CASEDAY MUST HANG UNLESS THE GOVERNOR COMMUTES SENTENCE

A CELEBRATED CASE FROM EASTERN OREGON PASSED UPON BY SUPREME COURT

Story of a Grant County Lynching, for Which the Defendant, Joseph Casedy, a Deputy Sheriff, Was Convicted of Conspiring to Aid the Lynchers, Giving Up His Prisoner to the Lynchers Without Resistance---Would Make Sensational Dime Novel Story.

OREGON SUPREME COURT DECISIONS

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State of Oregon v. Caseday, et al, Grant County.

State of Oregon, respondent, v. Joseph H. Caseday, jointly indicted with Emmet Shields, Earl Shields, Albert Green and Ben Hinton, appellant. Appeal from the circuit court for Grant county. Hon. Geo. E. Davis, judge. Argued and submitted March 23, 1911. Leedy & Patterson, for appellant. Roy F. Shields and A. M. Crawford, attorney general, for respondent. Burnett, J. Affirmed.

Joseph H. Caseday was jointly indicted with Emmett Shields, Earl Shields, Albert Green and Ben Hinton for the premeditated murder of Oliver Synder. The better to comprehend the situation it is proper to state that Canyon City, the county seat, is located near the center of Grant county. About 30 miles to the northwest is the village of Hamilton and Monument is situated about nine miles further in the same direction. Some miles still farther on that course on the evening of December 24, 1909, in an altercation in a sheep herders' cabin, Oliver Snyder killed Arthur Green and at once fled, secreting himself in the woods on the adjacent hills. Mr. Beymer, an eyewitness, notified the officers and summoned help. The defendant Caseday at that time was acting as deputy sheriff and hearing of the homicide, took with him a justice of the peace for the purpose of holding an inquest, borrowed a gun belonging to his co-defendant Emmett Shields and proceeded toward the scene of the killing. Arriving at Monument and learning that Snyder had given himself up, the defendant left the rifle and went on until he met some men bringing in the body of Arthur Green and having Snyder under arrest. Caseday then took charge of Snyder and returned toward Monument. Soon after the defendant started from Hamilton toward Monument the defendants, Emmett Shields, Earl Shields and Albert Green went together in a buggy to Monument. On returning to Monument with the prisoner, Caseday at once sought Albert Green and found him in a saloon, took him out in the rear of the building and had a private conference with him out of the hearing of other persons. He directed the man with whom he had left the rifle to return it to Emmett Shields. Soon after, meeting Emmett in the saloon, the latter asked him for the cartridges belong to the rifle. Caseday produced them and when Emmett asked him if that was all, the former ejaculated: "For God's sake ain't that enough?" The parties held a number of private conferences in and about the saloon in Monument and later in the evening about 8 o'clock Caseday started with the prisoner to drive to Hamilton, following two other men who took with them the body of Green. Arriving in Hamilton all the parties stayed there until between 2 and 3 o'clock the following morning. Also in Hamilton there were frequent conferences in private between the defendant Caseday and others of the defendants. Emmett Shields was heard to state that they would never get to Canyon City with Snyder. He and the defendant Hinton also solicited various persons to assist in hanging Snyder. There is testimony tending to show that although Caseday had assistance in bringing Snyder as far as Hamilton he represented to the assistant that they would stay all night in Hamilton and go to Canyon City the next day, but disregarding that arrangement he took the prisoner alone and left for Canyon City about 3 o'clock in the morning. Although warned of plans to lynch Snyder and advised to take assistance, he curtly declined any help. The testimony also tends to show that his four co-defendants left Hamilton on horseback in advance of him and took the road leading to Canyon City. The defendant Hinton was convicted on a separate trial of murder in the second degree and testified at the trial of Caseday, giving the details of taking and killing the prisoner about two miles out of Hamilton towards Canyon City. The foregoing is a statement of only some of the salient features of the voluminous testimony in the record. The contention of the state is in substance that the matter of lynching Snyder was arranged among the defendants Shields, Green and Hinton and that Caseday was approached on the subject and consented to play the part of taking the prisoner ostensibly under arrest to the place where the other defendants, by a pretence of force, should take him away from the officer and lynch him. The separate trial of Caseday resulted in a verdict of guilty of murder in the first degree and from the resultant judgment he appealed.

Burnett, J.: The first error assigned is the refusal of the court to change the place of trial. The defendant filed his own affidavit and that of one of his attorneys, together with two others, to the effect that the killing of Snyder had been generally discussed throughout the countp; that several accounts of the homicide had been published in the local papers and that in their opinion a fair and impartial trial could not be had in that county. It is also charged that some of the prominent taxpayers had employed special counsel to aid in the prosecution. The state filed counter affidavits, in substance giving a contrary opinion as to the probability of getting a fair and impartial jury. The affidavits amount to no more than the mere opiionn of the affiants as to the state of public feeling. On the part of the defendant there is no showing of any overt act indicating prejudice against him except in the employment of special counsel. Who or how many of the citizens of the county participated in that employment is not shown. The newspaper accounts attached to the affidavits are devoid of sensation calculated to inflame the public mind. The press accounts were mere statements as matters of news of the testimony given at the trial of Hinton and other incidents relating to the homicide. The showing is in substance equivalent to the statement that possibly the public may have formed a general opinion of the guilt or innocence of the defendant from what it has heard or read. This situation as to the material available for jurors is analogous to what is contemplated in Section 123, L. O. L., to the effect that such an opinion shall not of itself be sufficient to sustain a challenge to a particular juror, but the court must be satisfied from all circumstances that the juror cannot disregard such opinion and try the issue impartially. It is uniformly held that a change of venue is discretionary with the trial court. The jury in this case was empaneled after the examination of 98 men. We cannot say that the judicial discretion was abused in denying the application to change the place of trial. The decision of trial courts denying motions to change the venue on much stronger showing than exhibited here was upheld in the following cases: State v. Pomeroy, 30 Or. 16, 19; State v. Savage, 36 Or. 191, 198: State v. Armstrong, 43 Or. 207, 211; State v. Smith, 47 Or. 485, 487; State v. Mizis, 48 Or. 165, 174.

Twenty-five assignments of error in the bill of exceptions relate to the manner of forming the jury. At the beginning of the trial there were but seven jurors of the regular panel in attendance. The names of these were taken from the box at once and the court directed counsel to proceed with their examination, to which the defendant objected until the full number of 12 had been drawn. The court overruled the objection and the seven were examined with the result that four of them were excused for cause. Afterwards special venires for 50, 40 and 25 jurors were issued in succession, from which the remainder of the jury was empaneled. As this progressed the three remaining jurors of the original seven were peremptorily challenged by the state, so that as to them no harm was done the defendant; he lost no challenges on either of them.

In respect to the formation of the jury, Section 116, L. O. L., prescribes that "when the action is called for trial the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the sheriff, under the direction of the court, shall summon from the bystanders, or the body of the county, so many qualified persons as may be necessary to complete the jury." According to section 1005, L. O. L., the sheriff summons persons named in the panel by giving written notice to each of them personally or by leaving the same at his place of residence with some person of suitable age and discretion. As each juror from the special venires was examined and the defendant inquired of him by whom he was served and to each one answering that he was served by some person other than the sheriff himself in person the defendant objected because of that. This, in our judgment, amounts to a challenge to the panel, which is forbidden by section 117, L. O. L. The only challanges allowed are peremptory or for cause. Challenges for cause are arranged under two subdivisions: 1. General, that the juror is disqualified from serving in any action; or, 2. That he is disqualified from serving in the action on trial. The general causes for challenge are: first, a conviction for felony; second: a want of any of the qualifications prescriebd by law for a juror, and; third, unsoundness of mind or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror: and the particular causes of challenge are for actual or implied bias. L. O. L. Sections 117-123. These provisions of the code so particularly delimit objections to jurors as to exclude almost every quasi judicial feature from the duty of the sheriff in summoning talesmen. The mere act of delivering notice is purely ministerial and it might well happen that the sheriff himself designated the citizens of the county to be summoned and directed his deputies or, for that matter, any one else, to hand the statutory notice to those selected. There is nothing in the objections of the defendant as reported in the bill of exceptions to exclude this hypothesis. There is no charge that the sheriff acted otherwise than fairly in the discharge of his duty. We must presume that his official duty was regularly performed. The end to be attained is an impartial jury and this is finally determined by the examination of the men themselves under the sanction of the court at the trial of the cause. The result is not affecetd by the question of whether or not the sheriff in person or his deputy delivered the notice to the jurors under consideration. The manner in which they were served constitutes the only objection urged by defendant to 10 of the jurors participating in the verdict and in the absence of any showing of partiality in the action of the sheriff there is no merit in that objection.

Except for the order in which the court required the parties to exercise their peremptory challenges the dispute about the formation of the jury is narrowed to a consideration of the rulings on the eligibility of the last three jurors examined. With but one peremptory challenge left the name of J. W. Allen was drawn from the box. He testified that he served "a year ago this spring" on the jury in that court, but did not know when he was discharged. The trial began June 20, 1910. The statute says that it is a sufficient cause of challenge if a juror has been summoned and attended as such at any term held within one year prior to challenges. L. O. L., Sec. 990, sub. 4. "A year ago this spring" would be more than one year prior to the beginning of the trial and there is not enough in the record to raise the question on that ground of challenge. Allen further testified that he was not acquainted with any of the defendants; that he had read the account of the killing of Snyder, had heard it discussed some but not to any great extent; that he sometimes took part in the conversations and had expressed his opinion in those conversations. He had heard some of what purported to be the facts developed in the trial of Hinton and from what he had heard he had formed and expressed a fixed opinion as to the guilt of the defendant Caseday at the present time which it would require sworn testimony to remove. He stated, however, substantially that he could lay aside his estimate of the case and try it fairly and impartially; would not allow his previous conceptions to influence him if taken as a juror; that his opinion would not have any influence whatever in making up his verdict; that the view he had was not formed from talking with witnesses or jurors who had participated in the trial of Hinton, but arose from talking with people about the case and from reading the papers. The court overruled the defendant's challenge for bias of this juror and afterwards the defendant used upon him his last peremptory challenge.

The juror Cook was slightly acquainted with the defendants Caseday and Albert Green, but not with the defendant Shields. He had heard of the killing of Snyder and read about it in the local papers; had talked some with other people about it but had not expressed any opinion himself. He was absent in Portland during the trial of Hinton, had not formed an opinion as to the guilt or innocence of Caseday and stated that he would not take into consideration what he had heard or read of the evidence in the trial against Hinton, but would go by what was produced in the present trial; that he would not consider the fact that Hinton had been convicted unless the evidence showed a connection between Hinton and Caseday, in which event he would give some consideration to the conviction of Hinton, but on examination by the court he answered that he would surely go by the directions of the court not to consider the fact that Hinton was convicted.

Bert Howard was not acquainted with any of the defendants; had heard of the killing of Oliver Snyder, had heard the name of the defendant used in connection with it only as a deputy sheriff at the time; had read the county paper and had participated in the discussion of the reports but had not taken enough interest in the matter to inform himself as to the facts for his own satisfaction and had not expressed any opinion as to the guilt or innocence of Caseday. He was present in Canyon City about 15 minutes while some one of counsel was arguing the case of Hinton to the jury, but who it was he did not remember.

The court overruled the challenges for cause made by the defendant against the jurors Cook and Howard and permitted them to participate in the trial of Caseday. "A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section 121; but on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially." L. O. L. Sec. 123. The defense, to sustain these challenges, relies upon the case of State v. Miller, 46 Or. 485. In that case some of the talesmen testified that they were in court at the former trial when the widow of the decedent gave her testimony; that they had talked to a good many witnesses who gave testimony at the former trial and also to some of the jurors who returned a verdict of guilty therein; that they detailed as nearly as they could the facts involved and having confidence in what they said, the jurors had formed

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