

MAKING FAST WORK ON MURDER CASE

Lee Thacker, Son of Murdered Man, Principal Witness

Wednesday Morning. Considerable wrangling between counsel over the character of the language used by the county attorney was had here.

The two men grappled after the two shots, Thacker going toward Clarence when the third shot was fired. As the men fell to the ground, Lee Thacker stepped on Clarence's hand and disarmed him. Two of the shots had no powder burns about them but the last or third shot had. Mr. Ramsey's statement was very complete as to what the state expected to show as to the position of the several witnesses and was a lucid statement of what the state expected to prove. Mr. Ramsey also stated the State expected to show Mr. Thacker's statement of the facts under a sense of impending death, made after he was taken home. In addition the state would show a malicious disposition of Clarence's part toward Thacker and Bob Kendall. Mr. Clark fought bitterly against including Bob Kendall in the statement but Judge Travis admitted it over his objection. Other statements were also vigorously objected to by Mr. Clark but were admitted. Mr. Ramsey closed at 11:50.

Mr. Clark made his statement which was in effect that the sheller did not stand in the position the State contended, and that Thacker had called Earl Albin a name and said he was no good when John Clarence told him to keep his nose out of it but said nothing about shooting. Clarence was at the tank. Thacker started toward Clarence and picked up the stick. He attacked Clarence and struck him two or three times over the head. Clarence raised his cane in self-defense. Thacker took it away from him and struck him with it. He then dropped and they grappled. It was then Clarence drew his gun. He fired two shots before they fell. When they fell Clarence fired the third shot. Mr. Clark then described what the witness for the defense would show about seeing the shots fired. He contended the defendant thought the relations were friendly until that morning when he learned different. Clarence was a cripple and nearly helpless without a cane and had carried a gun for years which Thacker knew. This was to protect himself from outlaw horses. He mounted his pony at once and delivered himself. At 12:05 he concluded.

Wednesday Afternoon. A recess was had from 12:10 noon

until 2:00 p. m. When the taking of testimony commenced. Clarence was composed and calm when court opened and seemed prepared to accept the proceedings as a matter of course. There were many ladies in attendance.

G. R. Olsen was the first witness called. Lived in Plattsmouth, photographed at the Darrough farm on February 12, with County Attorney Ramsey, and Lee Thacker and the witness Carter Albin. Witness examined photographs which the reporter marked and testified he took the photographs in question and they represented the condition of things there when the pictures were taken. He also showed the jury the situation of the camera when the photographs were taken.

Mr. Clark for the defense cross-examined the witness as to the time of day which was about noon. This was done at the request of the state.

Carter Albin called. Age 40, lived at Union, was at Darrough farm on January 15, was hauling corn and was familiar with location of objects. Was present there on Feb. 12, when pictures were taken. They were correct representations of things at the farm on Jan. 15. He explained to the jury his position and the position of the team and wagon which were his, as being the same as on Jan. 15. Wagon double box and same as on Jan. 15. The State then offered in evidence the five pictures. Objection was made and overruled.

Mr. Clark cross-examined witness concerning cobs on the ground showing the cobs had been changed. He also showed that the wagon was on the ground on Jan. 15 and as near the ground as they could get it on February 12 and witness's position in the wagon was also identified. The cob carrier was on the machine on January 15 and not on February 12. Mr. Ramsey and Mr. Thacker are shown in pictures of Feb. 12 in a different position than on Jan. 15. This variation in positions occurred throughout all the pictures. Mr. Clark objected unless the jury were instructed the men shown did not correctly represent their positions on January 15. The court stated the jury had heard witness testimony.

Witness did not think any cobs were under the wagons when the pictures were taken. Mr. Ramsey showed by witness that he occupied the position in the picture Earl Albin stood in on January 15. Mr. Ramsey was also in the crib when pictures were taken, in same position

the two men were on Jan. 15. In all the pictures witness occupied the position he was in on January 15. Judge Travis examined the pictures. Witness handed a plat which represented the distance at the Darrough farm with respect to the men, the sheller and the crib, which witness identified. Mr. Clark cross-examined witness as to distances shown by plat with reference to the distances on the ground. Tank was 34 feet southeast of the crib but was not made so many feet south and so many feet east of the crib. Mr. Clark objected to the plat because it did not show relative distances. Objection was overruled. Plat offered in evidence and objected to. Overruled. Witness explained at length directions and distances shown on the plat. Some argument arose over distances. Witness was born and raised in Cass county and a farmer. The crib was 8 feet high on Darrough farm, made of 1x4 boards. Distance between cracks in crib about one inch. Was hauling corn from Darrough farm on January 15. Ground South and Southeast of the crib no level, a gutter running South and West. Gutter about a foot deep. Ground North of tank up hill but not much. The bottom of the middle part of the ground was 10 inches. There was about 30 inches in end of crib but none in the center of the crib. The floor was bare at center of the crib. The door was 4 feet by 3 feet, 6 or 8 feet of crib clean at time. Crib had corn in both ends about 8 feet in height. Lennie Crawford was in the crib in front of the door squatting on the floor. Ira Clark was on the corn Northwest of witness and North of Crawford. Clark was squatting down. Both were facing East. The sheller was not working. Earl Albin was on the west of witness's wagon about two feet from front end of box facing the front wheel. Thacker was Southeast of witness when he first saw him. He followed at witness, told him to hit Earl Albin, and walked around head of horse. Clarence called him back, said for Thacker to keep his mouth out of that. Witness did not see Thacker again until the shooting. Witness watched Earl Albin who had one hand in his pocket and who was daring witness to hit him. Witness was afraid, Earl would cut him with a knife. Witness did not hear anything between Clarence and Thacker except as testified to. Lennie Crawford and Ira Clark were in the crib at the time and witness did not see them come out. Earl Albin was West of the wagon when the shooting occurred. Witness explained by a demonstration on a picture how one had to get out of the crib around the horses. Witness got out of the wagon just as the last shot was fired and the men fell. John Clarence was facing and John Thacker Southeast. Thacker and Clarence were together. Witness did not see the shot but did see the smoke. No one was there then but Lee Thacker when he got there and the

others came later. Witness explained by demonstration before jury how the men lay. Thacker had Clarence right wrist grasped by his left hand. Witness did not see Thacker do anything at all. Lee was at the head of the two men standing on Clarence's right hand. Witness' team started to run off and he tried to catch them. Witness could not tell now as to the time of shots. Witness was about 16 feet from the parties when he left the wagon. The other, were closer. Witness tied his horses and called a doctor. When he got back Thacker was on the ground and no one was there. Lee Thacker came back later with a buggy. The rest were gone. Clarence gave him no assistance as he wasn't there. Lee and witness helped John Thacker in the buggy. Thacker was then taken home within fifteen or twenty minutes. Objection was made to questions as to Thacker's conversation on his way home, showing a sense of impending death. Argument on the question was made by counsel. The court sustained the objection of Mr. Clark for the time being. The shooting occurred in Cass county, Nebraska. A wrangle at this point between counsel developed into a noisy dispute which Judge Travis suppressed by a positive declaration for order. Cross-examined by Mr. Clark. Witness was a brother-in-law of deceased. Had testified at the coroner's inquest after talking with County Attorney Ramsey. No measurements were taken of the bare floor on February 12. The horses were in a position on February 12 as near as possible to where they were on January 15. Witness had off his overcoat and undercoat when he and Earl Albin were quarreling. This was before John Thacker spoke. Earl began the quarrel by throwing corn at witness who was North of the crib. Earl was in the crib then. When the sheller broke Earl came out. The end of his wagon was East of the door. Earl came out and stopped at the West end of the wagon. The tank and John Clarence were Southeast. Did not know what he was doing. Thacker was going West. Mr. Clark cross-examined witness, seeking to impeach his testimony by reading from his testimony before the coroner's jury which was at variance to his testimony now. Witness could not recall his testimony before the coroner's jury and developed a very poor memory. Witness had read over part of the testimony last night by one of the counsel who had also gone over it with him. Lee Thacker was also present. Witness had a good deal of personal interest and feeling in the case. The remainder of the witness, testimony was in general the same as his direct examination. On re-direct examination County Attorney Ramsey sought to show that the questions and answers taken at the coroner's jury were incorrect and did not report the witness correctly. This was what the witness testified to and he sought to explain what he meant and said that time. Witness' horse were about 5 feet 4 inches high each at the shoulder blades. Never measured them at the hips. Considerable liberty was indulged by the audience which Judge Travis rebuked as this was a murder trial and he did not care to have the performance repeated. The wagon was 5 feet 2 inches in height. Witness was a cousin of John Clarence, the defendant. George Hill called. Lived South of Murray. Farmer. Knew Jno. Clarence. Saw him at Darrough's the morning of the shooting. He was dressed in his every day clothes. Had no gun on the outside of his coat then. The crib had between 7 and 8 feet of corn in each end. Corn had been taken from the center of the crib. Corn sloped up at each end. Had seen Clarence twice with revolver on him. James Tigner testified he did not see Clarence have a revolver that day. He also was hauling corn the day of the shooting and his testimony was practically the same as George Hill's. Charles Hill lived South of Union, farmer. Was at Darrough's hauling corn on January 15. Never knew Clarence packed a gun in his life and did not see any on him that day. John Hobschelt, farmer, was hauling corn on January 15, from Darrough's. Saw Clarence there. Did not see a gun on him that day. His testimony followed closely that of the two preceding witnesses. William Mark testified he lived in Nehawka precinct about seven years. Had known defendant eight or ten years. He had worked for him about 1894. Had seen Clarence one time take off a belt with a gun in it. This was in the barn at his place. Tom McQuinn worked for him at the same time. Thomas McQuinn testified he lived near Union; farmer. Knew Clarence. Knew Wm. H. Mark, John Clarence worked there also. Clar-



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ence carried a gun around his waist under his coat, in a belt. He carried it while plowing corn with his own team and also Will Mark's team. Teams not dangerous so far as he knew. Clarence gave a reason that he didn't know what he might run up against sometime. On cross-examination witness testified Clarence broke horses and also tended two stallions at that time. Chas. L. Graves called. Editor of the Union Ledger at Union, Neb. Lived there thirty years. Also an attorney-at-law. Knew Jno. P. Thacker in his lifetime. He was called to Mr. Thacker's residence on January 16. Saw Mr. Thacker. The State sought to lay foundation for dying declaration of Jno. P. Thacker which was objected to. Objection overruled. Mr. Thacker said he had business he wanted to fix up. He had witness write a bill of sale conveying to his wife certain property which he did not recollect. Could not say as to whether it conveyed all or not. He did not say why he wanted to fix up these business affairs. The matter of his having the money in the bank and he suggested Thacker give his check for it. He suggested this for the reason he thought there was a serious matter on hand. Thacker was on the bed, mentally he was strong, physically he appeared healthy but suffering from some injury. Witness described the room he was lying in with the several doors to the room. It was 10 feet from the head of the bed to the North edge of the nearest door. The room was about 14x10 feet in size. Witness drew the check for deceased who signed it. At 5:20 p. m. court adjourned.

farm. Knew John Clarence. Had a talk with Clarence in which Clarence said "if Thacker came into a field with him, he would kill him." Witness could not state date. They were talking about trouble between Len Crawford and Thacker, and Clarence said that if Thacker had gone after him like he did Crawford, he would not only draw a gun but use it, and if Crawford had shot Thacker he would have gone to the penitentiary while he would go clear. He said he wouldn't lose his credit if he came here. He also said Crawford had a bad reputation while he didn't. This conversation took place about one year ago at Clarence house. The same day witness bought a team of Clarence. Cross-examined by Mr. Clark. Witness denied falling to pay for the team but said he gave them back to Clarence on account of his wanting more pay. Witness and Clarence had quarreled but witness denied threatening to do Clarence up in this case. He claimed Clarence started to draw a gun on him. Witness claimed to be from Rawlins county, Kas. and gave names of parties he rented from. He had talked to Clarence since the quarrel and now owed him some money. Dr. J. F. Brendel of Murray testified he had been a practicing physician for six years, a regular graduate, called to Mr. Thacker's on January 15 and found him suffering from three bullet wounds, in a nervous condition and loss of vitality. Described his dress. Witness attended him and he died Jan. 21, at 12:30 a. m. The room in which he lay was about 12x14 feet. There was a door in the northwest and one in the southeast corner. The distance from the head of the bed to the southeast door was about 12 to 14 feet. Knew Mr. Thacker prior to shooting and health was good although he had had gall stones. He was operated on after the shooting by Drs. Davis, Livingston, B. F. Brendel and witness. An autopsy was performed later. The operation was on January 15 and the post-mortem on Jan. 21. Mr. Clark for the defense developed witness had visited deceased every day during his illness. Anesthetics were administered during the operation, which was performed with Mr. Thacker's success. No errors in the operation which was successful from a surgical standpoint. Could not recall whether patient was told or not as to success. Asked by County Attorney Ramsey his opinion as to chances of recovery from such wounds, witness replied he thought there was none. One bullet wound between fifth and sixth ribs, one in abdominal region and one in lower part of thigh were the wounds he found. Witness indicated to the jury where he found the bullet wounds. Mr. Clark. Witness had had some experience in similar cases. Could not recall which leg the wound was in for sure. Lee Thacker called. 25 years old. Born in Cass county; farmer, son of Jno P. Thacker, single. Lived with father on January 15. Knew John Clarence, a second cousin. Father and Carter Albin and Earl Albin cousins to defendant. Witness and his father owned a corn sheller which was taken to the Darrough farm to shell the east crib of corn. Crib 24x12x8 feet. Crib nearly full of corn. Cracks between boards about one inch. Commenced shelling after dinner. He handled sheller. The two Hills, Jno. Tigner, John Hobschelt, John Clarence and Car-

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