

WAS THERE BLOOD ON THE PASTOR'S SHOE?

Testimony That the Stain Was Not Blood.

DR. CHENEY'S ROLL CALL.

The Book Shows That Durrant Was Not Marked Absent From the Lecture.

MARKS ON THE BELFRY DOOR.

Evidence to Show That the Pastor's Chisel Was Not Used—The Defendant's Alibi.

THE DURRANT TRIAL IN A MINUTE—THE ROLL CALL.

The testimony offered by the defense yesterday was mainly upon three points: Was a blood-stained shoe found in the pastor's study...

On the first two points Sergeant Reynolds, Sergeant Burke, Detective Cody and Detective Seymour testified, with the result that Sergeant Burke said the police had been satisfied the stain on the shoe taken from the study by Sergeant Reynolds was not blood, and Detective Cody testified that one of the marks on the door jamb was old and covered with paint...

THE MORNING SESSION.

The Marks Were Not Made by a Chisel, Cody Testifies—Roll-call of Dr. Cheney's Lecture.

The biggest and weightiest exhibit yet offered in the Durrant case was produced by the defense yesterday. When the spectators began to crowd into the courtroom in the morning they found a whole, life-size door frame with a practical door swinging from it. It proved to be the door and door-frame leading into the belfry of Emmanuel Church, taken bodily from the church and set down near the skeleton model of the tower and belfry that stands in the corner of Judge Murphy's court.

Officer Russell was called upon to nail the door-frame exhibit in a standing position by bracing it to the window casing, and then Sergeant Reynolds, who was still on the witness-stand, opened the door, walked through it, looked it over and finally identified it as the door and doorway to the belfry.

THE SIXTEENTH DAY.

As to the Roll-call and the Chisel Marks on the Door—Slow Progress.

Not a great deal of progress was made in the defense of Theodore Durrant yesterday. Most of the day was spent in argument between the counsel on both sides and the court concerning the admissibility of evidence touching two points.

The first was with reference to the chisel marks on the door of the belfry, and the second was on the admission of the roll-call of Dr. Cheney's lecture at Cooper Medical College on the afternoon of April 3.

It was generally thought honors were about equally divided on these two points between the prosecution and the defense. It was the purpose of the defense to show that the marks on the door jamb were made by the chisel found in the tool chest in the pastor's study. To this end the door itself and its frame were brought down from Emmanuel Church and placed on the stand, among the multitude of other silent witnesses.

There was then a deal of questioning concerning these marks—their size, their location, their description and all that—but in the end Detective Cody told Mr. Barnes and the jury and the court in general that upon examination by a magnifying-glass the first mark was an old one and had been painted over, and that the second mark was plainly seen to be, when the door was shut, the mark left by the use of a "jimmy." So it would appear that the chisel found in the pastor's study did not produce the marks on the belfry door-jamb. At least this was the last evidence offered on the subject yesterday by the very witnesses the defense had called to prove the contrary.

And the end of it all was an understanding that when sufficient testimony has been introduced touching the condition of the door at present and the state of good or bad preservation it may be in the jurors will be permitted to examine the marks for themselves and form their own conclusions.

Another point that was discussed in the morning concerned the shoes found in the pastor's study. There was a dark spot on one of them. But Sergeant Burke testified that when the shoes were first examined the police came to the conclusion that the spot was not a blood stain and for that reason had paid no further attention to the shoes.

However, Sergeant Reynolds had preserved that shoe. The spot was still on it. He put a chalkmark around the spot, and the shoe was added to the long, long list of still-life exhibits.

Came Dr. Cheney then and his rollbook of the lecture delivered by him on the afternoon in question. Came also, almost at the same moment, a lengthy argument over the admissibility of that rollbook, which was not concluded till late in the afternoon.

The rollbook showed that W. H. T. Durrant, as Mr. Deuprey never fails to call him, was not absent from that lecture. That is, there is no absent mark, or A, after his name. But neither Dr. Cheney nor Student Gray, who made the tally and called the names, has any knowledge of whether Durrant was present and answered his own name, or whether the "here" was called out by some one else in the room.

As to the admissibility of the book, Mr. Barnes soon discovered that it was not the original book of entry, and that the entries had first been made on a page headed "March 31," and subsequently erased and transferred to the page marked "April 3." Upon these grounds he fought stoutly the admission of the record, but Mr. Deuprey finally triumphed, and the book went in as evidence—or, more accurately, as an exhibit of the defense.

Judge Murphy remarked that in his opinion the case was similar to that of a bookkeeper who should have made a correction in his books. And the fact is that Student Gray was there to testify that he

made a mistake in making the tallies and that afterward, at Dr. Cheney's direction, he made the correction.

Then as to testing the accuracy of the rollbook, Mr. Barnes claimed the right to ask Dr. Cheney what his experience had been concerning the pupils answering for those not present. Mr. Deuprey most stoutly denied the right of any such inquiry. He wanted the record to speak for itself. The court said that the District Attorney had certainly the right to offer proof showing the incorrectness of the record, if he could. But the manner in which Mr. Barnes couched his questions, asking for the experience rather than the knowledge of the witness, was not, the court held, entirely proper.

Mr. Barnes then gave notice that at a future time he would make Dr. Cheney his own witness. By the time this point had been reached in the day's proceedings the hour for adjournment had come and a recess was taken till this morning.

Prior to the opening of the afternoon session the crowds were so dense in the corridors adjoining the courtroom and so unruly and so entirely beyond the control of the deputies and policemen in attendance that Judge, jurors, attorneys and all the court officials and attaches had to fight their way through. They entered the courtroom with clothes wrinkled or torn and with collars wilted and neckties awry, panting and showing many evidences of the struggle they must pass through.

When Judge Murphy finally secured an entrance he called for the Deputy Sheriff in charge and lectured him soundly upon the handling of the crowd. If the Sheriff's office could not maintain a free passage to and from the courtroom the Chief of Police would be called upon for assistance, the court intimated, in rather positive language.

THE MARKS WERE NOT MADE BY A CHISEL, CODY TESTIFIES—ROLL-CALL OF DR. CHENEY'S LECTURE.

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Barnes—We object to that. It is asking for hearsay.

Deuprey—We are only asking for what he did, not what was said.

The court—He may answer that.

Witness—No, sir.

"What did you do with the shoes?"

"We came to the conclusion that the spots were not blood, so we left them there."

"Do you recollect Sergeant Reynolds wrapping up one of them?"

"No, sir."

Barnes—Answer this question simply yes or no and do not answer until the defense has had time to offer an objection.

"Did you make this search, at the time when you found the shoes, in relation to the case of Theodore Durrant charged with the murder of Blanche Lamont?"

Deuprey—We object to that as not being cross-examination, as immaterial and incompetent.

Barnes—I ask the question because the testimony of this witness has no connection with this case. It was 1 o'clock Sunday morning when this search was made.

The court—I will sustain the objection to the question. The motive of the search can have no bearing at this time, and the jury knows the time at which it was made and can apply it.

Detective Charles J. Cody was called and sworn. He said he recollects a visit made to the Emmanuel Church in company with Detective Bohlen and Attorney Dickenson and Deuprey. The visit was made on the 18th of April, between 4:30 and 5:30 in the afternoon.

He remembered that a hammer was found in the pastor's study in a toolbox; that the hammer was taken up to the belfry-door and fitted in the indentations. As to the chisel, he did not remember. The

hammer was wrapped up and taken to police headquarters.

Witness then took the hammer and fitted it to the indentations on the door jamb. He identified the other tools found in the toolbox in the study at that time, and also a small blackboard that was hanging on the wall.

"Was there any writing secured in the pastor's study?" asked Dickinson.

"I believe there was an envelope found with an address upon it."

The tools and the blackboard were then offered in evidence and admitted, when Mr. Barnes asked some questions in cross-examination.

"Why did you go to the church?"

"I was detailed to go by the Chief of Police."

"At whose solicitation?"

"Mr. Dickinson's and Mr. Deuprey's."

"Are the marks on the door and the door frame now in the same condition as they were when you found them?"

"Yes, sir."

"Take this glass and tell me if those two marks, No. 1 and No. 2, which are claimed to have been made with a chisel, are not old marks and have been painted over?"

"No, I is painted over," said witness, after a careful examination. "No. 2 seems to have a rough surface."

"Now close the door and examine No. 2 again and tell me if it is not the mark of a 'jimmy' instead of a chisel."

"Yes, sir; it is when the door is closed you see that it was made by a 'jimmy'."

"Would it not have been impossible for a flat instrument to have made that mark?"

"The court—Then you only depend upon their statements?"

"Yes, sir."

"Were you present when the roll was taken?" asked Deuprey.

"Yes, sir."

"E. B. Gray called it, standing beside me."

"What do you know of Durrant being present at the church?"

"Nothing."

"From all of your investigation, what is your best recollection and belief concerning the absence or presence of this defendant?"

Barnes—We object.

The court—But will allow him to state his recollection, but not his belief.

Witness—I have no recollection on that point.

"Why did you not state to me that from your knowledge of all the facts you believe the roll-call is correct?"

"I am not sure, but I think it is an improper statement and as hearsay."

The court—I shall sustain that objection.

Juror Smyth—Can you call all the students by name?"

Witness—No, sir.

Deuprey—Do you know Durrant and could call him by name?"

Witness—Yes, sir.

Then Frank P. Gray, who called the roll and marked the absentees, was called to the stand. Dr. Cheney took a seat near by. Mr. Gray testified that he stood at the left of Dr. Cheney, after the lecture, and called the roll at the direction of the lecturer.

"State whether or not W. H. T. Durrant is marked present on that roll," said Deuprey.

"There is no mark after his name. Only the absentees are marked."

"Does the roll show that Durrant was present?"

"It does."

"Is that the book in which the roll was called?"

"Yes, sir."

Mr. Barnes was then allowed to ask some questions.

"Have you any personal recollection of Durrant being present at that lecture?" asked the District Attorney.

"I have not."

"Can you say that you saw him there?"

"I cannot say that I saw him there."

"Is it not a fact that this book is not the original book on which the roll was marked that day?"

"The marks in this book were not made on the day of the lecture."

Mr. Barnes then took the rollbook, and, after examining it under a glass, handed it back to the witness and asked him if the absent marks had not been erased from the page marked March 31 and transferred to the page marked April 3.

After considerable discussion on all hands, Mr. Deuprey attempted to stay all question, it was finally admitted by witness that the roll of April 3 was by mistake written on the wrong page and then transferred to the proper page.

Mr. Barnes then objected to the admission of the roll because it was not the original book of entry.

Before the point was passed upon Mr. Deuprey made further inquiries.

"Are you satisfied that the entries and marks on the page of April 3 are correct?" he asked.

Barnes—We object to his opinion.

Deuprey—But you made it.

The court—Hold on, Mr. Deuprey; there is an objection to be passed upon. There is plenty of time.

Deuprey—But we will now take a recess until 2 o'clock.

THE AFTERNOON SESSION.

More Discussion of the Rollbook, Which is Finally Admitted as Evidence in the Case.

In the afternoon, after Judge Murphy and the jurors and the lawyers had fought their way through the howling mob outside, the court called in the Deputy Sheriff in charge and administered a lecture which will probably prove beneficial in making ingress and egress to the courtroom in least safe, if not an agreeable process.

Judge Murphy said that he had been compelled to fight his way through the crowd, and said that one of the jurors had made a complaint that he could not get into the courtroom.

"I see him here, now, your Honor," said the Sheriff.

Juror Smyth—Yes, but I had to fight my way in, anyhow.

The Judge instructed the deputy to keep the entire corridor clear of all persons except such as had connection with the case.

"Did you enlarge the indentations by this?" asked Mr. Barnes.

"I did not," answered the witness, after the court had overruled Mr. Deuprey's objection to the question.

Dr. William Fitz Cheney, lecturer at the Cooper Medical College, was the next witness. April 3, in the afternoon, commencing at 3:30 and ending at 4:15, he lectured on the subject of "How Infants Feed," involving, as Mr. Deuprey elicited, the matter of the sterilization of milk.

"Was there a roll kept of those who were present at that lecture?" asked Mr. Deuprey.

"There was."

"When was that taken?"

"At the close of the lecture."

"Now, consult your rollbook and state if you find the name of W. H. T. Durrant on it marked as present?"

Barnes—I object to that until I have a chance to ask some questions about the rollbook.

Deuprey—We do not offer the roll in evidence.

The court—But suppose the witness did not keep the rollbook himself?

Deuprey—We maintain that the rollbook is not in question at this time.

The court—You can ask him if he knows whether Durrant was present; but unless he kept the roll he can have no knowledge of its correctness.

Deuprey—I will ask that, your Honor. (To witness)—Do you believe the roll is correct?"

"I do."

"Upon what do you base that belief?"

"Because I questioned each pupil subsequently concerning his absence or presence, and found the roll to tally with their answers."

"Did you not state to me in the office of the Chief of Police, in the new City Hall, in this City and County, in the presence of myself, Captain Lees and Mr. Seymour—did you not state that you did not tell whether or not the present mark for Durrant on the 3d of April was in your handwriting or not?"

"I really do not remember having mentioned Durrant's name in regard to that point. I remember you asked me a question as to whether I could identify it, and I said it would be impossible because it was merely a straight line."

"How soon after the 3d of April did you change your system of marking?"

"The change was made at the beginning of the next term, in June."

"Why did you make the change?"

"Now, as to the question that a question had been asked in regard to the marks from other papers."

"Was not that change introduced on account of the errors that had been made by the other system?"

"No, sir. Not because of errors, but because of the liability to error."

The witness here stated that he considered the former system of keeping the tally-roll one that was very likely to lead to errors.

"Do you know Mr. Ross?"

"Yes, I met him in Sacramento."

"How long have you known Mr. Ross?"

"About three years."

"How well do you know him?"

"About as well as many other members of the class."

"You discussed the subject of the roll-call with Mr. Ross?"

"I have no recollection of having done so."

"Now, as to the question that any other places where similar ones have been made?"

"The same thing happened last June."

After some questions concerning the erasures made in June, Mr. Deuprey again made offer of the rollbook as evidence.

Barnes—I object again to the introduction of this rollbook, because the evidence is that this is not the book of original entry, and that the entries in it are not the original entries on the 3d of April were transferred from another page to the one where they are now found. Therefore, we believe to be in no way a record of the attendance that day, and hold it to be irrelevant and immaterial.

The court—The evidence is that these entries in both cases were made by the witness; that they were first made on a wrong page and subsequently changed by the witness to the proper page; it seems to me an analogous case would be that of a bookkeeper who should make an error in his books and then correct it. Therefore, although the erasures on the rollbook, if considered by the jury, it could hardly be held that the books were not admissible. I believe this to be the proper view of the matter and will admit the roll.

Deuprey—Have you any recollection of Durrant being present?"

"No, sir."

"Have you a recollection of any of the other seventy-four students being present?"

"I could not swear to any of them."

Juror Smyth—in whose charge is the roll-book kept?"

Witness—in mine. I keep it at home. Sometimes Dr. Cheney borrows it to examine.

Deuprey—is this the only record of attendance kept?"

Witness—Yes, sir.

The court—I want to understand this matter first, and to have the record show it. How have any way of knowing who it is that answers to the name called? Can you tell whether it is the student present or whether some one else answers for the name that is called?"

Witness—I have no means of telling who answers.

Deuprey—But hasn't an examination been made of all the seventy-four members of the class by striking it with his foot. An examination that no one could be found who answered for Durrant?"

Barnes—We object.

The court—You may bring all the seventy-four members here and ask them, but you cannot cite by his witness's opinion.

Deuprey—Then I will ask you, Have you made any such investigation or has any one else?"

Witness—No, sir.

"Did you answer for Durrant?" then asked Deuprey, as the witness was starting on the task of interrogating all the seventy-four members.

Dr. Cheney then came back on the stand. Mr. Deuprey asked him whether Mr. Gray came to him and asked him about the marks on the rollbook, and whether he had then instructed Mr. Gray to make the necessary change or correction.

Mr. Barnes objected to this, and the court said it might be answered so far as it does not concern the correction.

Witness answered that he did order the correction made.

"I told him to make the change, and he afterward told me he had done so," said witness.

Juror Smyth—When was this done?"

"On the 3d of April."

"At your lecture is there any confusion that would prevent a proper hearing of the roll-call?" asked Deuprey.

"No, sir."

"Did you have a conversation with General Dickinson last Friday concerning this matter?"

"Yes, sir."

"Did you not say to him in the presence of Durrant—"

Mr. Barnes (interrupting)—I object to any remark made to General Dickinson as being irrelevant.

Judge Murphy—I think the objection proper.

Mr. Deuprey—Did you not say to him that your roll-call was correct, and from your investigation that it was your opinion that W. H. T. Durrant was present at your lecture on April 3?"

District Attorney Barnes objected to this question, and his objection was sustained by Judge Murphy. Thereupon Mr. Deuprey attempted to frame the question in another manner.

Mr. Deuprey—At that conversation at your office on Friday last, when General Dickinson, one of the counsel for defendant, and myself were present, did you not say to him that you were satisfied that your roll was correct, and that you were satisfied that Mr. Durrant was present at your lecture?"

The District Attorney again put in an objection on the ground that the question was incompetent, irrelevant and hearsay. Upon Judge Murphy sustaining the objection the defense took exception to his Honor's ruling.

The court—The reason I sustain the objection is because, in my opinion, it tends to elicit something which is in the nature of hearsay.

Mr. Deuprey—How many students have you in your class, doctor?"

"About seventy to seventy-four."