

VERDICT OF MANSLAUGHTER IN BOCHE CASE THE JURY DELIBERATES SIXTEEN HOURS

JURYMEN WERE GIVEN THE CASE AT 9 O'CLOCK MONDAY NIGHT.

DECISION REACHED AT 2 O'CLOCK

PENALTY IS FROM ONE TO TEN YEARS IMPRISONMENT.

MOTION FOR NEW TRIAL MADE

After a Long Battle in the Jury Box Twelve Men Became of One Mind and Decided That Herman Boche Was Guilty of Manslaughter.

Madison, Neb., March 3.—From a staff correspondent: "We find the defendant, Herman Boche, guilty of manslaughter." The jury of the Boche murder trial returned a verdict shortly after 2 o'clock this afternoon finding Herman Boche guilty of manslaughter in the killing of Frank Jarmer in front of a Norfolk resort last May. The verdict carries a sentence of from one to ten years in the state penitentiary.

The jury was out sixteen hours. Save when they went to a down town restaurant for meals and when they took a short walk for exercise they were locked in the jury room. During the morning and early afternoon Judge Welch and the attorneys waited in Madison for the result of the jury's decision. During the day a disagreement was the common prediction.

About 2 o'clock the jury announced that they had arrived at a verdict. The twelve men were again conducted into the court room and their names called by the clerk.

H. F. Helme, a farmer living in the southwest part of the county, and counted as one of the strong men on the jury, had been elected foreman of the jury. He handed the written verdict signed with his name to Judge Welch.

The verdict was read aloud by District Clerk Fields. It was asked if it was the jury's verdict and no juror dissented.

Herman Boche heard the verdict without apparently being affected.

The usual motion for a new trial will be made.

Judge Welch will return to Madison on Monday, March 16. At that time he will pass on the formal motion for a new trial, always asked for and usually denied. The defense has intimated that it will appeal the case to the supreme court for alleged error. Judge Welch on the sixteenth will pass on the appeal bond and any other details that may arise.

Sentence will not be pronounced by Judge Welch until the usual preliminary motions have been made and acted upon.

The jury has been discharged. County Attorney Jack Koenigstein said that he was well satisfied with the verdict.

The court room was nearly empty when word came that the Boche jury had agreed. The people began to flock to the court house.

Judge Welch and the attorneys will take this evening's train back to Norfolk.

A peculiar feature of the Boche murder trial was that no witnesses were called to testify that the defendant was a man of good character.

During the long trial the Ives killing of nineteen years ago was not hinted at, nor did the trial of eighteen years ago when Boche was acquitted of the charge of murdering George Ives get before the jury.

To have tried to give Herman Boche the character of a peaceful citizen would have invited some reference to the affair of many years ago.

The Boche murder case went to the jury a little after 9 o'clock last evening. When Judge Jackson finished his argument and analysis of the case Judge Welch instructed the jury on various technical points of the law. Under the instructions of the court the jury could return a verdict of second degree murder carrying a sentence of from ten years to life imprisonment in the penitentiary, a verdict of manslaughter carrying from one to ten years in the penitentiary or a verdict of acquittal.

The jury then retired to their jury room and were locked in by themselves. Herman Boche's fate was with them.

Yesterday afternoon the jury heard Jack Koenigstein, county attorney, and Senator Allen, chief counsel for Herman Boche. In the evening they listened to Judge Jackson.

DETAILS OF THE TRIAL.

Testimony Introduced, Arguments Used, and Result.

Madison, Neb., Feb. 28.—From a

atic day in the trial of Herman Boche, charged with the murder of Frank Jarmer, the day when the defense places its best witnesses on the stand and draws the threads of evidence already presented into the story upon which the attorneys of Herman Boche will make the final plea for his acquittal. The testimony of the witnesses placed on the stand yesterday afternoon after the state had given way to the defense was to pave the way today.

Seven witnesses, Dr. A. B. Tashjean, John P. Classen, Emil Koehn, Edna Ingham, Jack Koenigstein, Julius Hulff and William D. Uecker, were called to testify for the defense yesterday between 3:30 p. m. when the defense started to forge the first link in its chain of evidence and 6 o'clock when a recess was taken until 9 this morning.

By the testimony of the county attorney himself it was established that Frank Jarmer was virtually a bankrupt at the time of the tragedy last May. It was an unusual incident in the trial when the prosecuting attorney was asked to step into the stand by the attorney for the defense to give testimony on a rather important point.

The most important testimony of the afternoon was the declaration of Dr. A. B. Tashjean of Norfolk, called to the scene of the tragedy as a physician, that the soil of the street in front of the resort showed that a struggle had taken place.

Struggle Took Place.

Dr. Tashjean was the first witness on the regular program of the defense, though at the time the state rested its case J. H. Conley and William Stokes were called to the stand to impeach the testimony of Lee Vroman, cab driver and star witness for the state.

Dr. Tashjean, who has been a practicing physician in Norfolk since 1884, was called to care for Jarmer after the shooting, arriving about 5:30, half an hour or so after the shooting. Dr. Tashjean was brought at once to an investigation that he had made of the spot in the roadway where Jarmer lost his life.

The sandy and easily impressionable soil, Dr. Tashjean testified, showed the signs of a struggle. The doctor had made the investigation to satisfy his own curiosity. Fresh blood easily established the spot where Jarmer fell. An irregular circular place, of a diameter of six or seven feet, was marked with heavy footprints, the condition of the ground indicating the struggle. Part of the foot prints had been obliterated by the dragging of Jarmer's body towards the porch of the Ingham place.

On the spot where Jarmer was killed, in the dirt of the road and partly covered by the dirt Dr. Tashjean found a bunch of keys and a dime. All this was brought out by Senator Allen's examination.

Dr. Tashjean's testimony was not greatly altered by a rigid examination by Judge Jackson for the state. Dr. Tashjean made the point that the dragging of the body had obliterated only part of the tracks and that from their size the tracks had been made by men. The soil also held the tracks of the women who went barefooted to Jarmer's assistance.

Photographs Identified.

John P. Classen, a Madison photographer, was called to the stand to identify the photographs which have been used extensively during the trial. He testified that he had taken the pictures last November at Senator Allen's request. The pictures included exterior and interior views of the resort.

Defense Not Strengthened.

Emil Koehn, Norfolk saloonkeeper, was called as a man who had been in the saloon of Jarmer the night of the tragedy. His testimony as far as concerned the immediate events of the evening and Herman Boche's condition did not strengthen the cause of the defense.

Herman Boche, Koehn testified, came into the Jarmer saloon about 10:30 p. m. Ten or fifteen men were in the saloon and about five or six were there when the saloon closed and Jarmer and Boche walked down Norfolk avenue together. Herman Boche treated the crowd and it cost him ninety cents. Boche had Jarmer take a drink on the dime left. There was no quarrel between the men that Koehn could see.

Koehn testified that he belonged to both the Sons of Herman and the Eagles, fraternal organizations. Jarmer, he said, was a charter member of the Sons of Herman and Boche had been in for about two years. Boche belonged to the Eagles while Jarmer belonged but was in arrears.

"Now isn't it true that a cardinal doctrine of these organizations is brotherly love and mutual aid?" inquired Senator Allen, Boche's attorney.

"Yes, sir."

"And the members take an obligation?"

"Yes."

"You never knew any cause for ill feeling between Jarmer and Boche?"

Jarmer had applied for a license for 1907-8.

Fraternal Obligations.

Judge Jackson of Neligh, assisting the prosecuting attorney, took up the cross examination of Koehn. "Is it true," he asked, "that a member of one of these orders is under obligation to render financial assistance to another member just because he is a member?"

"Not under obligations."

"Not in either order?"

"I guess you can't make them do it."

"If a member of the order is in business do other members have to trade with him?"

"They have their own free will."

"Yes. Now was Boche intoxicated that evening when you saw him?"

"I didn't think so."

"Was Boche intoxicated when he left the saloon?"

"I didn't think so."

Koehn also testified that he didn't think that Boche staggered when he went down the street with Jarmer.

The cross examination further developed from Koehn's testimony that Boche in treating the crowd had come over to Koehn and asked him to drink, Koehn making the plea that he had just had something. Boche insisted, saying that he had plenty of money and to prove it drew out a small purse. Koehn said he told Boche that he must have \$100, but the latter said he did not have that much.

"Now you don't know that he had no other money?" said Senator Allen, taking up the examination again.

"No, I don't," the witness said.

"Did Boche ever show you any money before?"

"No."

"And couldn't Boche have come in to the saloon before 10:30? Might he not have come in at 10?"

"I don't think so. It was after the council meeting."

"Now wasn't it a rather unusual thing for Herman to be up town in a saloon at that hour?"

"No, I don't know that it was so unusual for him."

Edna Ingham was called on the stand as the next witness for the defense. She was asked to identify the photographs of her place, which she did. One photograph in particular showed a chair placed out in the road to represent the spot where the shooting occurred. Some of the pictures were ruled out as immaterial, the other photographs being examined by the jury.

County Attorney on Stand.

Senator Allen then asked Jack Koenigstein, county attorney to step into the witness chair. After the usual preliminary questions he testified that at the time of Jarmer's death he held a loan on the furniture in the Jarmer saloon for about \$178. This was secured by a mortgage.

"After closing out the estate and satisfying this mortgage how did the creditors fare?" inquired the senator.

"Seventeen per cent of their claims were paid."

"What would you say was the financial condition of Jarmer on May 1?"

"Well, his unsecured creditors got seventeen per cent."

"And some creditors filed no claims at all?"

"Yes, sir."

Jarmer's City License.

Julius Hulff, city clerk of Norfolk was called and examined by Burt Mapes, attorney for the defense. He brought Jarmer's old license papers, his 1907 application and the city records to Madison.

Last year's license tangle was found to have a possible bearing on the case. In 1906 through error the city clerk had drawn up the saloon licenses of the city to expire April 30, 1907, instead of the end of the municipal year, May 6. At the time there was some talk of the old council holding an emergency meeting and issuing licenses for the coming year before the arrival of the new municipal year with its new administration.

The defense sought to learn whether or not Jarmer supposed the license matter would come up before May 6, and was, as a result doubtfully anxious to get his license money ready without delay but the city clerk could not give definite testimony.

Pig Pen Information.

William D. Uecker, night watchman in Norfolk at the time of the shooting, was called in his former official capacity but because as a resident of East Norfolk he was supposed to be familiar with the vicinity just east of the river. He was examined closely by Senator Allen on East Norfolk geography.

Uecker's principal testimony was a dissertation on the pig pens south of the resort and on the route that Uecker thought Boche would naturally take in getting home. Uecker testified that a pig pen eighteen feet square was on Joe Trulock's property south of the resorts on May 1, but that it was later removed. He was questioned about it in especial detail.

Uecker was vigorously cross-examined by Judge Jackson, who too sought pig pen information. It is claimed that Boche spent the morning and afternoon of the tragedy in a nearby pig pen, unconscious.

Uecker left the stand at 6 p. m., when court took a recess until this morning at 9.

When court was called this morning the defense turned its guns on the character of Frank Jarmer, the man Boche killed. Up to a late hour this morning they had not been able to get their essential questions answered. The court sustained the objections of the state that this testimony was not material to the case.

County Attorney Jack Koenigstein was called to the stand when court met. As a member of the firm of Barnhart & Koenigstein he had been an attorney for Grace Cole, one of the

witnesses, who sought a divorce and whom the defense has sought to connect with Lee Vroman, cabman. The defense made an effort to get the divorce proceedings and petition before the jury but the court ruled out all questions and the county attorney was not required to answer.

The defense then called W. H. Field, clerk of the district court to the stand and succeeded in getting before the jury the court docket, showing that Judge Welch had taken Grace Cole's petition for a divorce under advisement.

Emil Kleiphorn, just moving from six miles north of Stanton to Hoskins, was asked to step into the witness stand by the defense.

"Did you know Frank Jarmer?"

"Yes."

"Did you know of an instance in Frank Jarmer's saloon where Jarmer took a pocketbook from a man's pocket?"

The prosecuting attorneys objected to this question, holding that it was immaterial. Judge Welch ruled in their favor and the question was not answered.

The state asked what relation the witness was to Herman Boche but the question was ruled out on the grounds that no evidence had been given.

Gus Wagner living southeast of Norfolk, was called to the stand. He knew Jarmer.

"Do you remember drinking beer in Jarmer's saloon a year or so ago?" the defense asked.

"Yes."

The witness had bought a glass of beer. Jarmer treated him to a second glass. The witness asked Jarmer to put some salt in the beer. He saw him put it in.

"Will you tell what happened?"

The witness was not permitted to answer.

"Were you taken sick after drinking the second glass?"

This was also held immaterial.

Broder Kettleson of Neligh, formerly of Humphrey, was called.

Bowder Kettleson of Neligh went on the stand. He said he had been in the Jarmer saloon. He went in with \$147 in money and got drunk. "How much money did you have when you went home that night?" The question was objected to as immaterial and the objection was sustained. The witness was excused.

Lawrence Bowers was called. He is fifty-seven years old, lives in Boyd county and formerly lived in Norfolk. He is a laborer. He had seen Jarmer a few times. "Did you ever visit Jarmer's saloon?" "Yes."

"Did you drink some there?" "Yes."

"What did you drink?" "Whiskey."

"Do you know whether you became sick in that saloon after drinking the whiskey?" This question was objected to as immaterial and the objection sustained. There was no cross examination.

Frank Lehman an Old Playmate.

Frank Lehman, aged forty-one, living southeast of Norfolk, was called. He and Herman Boche were boys together. There is seven years difference in their ages. Lehman knew the location of the resort where Boche shot Jarmer.

"If a man were going from these places to the Boche farm what direction would he naturally take?"

"He would go straight across the country."

"Would he go on the east side of the Northfork river?"

"Wouldn't have to come to town."

"Yes."

"By way of the William Boche farm?" "Yes. The William Boche farm and Herman's farm are separated by the Elkhorn river. William Boche had a boat, also the witness, in which to cross."

Witness had seen Herman Boche the last day of April. "Did you see him in the Jarmer saloon?" "Yes."

"At what hour?" "Between 5 and 6 in the afternoon."

Witness said he accompanied Herman Boche as far as the Junction enroute home from the Jarmer saloon.

"Did you have a conversation with Boche on the way home?" "Yes."

Refer to Saloon License Money.

"Now, Mr. Lehman, you may state to the jury if Mr. Boche told you he was going home to get money to pay Jarmer's saloon license."

The question was objected to as immaterial and the objection sustained.

Herman Very Sick as a Boy.

"Do you remember that Herman, when about fourteen years old, was afflicted with a severe sickness?"

"Yes."

"Did this sickness last some time?"

"Yes."

"Can you tell the jury how long?"

"About ten weeks."

Did it Affect Herman's Mind?

"Can you say whether there was any difference in the mental condition of Herman Boche before and after that sickness?" "Yes. He was not as bright afterwards."

"Have you noticed that condition from that time on?" "Yes. I have."

"How often have you seen Herman since that time?" "I can't just say."

Says Herman Heard and Saw Things.

"Do you know of his having heard things when there was nothing to hear?" "Yes."

"And seen things when there was nothing to see?" "Yes."

But This Was While He Was Sick.

Judge Jackson cross-examined the witness. "This defect of hearing and seeing things was when he was sick, wasn't it?" "Yes."

"Has he been troubled this way since he got well?" "Not that I know of."

Gus Wagner was recalled. "You say you have known Herman Boche since 1871?" "Yes."

"Herman Boche's father belonged to the Braasch settlement?" "Yes."

"Do you remember Herman being

sick as a boy?" "Yes, I remember something of it."

"Did you notice any difference in Herman before and after his sickness?" "Yes."

"What did you call the trouble that afflicted Herman?"

Wagner Called Herman "Daffy."

"Oh, I call it daffy."

"In what way did you notice a difference in Herman after this?" "He was simple minded and shunned by his companions. He talked to himself."

"What else did you notice?" "He was easily led by his companions—he would do what other boys wouldn't do."

"Do you know what his ailment was at the time he was sick?" "I don't know—only what his father said. This, as hearsay, was ruled out."

"You say you knew Jarmer?" "Yes."

"Did you have occasion to know the strength of Jarmer?" "Yes."

"You may state if you witnessed the strength of Jarmer?" "Yes."

Says Jarmer Was Powerful Man.

"From observation what would you say as to Jarmer being a powerful man?" "I should say he was very powerful."

Judge Jackson cross-examined the witness. Wagner lived in Norfolk until 1890, helping his father in the hotel.

"When was Boche sick?" "Shortly after I went there."

Wagner used to hunt on the Boche farm and sometimes stopped at the Boche house. He only remembered once when Herman was with him.

"How many times a year did you go to the Boche place and associate as a playmate with Herman?" "Three or four."

"For how many years?" "Seven or eight."

"The only reason you say Boche was daffy is because he talked to himself?" "I guess that's about all."

"During these years had he transacted his own business?" "I don't know."

"Did you ever transact any business with him?" "No."

"You say Herman could be induced to do things others would not do?" "Yes."

"What did he ever do that others would not do?" "He acted differently."

Here there was a long cross-examination.

Queried—Entered Gambling Houses.

Wagner said Boche was different because they could induce him to go into gambling rooms. When the boys in Norfolk saw him coming they said, "Here comes Herman; let's have fun with him."

"Did you ever see him play for money?" "No."

Witness, Himself, Had Gambled.

The witness admitted that he, himself, had also gone into the gambling rooms and that at times he had gambled.

Freythaler Effective Witness.

John Freythaler was probably the most effective witness the defense has had on the stand. He testified this afternoon that he was in the Jarmer saloon the evening before the murder. Boche was there and was drunk; Jarmer was sober. Mr. Freythaler said he heard Jarmer ask Boche several times to go with him to a resort, but Boche refused and wanted to go home. Jarmer told Freythaler that night that day and that he would get money the next day with which to renew.

Boche's Only Sister Testifies.

Boche's only sister testified this afternoon. She is Mrs. Max Manke of Wakefield. Her testimony was given in German and with the aid of an interpreter.

She said that Herman had always been afraid to go places alone after his youthful sickness.

Mrs. Manke was much affected when the name of her brother, William Boche, who was drowned in the Elk-horn last week, was mentioned.

Rebuttal, Then Arguments.

A short recess was taken after John Freythaler's testimony.

The biggest crowd during the trial was in the courtroom this afternoon.

Dr. Mackay on Stand.

Dr. Mackay was on the stand for nearly two hours this afternoon. He testified that he was superintendent of the Norfolk hospital for insane for two years, and having so much to do with insane people led him to investigate the matter and post himself on the ailment.

"You know Herman Boche?"

"Over twenty years."

"You knew Frank Jarmer?"

"Over ten years."

"Did you ever treat Boche as his physician?"

"I prescribed for him on several occasions."

"From your knowledge of the man and from the result of your examination which you made to prescribe for him, what would you call his condition?"

"Instability of nerve structure."

"In ordinary language, what as regards his general condition of mind?"

"Well, instability of the nerve system."

"Would you call it unbalanced?"

"Well, when a thing is unstable it is unbalanced."

The doctor was called upon to define hallucinations and delusions.

"Did he ever have hallucinations?"