

WITNESSES NOT IN ACCORD ON LIQUOR PHASE

(Continued from page 1.)

Cordon declared that the state would attempt to show that Schwartz had been drinking prior to the dance and during the dance at Ten Mile; that he was under the influence of liquor while driving the car back to Roseburg; that he was driving in a reckless and fast manner; that persons at the scene of the wreck could smell liquor there, and that Schwartz was still under the influence of liquor, not only at the time of the accident, but even several hours later.

Defense Dexter Rice, outlining the defense, said that it would be shown that Schwartz was not under the influence of liquor, and that he was perfectly sober while driving the car. Evidence would be introduced, Attorney Rice said, to show that Schwartz at no time showed signs of having been drinking, and that his actions during the accident were such to show that his mental condition was normal and that he was mentally alert.

Witnesses Called
Paul Huffman, a member of the group in Schwartz's car, was the first witness called by the state. He was placed upon the stand merely to give an account of the trip to and from the dance, to show that Mrs. Robertson was riding in the Schwartz car at the time of the accident and that Schwartz was driving. He was not questioned for details and was not asked whether or not liquor was present.

Claim Schwartz Drunk
Mrs. Helen Bell, the next witness called, testified that she was at the Ten Mile dance, saw Schwartz there, and that he was apparently under the influence of liquor.

She stated that she saw the party come in right after the grand march and that a little later she had occasion to talk to the party. She did not speak directly to Schwartz, she said, but to the entire party in general and that she noticed they had been drinking.

"Did you observe Mr. Schwartz's appearance in regard to whether or not he had been drinking or intoxicating liquor?" the witness was asked.

"Yes, sir."

"What was his condition?"

"He apparently had been drinking, but I would not say that he was intoxicated."

"Describe his condition."

"There was an odor of liquor upon his breath, his face was flushed and his actions indicated that he had been drinking."

The witness stated that she observed Schwartz during the evening but had no occasion to speak to him. She saw him again about 2:30 in the morning, following the accident, in front of the armory, she said, and could still detect the odor of liquor upon his breath, but observed no signs of intoxication.

The witness was subjected to a severe cross examination in which it was brought out that there were a number of people in the immediate vicinity of Schwartz and his party in the dance hall at the time she spoke to them.

"You say that there were a number of people around Schwartz?" Mrs. Bell was asked.

"Yes, sir, the floor was crowded."

"Yet you say that you could smell liquor on the breaths of those of his party?"

"Yes, sir, and I could also tell by his appearance that he had been drinking."

"You say that you thought he had been drinking because his

Titina and Her Master



Here is Titina, the only dog that ever flew over the North Pole and her master, General Noble (inset), the Arctic explorer, lost in the Arctic wastelands.

face was flushed. He had been dancing, had he not, and the flush might have been caused from the exercise of dancing?"

"Yes, sir, but knowing the members of that party as I know them, I can tell whether they are sober or have been drinking, and his actions made me positive in my own mind that he had been drinking."

Schwartz Not Drunk

Schwartz had been drinking but was not intoxicated, according to Fred Brown, the state's next witness. Brown said he saw Schwartz at the entrance to the hall, and while there was little out of the ordinary in what Schwartz said, yet his actions caused Brown to believe that he had been drinking.

The court was informed. Brown said that Schwartz acted as if he were tipsy and feeling good, and he also had the smell of liquor on his breath.

Questioned regarding Schwartz's actions, Brown said that one statement made by Schwartz was taken by him to indicate Schwartz's condition. Brown said he had been dancing with Miss Golden, whom Schwartz had accompanied to the dance, and that when Schwartz came on the floor to claim her for the next dance he asked, "Where the H— have you been?" The question was peculiar, Brown said, and evidently would not have been asked in such language if Schwartz had been entirely sober.

When the state endeavored to introduce evidence of a riding Schwartz's manner of driving on the return trip, the defense immediately raised an objection involving a point of evidence that will form a basis for appeal.

Joe Farquhar was called to the stand and testified that Schwartz passed him about a quarter of a mile before reaching the place of the accident. He was asked how fast Schwartz was going, but the defense immediately interposed an objection, claiming that the speed at which Schwartz was traveling a quarter of a mile from the scene of the wreck was not material, as he had ample time to change his speed within that distance and that a quarter of a mile away was too remote to be given consideration.

District Attorney Cordon, on the other hand, contended that the testimony was permissible as showing Schwartz's manner of driving as linking up with other evidence to show that he had been traveling at high speed for considerable distance.

The objection was overruled and Farquhar testified that Schwartz was traveling about 45 miles an hour.

Upon cross examination he was asked whether or not he knew Schwartz and the car when they passed him. He testified that he did not.

"He was then asked if he went to the wreck, and he testified that he did not, stating that he did not see the car again until the next day at the garage, but was very positive that the car that went by him at high speed was the same one that he saw in a wrecked condition in the garage.

"It was an old car and had dirt on it," he testified as his chief means of identification.

Was Traveling Fast
Thomas Fletcher testified that Schwartz passed him at the top of the Johnson grade and was doing "55 miles an hour, not less."

He observed the car after it passed him and saw it remain on the left of the road. Fletcher said he was driving his car at 30 miles an hour when Schwartz went by him.

William Russell, the next witness called, was in the car directly behind the Schwartz's machine when it was wrecked. Schwartz had passed the car in which Russell was riding about 100 yards back, the witness said, and they watched the lights and saw them flash into the air and then on the hillside. Russell was traveling in a car driven by Grant Bales and he quoted Bales as saying, "I'll bet that poor devil went in the ditch."

Russell said that Schwartz was traveling 40 to 45 miles an hour when he went by Bales' car and that he pulled over to the right side of the road after passing.

On cross examination an effort was made to prove that the road was wet and slippery at the point of the accident. Bales' car was pulled off beside the road near the scene of the wreck and was full by two other cars immediately behind. The defense tried to show that the surface was so slippery that the oncoming cars skidded into the machine which Bales had been driving. Russell, however, said that he did not believe the surface was slippery and that the Ford in which he was riding did not skid in stopping, although the brakes were applied suddenly.

Russell said that he could detect an odor of liquor at the scene of the wreck, but could not say whether or not Schwartz had been drinking. Schwartz was a standing on the bank by the wrecked car when Russell arrived on the scene he said.

Following his testimony court adjourned for the night.

At Morning Session
Kenneth Atterbury, an eighteen-year-old youth, was the first witness to testify at the morning session. He testified that he was at the dance and was enroute home in a car driven by Grant Bales when the Schwartz car passed them going at a rapid rate of speed, estimated by him to be between 40 and 45 miles per hour. He stated that the Schwartz car was about 100 yards ahead of them when it turned turtle and crashed.

Grant Bales, driver of the car next testified and his testimony bore out that presented by Mr. Atterbury. He estimated the speed

of the Schwartz car at about 45 miles per hour.

Miss Osa Sims, was the next witness and she told of stopping at the side of the wreck and hearing Roland Schwartz talking. At first the witness testified that she heard him say something about "throw that bottle away" but upon cross examination she said that her testimony at the inquest was correct, at which time she stated that Schwartz said, "Get that d—d thing off of here." The defense counsel intimated that the allusion was to the wreckage.

Boys Found Dead Body

S. L. Hibard, a youth, said that he arrived at the scene of the wreck just following the crash and assisted in moving the car from the highway. He told of finding an arm protruding from beneath it and of rolling the car away to find the lifeless form of Mary Julia Robertson. "We did not know whether she was dead or alive at the time," he testified, "and we placed her in a car and rushed her to the hospital." When asked if there was any peculiar odor around the wreck, he said, "Yes, I could smell liquor there when we rolled the car over."

Traffic Officer Thurber next told of being called to the Coast Bay highway at midnight on Feb. 18th and examining the road near the wreck. He said that there was only a slight curve at the place where the Schwartz car rolled over and that the oiled macadam was not slippery enough to cause it to skid.

Wine Flask Found

"I walked along the side of the highway near the wreck," Thurber testified, "and found a silver flask near the car. I opened it and it smelled like wine. Then I went down the road and walked back. As I reached a point about opposite the wreckage I picked up a clear flask which was empty. I smelled it and it could detect the odor of wine."

Thurber then testified that he had heard Schwartz testify at the coroner's inquest that he had won the silver flask at a carnival game. He maintained at that time that it had had nothing in it.

Victory for Defense

The next witness called by the state was Dale Byrd, who testified that he had picked up a quart bottle near the wreck which was full of some sort of liquid. The defense scored a distinct victory at this point when they asked the court to have stricken from the records all references to bottles found around the wreck. The court sustained the motion.

Clifford Hess testified that that Schwartz was walking about the wreckage mulling something about "hitting a rock and the d—d rock isn't there now."

He could not testify as to smelling any liquor around the wreck.

Rather vague testimony was presented by Harry Snyder, who testified to seeing Schwartz at the Ten Mile dance. When asked to describe his condition there, Snyder hesitated then said, "Well, he was acting sort of peculiar. Just like he had had too much—acting just like a drunken man would. He was staggering very much. Just acted more like a two-year-old kid."

He testified that he had never seen Schwartz before, and that he was excused from the stand hurriedly.

Could Smell Liquor
Myron Hull, who testified to bringing Schwartz to his home in Roseburg following the wreck, said that he could detect the smell of liquor as Schwartz entered his car. He said that he paid no attention to his condition, as he was driving and Schwartz was seated in the back seat.

Cora Hull, who was seated in the front seat of the car, said that Schwartz smelled of liquor as he entered the car, but on account of defective hearing could not hear the things that he said.

Ruth Hull and Rose Mowry, sisters, who were seated in the rear seat of the Hull car, said that Schwartz was seated between them and kept saying, "D— those rocks." They said they could notice the odor of liquor about him as he entered the car but could not smell it after that.

Going at High Speed
Margaret Farquhar, the next witness, said that Schwartz passed the car she was driving home from the Ten Mile dance and was going about 50 miles per hour at the time. She said her speed was between 30 and 35 miles. Upon cross examination, Mrs. Farquhar grew very emphatic in answering the questions of Attorney Rice and some of her testimony was not allowed in that records. Her remarks brought laughter from the crowd in the courtroom and Judge Hamilton rapped for order, admonishing the spectators that, upon the next outbreak, the room would be cleared. "This is no time for merriment and merely shows a lack of civilization," said the judge. "I will clear this courtroom at the next disorder."

Mrs. Farquhar was asked by Attorney Rice if she had not told him on the streets yesterday that the only way she could identify the Schwartz car was by the mud on the back of it.

Member Grand Jury Testifies
George Weber, a member of the grand jury, testified that Schwartz was called as a witness in the investigation and that he was fully apprised of his rights, after which he stated that he had consumed a part of a pint of wine prior to the dance.

Dale Strange, stepfather of Mrs. Robertson, said that he saw Schwartz at the hospital following the accident and that it was his impression, judging from Schwartz's actions and conversation, that he had been drinking.

Dr. E. B. Stewart presented his notes made following an examination of the body of Mrs. Robertson, stating that death was due to concussion and shock.

C. W. Clark, local photographer, identified a photograph of the highway at the scene of the accident, pointing out the spots connected with the case.

M. E. Ritter, county coroner, said that he was called to the hospital when the body of Mrs. Robertson was brought in and that he saw Schwartz there; that there was the odor of liquor upon his breath, and that his mind was in a confused condition. When asked whether or not he knew the cause of that condition he said that he did not and that it might have been due to shock.

Thought Schwartz Intoxicated
Dr. E. J. Wainwright, who was called to the hospital to attend Lillian Jordan, who was injured in the accident, said that he talked to Schwartz, gaining the impression from the young man's appearance that he had been drinking. He said that Schwartz appeared to be in a talkative and exhilarated condition and that there was the odor of liquor on his breath.

Directed Verdict Asked
Dr. Wainwright was the last of the state witnesses and the state rested.

The defense moved for a directed verdict claiming that in order to sustain the indictment the state was required to prove that Schwartz was under the influence of liquor and that there had not been sufficient evidence to support this contention. While some testimony had been introduced to show that he had had a drink of liquor, there was nothing to show that he was intoxicated, it was claimed, and that the proof of drinking liquor was not sufficient to sustain a charge of intoxication.

District Attorney Cordon claimed that the law covering manslaughter provides that a person is guilty, whether death is due to carelessness, recklessness or lack of circumspection. Intoxication in such a case is only a contributing factor, the state's attorney claimed.

Judge Hamilton overruled the motion, stating that the evidence of drinking is a matter for the jury to consider.

Defense Opens Case
J. Wendell Wright was the first witness at the defense session and that he was in attendance at the Ten Mile dance and that he saw Schwartz several times during the evening and that there was no evidence of his having been drinking.

He further testified that he stopped at the scene of the wreck and that the road was wet and slippery at that spot, so much so that two of the young ladies at the scene slipped and fell. On cross examination Mr. Wright admitted that his wife, who has an automobile insurance agency, carried the insurance on the Schwartz car.

C. M. Malcom, deputy sheriff at the Ten Mile dance, said that he saw Schwartz during the evening, but did not see any signs of intoxicating liquor. He said under cross examination, however, that he would not have been apt to notice the presence of liquor unless Schwartz was disorderly.

Following his testimony court took a noon adjournment to meet again at 1:30 o'clock.

At Afternoon Session

Mrs. Wendell Wright was the first witness at the afternoon session and her testimony was much the same as that given by her husband. She told of the congested traffic on the highway the night of the dance. "The surface of the highway was very slippery," she testified. "One girl fell down trying to walk from a car." Upon cross examination Mrs. Wright said that she considered the highway on the night of the accident in a dangerous condition. Mrs. Wright admitted that she is the agent for the company carrying the insurance on the Schwartz car.

Mrs. Wm. Scott testified to seeing Roland Schwartz at the Ten Mile dance and said she did not notice him as being under the influence of intoxicating liquor. On the return trip to Roseburg, she testified to arriving at the scene of the accident. Her conversation with Schwartz at the dance was next related and she reiterated that the young man was sober.

Says Schwartz Sober
Mrs. Robert Brockley testified that she saw Roland Schwartz at the Ten Mile dance and that he was strictly sober. Her testimony remained unchanged during the cross-examination.

Lee Williams, local contractor, who had attended the Ten Mile dance, said he noticed Schwartz at the dance and could not say that he had been drinking.

P. E. Randall, accountant of the California Oregon Power Co., now a resident of Medford, testified that his two daughters had been in the Schwartz party attending the Ten Mile dance. He said the party assembled at his home before the dance. He declared that none of the party had been drinking. At present time, Mr. Randall was still on the stand.

Smoker at 5

Smoking infants are not so rare as one might think from recent news dispatches. Houston, Texas, discovered one recently. Niall A. Bertson, five, pictured above lighting one of his favorite stogies. His mother says she caught him with his first cigar when he was learning to crawl, and when he started to kindergarten about six months ago he began smoking regularly.

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SALT—Leslie Iodized, 2 lb. pkg., 2 for 25c

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GENEVA, May 31.—Vast job of reforming the calendar, being undertaken by the league of nations, but information from the United States indicates that the American people are beginning to show interest in the thirteenth month year.

The fashion shops are represented as eager to have a fixed date established, so that the Easter parade may be more adequately prepared for by fashionable tailors; Jews, Protestants, Roman Catholics, Confucianists and adherents of other religions throughout the world are watching the developments in the campaign of calendar reform