

JUDGE OVERRULES MOTION TO STOP TRIAL

Defense Charges Prejudicial

Remarks Made by Sparks to Jury.

Prosecutor Remy began to work around to introduce the written "death statement" which Smith prepared from memory after Madge had told him the history of the trip in different conversations. The witness' testimony was interrupted by frequent objections.

"Did you serve in the World War?" asked Remy.

"Yes, I did."

Defense Alert

The defense objected, fearing the prosecutor was about to submit Smith's war record, and the fact that he was wounded as a marine at the battle of Belleau Woods, and since that time has suffered from shell-shock. Remy evidently was afraid that Smith, who is easily excited, would become confused on cross-examination and create a bad impression. Remy wanted to get the fact to the jury it seemed that Smith was shell-shocked.

"I had a boy who did the same thing—served in the war," said Eph Inman.

"Yes, it's not material," said Judge Sparks.

Secretary to New

Smith then said that he was private secretary to Senator Harry S. New at Washington, D. C., for a year. He has practiced law since 1917, he said.

"Do you know the Oberholtzer family?" asked Remy.

"Yes."

"During last March when Madge Oberholtzer disappeared from home, did you receive notice of it?"

"Yes," replied Smith. "They talked to me on the phone before she was found."

"Before she was brought back, state whether you went to Stephenson's home in Irvington."

Went With Two

"Yes," replied the attorney. "Miss Erminda Moore, and Mrs. Oberholtzer went with me."

Miss Moore was a friend of Madge and worked at the State House.

"What time did you go to the Stephenson home?"

"Monday evening, March 16. We must have reached the house about 11 p. m. When we got there, I stayed in the machine while the two women went to the front door."

"While you were in the car did you see anything?"

"I saw a closed car, a sedan, drive into the Stephenson yard and drive back to the garage. The car, when it reached the garage, the lights snapped out, and I could hear barking of dogs from that garage. Then some lights were made in the garage, the car went in, and the lights went out."

"Did you see, or learn anything of Madge Oberholtzer that night?"

"No, sir, Mr. Remy, there is something I forgot. The dogs quit barking. A short young man came from the garage and went up on the porch."

"Do you know who he was?"

Asked Remy, while the eyes of several jurors turned to Stephenson, expectantly.

Stephenson Buses

The later busied himself with a pencil.

"No sir," was Smith's reply. Mrs. Oberholtzer and Miss Moore were on the porch, talking to some man in a dressing gown, who had answered the door, and the man from the garage talked to them. I was at the curb, Miss Moore and Mrs. Oberholtzer came back and I took them home."

"At whose suggestion did you go to Stephenson's home?"

"At my suggestion," said Smith. The witness was nervous, and several times corrected his answers.

"Had you been hunting Madge Oberholtzer?"

"Yes, she was ever since her mother called me."

"Did you see Madge Oberholtzer the next day?"

"Yes, she was at home, in bed. It was Tuesday. Yes, it was Tuesday I am sure."

"Who else was present?"

Mother Present

"Mrs. Oberholtzer took me up, and she was present all the time, Oh, she may have gone out of the room a few minutes once or twice, or something like that."

"Did you have any conversation with Madge?"

"Yes, she said I'm done for."

Smith said that Mrs. Oberholtzer showed him the bruises on Madge's chest.

"It was a solid mass of bruises, black and blue, some of them bloody-appearing. Yes, black and blue. Bloody-appearing," said the witness, as if looking at a mental picture, while a slight shudder ran through his frame.

"What did she say to you and to you?"

Defense Objects

Christian, safety man of the defense, whose duty it is to screen damning testimony, leaped to his feet,

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"We object, Your Honor," he said, and, turning to the witness, asked: "Were these remarks afterward reduced to writing, Mr. Smith?"

"The substance was," replied Smith.

"We object," said Christian. "The writing should be the best evidence."

Judge Sparks overruled the objection.

"Any one who hears a statement, later reduced to writing can testify about it," the Judge reminded Christian.

The motion was made on the ground that Judge Sparks had made prejudicial remarks before the jury, Thursday afternoon.

The remarks to which the defense took exception were made by Judge Sparks while George Oberholtzer, father of Madge, was on the stand, and were relative to the defense theories that Madge committed suicide instead of being murdered.

The "res gestae" is a legal term meaning the gist of the affair.

Overruled

"That's overruled too," said the judge.

Christian took a hand.

"We further object, because the defendants were not present. It calls for hearsay. It has not been shown she was in extremis."

"Objections submitted on those terms," said Judge Sparks.

The judge also indicated in his talk, according to defense contention, that the theory of suicide can not be made in the trial.

"Such remarks are more damaging to the defendants than any testimony that could be introduced," said Floyd Christian, defense attorney presenting the motion.

"This is a case of suicide, not homicide," Christian shouted.

"We ask that the submission of evidence be stopped and the jury be discharged," said Christian, "so we can start all over in this case with clean hands. This is a very clear case, and the defendants are entitled to a fair trial."

Christian told the judge that the motion and the defense argument were not made in a spirit of animosity to the judge, but only to "guarantee the defendants a trial under due process of law."

The defendants are reaching a point of honest concern over the seriousness of the case resulting from the testimony introduced by Prosecutor Remy Thursday, was written on his face. Stephenson sat at the defense table with his chubby fists poked into his face and a trace of worry visible on his countenance. Klinck and Gentry also followed the argument with much interest.

"Here we have a statement made by the court in all good faith, but we think the court has committed a very grievous error," said Christian.

"What the court states to a jury bears great weight."

Christian said that all the crimes in Indiana are defined by statute.

No Statute

"There is no statute in this case covering this murder charge as outlined in this indictment," he shouted.

Appeal Certain

Defense attorneys will appeal the case if a conviction is obtained, they stated.

"We have enough errors in the record now, to reverse this case on appeal," said Ira M. Holmes, one of the defense staff, who is noted for his success in appealing criminal cases in Supreme Court.

Judge Begins

Adjusting himself easily in his chair, Judge Sparks began:

"Gentlemen, the situation as I see it is just this: Of course, I wouldn't say anything to the jury that would jeopardize the defendants. That I have not done."

"This is one court, I think, that has done less to influence than any I know. To say they (the jury) would follow my instructions, instead of yours, is in conflict with my experience. Of course, you are all in earnest in the case, but I think you're taking yourselves a little too seriously."

"All yesterday, you had the privilege of asking the jury to step outside and make your remarks. It's not my duty to suggest those things to you," Judge Sparks shot at the defense. It was easily understood.

"Was the statement as prepared by you substantially the same as she had related to you?"

"Yes."

"And then you went to the Oberholtzer home?"

"Yes."

"Who was present in Miss Oberholtzer's room besides yourself?"

"You didn't ask the court to discuss that matter Thursday. You asked for a ruling."

Natural Consequence

"It seems to me Gentlemen, that the fundamental conditions in this case are well established. The law provides that if a man commits a felony, he is bound to anticipate the natural and reasonable consequences of that act. I did not tell the jury it was the natural consequence of the act, but if they find the suicide the natural and reasonable consequence of the act, it's up to them to do a certain thing."

"I don't agree with the defense counsel when they say a blow is necessary. Floyd Christian, defense attorney previously had used the word 'blow' in a general sense, as being necessary to the commission of murder."

"I think a murder can be committed indirectly, and so the decisions say."

"Did she request any corrections?"

"Yes, three or four times, she interrupted me."

"After reading her the statement, did she sign it?"

"Yes."

"Where was she when she signed it?"

"Still in bed. L. Kingsbury propped her up, and I think possibly, that Miss Moore, assisted him. We took a magazine, and laid it on a pillow, held it before her and I placed the pen in her hand. She signed it, and I did not guide her hand."

"No. You're misquoting me," Sparks retorted.

"This jury is bound to understand here from your remarks Your Honor, that this woman took her life to save her virtue," Christian said. "There is no issue here like that. At least I don't think so."

Judge Diflers

"Well, I do, and that's where we differ," said Judge Sparks.

"The motion is overruled, with thirty days in which to file a bill of ex-

ception. Call the jury in and the next witness."

The fourteenth day of the trial thirteen were taken to get a jury—was opened Thursday morning by the opening statement of the State's case, made by Charles E. Cox, former Supreme Court judge, hired by the Oberholtzer family to assist the prosecution. Cox drew a picture of Stephenson's palatial home in Irvington as a place of double character, like its master, to which the defense objected. Judge Sparks said: "It may explain why Miss Oberholtzer went there," in reference to statements that good people on occasion gathered at the house.

Mother on Stand

Mrs. George Oberholtzer, Madge's mother, dressed in mourning, was the first witness. Her voice broke frequently, and she appeared on the verge of a breakdown several times as she related how Madge left the home Sunday evening with a large man who called for her, following four telephone calls from Stephenson's house and how she was carried into the house two days later, broken and poisoned, while the family was down town looking for her.

Mrs. Eunice Shultz, who rooms with her son, a Butler University instructor, at the Oberholtzer home, was next. She told of seeing a man who said his name was Johnson, carry Madge into the house Tuesday, March 17, and lay her on her bed. One of the high points of the trial came when Mrs. Shultz, a motherly little woman, rose from the witness chair and pointed at the huge Klinck, sitting behind Stephenson and exclaimed: "That's the man."

Doctor Heard

Dr. John K. Kingsbury, family physician, who was called by Mrs. Shultz gave the jury the history of the case, as related to him that morning by Madge. He told it as Madge told him, he said from the time she left home. He told how she was forced to drink something at the Stephenson house, taken to the Union Station, put in a Stateroom with Stephenson who attacked her, biting and pummeling her after tearing her clothes; how she took poison at Hammond, Ind., and how the defendants refused her medical aid.

"I was trying to encourage her, but she'd always say, 'It's no use, Daddy,'" Oberholtzer explained in distress.

"I sat on the edge of the bed and she told me to hold her hand. 'Oh, Daddy,' she said, 'that was the longest ride from Hammond to Indianapolis,'" Oberholtzer continued.

"'Shorty' called Claude Worley from the Washington Hotel and told him to fix it up to protect me on the trip at Stephenson's direction," she told me. I asked her why she didn't jump out and she said, 'Why, Daddy, I had no show—Stephenson on one side of me and Gentry on the other, with guns in my sides threatening to shoot me through if I made an outcry.'

Admission of the foregoing statements precipitated a group of objections from the defense, who contended that nothing more than a suicide had been shown. Judge Sparks explained his opinion that that was a matter for the jury to decide.

Virtue Dear

"Suppose her virtue were dearer to her than her life—then death would be her alternative," Sparks declared.

Floyd Christian, attorney for the defense, declared opposing attorneys ought to be allowed time to discuss this phase of the law with the court before proceeding further.

"Oh, no. We'll not any time now on arguments," Sparks replied.

Fellow Doctor

Oberholtzer had followed Dr. John Kingsbury on the stand. The State scored an important point when Kingsbury was allowed, over strenuous objections by the defense, to describe the girl's wounds, and relate the time he said she told him of her trip to Hammond, Ind., with the three defendants, her return after taking poison, and how she was smuggled into her home after having been denied medical aid by them.

Mrs. Oberholtzer, the girl's mother, and Mrs. Eunice Shultz, who lives at the Oberholtzer home, were State witnesses who preceded Kingsbury.

Doctor Unshaken

On cross-examination Kingsbury was unshaken by Eph Inman, chief defense attorney, although the latter pointed out some minor discrepancies between his testimony today and March, Morgan says.

Here are his rules to avoid colds:

Keep regular hours and get lots of sleep.

Practice moderation in drinking and eating—excesses rob the body of its resistance to disease.

Get plenty of exercise.

Keep good body elimination.

Keep the feet warm and the head cool.

Individuals living indoors should avoid too heavy undergarments, but put on heavy clothing when outdoors.

Keep the home and office well ventilated—with lots of moisture in the atmosphere.

Cities Case

"Here's a case: Three men took an old man from his home and loaded him into a carriage. They carried ropes and clubs, not with the purpose in mind of killing him, but to beat and flog him. He jumps from the carriage, falls into the river, and is drowned. The three are convicted of murder."