

Frequent and Angry Clashes Between Attorneys Mark the Hearing of Darley's Testimony

N. V. Darley, mechanical head of the National Pencil factory and directly in charge of the Georgia Cedar company, an adjunct concern, was put on the stand by the state, after Mrs. White had finished.

"How long have you been with the company, and are you still employed there?" asked Solicitor Dorsey.

"I've been there about five years, and am still employed there."

"Who is your immediate superior?"

"I consider Sig Montag my immediate superior," he replied.

"What is your relation to Frank?"

"We are co-laborers, on an equal basis."

"With whom do you more often come into contact?"

"With Frank."

"Did you see Frank on Saturday, April 26?"

"Yes."

"What time did you leave the factory that morning?"

"About 9:40."

"When did you next see Frank?"

"About 8:20 Sunday morning, at the factory."

"Was Frank there when you got there?"

"No; he came up just as I got there."

"What were you doing there?"

"Mrs. Frank had called me up and told me all. Mr. Frank had asked her to tell me to go to the factory."

Rosser objected to the witness telling anything Mrs. Frank had told him, and, despite the solicitor's statement that it had already been proved that Frank had asked his wife to call up Darley, Judge Roan ruled out his statements about what the wife had said.

Noticed Frank's Nervousness.

"Did you notice Frank as you got there?"

"Yes."

"What did you observe about him?"

"Nothing at first."

"Well, what, if anything, later?"

"When we started to go to the basement I noticed his nervousness."

"Describe it."

"Well, he started to lower the elevator, and as he reached for the rope his hands trembled, and then when he started to nail up the back door of the basement later his hands trembled again, and I took the hammer and nailed up the door myself."

"What, if anything, did Frank say to you?"

"When we started to nail up the back door he made some remark about his clothes, and pulled off his coat."

"Did he say anything about coffee?"

"Not then."

Why Frank Wanted Coffee.

"Well, what did he say at any time that morning about coffee?"

"At the station house he told me he had been rushed away from home without any breakfast and carried

into a dark room, where they turned the light on and showed him the dead girl, and that he was nervous and wanted some coffee."

"What did he say breakfast would do for him?"

"He said breakfast would keep him from being nervous."

"Did he get any breakfast?"

"I don't know; I left him at 10 o'clock."

"Did you see Newt Lee at the time you saw Frank in the factory?"

"Yes."

"Was Lee nervous or composed?"

The solicitor fired the above question at the witness as though seeking to show the jury that the man he charged with being guilty was nervous when at the scene of the crime, and the innocent man was not.

"Lee seemed thoroughly composed," answered the witness.

"What was said in the basement?"

"Something was said about the staple and Frank said that it would have been easy for anyone to have pulled out the staple. The staple looked to me like it had been pulled out before," the witness said.

"Did Frank suggest that the murder had occurred in the basement?"

"Yes."

"Repeat his words."

"I can't repeat the exact words, but I know he suggested that."

"Did he say anything later about being nervous or not?"

"Monday afternoon he said that if he had had some breakfast that morning he would not have been so nervous."

"What brought up the talk?"

"I don't remember what or who brought it up."

"How often did Frank try to explain his nervousness?"

"Twice."

"On what subject did Frank seem to dwell the most, the murder or his nervousness?"

Rosser Offers Objection.

Rosser entered a strong objection to this question, claiming that the witness was not qualified to testify about it. Judge Roan ruled that it could not be asked in that form.

"Well how often did he talk about the murder?"

"On numerous occasions."

"How much of Frank's body was shaking?"

"His hands."

The solicitor then produced a former affidavit made by Darley, in which the man had said Frank was shaking all over.

After he had looked at it, Darley reiterated his statement that only Frank's hands were trembling.

"It's too much to say that a man's whole body is trembling; you can't well tell," he continued.

"When were his hands trembling?"

"As we started to go down the elevator to the basement he reached for the rope and both hands trembled, and here the witness held up both his

own hands and shook them violently.

"Could Frank have nailed up the back door?"

"I think so."

"What did you swear about this in your affidavit?" asked the solicitor, but the witness held out that he thought Frank could have nailed the door.

"How did Frank look that Sunday morning?"

"Pale."

"Can you say or not if Frank was upset and why in either case?"

Rosser took a Dig at Darley.

"The witness can't testify in regard to 'upset,'" roared Attorney Rosser; "if he'd been in the courtroom all the week, though, and had watched the solicitor he would know what the word means."

"I don't see why we can't use the good old Anglo-Saxon word, 'upset,' instead of having to use 'nervous,'" the solicitor objected, and after an argument the court ruled that "upset" was just as much allowable as the Latin derivative.

"Well, was Frank upset?" continued the solicitor.

"I can't say that he was."

"Look here at what you said in your affidavit!" yelled the solicitor, apparently thoroughly exasperated.

Attorney Rosser declared that the solicitor had no right to talk in such a manner as to indicate to the jury that the witness had said in a former affidavit which had not been placed in evidence and went on to say that Frank's actions on that morning had shown that he was not thoroughly upset. Before he and the solicitor finished arguing the affair had almost developed into regular argument as to whether or not Frank was upset, rather than in contesting about the witness using the word.

"Well, on that Sunday morning was Frank thoroughly done-up?" asked the solicitor, seemingly determined to get down to plain, old Anglo-Saxon in preference to the Latin derivative, "nervous."

"What in the world does 'done-up' mean?" objected Reuben Arnold, Mr. Rosser's partner in the case. "It may mean in bed, for all I know," he added.

The court, however, held that "done-up" might come into the case and take its stand by the side of "upset" and that it was for the jury to determine what was meant when a witness used either of the words.

Frank "Partially Done-up."

Darley then declared that Frank was "partially done-up" on that Sunday morning that the body was discovered.

"Give your reasons for saying he was partially done-up," said Mr. Dorsey.

"Well, he did some things that a man entirely unstrung could not have done," said Darley.

"Unstrung" was a new word and when it came into the trial spectators expected Attorney Rosser to ask for its credentials, but he let it in without a murmur.

"Did Frank sit steadily on your knees in the auto ride to the station?" asked the solicitor.

"No, he was trembling and shaking."

"Did you see Lee?"

"Yes."

"What was his demeanor?"

"He was composed."

Mr. Rosser objected to the question about Lee, and Dorsey withdrew it.

"Did you attend to any business Monday?" the solicitor then asked.

"Yes."

"Did you see the financial sheet Sunday?"

"Yes."

"Who called your attention to sheet No. 287?"

"Frank."

"What did he say?"

"He said something about it."

"What time was it?"

"Between 8:20 and 8:45."

"Did J. M. Cantt ever come to the factory after he was discharged?"

"Yes."

"Did you see Frank examine the financial sheet?"

"Yes, he handed it to me."

"When did Haas, the insurance agent, come to the plant?"

"On Monday or Tuesday in May."

"What was done after his visit?"

"The plant was cleaned up in a general way."

"Did you clean up the first floor?"

"Yes, it was cleaned on May 3."

Bludgeon Produced in Court.

Mr. Dorsey then asked the defense to produce the bludgeon which it is claimed was found later in May near the elevator. They produced it.

"Did you see this club found?" Mr. Dorsey asked, sending it clattering down on the floor between the witness and the jury box.

"No."

"Was the finding of the club subsequent to the cleaning up?"

"Yes."

"Did you see anything on the rear of the office floor near the ladies' dressing room Monday after the murder?"

"Yes, blood," replied the witness.

"Who called your attention to the blood?" asked Attorney Arnold.

"Barnett and Quinn."

Arnold Cross-Questions.

"How many strands of hair did Barrett show you?" asked Mr. Arnold, who here took up the cross-examination which before this Attorney Rosser had always conducted.

"When I first saw them they were wound around a lever, and there seemed to be six or eight in all," said the witness.

"Wasn't it difficult to tell their color?"

"Yes."

"Barrett did most of the discovering, didn't he?"

"Yes."

"Isn't he mono-maniac on the subject of the crime; buys all the papers and keeps constant watch on the case?"

On objection of Mr. Dorsey this question was ruled out.

"Barrett claims to have discovered the blood spots, doesn't he?"

Mr. Dorsey also got this question ruled out.

"When you first saw the blood spots, who pointed them out to you?"

"Quinn, Barrett and others."

"Were they hidden by white spots?"

"Partially; not completely."

"In other words, the man who attempted to hide the spots left the spots and the attempt to hide them revealed," said Mr. Arnold.

"It looked that way," replied the witness.

"Did Barrett tell you he was working for the rewards?"

Mr. Dorsey objected to this question, and was sustained by Judge Roan.

"Did you ever see any blood around Mary Phagan's machine?"

"No."

"Did you see Barrett find the pay envelope?"

"No, I was at the other plant."

"What did most of the employees do with their pay envelopes?"

"Tear them and take out the money."

"By looking at this envelope can you tell whether it ever had any money in it?"

"No, there are no indications by which one can tell."

"Don't you find such envelopes all over the factory?"

"Yes, even in the metal room."

"Unable to find them anywhere, aren't you?"

"Yes."

"Nothing more common than pay envelopes?"

"No."

"Were you present when Frank ran his finger down the time slip?"

"Yes."

Falls to Identify Time Slip.

Mr. Arnold then showed the witness the time slip which the defense claims is the one taken out of the clock that Sunday morning by Frank.

"Is this the one?" the attorney asked.

"I can't say that it is; they are all alike."

"Did you notice the absence of punches on it?"

"No."

At this juncture M. Johanning, one of the jurors, stated that he desired some information about these time slips, and he and the witness exam-

ined it together, the factory man explaining to the juror the manner in which a record is kept on it of the time the punches are made and how the clock worked.

"I believe you saw the financial sheet Sunday morning."

"Yes."

"It is all in Franks handwriting?"

"Yes."

Mr. Arnold then asked the witness to tell what the financial sheet showed and the state objected to this until the actual sheet should be brought into court.

"We are going to produce it," said Mr. Rosser. "Oh, yes; you needn't fear but what we'll bring that in all right," added Mr. Arnold.

"Why did you always want to look at this sheet on Saturday?" said Arnold.

"Because it always told what had been done during the past week, ending Thursday," said Darley.

"Was it always made up on Saturday afternoon?"

"Yes."

"Takes an expert to get it up, too, doesn't it?"

"Yes, it has not been got up since Mr. Frank left the factory."

A Laborious Task.

Mr. Arnold produced the sheet and went into great detail as to each item on the sheet, proving by the witness that the task of making out this sheet was a laborious one, and one that required expert work and that it usually took from 3 to 5 or 6 o'clock for Frank to make it out.

"Could the sheet have been made out on that Saturday before 3 or 3 o'clock?"

"I left there at 9:40 and he had not started on it then."

"How does Frank's handwriting on this sheet compare with his handwriting on similar sheets?" asked Mr. Arnold.

Mr. Dorsey objected to this, saying that Darley was no handwriting expert and that the best evidence would be to produce other sheets and let the jurors judge for themselves about the comparison. Both Attorneys Arnold and then Frank Hooper, for the state, and the Frank Hooper, for the state, joined in the protest on the question, to which his colleague, the solicitor, had objected.

Judge Roan held up this ruling, declaring that there was one point he wanted to decide upon and that if necessary Darley might be brought back to the stand.

Mr. Arnold then went back to the question of the financial sheet which Frank claims to have made up that Saturday afternoon before the murdered girl was found and had Darley show further what a task it was to prepare the statement.

"How many persons were in the factory that Sunday morning?" the cross-questioner then asked.

"About six or eight."

"Was any blood found there that morning?"

"No; not that I know of."

"Was there any excitement?"

"Yes."

"Weren't you and the others excited?"

"Yes."

Lawyers in Long Wrangle.

Mr. Dorsey then objected to the testimony about others being excited and declared the only thing that this trial had to do about excitement was the question of whether or not the defendant was excited. Before he and the opposing attorneys got through the wrangle developed into something that was similar to a lawyer's argument to the jury in which he might justify his client's excitement on that occasion, while the state's attorneys were contending that it was

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only about Frank's excitement that there was any material evidence.

Judge Roan held that the witness might be used to show that the occasion was an exciting one, but that he could not be used to show that others were excited.

Messrs. Arnold and Rosser repeatedly stated then that they wished their protest against this to go on record.

"Were there any spots on the metal room floor?" asked Mr. Arnold, again taking up his questioning.

"Yes; varnish spots," replied the witness.

"Any red spots?"

"Yes; red and dark ones."

"How long have you worked in a factory?"

"Twenty-four years."

Blood Spot Frequent.

"Have you ever seen blood spots around where the employees work?"

"Yes, they are quite frequent."

"Why was the back door nailed up that Sunday morning?"

"Well, the factory could not be left unprotected."

"What colored suit did Frank have on that Saturday?"

"A brown one."

"Did he wear the same one Monday?"

"Yes; it looked like it."

"Well, the suit he wore Sunday was just his regular Sunday suit, wasn't it?"

"I don't know; it was a different suit."

"Did you see any scratches or bruises on Frank Sunday?"

"Never noticed any."

"Does the elevator make a noise when it runs?"

"Yes."

"Makes a bumping noise when it stops, too, doesn't it?"

"Yes, some."

"Is not the factory saw attached to the same motor as is the elevator?"

"Yes."

"Couldn't run the elevator without running the saw, could you?"

"Not unless you took the belt off that connects with the saw from the motor."

"Is the factory floor dirty?"

"Yes, it was when we went there. It was dirty, and it has always been so. In some places the dirt and grease is an inch thick and boxes are cluttered around on the floor."

Dark Around Elevator Shaft.

"Was it dark around the elevator shaft?"

"Yes, especially on cloudy days."

"Was April 26 cloudy? Didn't it rain on that day?"

"Yes, part of the time."

"Wasn't it very dark on the second floor around the elevator shaft and near the clock?"

"Yes."

"Can the metal room door be locked?"

"No, there is no lock on it."

"Aren't there large vats in the metal room?"

"Yes."

"Big enough to get a horse in?"

"Well, no, I won't say you could."

"Get a pony in there, then, couldn't you?" urged Mr. Arnold.

"Well, I don't know. They were rather shallow."

"Well, how deep are they, about 2 feet, or a foot and a half?"

"About a foot and a half, I think."

"Is anybody supposed to be in the factory on Sunday?"

"No."

"Isn't there slack in the elevator rope?"

"Yes, some little slack."

"When Frank was engaged in his work at the factory wasn't he very intent on it?"

"Yes."

Frank Easily Excited.

"Have you ever seen him get excited when things went wrong?"

"Yes, never a day went by without his getting excited. I've seen him get excited frequently and I've seen him rub his hands together a thousand times, and one day when Sig Montag raised cane he became terribly excited."

"Are you as nervous as Frank?"

"No."

"When he got excited and worried he would call on you, wouldn't he?"

"Yes, frequently."

"Did Frank know many of the help? Did he know Mary Phagan?"

Mr. Dorsey objected to the witness stating what was really something that was a state of Frank's own mind, and Judge Roan finally ruled that the witness might give his opinion.

"I don't know whether or not he knew Mary Phagan," the witness then declared.

"Did you know her?"

"I did not know the name, but if I had seen the girl on the street I would have known that she was one of the factory girls."

Darley then stated that pieces of paper similar to the part of a scratch pad found near the girl's body were commonly scattered around the building.

"Was the clock door unlocked that day?"

"Yes, the door was usually kept locked, but about that time the key was lost and the door was kept unlocked."

"Both you and Frank were mistaken that Sunday morning in thinking that the punches on the time slip were all right, were you not?"

"Yes," the witness replied.

Judge Roan then adjourned court for lunch.

Roan Reverses Decision.

At the beginning of the afternoon session Judge Roan reversed his decision in which he had sustained the state in their objection to testimony relative to the nervousness of others beside Frank being admitted.

He said:

"The defense can show the mental demeanor of any other person in the building. Relative to Darley's testimony of the handwriting, inasmuch as he is no expert, his statement will not be admitted without the compar-

son of other handwriting specimens of the defendant."

The witness was then questioned by Attorney Arnold. After pointing out a number of stated discrepancies in the diagram presented by the state, he was asked:

"Anybody on the third floor can see anyone coming from the metal room, can they not?"

"Yes."

"Have you seen Mr. Frank in a nervous condition on any previous occasion?"

"Once, when he saw a child run over by a trolley car on which he was riding. He was nervous throughout the day and couldn't work. On an occasion prior to that he and Sig Montag had had an argument on the office floor of the pencil factory, and following, Mr. Frank was nervous the rest of the day."

"Did he use any remedy on day of the car accident?"

"Yes, spirits of ammonia."

Everybody Was Excited.

"Everybody at the pencil factory was excited on the morning the body was discovered, were they not?"

"Yes."

"Some manifested nervousness in some ways while others manifested in different ways?"

"Yes."

"Who were there?"

"Detectives Black and Starnes and 'Boots' Rogers and others."

"Is there anything right about this diagram of the state's except a general view of things at the factory?"

"Yes."

"Isn't Frank's office a lot smaller than shown in the picture?"

"Yes."

"Does the picture show a bookcase in Frank's office?"

"No."

"Isn't there a case that hides part of the view from the office?"

"Yes."

"Doesn't the picture misrepresent the office view?"

"Yes."

"Isn't it drawn adroitly with that view?"

"It zooms so."

Objection Is Sustained.

Attorney Hooper's objection to rule out the word 'adroitly,' on the grounds that it was purely a conclusion, was sustained.

"The ants look small in the diagram, when, in fact, it is larger than the door?"

"Yes."

"The diagram doesn't show a roll-top desk, two cabinets nor a wardrobe, does it?"

"No."

"That's not a very accurate picture, is it?"

"No."

Solicitor Dorsey took the witness.

"Did you observe the persons who were there at the factory the same time you observed Frank's deportment?"

"Not at those very special moments."

"Did you tremble when you nailed the door in the basement?"

"No."

"Is there generally any difference in a person's attitude?"

"No."

"Who were nervous?"

"Starnes looked and spoke as though he was worried and excited."

"How do you know?"

"By his manner and words."

"Well, let's take up the next man."

"They all were officers."

Describe All Actions.

"Well, whether they were officers or not, you said they all were nervous. Now describe the actions of them all."

"I have explained all I know."

"Why did you notice Frank so much and fall on the others?"

"Because Frank was so much more nervous than all the others."

"Who else was nervous?"

"Mr. Holloway was shaky on Monday."

At this juncture the witness showed signs of anger. The solicitor asked him:

"Are you mad—do you mind my questions?"

"No."

Another question was asked:

"Who else was nervous?"

"Mr. Schiff was shaky and apparently nervous."

"Was anybody nervous on Tuesday?"

"Yes, Mr. Frank was when the extras came out that he was to be arrested."

"Who gets up the data for the financial sheet?"

"Mr. Schiff and others."

"Then all Frank has to do is to compile this data?"

"I do not know."

"Was Newt Lee nervous?"

"I never noticed."

"What did Frank state to you in reference to the clock slips?"

Correct Up to 2:30 A. M.

"He said the slip of Newt Lee's was correct up until 2:30 o'clock a. m."

"What was the date of this slip?"

"I didn't notice."

"Where are the time slips kept?"

"In a desk, and later in a safe."

"Could there have been two slips punched by Newt Lee—were his slips ever in duplicate form?"

"Not to my knowledge."

"Where is the nearest place to Frank's office that those yellow pads are kept?"

In asking the question the solicitor held to view a yellow scratch pad containing sheets of paper similar to the sheet on which had been written one of the mysterious murder missives found beside the girl's body.

"On second floor near the office. We gave you twenty or more of them—almost all we had."

"Is there a place to keep them in the basement?"

"No. They go down sometimes in the garbage."

"Is there any use for them on the first floor?"

"No use except on the office floor. They are often scattered around, however."

"Where is the trash put when carried downstairs?"

"Near the boiler in the basement."

Looked Like She Was Crying.

"What was Miss Smith doing that Saturday morning when you walked downstairs with her?"

"She looked as though she was crying."

"How long have you and Frank worked together?"

"For two years."

"On the Tuesday following the Phagan tragedy did any woman become subject to tears in the pencil factory?"

"Yes, a Miss Ella Mae Flowers had a crying spell Tuesday."

"The whole factory was wrought up, wasn't it?"

"Yes. I had to let them go on Monday, and I often wished I had not let them go back to working during the whole week."