

STATE CONCLUDES ITS CASE

County Attorney Completes Evidence in Charles Davis Murder Trial.

DEFENSE STARTS ITS INNING

Attacks State's Testimony as to Time Dr. Rustin Went Home—Mrs. Rice Completes Story.

(Continued from First Page.)

The shooting and had made a thorough search of the barn, cellar and premises for the revolver, but had failed to locate it.

Davis Story is Read.

Frank J. Sutcliffe then went on the stand to read the transcript of the story of Charles Davis told at the coroner's inquest. Davis said he saw Dr. Rustin about 5 o'clock Tuesday afternoon at his office to get some medicine for sleeplessness. Dr. Rustin, he said, told him to return at 8 o'clock that night and he would have the medicine ready for him. That evening he saw Abbie Rice at Dr. Rustin's office, but the doctor was busy so he went out and returned in about three-quarters of an hour. He went out later and got a bottle of beer, which he and the doctor drank, and about 10 o'clock they went out together, going first to the Alleyette saloon where Davis said he drank beer and the doctor whiskey. Then he said they went to Sherman & McConnell's drug store at Sixteenth and Dodge and while Dr. Rustin went in the store to get some morphine tablets he stood on the corner by the postoffice and watched Mayor Dahlman's automobile party which stopped at the corner while the mayor made a speech. Then, he said, they went to the Falstaff saloon and about 11 o'clock he took the West Farnam car. He got off at Fortieth and Farnam streets, he said, and walked down Farnam to the railroad track, and laid down in the grass. While he was walking around he said he had taken a number of the morphine tablets the doctor had given him and then took the fluid in the bottle which the doctor had told him contained chloride of gold and strontium which made him very sick and caused him to vomit.

Wanted to Commit Suicide.

"My idea was to go out there and take that dose," he said. "Were you going to commit suicide?" "I was." Davis denied he had any arrangement with Dr. Rustin to meet him again. He went to sleep and when he woke up the cars had quit running and he walked back to the Chatham, where he roomed. He denied standing at the corner of Fortieth and Farnam streets, where Mrs. Rice said she saw him when she parted with Dr. Rustin. "Did Dr. Rustin give you this medicine for the purpose of committing suicide?" he was asked. "Not that I know of."

"He didn't say anything about dying himself?" "No."

"You went out to Fortieth and Farnam with the intention of killing yourself?" "Yes."

"Did Dr. Rustin have any idea you wanted the medicine for the purpose of killing yourself?" "He may have suspected it. I didn't come out and tell him."

Later in his evidence Davis said he believed Dr. Rustin thought he wanted the medicine for suicide purposes. He said he told the doctor the suicide mania had come over him and he had tried it the week before. He had taken nine sleeping powders the doctor had given him, but he woke up about 11 o'clock the next day alive. He said he told the doctor this. "I want something now that will do the work," he said he told the doctor.

Detective Maloney followed Davis. He said he had made an examination of the territory around Saddle creek, where Davis said he had laid down and taken the medicine. East of the creek, he said, there was a vacant lot and beyond that a single tree instead of a clump of trees as Davis said he saw. The lot was grown to sunflowers and no evidence could be found that anyone was there.

State Rests Case.

County Attorney English then offered in evidence the bullet found in Dr. Rustin's body, the morphine tablet swept up by Hannah Dineen at the Rustin home, the gun identified by Abbie Rice as the first



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one Dr. Rustin procured, the bottle of acetic taken from Abbie Rice, the vest Dr. Rustin had on the night he was killed and the photographs of the Rustin home.

"That's our case," said Mr. English after the offers had been received. Attorney Woodrough, for Davis, then made a formal motion to discharge the defendant, which the court overruled. The defense started out with witnesses tending to show that Davis did not get on the street car at Sixteenth and Farnam streets at 10 o'clock, as several witnesses testified, and that Dr. Rustin and Mrs. Rice did not start on their last walk out to the neighborhood of Dr. Rustin's home at that time. The time Mayor Dahlman's automobile party stopped at Sixteenth and Dodge streets, as both Davis and one of the state's witnesses said Rustin was in the Sherman & McConnell drug store at that time.

Henry Staples, barkeeper in the Alleyette saloon, was the first witness called to the stand. He said Dr. Rustin and a short stout man, presumably Davis, came into the saloon at about 10:30 o'clock. Dr. Rustin, he said, drank whiskey, and the short man a small glass of beer, and then went right out. On cross-examination he said he could not tell definitely what time it was, but it was near 10:30. He admitted to testified before that both men drank beer, but he said his recollection now was Dr. Rustin took whiskey.

Mrs. DeBrand De Christian, who runs a

confectionery store at Sixteenth and Dodge, testified Mayor Dahlman and his party began speaking on the corner at about 10:30. She said she looked at the postoffice clock when a woman from an adjoining theater called her attention to the fact it was after 10 o'clock. Alphonse De Christian, her brother-in-law, testified to about the same time and created considerable amusement by his broken English.

Charles Emery testified he was in the Falstaff saloon between 10 minutes of 11 o'clock and 11 and saw Dr. Rustin there. He also saw Jack Welch, who had previously testified for the state. Mr. Welch testified it was about 10 o'clock. John McKenna also testified he saw Dr. Rustin at the saloon about 11 o'clock. He said he had gone to the saloon from the court house, where he had delivered the election boxes from East Omaha.

Dentist Clerk in Place.

W. E. Roberts, a clerk in the cigar store of Niles & Moser at Sixteenth and Farnam, gave another piece of important testimony. He said the clock that hangs on the corner of the store was taken down September 1 and was down for two or three days undergoing repairs. This is the clock P. B. Myers testified he looked at when he saw Dr. Rustin John Abbie Rice and noted it was 10 o'clock. Fred Metz said he rode home on the street car with Dr. Rustin about 6 o'clock the evening preceding the murder and there was no one with Dr. Rustin. Mrs. Rice said she went out on the same car with Dr. Rustin and rode on to Dundee after he had alighted at Fortieth and Farnam streets, the climax of the state's evidence in the Davis murder trial, Mrs. Abbie Rice, Friday morning related to the jury the conversation she had with Dr. Rustin the afternoon before his death, in which he told her Charles E. Davis, the defendant, had promised to shoot him.

When court convened Judge Sears formally overruled the objections made by the defense Thursday to this part of the testimony and the question asked by County Attorney English the night before was read to her. The question related to what Dr. Rustin had said to her when he came back to her in his private office after consulting someone else in the public reception room on the afternoon before his death. "He said he had found someone else to do the deed," said Mrs. Rice. "He said he did he say?" "Yes," she said. "He said the man who had promised to kill him and the man was in the other room and his name was Charley Davis. He said he was to do it in return for poison with which to kill himself." "Did he tell you when or where?" "He said the man was to come back to the office at 8 o'clock."

Crowd Not So Large.

The crowd in the court room was somewhat smaller than it was the day before, though all the seats were taken and many were standing. The interest in Mrs. Rice's story was intense and everyone strained to catch every word. Mrs. Rice was on the witness stand until 11:15, when she was released after a searching cross-examination by Mr. Gurley. The state immediately began putting on minor witnesses, whose examination required only a few minutes each. After Dr. Rustin had told her about the defendant, Mrs. Rice testified he called up Myers-Dillon's drug store and ordered a bottle of acetic.

"Did you see the man in the other room?" asked County Attorney English. "Yes."

"Who was he?" "Charles Davis."

Mrs. Rice says she returned to Dr. Rustin's office in the evening and Dr. Rustin came in about 7:45 Charles Davis, she said, came in about 8 o'clock. She described his clothes, her description corresponding minutely to that given by Dr. Lord of the man he saw coming east on Farnam as he was hurrying to the Rustin home.

"Dr. Rustin said Davis was connected with some people at the First National bank and had tried to kill himself several times and wanted to do it now," she said. "Before Davis came in did you have any conversation with Dr. Rustin about the plan?" "He was asked."

"He said he was going to do it out near the doctor's home that night."

She said the doctor divided the bottle of

Thursday after the tragedy in which she said Dr. Rustin was in his usual jolly mood and that she knew nothing about his affairs. She said she remembered talking to a reporter, but could not recall just what she had said. After a short rest and a recess-examination Mrs. Rice was allowed to leave the witness stand at 11:40 o'clock.

Strong Supporting Evidence.

Strong corroborative evidence was given by A. W. Larson, a foreman in the street car line at Twentieth and Harney streets. He said on the night of September 1, at 11:20 o'clock he took a car at Fortieth and Farnam streets and a woman got on the car with him. Mrs. Rice was asked to stand up and Mr. Larson said it was a woman of her size and figure. "She had on a dark shirt, a white shirt waist and a merry widow hat," he said. His reference to a merry widow hat caused a burst of laughter from the crowd. His description of the clothes worn by the woman corresponded with that given by Mrs. Rice herself.

"Dr. Rustin said for me to wait a while and if Davis would not kill him he would come to me. I waited for the third car and then took it and came down town."

She said a man got on the car at the same time she did. She said she went to Clara Gleason's place, where she had a room, reaching there about twenty minutes after 12 o'clock. She said she telephoned Dr. Rustin's home twice before going to bed. The first time she got no response and the second time someone told her the doctor was not in. She said she then went to bed and got up before 5 o'clock the next morning, reaching there about twenty minutes after 12 o'clock, but the court would not let her say with what success.

This Corresponds to the Evidence of Hannah Dineen, the Rustin Servant Girl, who answered the calls.

This closed the direct examination of Mrs. Rice by the state and Judge Sears ordered a short recess. Davis Not in Court Room. A mild sensation was caused when court convened again by the discovery after Mr. Gurley had asked Mrs. Rice several questions in cross-examination that the defendant, Charles E. Davis, was not in the court room. Judge Sears ordered proceedings stopped and Mr. Woodrough went out to find the missing defendant. He discovered him in one of the jury rooms consulting with Attorney John W. Parish. After he was brought into the court room the judge ordered all the evidence taken in his absence to be read to him.

Mrs. Rice said when it was planned that Dr. Rustin was to be shot in his office he was going to telephone to his wife that he was hurt.

"Was he going to say, 'A man shot me'?" asked Mr. Gurley. "I don't believe he said what he was going to say."

Mr. Gurley went over all the important points in her evidence and subjected her to a close cross-examination. Her story at the close was unshaken. She was asked about an interview in a local paper the day before.

"A marked increase is shown in the live stock marketed this year, the total of 48,924,448 pounds, comparing with 24,737,715 pounds in 1907. The historian accounts for this by the shipments of big range herds before the advance of homesteaders and the large increase of fat stock on the farms. It will be observed that, notwithstanding South Dakota's classification as a wheat state, corn, as last year, led in the value of yield, while the barley crop of 24,600,000 bushels makes South Dakota one of the most important states in the production of that cereal.

The National Association of Wool Manufacturers estimates the South Dakota wool crop at 3,900,000 pounds, worth \$2,000,000, the largest ever credited to the state. There is no material change in dairy and poultry products, while creamery production is diminishing and farm production correspondingly increasing. The miners have had a satisfactory year and the output of \$5,000,000 is the biggest ever reported.

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And if, by some giant knife, Manhattan island could be cut like a pie, down through the lofty Metropolitan tower, to the extreme depth of the elevator cylinders beneath the City Investing building, all unbelievers would be offered ampleocular proof that within the last few years underground life in New York has developed at an almost unbelievable rate.

Following the trail of the elevator shafts, sub-basements have followed basements, and have in turn been followed by sub-sub-basements, until beneath the Hotel Belmont at Forty-second street and Park avenue elevator service has been extended down to the fifth level, a distance of fifty-

three feet and four inches below the level of the street. True, it is only the freight elevator cars which descend to this bottom level at present, but passenger elevators even now descend to the third level or story below the street, on which the hotel laundry is, and they will probably descend the entire distance to the fifth level some day. A better idea of the depth to which activities are carried below the surface of New York at this point is afforded by the fact that the subway, as it swings from Park avenue into Forty-second street, passes through the second level or story of the hotel building below the street, and that business is daily going forward in the three levels below the subway. If the situation were the most common place in the world, there are numerous other buildings in the city, especially among those recently constructed, in which the elevator service is extended beyond the basement to the sub-basement.

An illustration of the growing tendency to develop the underground possibilities of New York at this point is afforded by the fact that the city engineer, when plans were recently filed for a new skyscraper, to go up on the site of the Tower building, the original New York skyscraper, at 50 Broadway. The plans for this new building call for six stories below the level of the street.—New York Tribune.

Testimony in Lower Fare Case. SIOUX FALLS, S. D., Dec. 4.—(Special.)—On Saturday of this week J. Howard Gates, of this city, who some weeks ago was appointed by Judge Carland, of the United States court, as special master to take testimony in the 25-cent passenger rate case, will depart for Chicago, where he will commence the work of taking testimony in the case.

When the testimony has all been taken, Special Master Gates will make his findings of facts from the testimony and report the same to Judge Carland, who then will make his ruling on these findings of facts as submitted by the special master.

Snow Storm in East. CHICAGO, Dec. 4.—Winter's first onslaught on wire service in the east was made today when a wet snow, accompanied in some places by a high wind, demoralized telegraph service between Chicago and Pittsburg. Linsmen were ordered out along the line to make repairs as fast as possible. In other districts from Chicago conditions were reported normal.

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