of Clement's store. Did not see one tied in front of Dr. Dell's office.

Mr. Gering's cross-examination of this witness was caustic and severe. He brought out that this witness like others had objected to defendant because he drank some. Mr. Gering endeavored to show by the witness that witness' son had knocked his mother-in-law down and had been arrested for this but Judge Travis ruled this out. His cross-examination was very caustic and bitter and led to several clashes with counsel.

Friday Morning.
Lured by the prospects of an early closing of the trial of Fred Ossenkop, there was a large crowd on hand this morning when court convened as has been the case for the past several days, women were conspicuous in the multitude. It was the general belief that the counsel would reach the arguments not later than 11 o'clock in the morning. Court was late in opening it being half past nine before they were ready to proceed.

William Irely called as the first witness for the state, testified he lived in

Eagle. Was there on the evening of September 16. Was in the saloon after the man who was knocked down. Saw defendant. This was about 9:30. Defendant said "Stand back. I don't care if you are loaded with stars and clubs" and used vile language toward him. Knew defendant's reputation as a peaceable, well disposed and law-abiding citizen. It was bad.

Cross-examined by Mr. Gering. Reputation was what people said. Heard this when he was a kid. Had not talked about reputation with attorneys. Witness was quite aggressive toward counsel.

Wm. Hobson called. Testified he knew Ossenkop. Night of affray in a conversation between witness and he in Brinkworth's presence, he asked Ed. who did it. Ed answered "I don't know. I did not see it. I was across the street." Knew the reputation of defendant as a peaceable, well-disposed and law-abiding citizen. It was bad.

Mr. Gering cross-examined. Witness did not know just where defendant lived. He had been told he lived west of Eagle. Had seen defendant before September 16, but never talked to him. Had heard of his being arrested at Eagle on September 16, but not before. Had heard talk about his breaking the law before September 16. Spoke of his being quarrelsome an having trouble at dances. Had overheard such talk. Witness had heard people speak of trouble with defendant, naming several, including Adams, Brown and Oberle. Never had heard of defendant being convicted. Reputation was what the people thought of a man. Had not consulted either of counsel for state on this. Had not told them about the conversation, told them about reputation but not about the conversation. Thought he did this the last time he was here. First met Ed. a little over a year ago. Had never been at house of either. Did not know what his neighbors thought of him.

William Irely recalled stated he was appointed marshal by Hudson and sworn in. Did not know Byrnes or if he was in the saloon at the time of the trouble.

J. E. Brinkworth, editor of the Eagle Beacon, called and testified. Knew Ed. Ossenkop. Was present at the conversation between Hobson and Ed. Ossenkop and corroborated Hobson's testimony as to the conversation. He heard it as Hobson did. Knew Fred Ossenkop and his reputation as a peaceable, well disposed and law-abiding citizen. It was bad.

Cross-examined by Mr. Gering. Reputation was what people say of a man. Had never heard of defendant being arrested. Witness had had an altercation with a son of Druggist Brown of Elmwood and had paid a fine of \$20 for assaulting him. Had never heard of Ossenkop having trouble since witness had been in Eagle some nine or ten months. Witness came from Beatrice and Gage counties. Knew Ed Ossenkop by sight, was a subscriber to the paper. Had met him once. At that time he did not know Will from Ed.

Juror Whitman wanted to fix the time of the conversation. He fixed it about 11 p. m.

James H. Latrom called. Merchant at Eagle. Knew defendant slightly. Knew his reputation for being a peaceable, well-disposed and law-abiding citizen. It was bad in the town. He could not say as to his neighborhood. Stricken out as not responsive. Question repeated. An objection by Mr. Gering as to witness not being able to show reputation in his immediate neighborhood. The objection was sustained. Attorney Doyle explained that he meant by community that intercourse of business interests between city and country as including the community. Witness stated he did not know as to the country and this line was abandoned.

Henry Snoko called. Witness showed photograph of teams on the street at the time of the trouble. He denied that photographs correctly stated the position of the teams. Mr. Gering fought this vigorously.

Witness knew the reputation of the defendant around Eagle as to being a peaceable, well-disposed, law-abiding citizen. He knew the boys some sixteen years, but did not know them apart. Saw them in town frequently. Had heard they attended dances. Nothing could be shown by this witness as to reputation, he not qualifying.

J. C. Brown next called. Lived at Eagle since 1902, druggist. Knew Ossenkop by sight. Knew his reputation in the community as defined by Mr. Doyle to be bad.

Cross-examined by Mr. Gering. Did not know his reputation in the

neighborhood where he lived. Witness defined reputation as what people said about one. Character is what a man built up—his acts. Witness admitted the counsel for the state had talked to him on the difference. Witness had heard of defendant hitting other people but couldn't recall who. Defendant had traded with him some.

Charles Venner called. Lived at Eagle. Farmer. Saw George Vannoy while the latter was shelling corn for him. Had talked with Vannoy, who said "I don't know a darned thing about it" referring to the tragedy.

Jasper Eads called. Lived at Eagle. On Sept. 16th he graded the street with a home made grader. He graded the street at the scene of the trouble in the morning, finishing between 8:30 and 9:00 o'clock. Graded up to the sidewalk and within a foot and a half of the telephone pole and up to the walk two feet from the pole. There were no rocks, bricks or bottles in the street.

Mr. Gering cross-examined the witness and showed the angle at which the grader stood.

The jurors questioned the witness closely regarding the grading. The team hitched to the float was in the middle. The object was to smooth the street for races. He came up to the edge of the walk.

Mr. Gering then sought to shake the witness' testimony and discredit his statements as to getting to the sidewalk. The witness, however, was an excellent one and had a clear idea of what he said.

Nell Gardner called. Lived at Eagle all his life. Was there on September 16. Saw the body on the sidewalk right in front of the first pole of the porch to the south. Saw Guy Clements on the ground striking matches and looking on the ground. Witness was leaning against the porch. Saw nothing in the shape of rocks, etc., on the ground. He was looking for evidence as to what did the crime.

Guy Clements of Elmwood called. Was in Eagle on September 16 and was at the point where Byrnes was killed. Looked over the ground to see what he could discover. There were no rocks or bricks on the ground.

Cross-examined. Son of Coroner Clements. Knew H. W. Beaver but no relative. Search made about twenty minutes after death.

Reddret. He helped lift the body from the ground and knew where it lay.

Ed Roberts called. Lived at Eagle. Bartender for Chas. Trumble. Was there afternoon and evening. Saw defendant in saloon that evening about 9:30.

Defendant said he would kill me or any other G—D—S— of bartender who tried to stop the fight."

Cross-examined. Witness swore he had shut off men from drinking. Liquor was being passed to them. The fight was between the hired men of Charles Span and Albert Stang. The state rested.

Mr. Gering asked that the jury be instructed before argument.

The state rested at 10:50. An adjournment of several minutes was had prior to the commencement of the argument.

County Attorney Ramsey opened the argument by referring to the need of more enforcement of law, and the duty the jurors owed to the state to see that law was enforced. He referred to the safeguards and protection given the defendant by the laws. He spoke of the duty owing to the defendant of a fair and impartial trial. This duty he owed as well as other officers. He took up the reasonable doubt proposition and referred to the possible abuse of this in the case. He defined reasonable doubt as he understood it and outlined his ideas as to what the jury should find on this. Referring to the case at bar Mr. Ramsey reviewed the charge against the defendant and dwelt particularly upon the fact of malice, defining the latter. The question of intent entered into the case and Mr. Ramsey dwelt upon the specific acts of defendant as showing the intent. Referring to manslaughter, the County Attorney defined it as it would be covered by the instructions of the court. Under the instructions, the duty devolved upon the jury to determine the degree of the crime.

He then took up the evidence and reviewed it at some length referring to proof of Byrnes' death, at Eagle, and the subsequent proceedings up to the time of his interment. He then advanced his views of the testimony as to the defendant's guilt of the killing and he referred to the interest of

the several witnesses for the defendant in clearing the defendant as they were relatives. He referred to the number of witnesses the state produced who testified as to the defendant's assault on him, in the defendant's testimony.

The usual noon recess was taken and when court reconvened there was a very large crowd present. The room later filled almost to suffocation. While many women had been in the audience in the morning their number was far greater in the afternoon. They came early seeking to secure the best points of vantage from which to hear the argument of counsel. All those who had attended the morning session were there with a great many in addition.

County Attorney Ramsey resumed his argument immediately upon court opening. Mr. Ramsey pointed out to the jury his belief that Byrnes at the time of his death was headed for his team and home. He paid a high tribute to the worth of witness Henry Kettlebut and reviewed his testimony in detail. Touching upon the testimony of the defendant he sought to show by it that the state's witnesses were correct, by showing defendant and deceased could not have grappled as defendant contended as they would have gone off the walk at a different point than they actually did. The defendant's testimony he contended, did not show provocation for an assault upon deceased. He referred to the testimony of Snoko and Wettenkamp as to teams, and also paid their disinterestedness a high compliment as also their worth and standing. He severely criticized the theory of Byrnes' head hitting the tongue or neckyoke of the buggy, as being unreasonable. The theory of the state regarding the fall was expounded. Mr. Ramsey then criticized the testimony of George Vannoy and his silence at to what he saw. He referred to the disinterestedness of those witnesses who swore to the kicks of defendant to deceased. He dwelt upon the fact of Byrnes being alive when the affray started and dead when it finished. Reviewing the medical testimony he endeavored to demonstrate to the jury that the state's theory of death was correct even on the state's own medical witnesses. The attorney reviewed in detail the evidence established by the post mortem and also sought to show that Dr. Livingston's testimony demonstrated the state's theory of death by kicks and blows as correct. Throughout his argument Mr. Ramsey attacked the "reasonable doubt" theory of the defense, and in this connection explained how the state had disproved the theory of rocks, bricks, etc., on the scene of the tragedy by the testimony of two witnesses who examined the ground immediately after the trouble. Mr. Ramsey referred to the alleged conversation had wherein defendant denied knowing who did the deed and pointed out the lack of interest in the case of the witnesses who testified to this conversation. He also reviewed the testimony of the brothers and their alleged conversations and spoke of the honest disinterestedness of the witnesses who testified to these facts.

Mr. Ramsey closed at 2:30 after having spoken 2 hours. His argument was clear, connected and lucid and a fair and dispassionate review of the testimony and evidence adduced in the case.

Mr. Gering for the defendant did not believe the jury would find much in the case as the county attorney had seemed to. He paid a high compliment to the duty of jurymen and cautioned the jury as to their oaths. He entered at once upon the reasonable doubt theory and asked fair and impartial treatment. Referred to the several murders in the county in the past five months. Attacked the prosecution for taking four different tactics to secure conviction. The motive for the crime was taken up and counsel then read an instruction of the court upon motive. Spoke of the friendly relations between the parties and scored the character of the testimony introduced to secure conviction. With these relations there could be no motive for the crime. Thought the law suit between Ossenkop's father and the deceased had nothing to do with the case. Was not asking sympathy but referred to the indignity of a prison term. Mr. Gering then took up the testimony. He referred to tearing down the testimony of witnesses and objected to such a method of securing a reputation. He referred to the character of those witnesses who testified to the defendant's good character. Mr. Gering referred to the drinking habits of the defendant and made a brilliant defense of his German habit

of taking a drink. He cited the jury to a long list of brilliant and able men who drank. He sought to show that the defendant's testimony was correct and truthful and he vigorously denounced the efforts of the prosecution to blacken the character and reputation of the defendant. He reverted to the question of motive and contended the death was an accident from the fall. Who, he asked, started the quarrel? He reviewed the testimony of those who claimed to have witnessed the start of the trouble and criticized the state's witnesses. Mr. Gering made an extended argument to prove the defendant acted in self-defense.

Mr. Gering made much of the scratch upon defendant's neck and cited the testimony of the several witnesses who saw the scratch. He again called the jury's attention to their oaths and their duty to acquit if they had doubt as to who started the fight. He paid a very high tribute to Mrs. Frances Stang and her manifest truthfulness. To demonstrate the length of time a fight of one minute would take Mr. Gering ceased talking for that length of time. He defended George Vannoy whom he had cautioned not to talk about what he knew.

Mr. Gering quoted from the testimony of Mrs. Glebeath to corroborate the defendant's story of the commencement of the trouble. He reverted once more to the question of motive. Reviewing the testimony in the case so far as the clinching and struggle with the accompanying fall, came to the conclusion that when Byrnes fell under the defendant he was a dead man. Mr. Gering attacked the testimony of Harrison Hudson and bitterly scored him. He referred to the kicks and contended that no abrasion of the skin meant no kicks given by the defendant. He also contended that Dr. Munger corroborated this. He quoted from Dr. Munger's testimony to show he had testified two ways in the case—one way before the post mortem and another afterwards. He attacked County Attorney Ramsey for not acquainting the defendant with the results of the post mortem. He criticized Dr. Munger for having taken employment on both sides of the case. Mr. Gering made many sarcastic references to Dr. Munger and his limited experience as a practitioner. He compared his testimony with that of Dr. Livingston and Dr. Cummins.

Reverting once more to the testimony of Frances Stang, he paid her fidelity to her neighbors and friends an eloquent tribute. Throughout his entire argument he contended strongly for the theory of accidental death and he warned the jury of a possible mistake in their verdict. He spoke of his deep sympathy for the widow of Byrnes but he wanted no widow made by sending Ossenkop to the penitentiary. He made a very eloquent argument for the acquittal of the defendant. He spoke for one hour.

From Saturday's Daily.

Following Mr. Gering yesterday afternoon, Attorney T. J. Doyle closed the argument on behalf of the state. He pointed out to the jury the difference between motive and intent and then launched out on review of the evidence. He reviewed very specifically the actions of Byrnes on the ill-fated day when he came to his death. It was a careful and well-connected story. He made an eloquent picture of the home life of the deceased and spoke of the inevitable price sin exacted. He warned the jury against the feelings of sympathy and allowing it to interfere with their duty. Taking up the circumstances of the day of the tragedy he reviewed the events and lead up to the scene in the saloon, making particular stress upon the trouble with the bartender. He reviewed Ossenkop's actions just prior to the fight and the immediate proceedings of the fight. He reviewed the testimony of George Vannoy, Mrs. Spang and Miss Schroeder and referred sardonically to Mrs. Stang as the "lady who never moved." He criticized the testimony of Ed. Ossenkop where it referred to the conversation with Mr. Luther. The several alleged conversations which Ed. and Fred were reported to have had at the time of the trouble and he laid particular stress on the language they used. Taking up the scratch on defendant's neck he didn't know how it got there nor did the defendant. Under all the circumstances he was not surprised nor would he have been had there been scratches all over his body. He made a powerful and well connected argument on the testimony all with the intention of showing the defendant was responsible for the death of deceased and

(Continued on Page 4.)