

BE IT REMEMBERED that upon the trial of this case, after the jury had been duly impaneled and sworn to try the issue joined, and after the opening statements by counsel for plaintiff and defendant, the following proceedings were had:

THEREUPON the State, to maintain the issue on its part, introduced the following evidence, to-wit:

R. B. H A R R I S, having been first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION BY JUDGE DAMRON:

Q Is your name Bruce Harris?

A Yes, sir.

Q Where do you live, Mr. Harris?

A Logan.

Q How long have you lived here?

A Aroundabout twenty-five years.

Q What is your business or profession?

A In the funeral directing business.

Q City of Logan?

A Yes, sir.

Q How long have you been in that business?

A Aroundabout twenty years.

Q You embalm dead bodies?

A Yes, sir.

Q Where is your place of business?

A On Main Street, Logan.

Q Just down below here?

A Yes, sir.

Q Do you have anyone to assist you in that business?

A Yes, sir.

Q Who?

A Joe Wolf, embalmer.

Q How long have you been engaged in the embalming of dead bodies?

A About twenty years.

Q Did you know Mamie Thurmond in her lifetime?

A Yes, sir.

Q How long had you known her?

A I don't know the exact time, how many years here in Logan I have seen her and known her.

Q Is she dead or alive?

A Dead.

Q Were you called upon to embalm her body?

A Yes, sir.

Q When was that, Mr. Harris?

A It was on June 22, 1932.

Q Was that on a Wednesday?

A Yes, sir, I think it was. I am not positive right now what day of the week it was, but that was the date.

Q Where were you when you were called to do this work?

A I was here at my place of business when I was first

called.

Q And where did you go, if any place?

A I went to get the body.

Q Where was that?

A Up on Trace Mountain, on 22 Hill, in Logan County.

Q Is there a public road leading from Logan to that place?

A It is.

Q What is it, paved or macadam, or what kind of road is it?

A Paved road.

Q All the way?

A All the way to 22 Mine.

Q Who, if anyone, went with you?

A I believe the boy that goes with me occasionally, Elmer Gunther, went in the car with me up there. Then we picked up another man at the foot of the hill was going up there. I don't remember his name.

Q What kind of car did you have?

A Buick hearse.

Q Is that the car you haul dead bodies in?

A It is.

Q Where did you find the body?

A On the 22 Mountain, or around about the second bend of Trace, going over to Trace Fork, right around on the second bend there, in a kind of curve, on the bank.

Q Was there anyone in the car or anyone at the body to point it out to you?

A Yes, sir, there were several men there.

Q Several men at the place where the body was?

A Yes, sir.

Q Can you tell us one more of those?

A Well, Meade Smeltzer was one of them, the city police here. He is the one that really first gave me the call to come there.

Q Where was the body lying with reference to the highway or road?

A It was on the left-hand side of the bank, road, going from Logan to 22 Mine, over the bank a little ways from the edge of the bank.

Q Do you recall how it was dressed--the body?

A Well, yes, it had on a blue dress, regular other clothing that a lady would be dressed in.

Q What kind of weather, as relates to wet or dry, was it that day?

A Well, it had rained some that morning, and it had rained some the night before; pretty hard rain.

Q What time in the day was it when you reached the body?

A Oh, I would judge around in the afternoon between two and three o'clock.

Q And you tell the jury you found it on the left side

of the road just over the bank from the road?

A Yes, sir.

Q How was the head lying with reference to the road?

A Down hill.

Q And how were the feet lying?

A Up. That is, we was going from here to 22 Mine-- the head--we come to the head first, and the feet pointed the other way, towards 22, laying over to the left.

Q What is the topography of the ground over the hill where the body was?

A Pretty steep.

Q Was it cleared woodland?

A No, it is bushy, briars and some logs was around there close, too.

Q How was she lying with reference to her face, or back, or side?

A Well, she was laying more on her back, and I don't know whether her head was kind of laying in an angle over the hill, it seemed to me a little bit; she wasn't laying square, but was laying over there her head kind of down the hill, probably on a slant.

Q Was there anything holding the body?

A Well, there was some bushes and things there that could have held the body.

Q What did you do with the body after you got there?

A Why, several of the State Police had got there in

the meantime, and Mr. Hatfield, who was acting as coroner, suggested and told me to take care of the body, to take it to my place, and that they would hold an inquest and investigation, so I placed it in my hearse and brought it over to my funeral home.

Q Do you recall about the time that you returned to your funeral office?

A Well, we didn't stay up there on the hill very long, probably not more than an hour's time from the time I was called until we were probably at the funeral home with the corpse.

Q How long was it after you returned until you began embalming the body?

A Well, some doctors were called in and made an examination. After their examination was over with we began preparing the case immediately.

Q Was the body examined by Dr. Rowan before you embalmed it?

A Yes, sir.

Q Is that Dr. Rowan who was back in the room here a few minutes ago?

A Yes, sir.

Q Did you strip the body?

A Yes, sir, we did.

Q Tell the jury, Mr. Harris, in embalming this body just what marks of violence you found on it.

Q Where?

A I think so.

Q You didn't find that?

A No, sir.

Q Did you find anything else around or near the body?

A Well, it was a pocketbook was close there.

Q Did you get that?

A Yes, sir.

Q Did you open the pocketbook?

A Yes, sir.

Q Was there anything in it?

A Yes, sir.

Q How much money, if any?

A I don't remember the exact amount, but it was around about somewhere in the neighborhood of eight and ten dollars, I think. I think I have a notation of that property, the exact amount, somewhere on my record.

Q Anyway, between eight and ten dollars?

A Yes, between eight and ten. I think five-dollar bill, some bills and some change.

Q Have any cigarettes?

A Yes, sir, package of cigarettes.

Q Do you know what brand they were?

A I believe Lucky Strikes. I can't absolutely say for sure, but I think they were. I think I have a record on that somewhere.

Q Did she have anything on her hands or fingers in the way of jewelry?

A Two rings.

Q What was the character of those rings?

✓ A One was a wedding ring, the other was a diamond ring.

Q Do you know what size or character of diamond it was?

A No. It was a pretty ring. I didn't know what size it was.

Q They were both on her fingers?

A Yes, sir.

Q What did you do with the rings, and the pocket-book and its contents, after you brought them--

A Turned them over to Jack Thurmond, her husband.

Q In what county did you find this body?

A Logan.

Q Logan County. And what did you do with it after you embalmed it?

A We kept it at the funeral home until the funeral arrangements were made, and then buried it at the Logan Memorial Park, Logan County.

JUDGE DAMRON: That is all.

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CROSS EXAMINATION BY MR. CHAMBERS:

Q Mr. Harris, you have told the jury about the wounds you found on the body. There were two bullet wounds in the head, and the throat was cut?

A Yes, sir.

Q And that one of her eyes was discolored, is that right?

A Bruised up above the right eye.

Q Bruised above the right eye?

A Yes, sir.

Q Now, was the right eye discolored?

A I think-- Yes, sir, it was.

Q Isn't it a fact that the right eye had been bruised a sufficient time prior to death that a yellow circle formed around the eye--eye socket?

A It might have been possible this concussion from that bullet caused her eye to bulge out and got a bruise there beyond its normal size.

Q I didn't ask you that. Do you recall seeing a yellow ring around the orbit of the eye?

A No, I don't think I saw any yellow ring around the orbit of the eye.

Q You didn't see that? You embalmed the body?

A I did.

Q Was there any blood in it?

A Yes, sir, it was some.

Q How much?

A I didn't measure it.

Q Well, much or little?

A Well, it wasn't as much as we would ordinarily find in a body of that size.

Q Can you give the jury some idea as to the amount of blood you found in the body, whether it was a pint, or a quart, or a gallon, or how much?

A I don't suppose we took probably a pint out of the body.

Q You would say, then, there wasn't more than a pint of blood in the body?

A Oh, no, there was probably lots left in there. We never take all the blood out.

Q Do you know whether there was any left in the body or not?

A Absolutely there was some left in there.

Q Are you able to tell the jury the bullet wounds were inflicted prior to the throat cut?

A No, sir.

Q You can't tell that?

A No, sir.

Q If the bullet wounds had been inflicted first, would the fact that the throat was cut let out but a little of the blood?

A Well, yes, if the bullet wounds, no doubt it would.

Q If the woman was dead by reason of the gunshot wound in the head, and then the throat cut later, would the throat have bled any to amount to anything?

A It would have bled some.

Q How much?

A I don't know.

Q Very little, wouldn't it?

A Not as much as it would if it had been just the reverse of that.

Q Well, as a matter of fact, what causes wounds to bleed in great quantities is the heart pumping the blood in circulating, isn't it?

A Yes, sir.

Q Now, if she were dead before the throat was cut, the throat wound would not bleed much, would it?

A No, sir, it would not bleed as much as the other way.

Q Did you notice a bruise on her right forehead just about the edge of the hair?

A Well, it was some scars up there, little abrasions over her face, powder burns on her cheek, and bruises, some of them scattered around all over her forehead, a few of them.

Q Her face was powder burned, wasn't it?

A Yes, sir, on the left side.

Q And that was the side that apparently the bullets

had entered?

A I would judge so, yes, sir.

Q And the whole left side of her face was powder burned, wasn't it?

A Well, yes, on that left cheek more so than on the right, of course.

Q Well, were there any powder burns at all on the right?

A It was a few scattered, I think, up on the forehead and probably scattered around there.

Q You told the jury you found this pocketbook, some money in it, and a package of cigarettes. Do you recall anything else in that pocketbook?

A I don't remember anything else right now, unless it was a pocket handkerchief. I am not sure about that, whether it was in there or not.

Q Do you recall finding a card in there with certain numbers on it, apparently license number of an automobile?

A That card was taken out by another party. We were all there together examining this pocketbook, and there was a card in that pocketbook that was taken out. I think probably one of the State Police got hold of that.

Q You recall that now?

A I understand there was one, yes, sir.

Q There was a number on the card?

A Yes, sir, I heard there was a number on the card.

Q And that is all you remember was in the pocketbook?

A Yes, sir, that is all I have recollection of.

Q How many years have you been in the undertaking business?

A Around about twenty years.

Q You have embalmed, of course, during that time, many dead bodies?

A Yes, sir, quite a few.

Q I want you to tell the jury, if you can, about how long, in your judgment, this body had been dead.

A I really don't know. It all depends on the conditions of the weather. Ordinarily I would say anywhere from twelve, probably, to eighteen hours.

Q Twelve to eighteen hours?

A Yes. Probably it might come back earlier than that. In fact, I don't know. I couldn't say.

MR. CHAMBERS: All right, that is all.

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REDIRECT EXAMINATION BY JUDGE DAMRON:

Q You mean when you embalmed it?

A Yes, sir.

Q Speaking of the findings on the body, did you find a wrist watch on the body?

✓ A Yes, sir, I found a wrist watch.

Q Do you recall what kind of watch it was?

A No, I don't believe I remember the make of it.

Q Was it running or had it stopped?

A I don't think it was running.

Q You don't recall what time it was stopped?

A No, sir, I do not.

JUDGE DAMRON: That is all.

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D R. W. S. R O W A N, called as a witness in behalf of the State, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY JUDGE DAMRON:

Q Are your initials W. S?

A Yes, sir.

Q What is your profession?

A Physician.

Q Where are you located?

A Logan.

Q How long have you been a physician?

A About seventeen years.

Q Are you a graduate of any reputable school?

A I am.

Q What school?

A University of Louisville.

Q What class?

A 1914.

Q Where have you been practicing during the time that you have been practicing?

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A Well, I have practiced in Mercer County and this county, with the exception of being over-seas.

Q How long have you been practicing in Logan County?

A Since 1919.

Q Active?

A Yes, sir.

Q Licensed physician of West Virginia?

A Yes, sir.

Q Dr. Rowan, did you know Mamie Thurman in her lifetime?

A I did.

Q Were you called upon around the 22nd day of June to examine her body?

A I was called. I couldn't recall just the date.

Q Was it the date she was found on the mountain up here?

A It was.

Q Where was the body when you first saw it?

A At Harris Undertaking establishment--Funeral Home.

Q Did you make a minute examination of the body?

A Yes, sir.

Q Was that before the body was embalmed?

A Yes, sir.

Q I wish you would tell the jury, Doctor, in your own way, just what wounds were found on the body, and what the nature of them was.

A There was one bullet wound that entered anterior to the lobe of the left ear.

Q Will you point out to the jury as you go along, on your head?

A (Pointing) Anterior to the lobe of the left ear. It made its exit immediately above the right ear, about an inch and a half above. There was another bullet wound in this location, (pointing), on the left side, and came out in the back side to the left of the median line.

Q Doctor, in order that the record may show, what part of the head did the second wound you speak of enter?

A It entered in the left parietal bone and made its exit about two and a half inches posterior--I mean in the occipital bone, and about an inch and a half from the median line.

Q What else did you find?

A Her throat was cut, extending down into the trachea and right jugular, and was cut--the wound seemed to extend a little deeper on the right side--that is, into the tissues.

Q Point out to the jury on your neck the place where the cut was, and where it extended from and to.

A It was across here, (indicating), and extended back to here, on either side; a smooth cut.

Q From side to side?

A Yes, sir.

Q You say it was a smooth cut?

A Yes, sir.

Q And what arteries did it sever, if any?

A The carotid and the external jugular vein, too.

Q What other wounds, if any, did you find?

A Her neck was broken about the second cervical near the base of the skull. She also had a bruise over the right eye, just about the eyebrow. There was some minor scratches on one arm--I don't remember whether it was the right or left--right fore-arm, down in this location--and there was a bruise on one--just below--I believe it was the right knee. That was a very minor bruise.

Q In the region of the places where you found the bullet holes, tell the jury whether or not there were powder burns or absence of powder burns.

A The wound that entered the lobe of the left ear, there was powder burns over the face, and the opening seemed to be burned--that is, the entrance. There were no indications of any powder burns with the other shot.

Q Any powder burns on any other part of the head?

A Just over the face, around the area on the left side and cheek like.

Q And the left side is the side which both these shots entered?

A Yes, sir.

Q Doctor, tell the jury whether or not these gunshot wounds, or either of them, were fatal.

A Either one of them were fatal.

Q What part of the head did the balls pass through?

A They passed through the-- The first shot passed through both hemispheres of the brain; the second shot passed through one side or one hemisphere of the brain.

Q You say either or both of these shots were necessarily fatal?

A Yes, sir.

Q How about the cut on the neck?

A That was a fatal cut.

Q How long, Doctor, would it take a person to bleed to death with a cut such as you found on the deceased?

A Well, it would be a very short time. Maybe a minute or two minutes, at the outside.

Q And what would be the result of the gunshot wounds you found, as to the time of death?

A Well, I should say the first one would have been almost immediately fatal.

Q Instant?

A Almost, yes, sir.

Q What size, if you know, were these gunshot wounds?

A Thirty-eight calibre.

Q I believe you stated both of them had an exit?

A Yes, sir.

Q Can you tell the jury whether or not the gunshot wounds ranged upward or straight through?

A Well, from in the upright position it entered on

the left side, ranged upward.

Q Both of the balls that you indicated on your head would necessarily have ranged upward?

A Well, the second was more or less horizontal to the head.

JUDGE DAMRON: That is all.

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CROSS EXAMINATION BY MR. CHAMBERS:

Q You tell the jury that these bullet holes were made by a thirty-eight calibre weapon, is that right?

A Yes, sir.

Q On what do you base that?

A Well, the size of the wound.

Q How?

A Size of the wound.

Q Well, did you see any thirty-eight pistol cartridges inserted in these wounds?

A I saw one, yes.

Q Who inserted it?

A Sergeant Streagle.

Q Did it go in readily?

A No, it went in.

Q He had no difficulty in inserting the thirty-eight calibre in the wound, did he?

A No particular difficulty, no.

Q Could you tell, from looking at the place where the

ball had entered, the calibre, size of the calibre?

A I think I can, yes.

Q The outer skin where the ball had entered, did that show it had been made by a thirty-eight calibre?

A It appeared to me it was a thirty-eight calibre, yes, sir.

Q What I mean, was the opening the size of a thirty-eight ball?

A Well, the opening was somewhat contracted, of course.

Q Don't you know it was quite a bit contracted?

A Yes, it naturally would be after that length of time, yes.

Q Don't you further know, Doctor, that a hole that you could insert a thirty-eight ball in would necessarily have been made by a larger calibre ball?

A No, not necessarily. Just to look at the opening, it may be contracted, but it could be inserted very easily.

Q Did you ever have any experience with pistol balls?

A Yes, some.

Q As a matter of fact, these holes in this woman's head, looked like, to look at them, they were about the size of a twenty-two, didn't they?

A No. No.

Q Look larger than that?

A Yes, sir.

Q Didn't look as large as a thirty-eight, did they?

A In my opinion that is what it was, yes, sir.

Q I didn't ask you what your opinion was. Did these two holes that you saw there from an external appearance seem to be as large as a thirty-eight calibre?

A I say they had contracted some, but it had the appearance of a thirty-eight calibre.

Q Who else helped you to examine the body?

A Doctor Robertson.

Q Anybody else?

A No, there wasn't any other medical man.

Q You two physicians made this examination?

A We did.

Q Now tell us whether the two bullet wounds were fired before the throat was cut.

A Well, that would be hard to say. It could have been done immediately before or immediately after, but from the powder burns it had the appearance of being done before.

Q You mean the throat appeared to have been cut before the shots were fired?

A No, it would have been possible it could have been that way, but from the appearance I would rather think that the shots were fired first.

Q And the throat cut afterwards?

A Yes, sir.

Q Now, you noticed a bruise over her right eye, didn't you?