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THE EZELL MURDER CASE.

(Continued from page 1) Jennie Doyle was then placed on the stand. She was the witness that was found after the coroner's inquest and who appeared before the grand jury. Her testimony was sensational, both by reason of the evidence she gave, her intelligence and her remarkable coolness and exactness under cross fire. Her testimony could not be shaken at any point and she showed no hesitancy when questioned by Mr. Morgan that her testimony would be impeached. Questioned by Mr. Ponder, she testified that she was in her bedroom about one block from Ezell's house. That from the window of her room on the gallery she had an open view of the doorway at the side entrance to Ezell's. First saw Mr. Birch in the alley. He was in shirt sleeves and had on light pants. He and his wife were in this street or alley. Noticed them because she heard loud words by both. Mr. Birch was doing nothing when he was shot. He was out on the ground. She was fired as Mrs. Birch was flung from him. He was shot from the door. Was standing at side of steps out on the ground. Mrs. Birch stood on the steps screaming. Ezell had pistol when he came from the house. Cross examined by Mr. Morgan, stated she saw Ezell fire. Thought it was a pistol. Mr. and Mrs. Birch were fussing at the steps. Mr. Morgan warned her that he expected to prove by her mother that she had told a different story June 11. She said she had not told her mother differently. That she did not believe her mother would lie, but she might have misunderstood her or might not have remembered correctly. She clung positively to her statement. Counsel for defense maintained that it was impossible to see any one standing in the door of the Ezell house from the window of Jennie Doyle's bedroom. In order that this question might be settled court adjourned to Thursday morning, when the jury was taken to the scene of the killing. Thursday morning Judge Carter and members of the bar attended the funeral of Walter A. White, at the Methodist church on the arrival of the 9:40 train, and Court did not go into session until afterward. It was nearly 11 o'clock when the jury and the defendant reached the scene of the killing. Sheriff Brewster was placed in the doorway of the Ezell home in the position in which it was supposed the defendant stood when he fired the shot, according to the testimony of Jennie Doyle. Each member of the jury was stationed in the position occupied by Jennie Doyle when she saw the shot fired. This window is almost on a direct line with the side of the Ezell house on which the door opens, hence if any one stands so that the body does not protrude from the door he can not be seen, but if the body is exposed outside of the door in a leaning posture, notwithstanding the trees there is a clear vision from the window of Jennie Doyle's room, but only in one particular position. The jury was shown where the body fell by the steps and where the blood stain was, and Judge Burns stood at that spot while the jury tested their ability to see him from the house. As no one was allowed to talk with the jury, it is not known what conclusion they came to in the matter. But others on the grounds made the experiment with varying success, depending upon the position secured at the window and upon what position was taken in the doorway. Any one standing on the top step could be clearly seen. Granville Moore testified that he had known Birch eight years. That he lived about an acre and a half from the Ezell house. That he saw Birch three or four minutes before he was killed. Saw him come out of his house before he was killed. He had nothing in his hand. Cross examined by Mr. Morgan, said he saw Birch go directly from the door. That he would have had

to pass the Ezell house if he went into the side entrance. Did not hear him use loud words or curse. He went around the kitchen toward the street. Towards Ezell's house. That Birch was walking rapidly. Heard no holiering. Examined by Mr. Ponder—That he heard the report of the gun. Saw Ezell come out of back gate with pistol in his hand, immediately after report of gun. Ezell's wife was behind him. Fannie Elsie testified that she worked at the Birch home. Was at the house when Birch came home and into the dining room. Had on light pants but no coat. Birch went right over to Ezell's. Had nothing. Didn't look like he was mad. Testimony of Batiste Galouze was taken to show that Birch always walked fast, as if in a hurry. The defendant, James Ezell, was placed on the stand, but he spoke so low that neither judge, jury nor attorneys could hear him. It was very difficult to get his testimony. He was frequently urged by the court and by his attorneys to speak louder. He said he had gone out of business since he had been in jail. That Birch was his stepfather. (Objection was here made to any testimony as to previous quarrel with Birch and jury was withdrawn. It was then stated by defendant's attorneys that they wished to show that Ezell's life had been threatened by Birch. Question was finally withdrawn and jury recalled.) Ezell said killing occurred June 6. Was home with his wife and mother. Saw Birch between 8:30 and 9 in the morning. Saw him running. Saw him come out of back door toward his (Ezell's) house with gun. Mother ran out and grabbed him. That Birch said, "Let me go, I want to kill that damned little son-of-a-gun." That his mother held him away, but he kept on advancing toward house. Got on steps but his mother shut the door. That Birch jumped into door, when he struck Ezell's mother and said "damn you, you are going to get killed yet." Mrs. Birch testified that she came to Covington in 1903. Was married to Birch. Had known him 11 years; 5 years before she married him. Boarded with her. Jim lived with them three or four years. Birch had assisted him. Never did go on Ezell's notes. Saw Birch morning he was killed. Had gone to Ezell's to get milk. Saw Birch come running down stairway. Ran around house and met him 20 feet away. Birch said that scamp or scoundrel had him arrested. That he would kill Ezell. Birch was white and enraged. She struggled with him to the door. Screamed, but no one came. I said, don't go near the door. He said "I'm going to kill the little s---b---." Birch had no gun. Said breakfast was eaten, on day of killing at a quarter past six. That she had gone to Jim's to get milk because her cows were diseased. It was about 8 or 9 o'clock. Jim had finished breakfast. Mrs. Ezell testified that she was the wife of James Ezell. Had been married 8 months. Was home June 6 when Mr. Birch was killed. Saw him go to his house and turn and come back. Mr. Birch said James had had him arrested and was going to kill the little scoundrel. Mrs. Birch wrestled with him, she jerked the blinds open and struck Mrs. Birch and came up the steps into the door. That her husband backed into the door of a second room, but that Birch continued to come forward, and was putting his hand behind him. That when her husband fired Birch fell back the door. It was testified that the gun would not shoot again or become choked, and that Ezell got a revolver from a drawer and went to the door to see if Birch had been killed. Dr. Gautreaux testified that the bullet that killed Birch ranged slightly downward. Coroner Bulloch and Marvin Poole, embalmer, testified also that the bullet ranged slightly downward. Judge Pechon testified that Ezell had come to him to have Birch put under peace bond 30 or 40 minutes before the killing took place. The state objected. This testimony was excluded from the jury. Ezell asked that it be best for him to see if Birch had been killed.

but wanted to be protected. Court ruled that it was a self-serving declaration. That no overt act or hostile demonstration had been proven. That deceased was unarmed and in his shirt sleeves and could inflict no harm on defendant. A Beaucaudray, constable and deputy sheriff, testified that it was customary not to put business people under arrest, but to notify them to come into court. That when notified, Birch got pale and nervous and turned around and left the store. That killing took place 15 minutes afterward. That the warrant was issued but not served. Birch had asked for what he was put under peace bond, and then said, "that g---d--- son of a gun. I have a good mind to break his neck." All threats were excluded by the Court on the grounds stated before, that no hostile demonstration, etc., had been shown, and exceptions were taken in each case. Ezell was put on the stand again to prove that he was in Slidell when the indictment was returned against him and that he came to Covington and gave himself up. The case was closed and District Attorney Brock read the law governing the case to the jury. Attorney F. J. Heintz, Mr. Heintz then addressed the jury for the defendant. Mr. Heintz stated that he was suffering from physical pain and had found it hard to keep up with his required work. He had expected a few moments rest during the address of District Attorney Brock, and regretted that he (Brock) had opened the case by simple instructions as to the law, but that he would have to accept the situation. Mr. Heintz's appeal to the jury was largely one of sympathy for the accused, whom he called a mere child, and for the devoted wife of the accused. Mr. Heintz said that counsel for the State would tell the jury that witnesses who testified for defendant were interested in his acquittal. That the defendant's wife had stated that she would like to see him acquitted. Gentlemen of the jury, if any of you had a wife who would not like to see you acquitted of a crime with which you had been charged, would you think of her? Her loyalty to her husband is a credit to her, and you, gentlemen, should be most positive of the guilt of the defendant before blighting the life of such a devoted wife. He said any other man would have protected himself under the same circumstances. He urged the members of the jury to take the accused's place and ask themselves what they would have done. Has it been me, Mr. Heintz said, the testimony of Jennie Doyle would have been true, for he would have waited for the man to come into his house, but would have shot him down in the doorway. He asked the jury if, under such circumstances, they were prepared to mark the young wife with the brand of Cain—herself and her coming generation. Mr. Heintz pictured the faithfulness of the young wife, and appealed that her life be not blighted, and innocent people be not made to suffer. Mr. Heintz spoke but 15 minutes. Attorney Amos Ponder. Mr. Ponder said there was no case of criminal prosecution in which some innocent person was not made to suffer. There was no criminal who did not have a mother, father, wife or relatives who would suffer by his conviction. Mr. Ponder spoke of the early breakfast at 6:15, and the going for milk at 8 or 9 o'clock. He said that the reason given for going after the milk was that Mrs. Birch's cows were sick and that Ezell's cow was a Washington parish cow and a St. Tammany parish cow. As breakfast had been finished, Mrs. Birch said she wanted the milk for a strange woman at the house. She had not been able to tell who the strange woman's name was or where she went to or where she was now. As for Birch, all had seen him at the same place, outside by the steps. That he never made any attempt to assault Ezell. That no arms were found upon his person. All he had was a small penknife. Mr. Ponder ridiculed the testimony of Mrs. Birch. He asked the jury if they had noted the expression and conduct of the witness on the stand. How her eyes had glittered, her features set and her face had paled when she announced that she would live with no man who had struck her. "A rabbit might spit at a bulldog," said Mr. Ponder, "but no man would dare to strike that woman." (Mrs. Ezell frequently whispered to her counsel, Mr. Morgan, while Mr. Ponder was making these remarks. Mrs. Ezell was at all times wide awake to everything that was going on.) Ezell said Mr. Ponder, stated that when on the second step when he fired, but it was impossible for Birch to have been shot either on the steps or in the house without blood should have marked the spot. Blood would have been on the floor or on the steps. But the blood was on the ground three or four feet away. That as a physical fact he could not have been shot in the house, because Ezell was a small man and Birch a tall man, and according to the testimony the shot ranged downward. That the testimony of Jennie Doyle agreed with the physical facts. She saw the shooting on a bright day. The jury reviewed the scene on a dark, cloudy day. Jennie Doyle saw the pistol in Ezell's hand. Ezell admits he had a pistol in his hand. If you were to wipe out all evidence but Ezell's he would convict himself. He never said a word. Never made any effort to keep Birch out. Never warned him away. Didn't show him that he had a gun. That a man cannot plead self defense without an overt act or hostile demonstration. Mr. Ponder started to speak at 7:38 p. m. and until 8:30. District Attorney Brock closed the case. Mr. Morgan in answering the statement that Mr. Birch was not arrested and put under bond, said, "Why was not deceased arrested?" I tried hard enough to get this fact into the record—(Here Mr. Brock objected). The intimation, said Mr. Morgan, that Mr. Birch might have been killed in order to get possession of the property is preposterous. Every lawyer knows and the State's counsel knows that the property does not go to Mrs. Birch but to Mr. Birch's relatives. That he (Mr. Morgan) should believe in the punishment of

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the law, but not in a miscarriage of justice. That Moore had testified that he saw Birch practically running out to the defendant's home, and Raymond, that Birch was running out of his home. Jennie Doyle said the shooting was done in the doorway. She could not have seen the shooting unless he struck his body out of the door. The angle of the gun was slightly downward according to the testimony of Dr. Gautreaux, Dr. Bulloch and Mr. Poole. Had he fired the shot from the steps the wound would not have been slightly downward but would have had a positive slant at the angle at which the gun must have been held. But the fact was, that as Mr. Birch rushed forward he was inclined forward in a position to cause a wound of the description given by the physicians. That he was in fact shot as he took the second step into the door. Referring to Mr. Ponder's remarks as to Mrs. Birch, Mr. Morgan said that the time would never come when Lewis Morgan would be found casting slurs at a mother's love for her child. That the grandest, most noble sentiment in the human heart is the love of a mother for her child. That Ezell was defending himself in his own home. That self-defense was one of the dominating instincts of manhood. If a man of superior strength attacked you, would you defend yourself or would you allow him to brutalize you like a cur dog. That whenever this right to protect one's self is prohibited, the law will sink and crumble into a common ruin. Mr. Morgan spoke from 8:40 to 9:30 o'clock. District Attorney Vol Brock, District Attorney Brock closed the case. He said there were but three theories: First, that Birch stood four feet from the steps when he was shot. Second, that he stood on the second step, as defendant said when on the witness stand; or third, that he was in the room when shot. Which is more reasonable? Is it not reasonable to suppose he was shot inside the room, when the bullet broke off a piece of rib and ranged downward? Why should Jennie Doyle wish to convict an innocent man? You know that this witness was away in Baton Rouge, and her absence delayed the case one day. Does not every act of that witness go to show that she did not wish to testify? Was her statement a reasonable statement. Birch was four feet from the step, where he fell. That Ezell was shorter in stature than Birch, still the bullet ranged downward. He said it hurt him to prosecute this case, because the defendant's wife had been known to him as a school girl. He felt for her as any other person would feel for her—nothing but sympathy. But the defendant was guilty and should be punished. The Charge to the Jury. Judge Carter then read the charge to the jury. The charge covered every point that could arise. The part that especially applies to this case is embraced in the following extract from that charge: The killing of a human being is justified when committed by any person to prevent death or great bodily injury being committed upon him. Homicide can be excused or justified upon the ground of necessity alone. The necessity must be apparent, actual and imminent or the defendant must from all the circumstances have honestly believed it to be so. In other words, the defendant may safely act upon appear-

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6th, 1917, calling a special meeting of the executive committee to be held on August 10, 1917, he recommended, and that the whole parish board shall meet during the first week in August to transact the same business as was to have come before the above mentioned committee, and any other business as may properly come before the meeting. The date of this special meeting is to be set by the president of the board. Carried. Moved by Mr. Levy, seconded by Mr. Liddle, that the superintendent be instructed to advertise for official journal for the year beginning Aug. 1, 1917, and that bids be opened at the special meeting to be called during the first week in August. Carried. The following resolution was introduced by Mr. Miller, who moved its adoption. It was seconded by Mr. Liddle: It is the sense of this board that a full attendance of members at each meeting is desired, so that an intelligent expression of the wants and wishes of the different wards represented may be had; therefore be it Resolved, That any member of this board who is compelled to be absent from any meeting should send in a written excuse to the School Board and make such requests regarding schools in his ward as he may desire. Resolved, That it is the idea of this board that absence from three consecutive board meetings without a reasonable excuse shall be sufficient cause for calling for his resignation. Adopted. On motion duly seconded, Mr. Liddle, was given a leave of absence from any meetings that may be called up to the regular October meeting. The following resolution was introduced by Mr. Liddle, seconded by Mr. Levy: Resolved, That in accordance with invitation issued by State Supt. T. H. Harris, for a convention of school board members to meet in Baton Rouge on the 16th and 17th of the present month, that all members of this board, together with the superintendent do attend said convention at the expense of the general fund. Carried. Mr. Levy submitted bids for the repairing of the Lewisburg school house, as follows: Smith Bros., \$308; J. B. Dickens, \$213. Moved by Mr. Evans, seconded by Mr. O'Keefe, that the work of repairing the Lewisburg school be given to J. B. Dickens for the amount of his bid of \$213. Carried. Mr. Levy, as chairman of the Mandeville building committee, submitted the following report: Minutes of the meeting of the building committee of the Mandeville public school held at Mandeville on July 10, 1917. Present: Supt. E. E. Lyon, F. E. Vix, N. H. Levy. Bids for general contractors on the building of the new school were submitted, opened and the bids were as follows: Smith Bros., Mandeville, \$12,784; C. V. Quave, Covington, \$13,000; W. H. & R. B. Crews, New Orleans, \$13,790; A. Barbay & Moore, New Orleans, \$11,525. Bids from contractors on building of the fences and bridges surrounding the school property, were submitted, opened and the bids were as follows: Smith Bros., Mandeville, \$308; Dickens, Mandeville, \$399; Glozier, Mandeville, \$325. On motion made by Mr. Vix, seconded by Mr. Levy, it was resolved that the contract for the construction of the building be awarded to Messrs. Barbay & Moore, at the amount as submitted above, for \$11,525, it being understood that all the legal formalities affecting the bonds, etc., shall be fully satisfied previous to the signing of the said contract and that Architects Nolan & Torre be authorized to draw up the said contract and submit it for the signature of both parties hereto without delay, as suggested above. On motion duly made and seconded, and resolved, that the bids received and action thereon be deferred for the present time. The bid on the furniture was read and discussed, and on motion made, duly seconded, it was resolved: That furniture for only four of the six class rooms be purchased at the present time, and that all the other furniture, except for the two class rooms, be purchased at the prices stated in the estimate submitted thereon without delay. There being no further business the meeting adjourned. HERMAN H. LEVY, F. EDWIN VIX.

Mr. Levy reported that furniture for the building had been purchased for future delivery. Moved by Mr. O'Keefe, seconded by Mr. Kahl, that the report of the committee be received and spread on the minutes. Carried. Moved by Mr. Dutch, seconded by

Mr. Miller, that the following teachers be elected for the coming year to serve in positions named by the superintendent: Victor A. Lord, H. U. Baker, Mabel Lann, Beulah Baker, Viola Keller, Ernestine Whittle, Alma Frederick, Corlie Theobald, Isabel Smith, Ellis Scogin, Mary A. Linderbaum, Nina Hardesty, Jesse Mae Rayne, Helen Walsh, Edith Luecke, Eleanor W. Rayne, Jennie Cooper, Pearl Dutsch, J. W. Wilson, A. J. Park, Mamie Pavyinger, Victoria Pittman, Mrs. V. Z. Young, Hazel Doast, Christine Fitzsimons, Westie Lanning, Eliza Stockton, Marie Louise Cases, Mary Pinckney, Eva Whites, S. Scheibhaus, E. W. Kemp, Ethel Talley, Edna Missel, Leo Smith, Rose Perilloux, C. H. Murphy, Myrtle Sharp, P. A. Ross, Marguerite Abel, E. G. Lafour, Cora McNeill, Louise Peterson, H. F. Stafford, Mrs. H. F. Stafford, Mamie Braig, I. V. Parker, Mrs. W. F. Krentel, Sibyl Nehls, Rose Crawford, M. Modinger, Georgia Jay, Mildred Smith, Virginia Dossat, Barbara Englehardt, Leah W. Perkins, Martha Whittle, Lisette Dollar, Mrs. Elulita Burns, Jean's Pritchard, C. A. Chandler, Miss B. Lawrence, W. M. Galloway, Mrs. Aline Sharp, W. R. Galloway, Viola Dickey, Ola Scarborough.

Whereas, it is the belief of this board that a home for the principal of the Waldheim school is necessary so that the principal may live near the school house and have general supervision and care of the house during vacation time, as well as during the school year; and Whereas, C. W. and H. A. Dutsch, of Waldheim, have offered to sell their house and site situated near the Waldheim school for the sum of \$350.00; and Whereas, we believe that the purchase of this house and site is to the best interest of the Waldheim school, therefore be it resolved, That this board make this purchase for the sum above mentioned and that the board subscribe for four shares in the Peoples' Building & Loan Association, of Covington, La., according to the rules and regulations of said Association, and that the president of the Parish School Board be and he is hereby authorized to sign any papers necessary to carry the above and foregoing into effect, it being understood that the funds of the District No. 11 tax fund be pledged to meet any financial obligations the board may be under because of this resolution. Carried unanimously. Moved by Mr. Evans, seconded by Mr. Robert, that the rule regarding teachers having three years of experience teaching before they may be employed in either of the high schools shall be so amended that teachers with two years of teaching experience will be accepted, provided the teacher is a graduate of a normal school or college. Carried. Moved by Mr. Robert, seconded by Mr. Levy, that the superintendent advertise for bids for the painting of the Madisonville school house on the outside with two coats of best paint, and that the bids be opened and contract awarded at the special meeting of the board to be held during the first week of August. Carried. Moved by Mr. Dutsch, seconded by Mr. Levy, that the superintendent advertise for bids for the painting of the Madisonville school house on the outside with two coats of best paint, and that the bids be opened and contract awarded at the special meeting of the board to be held during the first week of August. Carried.

Moved by Mr. Kahl, seconded by Mr. Miller, that the meeting stand adjourned, subject to call. Carried. N. H. FITZSIMONS, President. ELMER E. LYON.

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