Salt Lake City, Utah, September 1, *1915*

Application of Joseph Hillstrom

To the Honorable Board of Pardons of the State of Utah:

I hereby apply to your Honorable Body for a commutation *and respectfully represent as follows:*

First—That I am serving a term of imprisonment in Utah State Prison *under conviction and sentence on a charge of* Murder in the First Degree

Second—I was convicted and sentenced on the 2nd *day of* Aug. 1915 *A. D.* ....., *at* Salt Lake City, *County of* Salt Lake *and State of Utah, in* Third Judicial District *Court, in and for the County and State aforesaid, Honorable* M. L. Ritchie, *presiding.*

Third—I was sentenced to be shot on Oct 1, 1915

and thereafter was imprisoned in the Utah State Prison

Fourth—Honorable E. O. Leatherwood *prosecuted the case.*

Fifth—My true name in full is Joseph Hillstrom

I was convicted under the name of Joseph Hillstrom

Sixth—The names of persons charged to have been connected with the same offense are as follows:

Seventh—I have never been convicted of any offense except

Respectfully submitted,

Joseph Hillstrom

BEFORE THE BOARD OF PARDONS,
Consisting of the
Governor of the State, the
Three Justices of the Supreme
Court and Attorney General.

In the Matter of the
Application of
JOSEPH HILLSTROM for
Commutation of Sentence.

The applicant, Joseph Hillstrom, in the District Court of Salt Lake County, by an impartial jury of twelve men, against whom no complaint of prejudice, bias or unfairness has been made, was, on the 27th day of June, 1914, convicted of murder in the first degree. Under the statutes of this State, when one is found guilty of such an offense, the jury, by their verdict, may recommend that he be imprisoned for life. In the absence of such a recommendation the court is required to impose the death sentence. The jury refused to make the recommendation and hence the court imposed that penalty. The statute further provides that the accused so found guilty may choose whether death shall be inflicted by hanging or by shooting. The applicant chose the latter. The court thereupon sentenced him to death by shooting. From that judgment the applicant prosecuted an appeal to the Supreme Court of the State.

One of the principal contentions made on the appeal was, that the evidence was insufficient to connect the applicant with the commission of the murder. The court, upon a complete transcript of all the evidence adduced before the trial court, and upon a complete record of the cause, reviewed that question and in its written opinion filed July 3, 1915, and published in 150 Pac. 935, ____Utah____, set forth at considerable length the evidence which, in its judgment, justified the verdict of the jury. For a better understanding of

the facts of the case a copy of the opinion is hereto attached. It is not necessary to here make a detailed statement of them. Let it suffice by noting some of them.

As appears by the opinion, and as shown by the record, two men with red bandana handkerchiefs over their faces as masks, and with guns in hand, at about 10 o'clock at night, on the 10th of January, 1914, entered the store of the deceased, J. G. Morrison, in Salt Lake City and there shot and killed him and his son. The undoubted purpose of the assailants entering the store was either murder, or roberry, or both. The deceased was shot twice; his son three times. In the attack one of the assailants was himself shot by the son. The gun with which the son did the shooting was found near the outstretched hand of his dead body with one chamber discharged. One of the assailants, as he ran from the store, was heard to exclaim, as if in great pain, "Oh Bob," and "I am shot." Considerable blood was found on the sidewalk and in an alley near the store, and where the assailants, after the shooting, were seen and heard to mutter to themselves. There was one living eye witness to the shooting,---a younger son of the deceased. Because of the handkerchiefs over their faces portions of the facial features of the assailants were hidden from him; but he testified that the general features of one of the assailants were about the same as those of the applicant, and that he had the same shaped head, was about the same size, and wore the same clothes as was shown the applicant wore that might. There also was testimony of two other witnesses, whose attention was attracted by the shooting, that the size and appearance of one of the perpetrators of the crime, and whom they saw running from the store after the shooting in a stooping posture, were similar to the size, appearance and build of the applicant, and that his voice as he spoke "Oh Bob" and

"I am shot" was similar to the voice of the applicant. One of the witnesses testified that they were exactly the same. Another witness testified that she saw the assailants near the store just a few minutes before they entered it. They then had red bandana handherchief tied around their necks. She had particular reason to observe one of them because of their crowding her off the sidewalk as she and her husband met and passed them. There was some snow on the ground, the night ~~xxx~~ a bright moonlight night, and the surroundings well lighted by electric arc lights. As some of the witnesses expressed it, it was about as light as day. She testified that one of the assailants, just as they had passed, turned and looked at her and that she looked at him and that close by she had a direct view of his face. She described that man as being rather tall and slim, with light hair and of light complexion; that he had a peculiarly sharp nose, sharp face and large nostrils, and a scar on the side of his face and neck, and that these were very like the sharp nose and face, and large nostrils of the applicant and the scar on the side of his face and neck; and that the build, size and appearance of that man and the applicant were alike. She gave such a particular and minute description that with it the applicant, among many, could well be identified. Many men have light hair and are tall and slim. That is a description not uncommon of others; but the peculiarly sharp nose and sharp face, and large nostrils of the applicant and the scar on his face and neck gave him most pronounced and unusual marks of identification, and features which may not readily be mistaken for another. In addition to that the applicant, about two hours after the commission of the murder, and about two and one-half miles from the place of the homicide, was found seeking aid at a doctor's office for a fresh gunshot wound

through his lungs and chest. He then was in a condition about to collapse because of loss of blood. He volunteered to the doctors who attended him that he "had had a quarrel with someone over a woman and that in the quarrel he was shot, and that he was as much to blame as the other fellow and wanted it kept quiet, kept private." He then had a gun in his possession, which, when he was dressing after the wound had been attended, dropped from his clothes to the floor. The physicians testified that in their opinion, the applicant's wound was produced by a bullet shot from a .38 calibre gun. It was also shown that the gun which lay near the outstretched hand of the deceased's son, with one chamber freshly discharged, and with which he had shot one of the assailants, was a .38 calibre gun. One of the doctors, in his automobile, took the applicant to Murray, a town about five miles south of the place of the homicide, and there left him with his friends. On the way there the applicant threw his gun away. As they approached the house to which he was being taken, he requested the doctor to turn down the lights of the automobile, and as they drew nearer he gave two shrill, penetrating whistles. He was arrested two or three days thereafter. The officer then told him that if he would disclose the place where and the circumstances under which he received his wound, and if the facts were as stated by him to the physician, he would be given his liberty. He declined to give the officer any information whatever.

There thus, as disclosed by the opinion of the court and by the record, is good evidence to connect the applicant with the commission of the murder.

The applicant was not a witness in the case. And, other than what he stated to the physicians, gave no explanation whatever to show where or the circumstances under which he

received the gunshot wound. He made no offer or attempt to prove anything of that kind at the trial, nor did he offer any evidence whatever to show his movements, whereabouts, or doings, on the night of the homicide. All these at all times have been withheld by him.

It also was contended before the Supreme Court that the applicant had not had a fair trial in the particular, as claimed in one breath, that he was not represented by counsel, in the next that he was not permitted to conduct his defense alone and in person without counsel. These matters are also fully and in detail referred to and set forth in the opinion. They show that the applicant was represented by two counsel of his own selection and hire. When the state was about half through its case the defendant, without any warning or notice to his counsel, arose before the court and jury and in a most unseemly manner, and wholly without cause, demanded that his counsel be summarily discharged and that he be permitted to conduct his defense in person and without counsel. The court advised him that he had the right to discharge his counsel and himself to examine witnesses and to conduct his defense. But the court further stated that he would request his counsel to remain and safeguard and protect his rights and interests. Colloquies were had bewteen the court, the defendant and his counsel, when the trial was suspended to enable counsel to consult with the defendant and his friends. That was just shortly before adjournment for the noon hour. As a result of such consultation the defendant his counsel returned into court when his counsel announced that "we will proceed to act in behalf of the defendant on the court's appointment unless the court chooses to appoint someone else in our place. If the defendant wishes some other attorney appointed we will cheerfully withdraw." The appli-

cant did not then ask that his counsel withdraw or that other counsel be appointed for him, but assented to his counsel proceeding in his behalf with the understanding, however, that he be given the right to examine witnesses himself. The court granted him that right and the trial thereupon was resumed. Shortly thereafter the noon hour adjournment was taken. When the court convened in the afternoon additional counsel appeared for the defendant and asked that his name, at the request of the defendant and of his friends, be entered as counsel for the defendant. That was done and from thence on for four days taking testimony in the case all three counsel, with the defendant's consent, represented him and took part in all of the proceedings to the end of the trial without any objection from any one. It was not claimed before the Supreme Court that the applicant's counsel had been unfaithful or disloyal to him, or that they had not done all in protecting and safeguarding the rights and interest of the applicant that was proper for anyone to do.

Other alleged errors also were considered by the Supreme Court, but the contentions made with respect to them also were held unfounded. The court, upon a review of the whole record, stated that "we are satisfied that there is sufficient evidence to support the verdict; that the record is free from error; and that the defendant had a fair and impartial trial in which he was granted every right and privilege vouchsafed by the law." The judgment thus, on the 3d day of July, 1915, was affirmed.

The applicant, within twenty days thereafter, had the right to file a petition for rehearing. The court also, upon application therefor, had the right to extend that time. No petition was filed and no attempt whatever made to do so.

Upon remittitur, the applicant was, bythe district court, again sentenced to death by shooting on the 1st day of

October, 1915. He thereupon applied to this board for a commutation of sentence. The application was heard on the 18th of September, 1915. Upon that hearing the applicant was represented by O. N. Hilton of Denver and Soren X. Christensen of Salt Lake City, attorneys, and who also prosecuted the appeal for him to the Supreme Court. One of them also represented him at the trial in the district court. The applicant also was present at the hearing before the board from beginning to end. So also were representatives or a committee of the Industrial Workers of the World. The grounds stated for a commutation were, that the evidence was insufficient; that the applicant had not had a fair trial, his counsel stating that he had had "a legal trial but not a fair trial;" that the case rested on circumstancial evidence and that the life of one should not be taken on that kind of evidence; and that the infliction of the death penalty was barbarous and ought not to be imposed in any case. Here let it be observed that the applicant before verdict and judgment was entitled to every presumption of innocence; but after a verdict finding himguilty and after judgment and its affirmance the presumption of innocence no longer prevails. The presumption then to be indulged is that the judgment is right and that the applicant is guilty. He, after that, had the burden to show, or bring forward, or point out, something to justify a commutation of sentence, or clemency in his favor. But neither he nor his counsel before the board attempted to point out anything wherein, orin what particular, they claimed the evidence was insufficient to justify the verdict. Nor did they offer or attempt to show anything respecting the applicant's life, habits, morals, or previous character, or what trade, profession or occupation had been followed by him, or who he was, or what he had done, or where he was from, or what kind of life had been lived by him. Nor did they

offer or attempt to show anything new or additional respecting the case, or anything in favor of the applicant, or anything to justify commutation or clemency. What was urged in support of the application is this: Cases were referred to wherein we were told convictions rested alone on circumstantial evidence and where later it was disclosed that the persons convicted were innocent. It, however, was not claimed, nor was there any attempt made to show, that the facts in those cases and in this case were similar or even analagous. Frequent assertions were made by counsel that the conviction here rested alone on circumstantial evidence and that the applicant's life ought not to be taken on that kind of evidence. But, as stated by the Supreme Court in its decision, and as shown by the record, the conviction here does not rest on circumstantial evidence alone. There is direct evidence, testimony of eye witnesses, to identify the applicant as one of the perpetrators of the crime. No reference whatever was made to that testimony by counsel, nor did they in any manner offer or attempt to review the evidence, or to inform the board wherein or for what reason the evidence did not support the conviction, or that the conviction rested alone upon circumstantial evidence. Indeed, counsel, before the board, for some reason avoided all references to the real facts of the case and as disclosed by the record, and in such respect contented themselves with fervid exhortations on the horros of an execution on circumstantial evidence and with unwarranted assaults on the good names of the States of Utah and Colorado.

It further was contended before the board that the applicant was denied representation by counsel. As to that, we may here say, as was said by the Supreme Court upon a review of the whole matter, that "under all the circumstances the argument in one breath that the defendant was denied his

constitutional right to appear and defend in person and in the next was proceeded against without counsel is as groundless as was senseless the defendant's action discharging his counsel in the forenoon and reemploying or reengaging them in the afternoon."

Counsel also,before the board in criticism of the Supreme Court, contended that it in its opinion had held that the failure of the applicant to be a witness on the trial of the case before the district court was a circumstance to be considered against him and as an inference of guilt. Notwithstanding counsel were told that they had misconceived the opinion and did not properly reflect it, they, nevertheless, impatiently persisted in their misconception and misconstruction of the opinion, and argued, as though this board were clothed with power to review and correct what counsel chose to assert were errors of law of the Supreme Court. They were asked that, if they were in good faith in their contention, why it was they had not filed a petition in the Supreme Court for a rehearing. No answer was made to this and no reason given for their failure to do that, except that one counsel was in Denver and that he had left the matter in hands of counsel in Salt Lake City. From the fact that no petition was filed, when counsel had every opportunity to do so, it may well be presumed that they thought there was no just or meritorious ground on which to ask a rehearing.

Reference also was made to ~~and comments concerning~~ the applicant's alleged attitude in protecting the honor of a woman. This, because of the testimony of the doctor that the applicant had told him that he had received the gunshot wound in a quarrel over a woman in which he "was to blame as much as the other fellow." Here it may be well to note that there was good evidence adduced by the state to show that the applicant received his gunshot wound in the store at the time

of the homicide. Neither at the trial nor before this board was there any evidence whatever adduced to show the contrary; nor was there anything offered on behalf of the applicant to show where, or in what manner, or under what circumstances he received the wound. There was, of course, the testimony of the doctor that the applicant had stated to him that he had received the wound in a quarrel over a woman. But that was not evidence of the fact. It was but evidence of his claim, of his declaration. Suppose he had said to the doctor that he accidentally had shot himself. That would be but evidence of such claim, of such contention. But such an extrajudicial, selfserving, and unsworn declaration would be no evidence of the fact that the wound was caused in such manner. So here. If the applicant claimed that the wound was produced in a quarrel over a woman, then it was his duty, and he was afforded full opportunity, to bring forward something to support it. He cannot ask anyone to believe his claim with no evidence whatever to support it and with no effort or attempt even to produce or furnish any. Hence it is time enough to consider the applicant's alleged attitude in protecting the honor of some woman when there is some evidence to show that he received his wound at some place other than at the place of the homicide. His mere general, extrajudicial, selfserving and unsworn statement to the doctor that he received the wound at some undisclosed place, in a quarrel with some unnamed and undescribed man over some unnamed and undescribed woman, is so vague and lax as even not to present an issue; much less can it be accepted as evidence of the fact. Further, his declaration to the doctor does not even imply that the honor of a woman was involved. He but said that "he had had a quarrel with someone over a woman and that in the quarrel he was shot." A quarrel between

two men over a woman may or may not involvex her honor. It depends upon what the quarrel is about. Yet upon this wierd, vague and selfserving statement, wholly unsupported by any evidence, the board was in effect asked to make a finding that the applicant was shot in a quarrel over some unknown woman at some unknown place and by some unknown man, and to ignore all the evidence adduced at the trial and in the record that he was shot in the store at the time of the homicide.

When counsel concluded their argument, without any attempt even to point out in what particular they claimed the evidence was insufficient to connect the applicant with the commission of the offense; without giving or offering anythigg as to the character, morals, habits or past life of the applicant, or as to who or what he is or was, or where he lived, or what he had done; without attempting to offer anything new or additional in the case, or any new information, or anything in his favor, or where he was or what he did on the night of the homicide, the chairman of the board asked the applicant if he desired to make any statement or to say anything in his own behalf. His reply was that he would not give the board any information, nor make any statement, until he was first granted a new trial; and that then he ~~would~~, on such new trial, ~~prove~~ his innocence and send several perjurers to the penetentiary where, as he said, they belonged. What or whom he meant by the statement he did not disclose. Nor did he disclose or attempt or offer to disclose what, if anything, were he granted a new trial, he would or could produce or prove, nor did he in any manner even indicate or intimate the nature or character of such proof. He was informed that the board was not clothed with power to grant him a new trial; that all by way of favorable action that it could do was to grant a

pardon or to commute the sentence. He stated that he did not want either a pardon or a commutation of sentence; that what he wanted was a new trial and an acquittal by a jury. He was asked why he did not make his defense and putin his evidence on the trial. His reply was that he thought the law presumed him innocent and that he would not be convicted on the evidence which was adduced against him. He again was told that the board was powerless to grant him a new trial and that a pardon would be equivalent to an acquittal; and that at this hearing was his opportunity to say or show whatever he desired to say or show. His counsel were asked if they desired to ask him any questions, or if there was anything that they desired to show by him. They replied in the negative. The applicant then was asked if he would be willing that any member of the board ask him questions which he might answer or decline to answer as he saw fit. He replied that unless the board first granted him a new trial he was unwilling that any qyestions be asked him or to make answer to any. His counsel were asked if they had informed and advised him that the board could not grant him a new trial and that if he desired to say or show anything in his behalf that he was required to say or show it at this hearing. They replied that they had so adviced him, and had requested him to make a statement and to tell the board whatever he claimed to be the truth about the case, but that he had declined to give any information, or to make any statement, or to answer any question, except on a new trial of the case before a jury, which, they had advised him, this board was powerless to grant. Some members of the board almost pleaded with him that if he was innocent he ought to give the board some information, or something, which at least might raise a reasonable doubt in the minds of the members

of the board and thus give them some ground upon which to commute the sentence. One of the representatives of the Industrial Workers of the World was asked if he desired to be heard in behalf of the applicant and if he would not consult with him in view of furnishing whatever information the applicant had in his favor. The representative but replied that the applicant knew his own mind and was quite capable of determining for himself his own desires in the premises, and that he did not care to advise him either one way or the other. Some members of the board even went so far as to say to the applicant that if he would give his attorneys and the warden the name of the man whom he claimed to the doctor had shot him, the name of the woman and the place and the circumstances of the shooting, so that the matter could be investigated, and if on such investigation it should be found that he was shot in such manner he would be given an unconditional pardon; and that the names of the parties to the affair, if any such had occurred, would be kept secret and made known to no one except to the warden, his attorneys and those investigating the matter. But after a conference with his attorneys he declined the proposition, his attorneys stating to the board, that he declined to give and further information, and that "he wanted to die a martyr."

There were also before the board a number of letters which were received by the chairman of the board from many different states. A few of them were from those seeking information as to the real facts of the case. Some of them were threatening demands to release and discharge the applicant regardless of whether he be guilty or innocent. Others were from those who, though in remote parts of the country, nevertheless claimed to know what the facts in the case are, and stated that there was no evidence to show the applicant's guilt, that he is innocent, and that he had hot had a fair

trial, and for these reasons asked that he be discharged. But ineevery such instance it is apparent from statements made by them that they have been misinformed as to the real facts and that they have been misguided and misdirected. If those who seek clemency on these grounds could but read the record in its entirety, as we have, and not some mere garbled reports and pamphlets prepared and sent out by partisans, they would reach a different conclusion. For, it is almost inconceivable how any impartial and unbiased mind reading the record in its entirety can reach any reasonable conclusion other than that of the applicant's guilt. Other letters and communications were from those who, wholly unfamiliar with and uninformed of the real facts of the case, labored under the impression that the applicant was arrested and prosecuted because of his membership of and connection with an organization known as the Industrial Workers of the World and that the trial involved something that the applicant had done as a member of, or in pursuance of that organization, or in furtherance of its principles, and that hence, the real contest involved the rights and general welfare of members of that organization, and of laborers and ~~the~~ workers of the world. And while they protested against the applican'ts execution and threatened and demanded his immediate discharge, yet indicated, in the event their protests and demands should be unavailing, that they exalted the applicant as a martyr dying in and for a most righteous cause. It is indeed, difficult to perceive how anyone, unless grossly misinformed of the facts of the case, could entertain any such views. It is natural and proper enough for the organization of which it is claimed the applicant is a member to aid him in his defense and to see that his trial was had in accordance with the laws ofnthe state and of our country.

But this controversy in no way involved any rights, doctrines or principles of any organization. There is nothing in the record whatever, nor in the history of the case, to support any such claim. Confessedly a most revolting double murder, without any extenuating or mitigating circumstances whatever, was committed by the two assailants who entered the store with faces masked and guns in hand. Certainly no one can exalt a perpetrator of such a crime a martyr. The only question, then, is, was the applicant one of the perpetrators who committed that crime? If he was, then ought he to suffer the consequences of his wilful and criminal acts, not because he is or is not a member of any organization, but because of the awful offense committed by him. If he was not, then is he entitled to a discharge, again not because he is or is not a member of any organization, but because of his innocence of the charged offense. As heretofore observed the state, at the trial, produced good and sufficient evidence to connect the applicant with the commission of the offense. Against ~~that~~ evidence the ~~defendant~~ applicant produced nothing and at all times withheld everything.

When thus nothing whatever was made to appear before the board to justify clemency or a commutation of sentence, and when the applicant, after a conference and consultation with his counsel asserted that he did not wish a commutation of sentence, but demanded a new trial, which we, as he was advised, were powerless to grant him, and when, too, no showing whatever was made to justify the granting of a new trial though we had the powef to grant it, there was but one course open to the board, and that was to deny the application, which was done.

To have reached any other conclusion requires a holding that capital punishment should not be inflicted in any case of first degree murder no matter how revolting the commission of it may have been, and to disregard the constitution and the statute of this state on the subject. This opinion and report is concurred in by all the members of the board. Let it be recorded and filed with the records of the cause before the board and made a part thereof. Such is the order.

A. R. Barnes
Secretary of the Board.

William Gray
Chairman of the Board.

District Court of the Third Judicial District

STATE OF UTAH

Salt Lake City

IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH

IN AND FOR SALT LAKE COUNTY.

State of Utah,
Plaintiff :

vs : Information No. 3532

Joseph Hillstrom,
Defendant. :

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TO THE HONORABLE BOARD OF PARDONS OF THE STATE OF UTAH:

Pursuant to the provisions of Section 4929 of the Compiled Laws of Utah of 1907, I herewith transmit the statement required by that provision concerning the conviction and judgment and the testimony given at the trial of Joseph Hillstrom, the defendant in the above entitled cause.

The defendant was charged by the information with the crime of murder in the first degree, committed on January 10, 1914, in Salt Lake County, State of Utah, by shooting one J. G. Morrison with a loaded revolver. After a trial in due course of law the jury, on June 27th, 1914, brought in a verdict in the following words, omitting the title:

"We, the Jurors impaneled in the above case, find the defendant Joseph Hillstrom guilty of the crime of murder in the first degree as charged in the information."

On July 8th, 1914, being the day theretofore appointed for pronouncing sentence and judgment, the defendant was sentenced

to death, and at his election the method defined was shooting, to be carried into effect on Friday, the 4th day of September, 1914, within the exterior walls of the State prison of this State.

I interpret the statute to mean that the judge presiding at the trial shall give only a synopsis of the main facts proven, making it full enough to show clearly the substantial facts upon which conviction was had, but that it does not require anything like a detailed synopsis of the evidence of each witness. Inevitably in almost every such case a transcript of the evidence in full will be available if the Board of Pardons has occasion to make a minute examination of the testimony.

Respectfully Submitted

Norris K. Ritchie

Judge

PHOEBE SEELEY,

a witness produced by the State, testified in substance as follows:

That on the evening of January 10, 1914, in company with her husband she attended the Empress theater, leaving the theater about 9 P. M. and walking leisurely home at 825 South First West streey; that after passing the Morrison store and noticing Mr. Morrison and Arlin and Merlin Morrison in the store, they went south to the south side of the street on 8th South to the Mahan corner and turned west and continued west along the sidewalk on 8th South; that when they reached the cobble stone crossing of Jefferson street they met two men who came shoulder to shoulder and refused to give the sidewalk crowding the witness and her husband off the walk; that it somewhat nettled the witness and she turned and stared at the men one of whom was slightly taller than the other; that the taller man also turned and directed his attention at the witness; that in addition to being a bright moonlight night, there was an arc light right across from the mouth of Jefferson street; the witness noticed that the taller man had a red handkerchief around his neck tied with the triangular part hanging in front; the witness further noticed that the taller of the two men who turned and looked directly at her had a real thin face, a sharp nose and rather large nostrils and a defection on the side of his face, apparently a scar; the two men were going east while the witness and her husband were traveling west, the shorter man being on the north side of the walk; that the height of the defendant, his nose and the marks on the left of his face and neck are very much the same as on the taller of the two men met that night; that the taller man wore a light soft hat and dark coat, square cut of light weight; that the hat Exhibit 5 exhibited to the witness looks very much like the hat work by the taller man that night; that the witness reached home about

9:45 P. M.

MERLIN R. MORRISON,

a witness produced by the State, testified in substance as follows:

That he was thirteen years of age on August 7th, 1913; that on the evening of January 10, 1914, a short time before 10 o'clock P. M. he was in the Morrison store in company with his father and brother Arlin, when two masked men entered the store; at the moment the men entered the witness was in the back part of the store near the west end of the bins on the north side of the little store room about at the corner, facing west; he turned toward the front door of the store just as the two masked men were inside the door; at this time J. G. Morrison was between the show cases on the north side near the middle of the store and almost directly north of the stove; a few moments before this J. G. Morrison had been carrying potatoes in sacks and putting them under the front of the north counter near the west end near the stove; at the time of the entrance of the men J. G. Morrison was facing the east toward the front door and was leaning over the potatoes pulling the sacks along, and at this time Arlin was between the stove and the cash register sweeping; that as the two men entered they shouted "We have got you now"; ~~whenxthexwitnessxgotxhisxfirstxviewxofxthem;~~the two men ~~they~~ were moving rapidly west in the store toward the center of the store and toward the stove; at this time J. G. Morrison was between the two counters on the north still holding the sack of potatoes; the witness noticed that both men wore red bandana handkerchiefs on their faces folded in a three cornered manner and coming up over the nose; that they wore soft felt hats and each carried a pistol in his hand; as the men advanced in the store the witness went to the opening into the little store room and as he turned to see what was going on heard one shot, the first shot fired; he did not see his father at the instant he heard the first shot but immediately after this shot

he saw his father's back just raising up from behind the show case; at this moment he saw the taller of the two men with an automatic pistol in his hand lean over the corner of the counter and fire the second shot at his father's back and thereupon his father fell behind the counter out of the witness's view; immediately after the firing of this second shot there were several shots fired and then the men ran; that just before the shooting this evening the witness had seen his father's revolver in the ice chestand had noted that it was loaded; that in his judgment about seven shots were fired in the store that evening; after the two first shots he could not see the shorter man but noticed that during the remainder of the shots the taller man's attention was directed toward the location of the cash register; he did not see his brother Arlin after the firing of the second shot; after the shooting and after the men had left the store the witness went to his father who was lying behind the counter with his head toward the west; he then went to his brother who was lying on the floor back of the counter against the brace of the counter, his back being to the bins and his head toward the north-east; he was lying on his side with his right hand outstretched and by his hand was his father's gun which the witness had previously seen in the ice box; that the witness picked the gun up and noticed it had been recently fired; that the height, general outline of body and head of the defendant are about the same as of the taller of the two men in the store that evening.

dead

3

VERA HANSEN

a witness produced by the State, testified in substance as follows:

That on the evening of January 10th, 1914, between 9 and 10 o'clock, she was at her home at 773 south West Temple almost directly opposite the Morrison store; that at the time indicated she heard gun shots and went to the front door and saw a man coming out of the front foor of Morrison's store; at the same time she saw Merlin Morrison in the store. She immediately went to the sidewalk in front of her house, a distance of about 25 feet; in addition to an arc light on the south corner of the intersection, it was a bright moonlight night; while the witness was on the main sidewalk in front of her home watching the man she had seen leave the Morrison store she heard him say "Oh Bob" and the voice sounded like a voice that was full of pain; she heard the man utter these words just as he was coming out of the door of the Morrison store; he came out slightly stooped with his hands kind of drawn up to his breast; he followed the sidewalk from the store down to the cprner and cut across towards the alley back of Mahan's house on the south-west corner of the intersection, still holding his hands to his chest; there were two persons standing in the road waiting for him, in the middle of the road between the corner and the alley; when the man cried out "Oh Bob" the two men in the middle of the road stopped; the man who cried "Oh Bob" went directly to these two men and they went down the alley; the witness ran to the north-east corner to watch which way they disappeared and saw them disappear in the alley back of Mahan's house; the witness heads sounds indicating that the men were talking but could not distinguish what was said; the height of the man who cried out "Oh Bob" compares exactly with the height of the defendant; she noticed that the man wore a slough-like hat;

the voice that cried "Oh Bob" was unusually clear for a man's voice; the voice of the defendant heard by the witness at the preliminary hearing and at the jail sounded exact;y like the voice of the man that cried "Oh Bob".

MARGARET E. DAVIS,

a witness produced by the State, testified in substance as follows:

That she resides at 922 south West Temple; that on the 10th of January, 1914, her name being then Kesler, she came from town and stopped with a girl friend at 730 south West Temple on the same side of the street as the Morrison store; she left her friend's house at a quarter to 10 that evening and went on the west side of West Temple and passed directly in front of Morrison's store; the store was lighted and she saw J. G. Morrison and Arlin in the store; just before reaching the Morrison store she saw two men on the north-east corner of the intersection of West Temple and 8th South on the sidewalk right on the corner; when she first saw them they were standing still; in addition to the street lights and the lights shining from the store it was a moonlight night and quite bright; the two men started across the street west towards the corner by Morrison's store while the witness was continuing her progress south past the store; she went around the corner while the men were standing on the corner passing them; as she got in the light of the store the two men moved over by the poles by the curb line; she was frightened at the presence of the men and intended stopping in the store but continued on her way; one of the men had something red about his neck and she thought it was a red sweater; she noticed that one of the men was taller than the other; the taller man was tall, thin and slender; the height of the defendant is very much the same as the taller of the two men; she did not see the face of either man; as she came to the corner the shorter man

stepped behind one of the poles

NELLIE MAHAN,

a witness produced by the State, testified in substance as follows:

She resides at 800 south West Temple on the south ~~west~~ corner of 8th South and West Temple, the Morrison store being on the north-west corner, her home being on West Temple street; from the windows on the north side of the house she has a clear view onto 8th South; the night of January 10, 1914, was an extremely bright moonlight night and on the corner where her house is located there was an arc light; between the hour of 9:30 and 10 o'clock that evening the witness heard shots; she went from her sitting room to the front room farther east which had a window onto West Temple and also on 8th South; she went to the north window and looked out to see if there was a light in Morrison's store and saw the light, and saw a man run from the store to the corner of the curb going east on 8th South to the pole by the curbing where he stopped a moment or two and then turned and ran towards the alley back of her house; she did not see any other men in the vicinity at that time but heard voices in the vicinity of her home and west on 8th South while the man was still in her view, the voices being toward the back of her house west; after she saw the man come out of the store and pass down near the poles, from the time he left there and started diagonally across the street towards the alley she heard him say two or three words which she did not understand and then say "I am shot". After hearing him say "I am shot" she heard voices farther west but could not distinguish what was said; as the man was running from the store to the curbing she observed that he was very tall and slender and thin and wore a soft hat and dark coat.

Various police officers testified as to the conditions found in the Morrison store on the evening of January 10th, 1914, identifying bullets found therein and testifying as to the location of bullet marks; also as to blood stains found on the sidewalk in the vicinity and near a warehouse on Jefferson street between 9th and 10th South.

Herman Harms testified that an analysis of this blood showed it to be of mammalian origin.

Mrs Lucy Williams testified that on the evening of January 10th, 1914 at her home at 966 Jefferson street right across the street west from the ware house of the Mitchell Van & Storage Company, at 5 minutes to 10 ~~xxxxxxxxxxxxxxxx~~, her attention was attracted by moaning and coughing like clearing the throat from right near the said warehouse; the next morhing she went across the street to the warehouse and saw a patch of blood right by the window on the north side, about the same location as she had heard the ~~xx~~ noise the night before.

DR. FRANK M. MCHUGH,

a witness produced by the State, testified in substance,

That on the night of January 10, 1914, between 11:30 and 12 o'clock, on the south-west corner of 14th South and State street where he resides and has his office as a physician, he was aroused by his door bell and got up and went into his office where he found the defendant. He took the defendant into the dining room and at this time Dr. A. A. Bird of Murray who was passing and noticed a light in the office came in. The witness knew the defendant at that time as Joe Hill; Upon meeting the defendant in the office the defendant informed him that he was hurt and asked him to do something for him; upon reaching the dining room the witness inquired what the trouble was and the defendant said he was shot and wished this kept private; upon an examination the witness found the defendant had been shot in the chest; the witness identifies two shirts which he removed from the defendant on the night in question; from the wound the witness's judgment is that it was made with a large caliber bullet, from 38 to 40 or 41; the defendant stated to him that he was shot in a quarrel over a woman, that he was as much to blame as the other fellow and he wanted it kept quiet; the defendant did not state where the quarrel tookmplace or who was engaged therein; the witness communicated to Dr. Bird the request of the defendant to keep it quiet he thinks in the presence of the defendant; the defendant said he desired to go to the Eselius home in Murray and the witness requested Dr Bird to take the defendant with him in his automobile. At the time the witness was replacing the clothing of the defendant a holster with a revolver dropped out of the clothing and fell to the floor; thinks it came from under the sweater coat worn by the defendant; it fell from between two of the garments; the witness picked up the weapon in the holster

did not remove it from the holster but noticed the handle upper portion of the handle and knew it was an automatic and bore a general resemblance to the 38 Colt automatic exhibited to the witness by the District Attorney; the holster seen by the witness was of a tan color, made of leather and to be worn over the shoulder, the gun being carried under the arm; after assisting the defendant to replace his clothing the defendant said he would take the gun and the witness is of the impression that the defendant then put the gun in his pocket outside coat pocket; the defendant was present with the witness at least three-quarters of an hour; the witness saw the defendant next on the following Monday night at the Eselius home in Murray where he examined the dressings and again on Tuesday night.

DR ARTHUR A BIRD,

a witness produced by the State testified in substance as follows:

That late on the evening of January 10, 1914, he stopped at Dr McHugh's residence and there found the defendant with a gun shot wound being dressed by Dr McHugh, the wound being in the defendant's chest; in his judgment the wound was caused by a 38 caliber bullet; the witness saw a revolver in a holster among the clothing of the defendant; the gun was in a leather shoulder holster; his recollection is that the gun found in the defendant's clothing was of the same color and general shape as gun exhibited to the witness by the District Attorney. The witness took the defendant in his auto to the Eselius home in Murray, at the request of Dr McHugh, Dr. McHugh requesting the witness to ask the defendant no questions; the witness and the defendant had no conversation en route except possible some remark about the weather. .As they were turning in the street to stop at the Eselius house the defendant asked the witness if he could turn out the

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lights of the auto, whereupon the witness turned the lights down; this was within 25 or 50 feet of stopping just before getting to the Eselius home that the request was made, the lights being turned down when they stopped to alight at the Eselius home; the defendant then gave two whistles, shrill and penetrating; these whistles were given while crossing the little street in front of the Eselius house; they entered the back entrance door together, the defendant preceding the witness, and found a number of men there, one or two of them being younger Eselius boys; on entering a number of men seemed to have just gone from the back room into the next room; they were all standing or walking in that direction; thxxxtxxx these men turned and seeing the defendant and the witness together expressed surprise and asked if the defendant was hurt; after a few minutes delay the defendant and the witness went into a further room where a cot was found that looked like it had been recently occupied and vacated. On the trip from McHugh's office to the Eselius home the witness was having some engine trouble but doesn't recall whether he stopped en route to crank up.

B. H. SEAGER,

a witness produced by the State, testified in substance as follows:

That after the arrest of the defendant and at the county jail of Salt Lake County, three or four days after the arrest, he had a conversation with the defendant in the hospital room at which conversation Atha Williams was also present, the defendant at the time being in bed, the purpose being to get the defendant to make a confession, the witness telling the defendant that he was there for the purpose of talking to him about how he was shot and telling him if he could tell exactly where and how it happened they didn't want him in the jail if the statement could be verified. The witness asked the defendant what he did with the gun that he had at Dr. McHugh's and the defendant told the witness that he threw the gun away on the road home as he was going down with Dr. Bird, that Dr. Bird's engine choked up and when the doctor got out to crank it he threw the gun away.

BETTY ESELIUS OLSON,

a witness produced by the defendant, testified in substance:

That on the evening of January 10, 1914, about 5' o'clock her two sons Robert and Oliver Erickson and her two brothers John and Victor Eselius went to the theater and returned some time that night after the witness had retired; that on this date the defendant and Otto Applequist were visitors at her home and were there on that evening for supper and were there when the four boys above named left for the theater; that she has not seen Otto Applequist since he left her home that evening and did not see Joseph Hillstrom again until 10 o'clock the following Sunday morning; that the defendant never wore red handkerchiefs; that the bandana handkerchief offered in evidence and exhibited to the witness was on the 10th day of January, 1914, in her care for the boys and that it was in the trunk with the rest of the handkerchiefs, and that on Sunday morning after the defendant was hurt she put the handkerchief exhibited, together with a white rag, on the table in the defendant's room for his use.

LESTER WIRE,

a witness produced by the defendant, testified in substance:

That he has been on the police force four years and six months; that the custom of police officers in loading their revolvers is to load with five cartridges and leave the sixth chamber empty, the empty chamber being under the hammer.

RILEY M. BECKSTEAD,

A WITNESS produced by the defendant, testified in substance:

That J. G. Morrison was on the police force when the witness was on the force about ten years ago; that the witness remained on the force until about three years ago and that Morrison was a patrolman during a part of that time.

E. J. MILLER,

A WITNESS PRODUCED BY THE DEFENDANT, TESTIFIED IN SUBSTANCE:

That he has had about 14 years experience with

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the handling of fire arms; that it is the custom of police officers to carry an empty cylinder in their guns where the firing pin rests; the witness identifies Exhibit 4 as a Cplt's revolver, and Exhibit 3 consisting of cartridges as follows: One is a U M C 38 caliber loaded with black powder; another is a Winchester 38 long loaded with black powder; three are 38 Peter's loaded with Peter's semi smokeless powder or possibly smokeless; Peter's people do not use black powder; the exploded shell is a Peter's 38, either smokeless or semi-smokeless; may be an old style smokeless; unless the empty shell were handloaded it would not be loaded with black powder; his experience would indicate that it would be impossible to tell with any degree of accuracy when a cartridge was exploded that was loaded with either smokeless or semi smokeless powder, from the odor; would not be able to tell whether it had been exploded within ten minutes, an hour or a week. The witness further testified as to an examination he made in the Morrison store as to the direction taken by the various bullets fired on the night of January 10th, and the objects struck. Reference is made to the transcript of the evidence for his evidence in detail.

BOB ERICKSON,

a witness produced by the defendant, testified in substance;

That on Wednesday following January 10th, 1914, he was arrested in connection with the murder in question and was held in jail from 5:30 on Wednesday night to 12 o'clock the next day and then released; that on the evening of the murder he in company with his uncles John and Victor and his brother Oliver, was at the Utah theater, leaving home about 5:30 and getting back home about 12 o'clock.

On cross examination the witness testified that Hillstrom the defendant came in about 15 minutes after the witness arrived at home from the theater; that about 12

o'clock when he arrived home he saw Applequist there in the front room in bed.

DR. W. F. BEER,

a witness produced by the defendant, testified in substance as follows:

On the 10th day of June he examined the defendant and found the lower border of the ~~5th~~ 8th rib two inches below the left nipple and one inch to the left where a bullet or some hard substance had penetrated his body, leaving the body 3/4 of an inch higher at the back; as the wound had healed the scar or discoloration would not give any definite idea as to the size of the instrument that made it; the scar resembled a wound that would be made by a bullet that had key-holed . Made an examination as to the relative position of the hole in the coat of the defendant and the wound in the body which showed the scar on the body four inches above where that would mark the body if he should put~~g~~ his pencil directly through onto the skin itself; when the defendant's hands were raised at extreme length over his head and he was in an erect position then the hole in the coat exactly corresponded with the wound in the body. He would assume that the bullet was passing in a direct line horizontally and from the scar at the back it would indicate that it had been deflected.

PETER RHENGREEN,

a witness produced by the defendant, testified in substance as follows:

Resides at 1028 South Jeremy street between 7th and 8th West and 9th and 10th South; that on the night of January 10th, 1914, about 11:20 o'clock while walking to his work at the Rio Grand shops he saw a couple of men standing on 8th West between 7th and 8th South about a block and a half from him; one of them came south and the other turned north on 8th West; when the witness got to 8th South

one turned west on 8th South and came back and they met on the corner and the man either fell down or laid down and was resting on one elbow when the witness came up to him; neither spoke to the other but the man was moaning; the witness stood right over the man; of the two men seen by the witness at this time and place, one was tall and the other short, the one on the ground being the taller; when the witness passed and got across the street the man on the ground got up and walked behind the witness and was about to catch up with the witness at 7th South when a street car came along and the man got on the car; the defendant is not the man he saw that night; the man he saw on the ground was close to six feet tall, of abour medium build and rawboned; the man got on the car about 11:30; he got on the wrong side of the car.

J. R. USHER,

a witness produced by the defendant, testified in substance as follows:

He is a conductor in the employ of the Street Railway Company, running on the south 8th West line; about 11:30 P. M. January 10, 1914, about 8th south and 8th west a man got on his car, the man acting suspiciously, he got on the left hand side instead of the right, the witness opened the door and let the man enter whereupon he paid his fare and entered the car and sat down; the witness thought the man was drunk at the time he got on the car but did not smell any liquor on him; he was about six feet one inch tall and rawboned; he came to 2nd South and Main and got off; ~~xxxxx~~ the witness understood the man he saw was W. Z. Williams; the defendant is not the man seen by the witness that night.

Certain police officers were called by the defendant and questioned as to their observations at the Morrison store and the vicinity on the night of January 10th.

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