Houser, Stephen H. v. State of MO 1858 St. Louis 400/4

Old Box 596/1

stabbed multiple times
Victim - William D. Farris
sentenced to hang

Filed 1857
March 1858
Napton
A: U. Wright
Rev'd Remand

COV = Gasconade → St. Louis Co.
COA = murder

depo read when witness
wasn't found; beyond
juris of court

Q4
431

O = depo. not admissible unless
absence procured by def.

Page 1.

State of Missouri
County of St. Louis } ss.

Be it remembered that on the Thirteenth day of September A. D. 1856 was filed in the Office of the Clerk of the Saint Louis Criminal Court, a transcript of the Record and proceedings in a certain case of the State of Missouri versus Stephen H. Houser, for Murder in the first degree, on a change of venue from the Circuit Court of Gasconade County, State of Missouri, to the said Criminal Court.- which transcript is in the words and figures following to wit:-

Transcript.

Transcript.-

State of Missouri.
County of Gasconade. } ss. In the Circuit Court of Gasconade County, September Term, 1856.-

Be it remembered that at a Circuit Court begun and held at the Court House in Hermann, County of Gasconade, State of Missouri on Monday the 8th day of September 1856, and on the second day of said term the following appears of record to wit:-

The Grand Jury return here into Court the following bill.-

State of Missouri
vs } Indictment for Murder. a true bill. - which said indictment is in words as follows:-
Stephen H. Houser.

Copy of Indictment.-

Indictment.

State of Missouri
County of Gasconade } ss. In the Gasconade Circuit Court.- September Term. A. D. 1856.-

The Grand Jurors of the State of Missouri now here in Court duly empanneled sworn and charged to inquire within and for the body of the County of Gasconade, upon their oath present, that Stephen H. Houser late of said County on the twenty fifth day of July, One thousand eight hundred and fifty three with force and arms at and in the County of Gasconade aforesaid in and upon William D. Farris, in the peace then and there being feloniously wilfully deliberately premeditatedly and of his malice aforethought did make and assault and that the said Stephen H. Houser with a certain knife of the value of fifty cents, which the said Stephen H. Houser in his right hand then and there held, the said William D. Farris, in and upon the left side of the belly in and upon the right side of the belly and in and upon the neck of him the said William D. Farris then and there feloniously wilfully deliberately premeditatedly and of his malice aforethought did strike cut and thrust giving to the said William D. Farris then and there with the knife aforesaid in and upon the left side of the belly in and upon the right side of the belly and in and upon the neck of him the said William D. Farris divers mortal wounds, that is to say in and upon the neck of him the said William D. Farris one mortal wound of the length of ten inches, of the depth of four inches and the breadth of two inches, and in and upon the left side of the belly of him the said William D. Farris three mortal wounds each of the depth of six inches of the breadth of one inch, and length of two inches, and in and upon the right side of the belly of him the said William

2)

W. Davis, six mortal wounds each of the depth of six inches of the breadth of one inch and length of two inches, of which said several mortal wounds by the said Stephen H. Houser given as aforesaid, the said William W. Davis then and there instantly died, and so the Jurors aforesaid upon their oaths aforesaid do say, that the said Stephen H. Houser, the said William W. Davis in manner and form aforesaid feloniously wilfully deliberately premeditatedly and of his malice aforethought did Kill and murder contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State of Missouri.

W. O. Gale, Circuit Attorney.

And again on the third day of said term the following appears of record, to wit;—

State of Missouri
vs
Stephen H. Houser.

Indictment for Murder.

The defendant Stephen H. Houser being in Court and demanded of and concerning said bill of Indictment for plea says: he is not guilty in manner and form as charged in said bill of indictment and files his petition praying for a change of venue from the 9th Judicial Circuit to some other Circuit in the State of Missouri which petition being by the Court seen examined and fully understood, it is ordered that the venue be changed to the County of Saint Louis in the State of Missouri and that the Sheriff of Gasconade County remove the said defendant and deliver him to the Sheriff of St. Louis County together with all the papers & records in the cause and that the Clerk of this Court make out and certify a full and true and perfect copy of all the proceedings in said cause.

Change of Venue.

Petition and affidavit for change of venue.

State of Missouri
vs
Stephen H. Houser.

Indictment for Murder.

Petition for Change Venue.

To the Honorable John H. Stone, Judge of the Gasconade Circuit Court.

Your petitioner would represent that the inhabitants of your entire Circuit are so prepidiced against the defendant that a fair trial cannot be had therein, therefore he asks your Honour to order his said cause to be removed into some other Circuit for which he will every pray.

P. P. Stewart Atty for Defendant.

Stephen H. Houser makes oath and says the above petition and the allegations therein contained are true to the best of his knowledge and belief.

S. H. Houser.

Sworn to in open Court. September the 10th 1856.

Jas Arott, Clerk of the Gasconade Circuit Court.

And again on the same day the following appears of record.

3)

State of Missouri
vs
Stephen H. Houser. } Indictment for Murder.

Wits Recog. } John Fulks, John Sonders, Mary Farris, and Larkin Henson, and Mary Henson his wife, this day appear in open Court and acknowledge themselves to owe and stand indebted to the State of Missouri in the sum of Two hundred Dollars each, of their goods and chattels lands and tenements to be levied, to be void however on these conditions: that if they be and personally appear before his Honour the Judge of the Criminal Court for the County of St. Louis in the City of St. Louis on the first Monday in November next to give testimony in cause there pending wherein the State of Missouri is plaintiff and Stephen H. Houser is defendant, on the part of the Plaintiff, and shall not depart said Court without leave then this recognizance to be void. Else to remain in full force and effect in law.

And again on the fourth day of said term the following appears of Record to wit.

State of Missouri
"
Stephen H. Houser. } Indictment for Murder.

Wit Recog. } Francis Sullivan this day appears in open Court and acknowledges himself to owe and stand indebted to the State of Missouri in the sum of Two Hundred Dollars of his goods and chattels lands and tenements to be levied, to be void however on these conditions, that if he be and personally appear before his Honour the Judge of the Criminal Court for the County of St. Louis in the City of St. Louis on the first Monday of November next to give testimony in a cause there pending wherein the State of Missouri is Plaintiff and Stephen H. Houser is defendant on the part of the plaintiff, and shall not depart said Court without leave, then this recognizance to be void else to remain in full force and effect in law.

Bill of Costs.

x x x x x x x x x x x x x x x x.

State of Missouri
County of Gasconade } ss.

Clerk's certif } I. James Arott, Clerk of the Circuit Court of the County of Gasconade aforesaid do certify that the foregoing is a true and perfect copy of the record made in said cause, of the State of Missouri against Stephen Houser, indicted for Murder, and of all the papers filed in said cause.

Seal

In witness whereof, I. James Arott Clerk as aforesaid have hereunto set my hand and official seal at office in Herman, this 12th day of September, 1856.

Jas. Arrott Clerk

The State of Missouri } Wednesday November 5th 1856.
vs. } Murder 1st degree.
Stephen H. Houser } A motion was this day filed requiring the Jailor to produce, the examination had in this cause, — which is as follows. —

State of Missouri
vs. } On Indictment for Murder.
Stephen H. Houser } The Defendant asks the Court, for an order, on the Jailor of Gasconade County Mo. to forward, to the Clerk of this Court the examination, of the witnesses as taken on the part of the State before the committing magistrate if the same is now in his possession.
Nov. 3rd 1856. W. McDonald, For Defendant. —

Tuesday November 18th 1856.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } Now at this day comes the said defendant by his counsel, and files, a motion to quash said indictment, which said motion together with the cause, are continued by order of Court. —
Which Motion is as follows.

The State of Missouri
vs. } In the St Louis Criminal Court on Change
Stephen H. Houser } of venue, from Gasconade Co.
Defendant herein moves the Court, to quash the Indictment for the reason that the words "a true bill" signed by the Foreman of the Grand Jury, are not endorsed thereon, nor does it sufficiently appear, that the same was ever found by a Grand Jury at all.
Nov. 18th 1856. W. McDonald, For Defendant.

Tuesday November 25th 1856.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } Now at this day the motion on the Jailor to forward Examination in this cause, being by this Court fully understood, therefore, it is considered by the Court, that said motion be sustained. —

thereupon, the Circuit Attorney files a motion suggesting Demination of Record.—
Which is as follows.—

The State of Missouri
vs.
Stephen H. Houser } Criminal Court November Term, 1856.

Now at this day comes the Circuit Attorney, who prosecutes for the State, and suggests, a Demination of the record in this cause, and prays that said record be returned to the Circuit Court, for the County of Gasconade, in order that the same be amended and rendered complete.

Charles G. Mauro. Circuit Attorney.—

State of Missouri
County of St. Louis } ss.

Be it remembered that on the Fourth day of December A. D. 1856. was filed in the office of the Clerk of the St. Louis Criminal Court, an Amended Transcript of the Record and proceedings in a certain case of the State of Missouri versus Stephen H. Houser, for Murder in the first degree, on a change of venue from the Circuit Court of Gasconade County, State of Missouri, to the said Criminal Court, which transcript is in the words and figures following to wit.—

State of Missouri
County of Gasconade } ss. In the Circuit Court of Gasconade County September Term 1856.

Be it remembered that at a Circuit Court began and held at the Court house in Herman County of Gasconade and State of Missouri, on Monday the 8th day of September 1856. the following proceedings were had and entered of record to wits.—

State of Missouri
County of Gasconade } ss.— Be it remembered that on this 8th day
1st day of September A. D. eighteen hundred and fifty six, personally appeared at the Court house in Herman, The Honorable John H.
Court opened Stone Judge of the ninth Judicial Circuit, Daniel Q. Gate, Circuit Attorney, James Arrott, Clerk, and Burton Cooper, Sheriff Whereupon the Sheriff opens Court by making public proclamation thereof at the Court house door, and returns here into Court, the
Ret Jurors. following list of Jurors, to serve at this term of the Court, to wits.—
George Klinge, Matthias Krautter, Peter Scheidt, Peter Miller,

Henry Anneling, John McMillion, Hamilton Sonders, Christian D. Pancken, William Johnson, William Williams, John Sullens, Jared Branson, William Cooper, Thomas Stites, William Hibler, James A Robertson, Thomas McKinney, Samuel Smith, Reuben Spaulding, Perry Eldredge, Nelson Jarris, Joseph Barbarick, John W. Stites, Lester Haynes, Jacob Manpin, Samuel Schepeler, and Jackson Smith,

Election of G. Jury. from which list the following were selected as Grand Jurors to wit, George Klinge who is by the Court designated as foreman, Matthias Kratter, Peter Schmidt, Christian D. Pancken, William Johnson, Wm. Williams, John Sullens, Jared Branson, William Cooper, Thomas Stites, William Hibler James A. Robertson, Thomas McKinney, Samuel Smith and Reuben Spaulding, fifteen good and lawful men, who being duly elected tried

Charge. and sworn well and truly to inquire within and for the body of the County of Gasconade, after receiving their charge, retire from the bar to consider of their presentments.

2nd day And again in said Gasconade Circuit Court, and on the second day of said term, to wit Tuesday the 9th day of September 1856. the following proceedings were had and entered of record to wit, —

The Grand Jury return into Court the following bill.

Bill of Indt. returned

State of Missouri
vs.
Stephen H. Houser } Indictment for Murder. A true bill which said bill is in words as follows. —

Copy of Bill of Indictment

State of Missouri
vs.
Stephen H. Houser } In the Gasconade Circuit Court. September term A.D. 1856.

The Grand Jurors of the State of Missouri now here in Court duly empannelled sworn and charged to inquire within and for the body of the County of Gasconade upon their oath present That Stephen H. Houser late of said County on the twenty fifth day of July, one thousand eight hundred and fifty three, with force and arms, at and in the County of Gasconade aforesaid in and upon William Farris in the peace then and there being feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Stephen H. Houser with a certain knife of the value of fifty cents, which he the said Stephen H. Houser in his right

7

hand then and there had and held, the said William D. Farris in and upon the left side of the belly in and upon the right side of the belly, and in and upon the neck of him the said William D. Farris then and there felonriously wilfully, deliberately, premeditatedly and of his malice aforethought did strike cut and thrust giving to the said William D. Farris then and there with the knife aforesaid, in and upon the left side of the belly, in and upon the right side of the belly, and in and upon the neck of him the said William D. Farris divers mortal wounds, that is to say, in and upon the neck of him the said William D. Farris one mortal wound of the length of ten inches of the depth of four inches, and the breadth of two inches and in and upon the left side of the belly of him the said William D. Farris three mortal wounds each of the depth of six inches of the breadth of one inch and length of two inches and in and upon the right side of the belly of him the said William D. Farris, six mortal wounds each of the depth of six inches of the breadth, of one inch and length of two inches, of which said several mortal wounds by the said Stephen H. Houser given as aforesaid, the said William D. Farris then and there instantly died, And so the ~~Grand~~ Jurors aforesaid upon their oaths aforesaid do say that the said Stephen H. Houser the said William D. Farris in manner and form aforesaid felonriously wilfully deliberately, premeditatedly and of his malice aforethought did kill and murder, contrary to the form Statute in such case made and provided, and against the peace and dignity of the State of Missouri.

D. D. Gale, Circuit Attorney

upon which said bill of indictment are the following indorsements

Indorsement of Bill of Indictment } State of Missouri vs Stephen H. Houser } Indictment for Murder. A true Bill. George Klinge, foreman of the Grand Jury. Filed Septbr 9th 1856. Jas Arrott. Clerk of Gasconade Circt Crts.

Witnesses. John Foulks, John Sorders, Mary Henson, Mary A. Farris

3rd day. 8

And again in said Gasconade Circuit Court and at said term to wit the September Term 1856, and on Wednesday the third day of said term being the 10th day of of September 1856, the following proceedings were had and entered of record to wit.—

State of Missouri

vs. } Indictment for murder.

Arraignment & plea of not guilty and pet. for Change of venue & order of Court

Stephen H. Houser } The defendant Stephen H. Houser being in Court and demanded of an Concerning said bill of indictment, for plea says he is not guilty, in manner and form as charged in said bill of indictment, and files his petition praying for a Change of venue from the ninth Judicial Circuit to some other Circuit in the State of Missouri which petition being by the Court seen examined and fully understood. It is ordered that the venue be changed to the County of St. Louis in the State of Missouri, and that the Sheriff of Gasconade County remove the said defendant and deliver him to the Jailor of St. Louis County together with all the papers and records in the cause. And that the Clerk of this Court, make out and certify a full true and perfect Copy of all proceedings in said cause.

Copy of Pet. & aff. for Change of venue

Copy of Affidavit for Change of venue

The State of Missouri

against } Indictment for Murder.—

Stephen H. Houser } In the Circuit Court of Gasconade County, To the Honorable John H. Stone Judge of the Gasconade Circuit Court, your petitioner would represent that the inhabitant of your entire Circuit are so prejudiced against the defendant that a fair trial cannot be had therein, therefore he asks your honor to order his said cause to be removed into some other circuit, for which he will ever pray.

P. L. Stewart, Atty. for Defendant.—

Stephen H. Houser makes oath and says that the above petition and allegation therein therein contained are true.

to the best of his Knowlege and belief.

S. H. Houser.

Sworn to in open Court September 10th 1856.

James Arrott, Clerk of Gasconade Circuit Court.

Indorsement on Aff. for Change of venue.

upon said Affidavit for Change of venue are the following endorsements.

State of Missouri vs. Stephen H. Houser } Affidavit for Change of venue, Filed Sept. 10th 1856. Jas Arrott Clerk.

Recog of Witnesses

And afterwards to wit at the same term of Court, and on the same day the following further proceedings were had in said cause and entered of record.

State of Missouri vs. Stephen H. Houser } Indictment for Murder.

John Fulks, John Sonders, Mary Harris, and Larkin Henson, and Henson, his wife, this day appear in open Court, and acknowleger themselves to owe and stand indebted to the State of Missouri in the sum of Two Hundred Dollars each of their goods and chattels lands and tenements to be levied, to be void however on these con-ditions, that if they be and personally appear before his Honor the Judge of the Criminal Court for the County of St. Louis in the City of St. Louis on the first Monday of November next to give testimony in a cause there pending wherein the State of Missouri is plaintiff and Stephen H. Houser is Defendant on the part of the plaintiff, and shall not depart said Court without leave, then this recognizance to be void, else to remain in full force and effect in law.

4th day

And afterwards to wit at the same term of said Court to wit on Thursday the fourth day of said term being the 11th day of September 1856. following proceedings were had and entered of record, to wit.

Recog of Wit.

State of Missouri vs. Stephen H. Houser, Indictment for Murder

10 Francis Sullivan this day appears in open Court, and acknowledges himself to owe and stand indebted to the State of Missouri in the sum of Two hundred Dollars, of his goods and chattels lands and tenements, to be levied, to be void however on these conditions, that if he shall be and personally appear before his honor the Judge of the Criminal Court for the County of St Louis in the City of St. Louis, on the first Monday of November next, to give testimony in cause there pending wherein the State of Missouri is plaintiff and Stephen H. Houser is defendant on the part of the plaintiff and not depart said Court without leave then this recognizance to be void else to remain in full force in law.

State of Missouri }
County of Gasconade } I, James Arrott Clerk of the Circuit Court, within and for the County of Gasconade and State of Missouri certify the foregoing ten pages contain a full Complete and true transcript of the return election and empannelling of a Grand Jury for said County at the September term of the Circuit Court 1856. together with a full and complete and true transcript of the record and proceedings had at said term in the case of the State of Missouri against Stephen H. Houser, on a charge of Murder as the same now remains of record and on file in my office.–

In Testimony whereof I James Arrott Clerk aforesaid (Seal) have hereunto set my hand and affixed the seal of said Court, at office in Hermann this 2nd day of December 1856.–

Jas Arrott, Clerk.–

Saturday January 17th 1857.

The State of Missouri }
vs. } Murder 1st degree.–
Stephen H. Houser } This cause is continued by order of Court, for the State, on account of the absence of the witness Henson.–

Saturday February 14th 1857.

The State of Missouri
vs. } Murder 1st degree
Stephen H Houser } Now again come the parties aforesaid by there Attorneys and the motion to quash being by them argued and submitted to the Court therefore it is considered by the Court that said motion be overruled.

Thursday March 19th 1857.

The State of Missouri
vs. } Murder 1st degree
Stephen H Houser } On motion of the Circuit Attorney attachments are ordered to issue for absent witnesses in this cause therefore, Franklin Richardson, John Davis, Levi L. Brashear, Benjamin Buse and William R. Douglas here in Court each acknowledge themselves to owe the State of Missouri the sum of One thousand dollars to be levied of their respective goods and chattels, lands and tenements Get upon condition that if they each shall personally appear before this Court, on the first day of the next Term thereof then and there to testify in the above cause, and not depart the Court without leave thereof then this recognizance to be void. else to remain in full force, - thereupon the cause is continued by order of Court.

Tuesday May 5th 1857.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } Now again come as well the Circuit Attorney who prosecutes for the State, as said defendant in his own proper person, and thereupon, come a Jury to wit: Martin Seifert, George Riesch, Frederick Bergesch, David Adams Thomas Lynch, George Borkenkamp, John D Stiegeman, George Schott, Michael Smith, John Croak, Augustus Mullen, and John L Kohler, twelve good and lawful men who being

duly elected tried and sworn the traverse, between the aforesaid parties, well and truly to try, after some progress in the trial of the cause. — Court adjourned until nine O'clock tomorrow morning. —

Wednesday May 6th 1857.

The State of Missouri
vs. } Murder 1st degree
Stephen H. Houser } Now again come as well parties as afore=said, as also the jurors aforesaid, and after some further progress in the cause. — Court adjourned until nine O'clock tomorrow morning

Thursday May 7th 1857

The State of Missouri
vs. } Murder 1st degree
Stephen H. Houser } Now again come as well the parties afor=said as also the jurors, as aforesaid and after some further progress in the trial of the cause. —

Court adjourned untill nine O'clock tomorrow Morning —

Friday May 8th 1857.

The State of Missouri
vs. } Murder 1st degree. —
Stephen H. Houser } Now again come as well the parties as aforesaid as also the Jurors aforesaid and after some further progress in the trial of the cause. — Court adjourned untill nine O'clock tomorrow morning

Saturday May 9th 1857.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } Now again come as well the parties, as afore=said as also the Jurors as aforesaid and having heard all the evidence in the cause, and the argument of Counsel, retire to consid=er as to what verdict shall be rendered by them in the premises. —

Court adjourned until nine O'clock tomorrow morning. —

Sunday May 10th 1857.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } Now again come as well the parties as aforesaid as also the Jurors as aforesaid who upon their oath aforesaid say they find said defendant guilty of Murder in the first degree as charged in the indictment.–

Conviction

Tuesday May 19th 1857.

The State of Missouri
vs. } Murder 1st degree.
Stephen H. Houser } A motion for a New Trial and in arrest of judgment was this filed in this cause

Motion for New Trial & in Arrest Judgt

Monday May 25th 1857.

The State of Missouri
vs. } Murder 1st degree.–
Stephen H. Houser } Now again come said parties by Attorney and the motion for a New Trial filed herein being by them submitted to the Court, and the Court being fully advised in the premises therefore it is considered by the Court that said Motion be overruled and the said defendant being brought into Court to receive his sen=tence in pursuance of the verdict rendered against him, and being demanded if he hath or knoweth any thing to say why the Court here ought not now to proceed to pass sentence of death upon him, and having nothing to say, it is therefore considered by the Court, that the said defendant Stephen H. Houser be taken from this Court to the place from whence he came there to remain un=til Friday the nineteenth day of June next thence to be taken to the place of Execution and there between the hours of Ten O'clock in the forenoon of said day and four O'clock in the afternoone be han=ged by the neck until he be dead; it is further ordered that the Clerk of this Court make out a Warrant under the seal thereof commanding the Marshal to carry this sentence into execution; whereupon defen=dant files his Bill of Exceptions and prays an appeal to the Supreme Court and the Court being of opinion that there is prob=

=able cause for said appeal grants the same, and it is order
=ed said Appeal operate as a stay of proceedings herein.

Bill of Exceptions.

The State of Missouri
vs.
Stephen H. Houser } Indictment for Murder in the first Degree. And Change of venue to St. Louis Criminal Court from the Gasconade Co Circuit Court. Be it remembered that previous to the trial the defendant was furnished with a panel of forty venirement from which to select his jurors in this cause and the cause being called for trial the defendant by his counsel objected to the panel on the ground that it was not such a panel as the law required should be furnished him. That the law required a panel of thirty six jurors to be selected and furnished to the defendant before the trial, and the Court had no more right to offer the panel of forty than a panel of thirty and the Court had no right to have venire men summoned in advance beyond the legal number to force the defendant to select such as his triers but the Court overruled the objection and compelled the defendant to select his triers from said panel, and the defendant by his Counsel then and there excepted to the action of the Court. The State then to maintain the issue on her part called as a witness Margaret French.

Matilda French } Maltilda French. Sworn on part of State, testified I reside in Gasconade Co. in July 1853. on the Burbois River in Gasconade Co. Burbois Township Mo. Myself & sister Mary Todd were living in the house, I then occupied & children. Mary Todds name is now Mary Henson no men lived in the house. Mrs Todd has been married 3 yrs last winter last Decr had 2 children — one 11, one 7 years of age at this time. Mrs Henson was married to Elijah Todd before. I know noth

=ing of a man being Killed at my house. The night of the occurrence, I was at Samuel Burchers about 4 miles distant, I suppose it is, I had been apt to Ed Lesters store abt 10 miles. The day before Deft went with me to Mr Lesters. I married Deft uncle my first husband. Houser was on visit to see his grandmother on the Burbois a 1/4 of a mile from my house Mrs Wyatt by name. He had been there a month & 26 Days, he came on 1st June & this was done on 26 July to best of my recollection, Went down to Lesters horseback started in the morning from home sometime, both started from Mrs Wyatts, cant tell what was going on at Lesters. I went down on business to the store & also to see the Dr. I was in bad health at that time. Dont know what time I got there, sometime be=fore 12 may be not so much or 12. Remained 4 or 5 hours tolerable late in the Evg. before I left.- I intended to go home that Evg - when I started I intended to return that evening they got up this fuss I suppose, I waited for Mr Houser to go home with me he didnt come & I went by myself to Judge Burchers. Here Defence objects to further Evidence on the part of this witness as to transactions occurring away from place of homicide, Court admits the testimony and defendant excepts to the admission of the same. I got to Mrs Wyatts about 9 O'clock & never went there after un=derstanding what had occurred until there were some per=sons on the place. When I got there there were 20 or 30 men there The Judge Burchers is 1 mile from Lesters - about 4 miles from my house, started from Judge Burcher about 7 O' clock the next morning, I then started to go home. I met my sister she told me what had happened & I didnt go home & stopped at Mrs Wyatts, met my sister Mary Todd, I left her at home I believe I started away. Met her next A M I sup=pose 1 1/2 mile from Judge Burcher between that house & Judge Burchers. She was going to Judge Burchers - After I met her she turned around & went home with me. Did not see anything of Deft after I left Lesters until I got=

to Judge Barchers Next saw him last June next saw him at Squire Hibler this was last June. Part of the time I was at Sesters, I cant tell what they were doing. I went into the Dr. I cant tell much what they were doing other part of the time they were out of doors seen them talking sumed to be talking about fighting playing cards, I cant tell much what they did say.. I onley heard in broken sentences. I did not see any Constable there If there was any there I dont Know him. I dont Know who was the Constable.. Mr. Farris is the man, I heard talking. Ive always Known him since a little boy the name he has gone by is William Farris. Dont Know whether he was the man who was Killed, People said so. I never saw him again. He was talking with Deft about fighting. a step may be a little further from store sumed to be in a fuss & he didnt come with me. I suppose I warted for him 2 hours after I was ready. I got Mr Ed Sester to go out & try to stop it. Then Houser quit talking & come in the house. I didnt see nary one have any thing in their hands.. When I started Houser came into the store he sat down I says come lets go I am ready, he sd in a minute, he'd be ready.- I saw no blood upon him. Then Mr Farris come in & says lets take some liquor Houser said - take liquor, take sugar in it that all right repeated same words, Farris then fixed the liquor putting sugar in it & said when the liquor was ready, I was joking in saying I could whip you for $2.50 then they stepped up to Drink Houser then said well if you were joking. If you said that way say it that way & say no more about it. then Farris then said By God. I can whip you. & Houser said whenever you feel like it let in but you do it at your own risk. then I left the store & started to go home. after I started I sent back for him to come as I could carry his things and mine too. then he started like he was coming home coming down I had got a piece on.- Farris & Mr Duncan. & cant tell how many more rest of the men. I not Know followed Houser & then as well as I could hear for I could not hear distinctly as I was some way off there

was swearing & calling him a coward, I thought I knew Far-
-ris voice well & heard him say these words heard them curse
him & call him Coward & 2d they could whip him, There were
more than one speaking Farris was one of them followed
him 100 may be 200 yds then he Houser turned around &
went back & I started & went nearly a mile around the farm to
Mr Sever Sesters then they caused a fuss I stopped to listen
they had been fussing all the time, I heard the report of a pis-
-tol or a gun sounded like it was, then I sat there & listened
& then Mr Houser came around. they were a dozen or more fol-
-lowing him, I couldnt see any person when I heard the pistol.
the orchard in the way. seemed to be in the store or about there
& when Mr Houser came around & overtook me in the lane
he jumped down off his horse then hitched it and went acros
the meadows to the house. This was my horse he had borrowed
it of me in the morning, his own horse had got out in the woods
he came nearly acros the length of this Room to me. I suppose I
was a mile from Mr Sesters he came the same Road I did. his
own bridle & saddle.- Deft. went back that is all I know a-
-bout it. I went on then as far as I could get. I saw my
horse next day when I got home in the bottom close to home.- Never
saw Housers horse again or saddle or bridle, I stayed at Mrs Wyatts
until some 20 or 30 men got on the ground, Mrs Henson was
afoot when I saw her. She took my horse. Old Mrs Wyatt lived
there herself I went down to my house some time after 12.-
whole neighbourhood seemed to be there cant tell who I saw
of them that I know of:- A Stable near my house, I had no
feed for horses except bran pon which we fed them Cant tell
where we kept the bran. Dont recollect exactly. House one
and a half stories high a ladder was used to get up stairs
both house & Kitchen sometimes we kept things up stairs bran
commonly kept in a sack which are sometimes kept up
stairs.- Deceased was lying near front Door, I didnt see him
all.- some where near the Door middle of the floor but nearer
the Door, saw the feet as of some person lying on floor

18. I was standing between 2 houses when I saw the person.— Kitchen seperate from house, Cant tell how long I remain=ed there then during the Evg. passing backward & forwards I left the farm that night me & my sister Mrs Todd both went over & stopped at Mrs Wyatts, Went over just at Dusk like, Cant tell where body was when I left It was Evg. when they took it out on a Kind of scaffolding sun wasnt down.— Body remained out there may be an hour may be longer cant say Dont Know what became of it after that Didnt go into the house again, Went into the house when something which lay on a scaffold outside, When I went in I just looked around & went in again. That was the room where I saw what seemed to be the body of a man. I saw some ashes scattered over the room a good deal ashes & some specks of blood Drops. Drops of blood scattered around the house like & once around & back part of the house by the Door on the floor & on the wall 2 or 3 feet high on the wall. Cant tell how many places. I saw it on the wall some as large as a pinhead or like in the clothing Room 16 X 18 Clothing hanging around on the back side of the house from the Door, Blood round there where the clothing was & some at the fire place. How much blood did you see in any one place on the floor. The largest I saw was the size of 2 bits something was covered with ashes,— how large a place was covered with ashes— 3 feet one way & 4 and then what was under the ashes I didnt see what was under ashes, I took in water & my sister washed it up.— looked as if it might have been blood it was all ashes This was where body lay. Didnt see body in the house only see the feet & legs, pantaloons half way to Knee. I could see the body wen lying down, suppose it was nearly 1/2 him might have been more, when we got the room cleaned up.— How much scrubbing was done. I didnt do any of it, How much was done.— Washed it all with broom & water, when the Room was vacant. when there was nothing else on.— Didnt see what they did with that uncertain object they had out on the scaffolding. This

19

was an 1 or 2 hours after. The men were some in the Kit=
=chen & some in the house a good many had gone away —
Went over to Mrs Wyatts next morning. - Cant recollect who
all was there. I didnt go in the house I was in the Kit=
=chen but not in the other house. — Dont Know where the body
was Late in the Evg. went in the house, men had then gone,
came back with a wagon & took something which I would
call a coffin put it in a wagon & took it away. — There was
Wm Douglass, Manson Farris Franklin Richardson &
Green Richardson. The balance I didnt Know. — Never saw
of them men take a coffin away or since. Hoover's horse was
a grey or white, dont Know which you call it Indian Poney.
Cant describe the saddle he had. Dont recollect whether dis=
=hes were setting on table or not seemed to me they were setting
on a table piled up. I think they were on the table, Wont be
sure even they were there. Plates were used to eat of off. Dont
Recollect of any thing on the table besides the plates might have
been or might not have been. It was in the Kitchen Usually
Kept plates in an open cupboard we Kept in the Kitchen. Plates
cant tell whether clean or otherwise some water in one of the
buckets, some bran in another bucket setting on the floor,
seemed like it was pretty near full, bran in any rate, Fed
our horses on bran at that time. This bucket was setting on the
flor in the Kitchen may be 3 or 4 feet from the ladder, cant say
where the bran came from, we had three children at the house
2 of the children were mine & one of them hern, my children
I left with my grandmother & Mrs Henson child stayed with
her. abt 5 years old one of the beds looked as if it had been
slept in the Room. I suppose the bed was as much tumbled as
be caused by a man or woman an childs, when I got to Mrs
Wyatts the little girl was there. I saw garments a pr of
Drawers & pr socks left at Mrs Wyatts. obj't. to & overruled.
a few days after. Didnt see a shirt at Francis Wyatts but
saw a shirt up at my house. It looked like a common
Eastern shirt bot out of a store. white would have been

20 clean. First thing I saw of it my sister had it. It seemed to me I saw it in the Kitchen. She had it in the Kitchen. Didnt see it until I saw my sister have it. Cant tell when I saw it or whether it was 1 or 2 day after I got home. One sleeve was off had tother near the wristband 2 or 3 specks of blood as large as a pin head on it, I examined the sleeve that was not torn off torn off right at the shoulder yoke leaning the armhole tolera=bly ragged, Didnt see the torn off part. Looked like all other shirt collars like the one Mr Cline has on, I Kept the shirt for a good while till this fall then I gave it to Robert Houser. —
Dont Know where that Shirt was brought from. I Kept Deft shirts I had been doing his washing since he left his grand=mother. he had 3 Shirts white shirts with standing collars When I started from the house in the morning there was only left home clean one he had just put on and the other which he took off and left home which was dirty, so that he had one clean one in the Drawer, when I got home that shirt was still in the Drawer When Deft went me to Sesters he had blk Tweed pantaloons striped pants on. Cant tell what Kind Kind of a purple may be blue with a Dark stripe in it. — Coat what you call a grey tweed I think or Cafsimere, he had an overcoat, he did not wear that down to Sesters he had a blk satin vest when he went down to Sesters he had another vest a summer vest like which he Kept at my house Kept his Coat at his grandmothers, other pair of pants was at my house. saw blk Tweed pants after=wards. Never saw overcoat again that I recollect of. Never saw the pants coat or vest that he had on that day again, grey looking Coat dont Know what Kind of a coat you call it. tolerably heavy coat, what you call a sack I think, I gave his pants & vest to his grandma & she dis=posed of them to her nephews, the winter after Deft went away Cant tell whether shirt left there was Houser. Cant tell whether any Differance between this shirt & the shirts Houser owned Two alike & one unlike. There were

no Knives about my house other than ordinary Knives, no butcher or Bowie Knives saw no Knife left there other than what belonged to the stable. Deft had some Kind of a Knife say 6 inches in length in blade. I have seen him have a pistol, long pistol - one barrel - holster pistol. Deft didnt Keep the Knife at my house. I've have seen him cleaning fish with it, he used to go a fishing. Cant say even if it was his Knife, blade an inch wide didnt shut - Defendant looks like the man, my first husband's nephew - his sisters son, came to our house about 1st June never Knew him before that time Cant tell how often I saw him between the day of his coming & going. This was in 1854 I think in 1853 4 yrs ago come July. Jury reproduced Witness resumes - I can't tell you any thing about my sister. I saw her during last fall, just before the Court sat she was down here. I have not seen her since that time. She lived up to that time in Gasconade County Mo. some 12 miles distant from my house. I never heard her say anything about going away. I cant recollect whether I received the letter before or after I saw her last. I saw her at Church meeting about 2 miles from her house and went home and stayed with her all night. I cant recollect how long it was before she came to St Louis. I have not seen her husband since. I understood that she came back to Gasconade County from St. Louis, but I did not see her. I have received no letter no letters from her or her husband, Cant say who went away with them - Cant tell what trade her husband followed, sometimes he worked on a farm, and sometimes followed "carpentering". I never saw her in company with any of the brothers of Defendant. I cant say whether any of them were in the neighborhood or not; I did not see them; I have made inquiry for my sister. I did not often visit her before she left, not oftener than once a month. and not always that, I could not say whose garments those were left at the old Lady's house. She had them hanging out as though they had been wet and were out to dry Nobody called my attention to them that I know of.

22 Cross Examined.

I saw Houser on the 26th of July 1853. I think for the last time before I saw him at the Squire. I saw him when the sun was about hour or two high. When I saw him he was going through Listers meadow to the house. It may be a mile to the house from where he started, The Grocery is about on the Spring=field Road, I believe the Grocery is about 30 or 40 steps from Listers house. We were together going to the grocery, and got there before noon. It was an hour or two after that that I understood there was a fuss, I was during that time in Listres house, and seeing the Doctor. When I first got to the grocery there were not many people around, while I was in the house I saw a party come up they were Farris and the Duncans which made fully a dozen men about there. They sold whiskey at that store. Houser was one of the crowd, I was in the store perhaps an hour; I first sent Houser word that I was ready to go by some young man, and received an answer that he was not quite ready yet. Houser's business there was to make some purchases for his Grand Mother When I heard a pistol fired I was in the lane. I stopped to listen if I could hear what was the fuss. Then Houser came along on his horse he was followed by a number of men. I heard some of them cursing him I dont Know who fired the pistol and cannot say it was fired at him, some of the men had guns on their shoulders. I cant say what was going on at the grocery that required men to be there armed. I did not see Houser have arms of any Kind I dont Know how old Houser is. I have heard and suppose he is about 25 or 26 and may be 27 years of age. I suppose Farris was about 30 years of age. He was a large portly man, over six feet I think of stout build a raw boned man. I think I saw Deceased have a gun but I wont be certain. I understood that Farris lived near to the prarie, I cant say that this was not on sunday, but cannot say what day of the week it was. Cant say what Farris business was at the store I saw him drink that day more than twice He drank what they called whiskey, Mrs Henson was mar=

23

X

-ried three years ago last December. She married Larkin Henson Her name before that was Mary Todd. Before the 26th. of July 1853 she had lived at my house with her child. My house was occupied by myself and my 2 children and Mary and her child. I had 2 brothers who did not make ~~their~~ my house their home. I was prevented from going home that night by darkness Did not know of a Murder till next morning about nine O'clock Mr Henson cannot write nor read writing. I always understood that Houser's home was in Warsaw Benton County Mo. No one lived with widow Wyatt, I never heard of Farris being a constable or officer until yesterday. When Farris said he could whip Houser for two dollars and a half, Houser said "well when you feel ready let in but you will do it at your own risk. Mrs Henson is no relation of Defendant.

John Davis } John Davis, sworn live at a place called Red Oak near canaan Prarie in Gasconade County, I dont know Houser Never saw him except when he was taken. that was in Gasconade County, I was called to help to take him, It may be three years ago more or less. I kept no account of it, It was between the summer and the fall like. I was called to take him close by canaan Prairie near Lesters store. I live about 2 miles from that store, That day There were several persons at the store a man they called "Will Farris" and who answered to that name was there, Mr Mc Daniel was there; a Justice of the Peace was there but I can not call his name; I did not see any man that I knew to be a Constable - Squire Sullivan called on us to take the Defendant but what it was for I did not know. I saw none of the fuss. Houser was setting on a chair in the House, I opened the gate and he went out through the house by the back door and I went round the end of the house and he then got over a fence into a place that is called an orchard. I spoke to him and he stopped. I asked him to come back into the house and he said he would. With that Farris came up to where we where standing in the orchard and said "It was a fine thing you stopped as quick as you did or I would have blown you through any how"

With that I stepped between them the two Farris had a pistol cock=ed in his hand " Then said "Take away away the Pistol and behave" Then said Houser to him "if you want want to shoot, shoot" hauling open his breast. Then they had some conversation cursing and swearing on some thing of that sort, and Houser turned round to come with me to the house, as we turned round Houser said if Faris even did the same thing again for no reason he should not live till sun rise No more passed that I recollect, till we got in the House. I went in and Houser sat down I left him there and went to m Stein's there I was doing some work, I did not see that I was called to stay there. I saw no more of him then that, I did not see anything of a woman with him: I heard of one: I may have been there an hour or two, When I was called to take Defendant I was in the quarry on the Road fifty or hundred yards from the Store, Farris and Mc Daniel were called to take him. I cannot say what words the Squire made use of when called in to take him, I saw 3 men have rocks in their hands Two of them were called Duncans, the other I cant name. I dont think they were called on to arrest him. I saw no blood on Defendant I saw several persons there but to my Knowledge none of them were wounded or bloody. I did not see the woman: only Knew her by hearsay. I saw no Butcher Knives, I did not see Houser again until he was brought back saw some horses & saddles about there They were hitched and I cannot say whose they were. I was in the quarry two or three days after when I heard that Farris was dead. I was slightly acquainted with him saw him as he lay dead at his grave. It looked like Faris, I saw his body did not see his wounds, I saw him dressed and lying in the coffin, I have no doubt is was Faris corpse. That was two or three days after I was called on to make the arrest, I dont Know where Mrs French lives, I dont Know where Faris was Killed.—

Cross Examined.—

The stone quarry is between 3 1/2 and 5 miles from the

the store It was in the afternoon when I got to the store. It was about 2 1/2 hours before sun down. I was on the Road when Squire Sullivan come to me and spoke about ar=
=resting the Defendant. I was fetching him rock to build a chimney. Sesters son was with me. He called him Will Sester. He was above with the team. Nobody was with the squire when he told me to take Defendant. He did not tell me what to take him for. Houser was setting at the end of Sesters building I could see him when squire spoke to me. He was quietly sitting there. I did not say anything to the squire about what he had done. I believe I was bound to obey the squire by the law. I had seen him marry and so on before the 26th July. I saw him mar=
=ry Hollingworth. That was after the arrest. I saw him acting as a Justice of the Peace before that day. He had his office at his house about 3 miles from Sesters. I was a Juror before the Square in a case of cutting Timber before this affair. Some=
=times in that Township they have a constable, and sometimes not, Cant say that Faris was a Constable or Deputy constable, or that he was called upon to arrest Houser. I dont think Sullivan said to Houser "go home" I did not understand what the squire said in calling either parties. Faris was called like I was. he was standing by me at the time. It was af=
=ter we were called that Faris talked about "running through" Houser came with me and left me and I left him I heard nobody anthorised to receive him. When I got up to him he agreed to give himself up. I dont know what Faris wanted to shoot him through for. We heard a pistol. I saw it in his hand when he came up. I was within 10 steps of Houser. He (Faris) held the pistol pointed at Houser, cocked, and in his right hand extended. He came forward to Houser, and then stepped aside. It looked like a small single barreled pistol. Faris did not go back with us he did not go into the house. Houser made no resistance to that arrest I spoke to him and said he had better come back and have

the affair settled there men, The two Duncans and the other that had rocks in their hands are called desperate fellows in those parts. These men were close by Justice's house; they had the stones in their hands under their coattails; I did not hear them speak, during this time Fans was in the yard. he was walking there, I did not see his pistol then. When I arrested Defendant I did not search him: Did not see any rocks thrown at Howser then There were several men there that day, for what purpose I dont Know, I cant say that Howser was stoned: that was even before I got there, I dont remember hearing a pistol fired.—

Francis Sullivan } Francis Sullivan.— produced and sworn, says. I recollect the Defendant Howser, saw him for the first time at Sestres That was during the last days of July 1853. I called on John Davis, Wm. McDaniel and William Fans to arrest him. There was no regular constable then that day. We called Fans, William D Fans—my officer was about a mile from Sestres, I had been at Sestres may be an hour that day. When I told Fans to arrest Defendant Fans came up out of the house. Defendant ran at a man named Pankey with a Knife. Ran him around a wagon that was standing by Sestre's door. Sestre and I hollowed to the men to Knock him down or he would Kill the man. They picked up some rocks and threw them at him; They did not hit him except with one which struck him on the foot. He stumbled and picked up a club and threw at them, He went on them and jumped over the fence. He had not struck the man with the Knife. He appeared to me to strike at the man with the Knife. Sestre and I went and talked with Defendant in the yard. We advised him to behave himself. He threw the Knife behind him. I picked it up and gave it to one of Sestres sons, and told him to take it into the house which he did. I then went to summon then three men to ~~take~~ arrest him, I then went into the house & he was setting there, and I told those men I wanted to assist me

27

in arresting him. He ran out and jumped over the garden ra-
-lings Faris went on one side of the fence and Davis on the
other, and they brought him back. I told them that they must
take him to the place where I usually did business, so that
I would examine him. Davis slipped off and would not act
saying he was too dangerous a man to have anything to do
with and left Faris and me and defendant together. How-
-ser said his Horse was hitched in the lane and asked if he could
go round and get him. I told him he could go, and Faris was
to go with him. They went and I saw no more of them until
I saw Faris corpse and Defendant at his examination. I saw
a gun with Howser. I told him to put it off and he told me to
stand back: This might be an hour before I gave him charge
to Faris. Sestre came in and Defendant gave the gun to him
I fixed no particular time for the examination, Howser lived
10 miles from there. I think Howser and Faris could have ri-
-den to his Howsers place of residence in three hours. I saw
the body of Faris on the graveyard. Saw no wounds on the body
Before the difficulty, I had been a Justice of the Peace some
nine years. I was a Justice at that time and Faris knew it.
I dont remember how Defendant was dressed when he was
arrested I know he had stripped off and pulled his shirt
sleeve off. He just caught hold of it and pulled it off. It
was a white shirt. I cant recollect which sleeve it was he
tore off Did not see Howser again until I saw him at
his examination in Gasconade ~~County~~ could not tell what be
-came of the part of the shirt torn off, and never saw the
shirt afterwards. after the Murder several men went out in pur
-suit of him. There was a man named John Southers,
Dr. P. Sitton, Francis Richardson, W.D. Brown. W.D. Muscot, and
I dont recollect any more. They went after him the 2nd day
after. They went went towards Jefferson. they took three
routes. They were gone several days some of them a week
or two. They did not bring Defendant back with them. I
know Mary Henson, she testified at the examination I think

28 in June last. The examination was before myself and Hib=
=ler, (Examination shown) I recognise the Examination, her
mark was acknowledged by her as her signature, I took down
the testimony myself. Hibler and I were Justices of the Peace
for Gasconade County in this State canaan Township. Defen=
=dant was present at the examination, and saw this taken
down, The witness was sworn before she commenced to give her
testimony. I think he heard all she said. I took the testimony
in the words she gave and as said it, and rehearsed it to her
at every sentence. Examining it now I see no alteration that has
been made. When I had taken it down I gave it to the sheriff
+ who is also Jailor, Dont Know where that witness is now. I saw
her last in St. Louis last November. She is not at her old residence.
I saw Houser's brother there in the County about the time I saw her
last. I dont Know what he was doing there. I dont Know of his being at
her house. I didn not see them together. She was missing about
the time I saw Houser's Brother in the County, search has
been made for her (& we learn she had been sent to California)
(Objected to by the defendant) Know of search being made for
her by the Sheriff of our County, I have not seen her in the
County since. I Know the signatures of the Justices to the depo=
=tion. I wrote one, the other is that of Thomas Hibler. The Knife
I saw Defendant have was a large Butcher Knife, I dont
of my own Knolledge Know where he obtained that Knife Defendant
ran Pankey two or three times round the wagon. nothing was
thrown at him until I and Lestre told those standing round to
Knock him down, He appeared to be about to stab the man he
was running after. I could not say which way he held the
Knife. Pankey had a bottle in his hand which he threw at Defen=
=dant. He afterwards took off his hat and threw it Defendant
Pankey was running as fast as his legs could carry him as
it appeared to me. Lestre and I had advised Pankey to have
nothing to do with Houser. Pankey was setting down on a
step and Houser came up behind him and Pankey said
he had nothing to do with the fuss, Pankey then got

up ran towards the waggon, and the next thing I saw Hou=
ser made at him with the Knife The Knife belonged to Sestre
I think - but of my own Knowledge I cant say - It was a new
Knife which I had not seen before - Sestre's boy took it into
the house. - Defendant had no opportunity of going into the
house to get the Knife after the conversation with Pankey
at the door - I could not say when he had the Knife. The wea
=pon was such as would produce death. I did not take much
notice whether it was sharp or dull.

Cross Examined —

I have lived in Gasconade nineteen years last october. I think
I saw Houser once passing by Sestre's house prior to 26th July
1853. If I saw him then that was the only time before, I saw
him on this occassion. I went to the Grocery say from 4 to 5
5 O'clock. Went with a man named McDonald. Sestre put
a note in my hand against McDaniel & I went up with latter
to see if he could get time on it. Before I got to the house, I saw
Houser on his horse in the road with the horses head toward
the store, I saw Farris standing on the left hand side of the road
as I went up. They were cursing each other and bantering each
other to fight. There was with them a man named Duncan and
one named Beck, Beck and Duncan were bantering Houser.
Houser was on horse back the others on foot There were 200 yards
distance between the parties one said, "Duncan you I can whip
you, and the other said the same thing. I then had no acquain=
=tence with Houser, but Knew the others. Farris was standing
talking to one of the Duncan's. I did not see any danger of
the peace being "broke" and therefore did not "command the
peace" They those parties were walking slowly towards the Defen=
=dant. They did not appear "Keen" to get to him. I saw no weapon
in Defendants hand at that time. I saw no pistol in the
possession of Farris then or during the day. I went on to Sestre's
house, the next thing I saw was Houser in the yard. I dont
Know how he got there. It was the front yard. - This was less than
a quarter of an hour after I saw him on the horse. Dont Know

what transpired during that ten minutes or quarter of an hour
Heard no pistol fired. Dont Know the cause of the Difficulty
between those men, Cant say whether the gun defendant got was
loaded, after the accurrence with the Knife had taken place there were
gone half dozen men in a crowd McDaniel the Duncans, Beck
and I shant take the trouble to think who else were there. Pankey
was on the ground. I did not offer to head a Mob, and can prove it
to hang Defendant when he was at Gasconade. I drank no liquor
on the 26th July 1853. I never saw liquor that day Had I seen it
I suppose I would have drank. My office was on the Herman
road, which ran to the Iron works. it is condemned now. It was
late in the evening, When I ordered the arrest of Houser. I did
not think it necessary to make out a warrant for him, as I believe
the law justified me to take him without. I ordered the arrest and
Farris and Davis arrested him They brought him in together. I
dont think either of them had hold of him. He walked before
them, and they came into the House with him. They told me
they had brought him, and I told them they must take him
to my house to undergo an examination. On my oath I swear
that I was going to examine him that night. I did not tell Hou-
ser he was to be examined that night, but I told him he was to be
examined. I think Dr Sitten Sestre and several others were present
when I told him that, I was on my way home when Farris went with
Defendant to get his horse. I wanted to examine him because of his
assault on Pankey. I gave no commitment or written authority to
those men to take him to any place. Davis & McDaniel slipped off.
and left me and Farris alone with him I was going to send for the
Sherriff and then issue process for the witnesses. I did not ask Pankey
to go to the office. I told Sestre that he was to testify. I did not see Pan-
-key do any thing to Houser. I dont Know whether he did or not.
He fanned. I have not seen Pankey for a long time. I cant say
whether he is still a resident of that County. I think he is not a
witness in this case, As they were running around the wagon Pankey
said I had nothing to do with the fuss, Houser said, Oh D—n

you, you didn't, I think Duncan is an older man than Defendant I dont know where Beck is, I believe he has moved off. I issued no attachment against Beck he is not worth it. The Duncan's have left Gasconade. I do not assist in employing counsel in this case I have had a bad bargain in being a witness. I did not say I would head a mob to hang defendant without Judge or Jury. Of my own knowledge I cant say that the sheriff searched for Mary Henson. I gave the knife spoken of to Sestreson, and suppose Defendant did not have it again. I think I should have known had he got it again. Duncan and Beck threw the stones at Honser. I cant say how many, but there were several, some as big as your fist and some smaller they pricked them from the road. I did not hear Farris say would whip Defendant. I do not know of his pointing a Pistol at Defendant.—

Deposition or Examination of Mary Henson shown.—

Some of this writing is mine I recollect Mary Henson placed her hand to the pen when I made the mark for her signature. Mary Henson assented to the evidence as I repeated it to her sentence by sentence. I say this is testimony she gave because I wrote it and she assented to it. Mr Hibler issued a warrant to seize Defendant and called me to sit as assistant Justice Dont know where that warrant is now, as it was lost on the day of Examination. Hibler verbally sent for me to sit with him. I cant say why that fact was not put upon the record After the examination I went about my business. He made out the warrant. I did not join in it. I told Hibler to deliver this testimony to the sheriff, and dont know if he did so. The warrant was not attached to it. Hibler endorsed the paper in part I endorsed the rest of it. The word evidence I wrote. I did not see this given to the sheriff. I did not care with it. Robert Allen was sheriff there and Burton Cooper succeeded him. I say that this deposition is as it was taken, I see no interlineation & it is my hand writing. There was no refusal to hear testimony on behalf of Defendant. The examining Justice rejected evi-

32 dence offered on behalf of Defendant. By "examining Magis-trate" I mean both of us. We rejected the testimony of Edward Lestre. I do not recollect that he was sworn as a witness. He did not testify under oath. He told a tale that it was all a drunken spree, and we rejected that testimony because we thought there was testimony sufficient to commit him. He did not consider what Lestre said of any account. The words in the Record, "Testimony on behalf of the Defence" were written by Hibler. I think that paper is a perfect record of all the proceedings at the examination. Lestre was subpoenaed there, Hibler issued the subpoena. There were several subpoenas for the Defendant. They were issued for Mrs Butler and Mrs Lestre, a man named Burnsides was sent for to defend Prisoner but he would not serve. There was a right smart excitement against the prisoner at the Examination. In the temple of Justice Gasconade, no attention was paid to the excitement I knew people talked of hanging him. I expect there must have been a thousand people there at the examination. It was held in a grove near Hibler's house because there was no room large enough to accommodate the people, of the persons present several had guns, at least those who guarded him. I cannot say that Howser was afraid to cross examine or to call witnesses for the Defence. I heard no threats made against the witnesses if they should not testify. I did not see any whiskey on the ground, but I understood there was some. Prisoner stay'd during the night before the examination at Hibler's house and was guarded by some 10 men. Dont know why this paper was not produced on the order of this Court before Friday

Direct Examination resumed.—

I heard nobody advise that the Prisoner should be taken out and hung. They could have taken him out and hung him if they had choosen, but no efforts were made. I remember part of the testimony of Mary Henson.—

John Foulks } John Foulks, sworn for State.

I reside in Gasconade County, and did in July 1853—

I live about 1/4 miles from Wyatts. I did not know Farris
I have seen Deft twice in Gasconade County: I saw him at his
grandmother Wyatts, and at a meeting at our School house
I take Defendant to be the same man. I know of a Killing at
Mrs French's house about the last days of July 1853. I was one
of the coroners Jury, and held an inquest on the body. Mrs Todd
came to my house. I went to French's where the dead body was
because, Mrs Todd came and told our folks. I started for the
house about 12 o'clock. I went to see what had happened. I
found a dead body in the room they sleep in. The body was ly-
-ing on the flor by the fireplace crossing head to the north, feet
to the south. I examined it. The throat was cut with a Knife
or some sharp instrument, clean round. We took the body out
put it on some board. stripped it and washed it. There we found
six wounds on the left side, and two on the right side near the
back bone. The six were between the ribs under the right
arm. They appeared to be about inch wide cuts, all of the same
size. The two in the back were near the back bone. The six stabs
were not far apart. No two however were connected together
They all went between the ribs, and I dont think any rib
was hurt. It appeared as though the Knife was on the
left side of him. The coat collar being 4 ___ of Jeans cloth
was cut though at the neck. I think the body had not
been moved. I saw blood on the floor all round the body
thick. I think the blood on the wall was about 4 feet high
Deceased was lying on his side with his left arm under
him, and his left foot drawn up slightly. The six cuts
could not have been given him after the fall. The other
two could. Blood was not collected in any quantity except where
he lay. A chair was about 2 feet from the hearth, which was
about two feet wide. It set a little to the right side toward
the north wall. Dresses hung on the wall close to the fire
place. The widow Wyatt lived in the house. She is now Mrs
French and had a sister named Mrs Todd. Mary Todd
was called in by the Justice to give testimony at the inquest.

She came in presence of the body. Mrs Wyatt did not come in
The body was not moved until she had given her testimony.
The wounds were examined outside of the house. We found
no arms, fire arms on the body. We pitched on Mr Lockhart
to examine his clothes. We found a $2.50 piece, a fifty cent piece
a ten cent and a five cent piece. No pocket comb Knife, handker=
=chief or piece of tobacco. Saw no weapons near him. I cant say
how long the homicide had been committed, before we saw
the body, The weather was cool of nights about that time
I did not examine the blood to see if it was dry on the clothes
There was no smell from the body nor any evidence of de=
=composition, The last I saw of Mrs Henson was in the Court
House here. I cant say when, but it was the first time. I came
down here. One time I was not subpoened. I Cant say where
she is now, I have not been to the place since I saw her here.
I was not used to see her, - did not see her often. Dont Know
what time Mrs Wyatts (French) got home. She was with
Mrs Todd in the yard. When I went, I did not see Hauser
that morning.

Cross Ex^d

I do not Know whether any person had been in the
house when I got there, Fifty people about there. They were in

Francis Sullivan reappeared

Francis Sullivan. reappears for State.

The testimony is unaltered, and is written as Mary
Henson gave it. I swore her I administered the oath. Hil=
=ler was present. I recollect perfectly well that this is her testimony

Frank Richardson

Frank Richardson. called and sworn for the State. I
Knew deceased 14 or 15 years. His name was William Dudley
Farris, I recollect about the time he was Killed think it
was the 25th of July 3 years ago. Know where Sestre's store
is. It is near two miles from my house. I live on the Spring
=field Road and Sestres store is on the same Road. My house
is ten or twelve miles from where Mrs French then lived.
She lives south of the Springfield Road, Farris lived two

35

or three miles from where I lived, south east of me. I lived nearer to Sestre than Farris did, but I cant tell how much nearer, Farris lived from Eight to ten miles from Mrs French. I saw Farris at the house where I suppose he was Killed. It was Mrs French's I saw him there dead, saw him in the evening It was after 12 when I learned that Farris had been Killed. Learned from Richy. He came to let me Know. that F. was Killed. Dont Know how long before I had seen him alive He was at work on a Farm. Had small farm. I went and saw him. When I first saw him. I looked through the crack the door was shut. He was lying on the floor, near the south door, I got there before he was washed. Nobody was in house when I got there. Dont Know why they were not in, said "dont go until inquest is held" Went into the house. Dont Know who opened the door. I saw him lying there. His throat was cut square arrow. I could see his swallow was cut in two. His wind pipe and swallow were both cut. He was lying on his left side. Head was on the floor. "Sorte" on his face. It was drawn up. his (body he meant) saw blood upon the flor The blood was scattered across the house. There was blood where he lay. Cant tell how much. Saw no ashes put over the blood. Saw where he was stabbed after he was stripped. Sorte on his back and side like, Cant tell how many stabs. They were an inch wide, cant tell what was done with the body The body was dressed in "Jeans" clothes when I went there Not certain Disremember about vest. Common domestic shirt Had on a frock coat. Had shoes or boots think he had. Had a hat - not on him, Am not certain, Dont Know where the hat was. saw no shirt with sleeves torn off. Have not seen it since as I Know of. Know Have seen Robert Houser Understood the man I saw lived up the Country. They called him Houser. I saw him east ~~~~ in our County, September, after the arrest of Stephen. I dont Know what caused his death. Think wounds sufficient to cause death. Did not see deceased afterwards, started to hunt the murderer

36 up the Country. 2 Mr Sowders went along Handry &
Muscott went after the man, They called Howser, Think
Deft is the man. They started on Springfield Road, and
went that a piece. Springfield is south west from my house
Never saw Howser before the murder, Saw him after
the murder. Believe him the same man, who eat his
breackfast at my house the morning after Farris was
Killed. This man arrived at my house after sun up
The sun was not more than an half hour high, could
not describe his chin. Had on an over coat, as well
I recollect, could not describe his coat I live on the Road
and then on a front many stop there. Cant say whether
it was a light or a heavy over coat, wont be positive do
think it was a warm morning very warm, I think
he was riding a white poney. He came down the Spring
=field Road from S.W. course, cant tell how long he re=
=mained. He took breackfast, his horse was put up and
fed. He started on toward St Louis he wanted to swop
horses with me. Mine was a cheesnut sorrel, good country
horse. We did not trade. Dont think his horse was
14 hands high. He inquired about the Road which
come to Herman. Told me he lived in Jefferson and
had been out about Jake's prairie. Jake's is called twelve
miles from our house four or five miles from Wyatts
Appeared to me he was lost from his conversation. Inqui=
=red for Springfield &c The days were long. I heard of
Farris death about noon. Deft then (or man) when sun
was about an hour high, we supposed Howser to be the
man We travelled on toward Warsaw together. We un=
=derstood Howser was raised thats Warsaw 150 miles.
The others turned back before we got to Warsaw. Did not
find Howser. No traces of him. He heard of him (obj^d)
We heard of him 9 miles west of Warsaw other side. He
inquired for man riding white poney named S. H. How
=ser did not overtake him. man on poney, I was recon=

37

mended to a Merchant in Warsaw, The people of Deft and heard lived near Warsaw, I stayed there 1/2 day went on south W. near state line of _____ its Heard of him 15 miles this side of Warsaw, and over at Warsaw. Heard about 9 miles other side of Warsaw. When we got there turned back Sutton and Brown were after him Sutton got sick and turned back, One party started in after part of the day 1 or 2 O'Clock This was 2nd day after man had been at my house, next day horses which go 100 miles in twelve hours, I was gone about 16 days in pursuit, I travelled as fast as could get along in going: coming back slow, I left him. 27th got to Warsaw the day of Election. When I last heard of him he was 2 days ahead of me. Howser was brot back last June. No efforts made to arrest him as I know off. After
+ we made them. Know Mary Hensen, saw her at home when I went to Frenchez, Last I knew of her she was living in Gasconade County, think she is not there now, seen her last down here, last fall, went home with us. I know Tom Howser, He lives I dont know where. Have seen him in Gasconade County, I saw him come to Sestre's. Dont recollect when, Few weeks back since March only time I saw him there, know of no effort being made to find her I have inquired. Received no information from her. Dont know where she is now. Saw no weapons on Farris body He hardly ever carried weapons.

Cross examined.

Brother-in-law of Farris. Know Squire Sullivan, Farris lives 1/2 mile from Road. Was not at the Grocery the day of the Killing, Did not see Sullivan the day of the Killing. I was present at Howsers examination, It was held in "bush" I mean in the woods, 100 yards from Hibler's house, dont recollect the day he was guarded there several days. It was a tolerable warm day sun shining Went out to set a shade. There were about 100 people there Mr Hibler & Sullivan conducted the examination

=tion. Dont Know who Killed Farris. I dont think well of the Defendant. I have bad feelings against the Defen=dant. I had bad feelings against him on the day on which he was examined.- nearly 3 years after the homi=cide. I dont think I proposed to head a mob. and Lynch him. Good many talking about it before ~~and~~ the examina=tion and after. I heard several say they thought he ought to be hung. Hanser ought to be hung. they said. Good many said he murdered Farris. There was a good deal of excitement about. I stood close by him while they were exam=ining him. I would have been willing to have seen him hung by the crowd. Good many said same thing at same time and place. Dont recollect that I said I would fix him. I think "I said I would have been willing to see him hung" Might have said it before or after Cant recol=lect. I stood close by the Prisoner most of the time during the examination. I was a guard. I testified - They said it was no testimony. Think they told me to stop. I had a pistol a five shooter I had one of my own and Allen handed me one a Young man had one also. 3. I had it Dont recollect what I did with it. Think It was not cocked. Dont recollect that it was, there was 20 ~~that~~ who said they would be willing to see him hung. Far=ris Brother. Enoch Douglas, Sheriff did not pro=pose. It was common custom for men to pick his rif=le or rifles there. I think John Lynch about 4 or 5 or 6 men summon^d to guard him. Dont Know how many they were to relieve one another. The Defen=dant had irons on him. Had no Lawyer. The man who said He ought to be hung. Did not speak louder than we talk now. Heard nobody say so in presence of Defendant. Saw Whiskey in bottle on ground a man named Mahoney had it, a quart bottle. He had it by side of the fence. Mahoney drank

39 I have seen Sullivan drunk; so often that I cant tell whether He was drunk or sober the day of the examination. If he was drunk I dont Know it. I dont recollect saw Hibler drink while I was on guard. Did not see him Drink. The day of the examination I drank liquor that day before I testified. I drant out of the Mahoney bottle. I was drunk yester day went to sleep We had no regular time. I am a farmer I live on the Road. Let people stay with me not very common for people for people to stop with me for breakfast. Never saw Deft before Farris was Killed I saw Howser in Jail in Herman. I wont swear positively Deft is the man who took breackfast with me the man was there half, may be an hour. I put his horse up and eat breack=fast with him. Had on broad brimm^d round crowned hat. Dont think took overcoat off. Noticed how cut in boot Think the man had hair on his upper lip. Dont recollect about his chin. Have not been at Mary Henson house since October. Ques. Was the man you followed the same one who took breackfast with you.- obj^d & ov^d

Benjamin Leach } Benjamin Leach sworn for the state. Dont Know Deft. Saw him after arrested in Gasconade County.- Had conversation after he was committed by Justices. Court examines witness on voir dire and pug retires. I was with Douglass this was at Hibler's same day after examination we conversed with Deft. Douglass asked him this question: "You did not think five or six weeks ago. You would have been in this fix" No says he I never intended to be taken when I left this County I did not Know they were taken me then for this thing but for spy in Kansas" Douglass asked him another question says "you did not get very far the first night you left here." No by God I did not get 2 miles from the place. Douglass asked him another question: They came right through the prairie when you had the difficulty with them. Yes I did I was lost When I

goto on 3rd creek I had a notion to go back and see them out. Prisoner asked what would they had done to me if I had gone back. Douglass said they would have mobbed you and hung you. Howser said that is all I am afraid of now. I asked him the difference between being hung or mobbed said good deal. If a man was sentenced to be hung what would be his end, and he would be a damd fool to get scared. If he were to fall in the hands of a mob, no knowing what would do with him. Was no officer. Douglass no officer that day. No arms guards were present, one man had a shot gun. Witness states in substance same confession or conversation alone at first = Now say "He did not get very far the first day". If I have done any thing against the law of the land. I am not afraid to die says Howser. If sentenced to be hung in a half hour he would be a d-d fool to get scared at it. This is about all the conversation that we had. The person spoken of is Douglass. Knows where Mrs Wyatt lives about ten or twelve miles. Prarie is one in which Richardson lives but little piece 3/4 miles to Lestre's. Have to pass it the prarie, in going from Wyatt to Richardson. 3rd creek heads up into the prarie from Frenches house to creek 14 or 15 miles from Richardson to creek 2 miles. Mr Shackley was present when conversation took place and Mr Prower. Dont know as he stated any thing in particular about means of getting away. He observed about going down through on 3rd creek. Did he state when a foot. Obj.d Dont know. He observed this. A man would do a thing to day, and tomorrow he'd be sorry for it. Set the same circumstances be brought up again and he'd do it again. Every man has not the same nerve.

Cross Examined.

Page 41. Have lived 19 years in Gasconade, near the Centre of the County eleven or 12 miles from widow Wyatts. 2½ miles from E. S. Hibler's. I was not at the examination. I saw him at Hiblers home and Office. Dont mind the day I had this conversation. Dont Know the month. Dont Know day of the week, nor month nor year. West to Hiblers house to see Houser. Did not leave your house for that purpose. had been away from home. Hiblers was a mile and a half out of my way. Did'nt change my mind with the time Houser was brought to the County. Heard he had been brought 3 or 4 days. I heard it in Franklin Co. to a meeting-church. Went to see Houser and to find out what they did with him. Got to Hiblers, between 2 and 4 O'Clock, Dont Know exact time. Its a log house 14 by 16 size of house- dont Know exact size, on no road- but might road. Only one room that I saw. Hibler is a man of family. It had been a stone house- Hibler lived 100 yards from there. The examination was concluded when I got to the ground. Dont Know how many were there when I got there. There were about 50 persons there- men, the most of em. They were scattered about the yard and outside. I went there alone. Hibler was about there. I saw him. I dont recollect then. Saw no one with gun except guard. Only 2 persons there besides Houser, when I went in. Shockley & Trower. They were guards, one of em had arms. Trower. Shot gun. The gun was lying across his lap. He was sitting on something. Did not notice what he was sitting on. Shockley was sitting. The prisoners were close to Trower. Shockley at the door 10 or 15 feet off. Douglass and myself went in. First saw Douglass then on the ground- out of the house. Never saw Houser before that day. I did not commence conversation with prisoners. Douglass commenced it. Prisoner ironed on his hands. Dont think feet were confined. I went in after being on the ground 10 or 15 minutes. Conversation with Douglass. Dont recollect who else. memory poor, unless want to change it with things. Douglas lived some seven or 8 miles, some body observed that there

was great excitement that day about Houser. Helps said this. I proposed to him to go in, went to see Houser. Don't know that I wanted to talk with him. I spoke to Shockley. I told him I wanted to go in and see Houser, Don't know exactly what words I used. He said I might go in. Did not change my mind with the words Shockley, and giving permission to enter, can't give a single word he said. He was standing or sitting inside the door. Don't know if Douglass spoke to him - respect of a gentleman. Don't recollect what I said to Houser. Can't recollect what I said to Houser in asking after his welfare, and how he was, - another version = "You are in a bad fix. Houser said he was" Douglass asked him - I dis-remember how it got in - but - my mind is gone! I'm sick!

William Douglass. Sworn for State.

Lives in Gasconade Co. Lived there in 1853. Was present at a conversation with Deft. Benj Leach, was there. I was at Mr Hiblers. the first I recollect was.

Deft unless all conversation . I observed to Mr Houser, "You did not expect to be here some 5 or 6 weeks ago. I suppose he said he did not. He said if he had known that this thing would have come up he would not have been taken in Kansas - said he was arrested there under his of being a spy, and did not expect to see any body there who knew of this circumstance in Gasconade County. I said you got away very slow. He said he had travelled all night and found himself within 2 miles of the place next morning - by God, - You passed along close to the prairie where the fun took place the day before. He said he was lost or bewildered or something. When he got upon 3° creek he missed his road. He got into an old road - met a man and asked him if 1 - man turned him round and put him on the road to Rollins ferry - was travelling he said the wrong way. I said - if you had gone on you would have got back to the prairie about

43 the time the news got there. He had a damn notion to come back and see it out. He asked me what would they have done with him if he had come back. I told him, I expect they would have marked him, or hung him up to a tree - He said he turned his horse and went on to the stage that night - said he traveled slow not fast - Did not say where he went. went on up the country. There is an old road runs about 2 miles from Frank Richardson, Hauser said he traveled part of the night. I referred to the news that Harris was killed - which came to the prairie that day. He told me he was riding an Indian pony, nothing further stated as to the animal. I think I observed to him that he eat his breakfast that morning at Frank Richardson, He stated that he staid the next night after at Lyle Tour, with a widow woman. This is called 30 or 35 miles from Richardsons.

Cross Exd

Was present at Exn of Prisoner. I lived 8 miles . I went to the Exn. Dont recollect day of the week. It was on Monday I went - Tuesday also. Went home one night, Sunday I went, stayed one night at Heiblers, there 3 days. Examination was put off one day on account of Defts Counsel. This is hereay. Went over on Sunday at 10. or 11. o'clock, understood he was and was to there. I went to see. Had no business there. Did not have an idea when it would be tried. Dont - Was there on Monday. doing nothing never "pack wepons" took me there never saw Deft before that time. Related to Harris, my first cousin. I employ no Counsel. I paid part of a reward for prisoner $200. was paid by county $200 by private persons. They paid as high as $20. I made up the reward - collecting form the persons then on the ground. I acted as a guard for a few minutes - for more than an hour I acted. I was while so acting - the Sheriff handed me a pistol - On monday & Tuesday

were a good many persons on the grand as many at 500 persons. Saw some a Saw two guns - one Shot gun the other a rifle - after the trial I heard men talking about Lynching him - an hour after the trial - I made no such expressions - Know Enoch Douglass - Did not say to Douglass - I would take a hand in the mobbing him. Heard one man say he ought to be mobbed, and that he would take a hand in doing. This was said during the trial by one man. This man they called him Don Sam Williams. He was in the crowd. He was off a piece from the prisoner - cant say how far - Dont know who he was talking to. Saw no drinking. Saw no whiskey. I did not tell any body that if I had caught him I would have fixed him - or Strung - There was an excitement - It was the common talk through the Country that they would have hung him up. It was generally supposed that he would be mobbed - Know who went in pursuit - Know of no mutiny prior to going in search of Hauser - I stayed there through curiosity - Did not stay for purpose of having talk with Hauser - Ext^n. concluded at 2 or 3 o'Clock. about an hour after I had conversation - Dont remember how many were there. about half remained. Leach could have seen them. He was confined in a small room, not full - few men in there - not dozen - but half a dozen. Shockley was in - Leach. cant say who else - Dont know about Hauser - there were more than 4. Went into the room alone - Dont know of Leach going in. think Leach came in after - Use persons in the yard - Shockley was sitting on a bed when I went in. Prisoner was there. Was in some time before spoke to Deft. never expected to be evidence. I addressed him first. Said you did not expect so - If he had known of this case he would not have been taken. I then said you got away slow - might have used both expressions to him - He said no - I got lost -

and found myself next morning in 2 miles of where I started. He said he went on this road and was coming back to the prairie, when he met a man. Had a damn notion to come back to prairie - asked what they would have done - I told him they would have mobbed. He said he did not fear death - and would have come back had he not feared they would mob him - Said he did not fear the law - If he had done anything against the law, he didnt fear to die. Dont recollect hearing anybody ask him the difference between hanging and mobbing - my memory is a tolerable memory - never took any memorandum of the conversation - no ill will against the prisoner - am willing to abide by the law. Dont know whether the Deft heard.

Re Ex d

Know of no prejudice as Deft before Harris was Killed, no excitement till news came. I left Mr Leach, in the room when I went out. Dont remember - they were talking Leach, and Houser, were just commenced when I went out.

Mr French.

I gave the torn shirt to Robert Houser, the Deft's brother Dont know where Robert is now is.

John Landers, being called and sworn on the part of the prosecution, testified as follows, I was summoned to hold an Inquest upon the body of Harris, that was found dead, went to the house about one or two oclock, lived one mile from the place nearly East have no acquaintance on Third creek, saw a horse in the stable, was some little distance off, did not see any saddle or bridle, some of the neighbours, brought me word of the Killing. I remained at the house until late in the evening

46 saw defendant once, do not recollect how long that was before I saw the dead body. It was some time before, I went home after leaving the Inquest.

Franklin Richardson, being recalled testified Knew Harris horse, it was a mare, saw the horse after Harris, was Killed, and at the place where he was Killed, at Mrs Wyatts, in the Stable some 40, 50, or 60 yards from the house, saw, the saddle and bridle hanging up in the stable as well as I recollect.

+ The State here offered to read the deposition of Mary Henson, taken on the Examination of the prisoner on this charge, before the Examining Court, and offered in evidence to the Court, the subpoena issued from this Court, to the Sheriff of Gasconade County, for the said witness, and the return thereon in the words and figures following to wit:

County of St. Louis. S.S.

The State of Missouri.

Subpoena

To Mary Henson Greeting: You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our St. Louis Criminal Court, at the City of St. Louis, May 5. 1857 at 9, O'Clock, a. M. there and there to testify and the truth to say in a certain cause pending in said Court, wherein the State of Missouri, is plaintiff, and Stephen H Hauser, is defendant, on the part of the State, and herein you are in nowise to fail.

Witness Frederick Kretschmar, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 20" day of April, in the year of our Lord one thousand eight hundred and fifty seven.

Seal

Fred Kretschmar, Clerk.

42

Sheriff Return

Mary Henson, not found within my County, this 30th of April 1857

Burton Cooper, Shff
of Gascnade Co Mo

And the State re-called the witness Francis Sullivan, who testified that he did not know the hand writing of the Sheriff endorsed upon said writ. That he had seen the writing or what purported to be the handwriting of the said Sheriff on one or two occasions and believed the said handwriting to be the proper handwriting of the said Sheriff. The State also offered the Subpoenas issued for said witness Mary Henson, to the Sheriff of Gascnade County and the return on each of them

County of St. Louis, S. S.

The State of Missouri.

To Mary Henson, Greeting. You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our St. Louis Criminal Court, at the City of St. Louis, on Nov 18th 1856, then and there to testify and the truth to say in a certain cause pending in said Court, wherein the State of Missouri is plaintiff, and Stephen H. Hauser, is defendant, on the part of the State, and herein you are in nowise to fail.

Seal

Witness, Frederick Kretschmar, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 28th day of Oct, in the year of our Lord one thousand eight hundred and fifty six

Fred Kretschmar, Clerk.

Marshals Return

Executed as endorsed, St. Louis County Novbr 18th 1856.

Wm C. Smith, Marshal.

48

Subpoena

County of St. Louis. S. S.

The State of Missouri

To Mary Henson, Greeting: You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our St. Louis Criminal Court, at the City of St. Louis, on January 7th 1857, at 9 O'clock A. M. then and there to testify and the truth to say in a certain cause pending in said Court, wherein the State of Missouri, is plaintiff and Stephen H. Houser, defendant, on the part of the State - and herein you are in nowise to fail.

Witness Frederick Kaetschmar, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 20th day of December in the year of our Lord one thousand eight hundred and fifty six.

Seal

Fred Kaetschmar Clerk.

Marshal's Return.

The within named witnesses not found in my County. St. Louis County Jany 7th 57

Wm C. Smith, Marshal.

County of St. Louis. S. S.

The State of Missouri.

To Mary Henson, Greeting: You are hereby commanded, that setting aside all manner of Excuse and delay, you appear before our St. Louis Criminal Court, at the City of St. Louis, on Jan 16th 1857, at 9 O'clock A.M. then and there to testify and the truth to say in a certain cause pending in said Court, wherein the State of Missouri is plaintiff, and Stephen H. Houser, defendant, on the part of the State, and herein you are in nowise to fail.

Witness Frederick Kaetschmar Clerk of

49

our said court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 8th day of Jan. in the year of our Lord one thousand eight hundred and fifty seven.

Seal

Fred Kretschmar, Clerk.

County of St. Louis S. S.

The State of Missouri

Subpoena

To Mary Henson, Greeting: You are hereby commanded, That setting aside all manner of excuse and delay, you appear before our St. Louis Criminal Court, at the City of St. Louis, on March 16th 1857, at 9 o'clock A. M. then and there to testify and the truth to say in a certain cause pending in said court, wherein the State of Missouri is plaintiff, and Stephen H. Hauser, defendant, on the part of the State, and herein you are in nowise to fail.

Witness, Frederick Kretschmar, Clerk of our said court, with the seal thereof hereto affixed, at office, in the City of St. Louis, this 24th day of February, in the year of our Lord one thousand eight hundred and fifty seven.

Seal

Fred Kretschmar, Clerk.

Marshal's Return

The within Mary Henson, cannot be found in the County.

Saml Smith, Dept Sheriff.
of Gasconade County.

The defendant by his counsel objected to the reading of said deposition and offered in evidence to the court the order of this court made on the — day of — on the clerk of the circuit court of Gasconade requiring him to return into this court, the examination of

the witnesses on the charge against the prisoner, and which is in the words and figures following to wit: (no order on record) and the defendant by his Counsel proved that no return had ever been made to said order- and the defendant also offered to read to the Court, that part of the said examination which shows the action of the Examining magistrates with reference to one Edward Luster, offered by the defendant as a witness on his behalf on said examination.

Testimony of witnesses on the part of the defence Edward Luster, produced and sworn deposeth and sayeth, about three years I saw Mr Houser at my store house in company with Mr Faris, and others the first thing that recollect of Mr Houser, drew out a pack of cards he proposed to shew some tricks with cards, I told him I did.

this evidence Rejected of Edward Lusters, and the Court refused to consider this, and the defendant by his Counsel excepted, and the defendant by his Counsel also read to the Court, the certificate of the examining magistrate on the conclusion of said Examination

Certificate of Justice of Gasconade

State of Missouri
County of Gasconade } S.S. We Thomas Wibler, and Francis Sullivan, Justices of the peace within and for the County and State aforesaid do certify that the said Stephen W. Houser, was brought before us and charged with the murder of William D. Faris and that the said Stephen W. Houser, was distinctly informed by us of the charge made against him, and that he was at liberty to refuse to answer any Question put to him, and he declined making any statement; as also the information of the said Franklin Richardson, Mary Henson, Mary A. Faris, John Jones, and John Sowden, were by us taken and reduced to writing on the day and year aforesaid in the presence of the

prisoner. Given under our hands this 17th day of June 1856

Thomas Gibler.

Francis Sullivan.

Justices of the Peace.

The Defendant by his attorney then offered in evidence the following letter from James Arrott.

Herman April 29th 1857.

Dear Sir

Letter from Jas Arrott

At the request, of your Pros Atty. I send you the testimony, of witnesses taken before the examining Justice in the Case of Hauser. When he is done with it please return the same.

Yours resply

Jas Arrott.

with the address, and proved by the Clerk of the Court, that said letter was received by him on Sunday the First day of May, containing the Examination by the Justices of the Charge against the prisoner, and that this date was the first time said Examination had ever been received in his office.—

James B. Goff, being sworn testified. I knew James Arrott, when I saw him at Herman, a month ago he was acting as Circuit Clerk. Letter shown. I believe that to be his Signature. Have seen him write - Have seen his signature to private accounts and believe this to be his. and the defendant by his Attorney objected further to the reading of said paper and to its admission as evidence against him. that the same is not legal evidence or evidence at all against him. that the defendant has a Constitutional right to meet the witnesses against him face to face. that the State has not established that the party whose statements are proposed to be read as evidence against him is dead, but on the contrary has shown that the said witness is in full life - that the State has not established

52

that the party whose statements are proposed to be read in evidence against him is absent from or out of the State. That the State has not established that the party Mary Henson, whose statements are proposed to be read in evidence against him is absent from or out of the jurisdiction of the Court. That there is no evidence or sufficient evidence that the said paper contains the testimony of the absent party Mary Henson, as given in the examination of the prisoner charged with the murder of William Harris. That if the said paper writing be the testimony of the Examination of the charge against the prisoner the same appears to have been illegally taken in that the Magistrate refused to permit testimony on behalf of the prisoner, and has failed to return the whole of the testimony given on said Examination declaring part thereof to be irrelevant and therefore inadmissible and because there is evidence that the said paper purporting to be Examination of the charge against the prisoner for the murder of William Harris, has not for a long period been in the custody of the law, and that the Examination was taken under such circumstances as ought to exclude it as shown by the testimony already in but the Court overruled the objections of the defendant and permitted the said paper to be read in evidence to the Jury, and the defendant by his attorney excepted to the ruling of the Court thereon. and the Circuit attorney thereupon read said paper in evidence to the Jury as follows.

Deposition of Mary Henson.

Deposition of Mary Henson

Mrs Mary Henson. produced and sworn deposeth and saith. that in July 1853, in the forepart of the night, Mr Hauser, and Mr Harris, came to the house, I looke to be the same Mr Hauser, to me

53.

at Mrs Matilda Wyatts, house where she was living. After they came into the house, Mr Houser, asked me to fix some supper for them and I did so. after they eat their supper they went into the other room. I stacked up the dishes, and took the lamp in one hand, and a bucket of water in the other. I went into the other room. Mr Houser was squatted down by Mr Harris, side talking. I did not know what they were saying. Mr Harris said to Mr Houser, "let us take a game of euchre" Mr Houser answered "No not to night" I turned out of the room. Mr Houser asked me to go and get something to feed the horses on, I told him he knew there was nothing to feed the horses on but bran. I told him that I could get it for him. Mr Harris, spoke and said "Yes get a bushel. Mr Houser, said "No dont get that much, get enough. I went into the other room and took a bucket in my hand and went up stairs to get the bran, while I was up stairs I heard a noise in the other room. The noise sounded as like they were dancing - I heard one of them fall I did not know which until I heard Houser, walk across the floor to come to the foot of the ladder. I mean Mr Houser, He said to me to come down, I told him to wait until I got the bran, He said never mind the bran come along down. I filled up the bucket and handed it down and told him to step aside and I would come down, after I went down he took me by the left arm and said he had killed that man. I said I reckon not. Yes says he, Joe cut his d — d throat. I told him I hoped he would have mercy on me and not kill me too, said he dont be afraid, I will not hurt you. He said come and go and see,

I told him I did not want to see, I went into the room where Harris was lying. He said there he is look at him. look at him. I went on to the bed to take up my little girl, and he told me not to to let her alone. He said he wanted a shirt to put on. I told him he knew where his shirts were. There were none out of the bureau, only the one he put on that morning. He hunted up his dirty shirt, and put it on, after he got every thing ready he started and got his horse, not his either, it was my sisters horse, then he went over to the old lady Wyatts. He went to the door and called her. she jumped up and went with him round to the chimney end of the house. I could hear him talking. I could not understand what they were saying. He came in the house and lay on the bed: the old lady Wyatt, fixed some supper for him. after he eat his supper he caught his white poney and started. The last I seen of him until last Sunday, was when he turned the corner of the old lady Wyatts yard fence.

Cross Examined by the Prisoner.

Q. I want to know if you believe that I am the man.

A. I believe you are the same man.

Q. How are you positive that I am the same man.

A. If you are not the same man you are just like him.

Mary her mark Henson.

Sworn to and Subscribed before me this 17th day of June 1856.

Thomas Hibler.

Francis Sullivan,
Justice of the Peace.

The State here rested.

The defendant then called William McDaniel, who being duly sworn testified as follows. I live in Gascoade Co. I have live there about 12 years, in all, Live on the Rail Road. I have lived the last four years, where I live now. On 26th July 1853. was living about one and a half mile from present residence. I suppose about 3 miles from Luster's store. Dont recollect whether I was at that store on 26th July. last went up there on the evening of the day on which Harris, was said to have been Killed. dont recollect what day it was, met Squire Sullivan as his house. Had to pass his house to go. He lived a mile from Luster's, went a foot, I had some business with Luster. I think he had sued me, or was going to sue me on a note and went to Squire Sullivan's, to see about it. When I got to Luster's Store, the sun was about two or three hours hight. Had nothing to drink at Sullivans, and dont recollect to have drunk on the road. Nobody went with Sullivan, and myself to Luster's store. Saw between Luster's and Brown's, a man that I suppose was Houser. I had never seen him before. I met him two or three hundred yards from Luster's. We met some other men following after him. I believe a man named Duncan, was following him also. Beck and Pauckey were walking. They had no arms that I saw but some of them had rocks in their hands. These men dared him to come back. Houser was riding down the road. Did not see them follow him far. He passed me and Sullivan, and as they

56

came up to us they stopped. They were twenty or thirty yards behind him. They said they allowed to whip him if he came back. Duncan, or Pauky said that one or the other of them. I was from fifty to one hundred yards from these men when they said that. Dont recollect that Houser said anything. They commenced telling them that they had had a kind of fuss that day at Housers. I dont recollect what they said. I dont know who they had the fuss with only what I heard, they said they intended to have whipped him if he came back, they threw no stones at him as I saw they motioned to throw at him but I dont think they did. Sullivan did not command the peace as I heard. Houser continued on to the mouth of the lane between Brown's and Lusters, he went on until we lost sight of him, and we went on to the store, when we got there nobody was there, but Beck Pauky, and Duncan, went back with us, and we passed another Duncan, when we got to Lusters, it was late in the evening, saw Houser, again in about an hour, the first I saw of him again he was behind at the back part of Lusters house. Houser had a gun which I dont know where he got. he was standing with a gun in his hand, nobody was with him. Luster, came from the field somewhere, and told Houser to give him the gun, and he gave it, then Houser went out side of the yard, to where the store was, then he and this Pauky, had some words there and Houser took after Pauky with a knife, run him around a wagon, or wood pile, or something a time or two, he did not catch Pauky; Luster I think then told these men Duncan, and Pauky to knock him down with a rock, they commenced throwing at him, and one of them hit him I

believe on the foot, then he jumped over inside into Lusters yard, then he run through the yard and got over the fence by a little well there was there, then he stopped and hurled his knife back into the yard. I suppose it was a knife he got in Lusters store. The Sullivan, summoned me with Farris, and Davis, to take him, and Davis and Farris, started out. I did no go myself, they ran through Lusters orchard a piece, then they stopped, and all of them came back to Lusters house. They were going to take him to Sullivans then, to try him, Dr Pitton, came in after this had taken place he enquired about the fray and said he intended to go to Sullivans, to help him (Houser) out of it and he asked Luster to go down with him, Luster had his horse caught to go, then they got to talking about the case, and some of them allowed the best thing to be done would be to let him go, after he staid somewhile on the porch Houser, got up to start, after he got out side the gate at Lusters, Will Farris, I, and Luster, were on the porch. I think Sullivan, was there when they got down to the lane, Beck, and Duncan, Pauchy, and some others followed after, when I last saw them, Houser was some twenty yards ahead of Farris, going at a tolerable walking gait, did not hear Houser, or Farris, say anything as they left, when I first saw Farris, he and Duncan, (one of the Duncans) were sitting or lying down in the road. He came to the store after we had been there a little while, Dont know what he came for, Dont know that he bought anything or did any business at the Store, about the first time I saw him was when

Sullivan. Summoned myself Farris. and Davis, to take Houser, Cant give Sullivans words. he told us to take him. I guess it was for running after Pauckey with the knife. I saw that transaction Pauckey. and Houser, had had words. Pauckey. said he had been trying for peace been all day. they passed a few words which I dont recollect exactly, anyhow Houser, jumped up and took after him, Dont recollect where Pauckey. went when Houser. got through running him; think some of Lusters children took the knife into the house, Dont know that it was brought out again during the day. Dont know if any liquor was sold that day. they kept it for sale. Paucky. had a bottle. in his pocket. and I think Sullivan. and I took a dram or two from that bottle. That was not right at the store. Did not see Farris. drink any that day. Dont recollect that Harris said anything when Sullivan told him to take Houser. think Houser. could hear what Sullivan. said. I could not say. whether Sullivan. was in the crowd. all the time. till Houser. went off. I did not hear Sullivan. fix any time to try Houser, they talked of trying him that evening. I think this talk was before he went off. Dont recollect to have heard Sullivan, tell any witnesses to go and testify I and Luster, and Sullivan, Ike Duncan. Beck, and I dont recollect if there was anybody else saw this affair with Pauckey, Dont recollect that Sullivan. told me to go and testify against Houser. Dont think Harris saw this difficulty between Pauckey. and Houser, it looks like I would have heard if Squire Sullivan.

had fixed any time to try Houser. saw several stones thrown at Houser, dont recollect how many were thrown, only saw one hit him. that struck him on the foot, dont know which hit him. Duncan, and Beck, were both throwing could not hear what was said when Houser, stepped in the orchard together, did not see Houser resist. did not see him have any weapon did not see Harris have a pistol and dont know that he owned one at that time, we got talking about the affair, Dr Sitton, enquired of us and among all of us it was concluded it would be better to let him go, he did not speak against it, cant say whether Houser, thought himself under arrest. If any objection was made to his going did not hear any. Did not hear Harris, object, Houser had got several steps outside the gate when Harris followed him. The mouth of the lane is 2 or 300 yards from Housers, when Houser started he moved on his horse at a walk. Saw no arms in the crowd that I recollect. Dont recollect to have seen any guns except the one, I spoke of in Housers hands. Have known Harris 14 years, ever since I came to the State. He was an tolerably weighty man. He drank sometimes. He was a tolerable tall man by which I mean that he was perhaps hardly 6 feet high. He was considered to be a stoutman both to lift and to fight.

Qu. what was his character as to being reputed a fighting man.

Qu. obj to by State, and obj sustained question overruled and the defendant by his counsel excepted.

I have seen Harris, drink sometimes. I have seen him under the influence of liquor several times. Did not see him drink that day

Qu. State whether when under the influence of liquor

Farris, was a passionate violent and turbulent man.
Qu obj by state, question overruled, and the defendant
by his Counsel excepted to the ruling of the Court.
left Lusters with squire Sullivan, at nearly night.
I went home, Had to pass by Sullivans house to
get home. Did not stop on the road. Went a foot
It may have taken no half an hour to get to Sul=
livans house. Think I stopped in the lane talk=
ing to Sullivan, when I got to the house, Dont
recollect to have seen any of the men, that I
saw at Lusters store, doubtless it was between
Sundown and dark, when I got to Sullivans.
Think his office was where he lived, I think
Mahaney, was Constable of that township at the
time of the occurance. Went the direct way to
Sullivans, the way I always go, did not see Far=
ris, or Houser, on the road. Expect I would have
seen them if they had been in sight on the road;
when they left Lusters house, they came down on one
side of Lusters fence, towards the mouth of the lane
they did not go the same road as I and Sullivan,
The lane I speak of led South, not towards Sulli=
vans, office, Did not see Farris or Houser, get on
their horses, Cant say what length of time escaped
between Sullivans, telling us to take Houser, and
his leaving, Houser during that time was sitting
on the porch with the balance of them. I did not
consider myself one of the guards, because it was
none of my business. I did not consider I was
bound to run after the man, to take him, because
of what Sullivan said on the porch, they talked friend=
ly about the affray. Dont think Faucky came in=
side. Dont think the crowd was drinking.
Was at the Examination of Houser, last June. Calc
it five miles from my place to Heiblers. Went there

61 to see and hear the trial. Got there before noon, I guess. Dont recollect what day of the week, staid till pretty late in the Evg. dont know the day of the month. In my opinion there were between 2 and 300 men there. Cant say what they were doing. Houser was tried before Sullivan, and Eibler. Dont know how many guarded him. I was about in the crowd. Saw some men with guns. There might have been as many as twenty. I did not count them. Saw some liquor. Old man Mahaney not the Constable had some. he had some in a jug and some in a bottle. He did not bring it right up into the Crowd but kept it off a piece. Mahaney came to me to buy whiskey. Phelps had whiskey for sale. I loaned him ten cents. He got a quart at that time. He was playing off and on all that day treating round. Think he had a gun. He was not an officer or guard that I knew of that day. Saw a good many drinking but none particularly drunk. It was late in the evening when I left. Dont think I saw anybody sell liquor on the ground, but it was bought at Phelps and brought to the ground. Phelps is between a half and three fourths of a mile distant. No other liquor store nearer than Phelps to the ground. I reckon Lusters was the next nearest. Saw several fellows have bottles with liquor in them there. Dont recollect of seeing Sullivan, drink that day. Dont know that I saw Eibler drink. There seemed to be considerable excitement on the ground that day. Heard it spoken of to Lynch him a great many spoke of it. some of them said they thought he ought to be hung. and some said they thought not and there was considerable stir. It was general talk there. Dont know that I could tell any particular

one, but is was general talk there that he would be taken out and be hung. Did not hear any particular one say so, but there was talk of it. Dont know any one who proposed to do it. Dont think that I heard any one make any remarks to the crowd to that effect, some said it ought to be done. Dont think I heard any man get up and lead a crowd to use violence towards him Sullivan, and Kleibler, went in the crowd amongst which these remarks were made. I think the examining Justices could have heard these remarks, they were close enough to hear them. They were mighty crowded, and I did not push in to see the distance of the witness from the magistrate. The witnesses might have heard this said. I should think they were nigh enough, saw the witnesses who were examined before they were examined, they were passing through the crowd the same as any body else.

Q. Did you hear any of the witnesses who testified on the 6th that day on the ground say that Kauser ought to be hung by mob law. Qu objected to by state, obj sustd by Court. Qu overruled and Exception taken by Deft. Think I saw Thom Stokely there. Dont recollect if he had a gun a drank any liquor Fraver was one of the guards. Douglass also The 6th I think took 2 days. I was there on the first day. Dont know what they did the first day.

Defence.

Afternoon 1st day

Wm M McDaniel, being duly sworn for State, Faucky said he had been trying for peace all that day. Kauser says I've been noticing you all day or something to that amt. He then got up. Kauser was setting on steps of Kauser. Kauser got up

63

first. Pauckey was sitting down in the wagon as well as I recollect. 5 or 6 steps from Houser, didnt see anything in Houser's hand when he got up. he drew it out somewheres. where I dont know. Luster was not in store, and Deft had no chance of getting in the store and getting the knife after he spoke It looked like a common butcher knife 8 or 10 inches in blade. a new knife, it looked like it to me. he held it in his hand - he held it at his side Pauckey threw a bottle of whiskey as he came. I dont recollect whether he threw his hat. cant tell how Houser held his knife, I think he made a cut at Pauckey. as Pauckey ran. he cut at him about as high as a mans hand goes. I think he was gaining on Pauckey. I didnt do any thing. Pauckey didnt hallo. I didnt see him have any knife when he went at Pauckey he went pretty fast. Dont know where Harris was. Squire Sullivan saw it, and ordered us to take him. Houser got in Lusters orchard 1. or 200 yards before they overtook him. Didnt see nothing in Harris hand. Would have seen it if he had it I think out in Lusters yard. Dont know where Houser hose was. He gave the gun up to Luster. Dont know where he got the gun. Dont know where Harris hose was - they said he got the gun. Didnt hear Houser ask Harris to go with him to the meadow where his hose was hitched. Davis went off somewhere. when Houser was brot back, when the rock hit him he got over the fence, and he threw the knife back into the yard. the knife was not thrown towards where Squire Sullivan and I were standing particularly he just threw it, and one of Luster children picked it up and took it into the house. Ropes were stretched around the trees at the examination to make a circle inside of which the

trial was carried on it might be as big as this room. Think the ladies and witnesses were inside the circle, cant tell whether spectators Some of the crowd had guns. It is very common thing in that country for people to go to school, meeting or a trial with arms. I saw no person there offer to use these fire arms as against Deft. Dont know why the trial was held in the woods. Suppose the crowd was too large and that it was warm in Hiblers place - it was cool in the grove. some little acquainted with Mary Herson, there as as witness that day. Dont know where she is now. I dont know of any one sending her to Cal. Exception to Question.

4th Day afternoon.

When I knew her she lived on the waters of the Bonbois. I dont know how long since I was there. Couldent tell how long since I have been in that co. I forgot what time I saw here last Fall, whether last fall, or writer. Dont know where Pancky is —

" " " Beck is —

E. Luster Edward Luster X. Pancky is somewhere in the County. Beck lives in the neighborhood - Duncans sometimes in our country, and sometimes away. I lived where I now live 18. or 19 years - I am the Mr Luster, who has this store they speak of. I recollect 26 July 1853, the day they had the difficulty. I was at home all that day. I keep a common country store, Dry goods and groceries on a Small scale. 1st of it was Mr Wyatt and Mr Houser, came to the store there - after they had been there some little time Mr Houser, took out a deck of cards, and said he had learned some tricks with cards, at Jakes Prairie a few

65

days before. and that he didnt understand them himself and that probably some of those present might know what the trick was, as well as I can recollect 2 or 3 of the Duncans, a young man by the name of beck, and another by the name of Pauckry, were engaged in the Row. Pauckry, I dont know whether he was concerned or not. he was a relation of Duncans. this was 9. or 10. oclock in the morning. I told him Houser. did not allow cards played in my house. he told me he didnt aim to play cards at all. I then told him I didnt suffer them to be used in my house even in showing tricks. he then went out of doors with the cards. him and the 4 or 5 we have named, after I got out of doors part. I didnt notice part of the time. I was busy engaged and part of time not. when I noticed them. They were throwing slurs or insults at each other. They didnt appear to be quarrelling ~~with each other~~ My opinion was they were aiming to aggravate each other into a bet. they were talking about betting. I staid there but a very short time until I had to go into my store and in about a 1/2 hour after this I heard a pretty considerable fuss further than where they first were. I then went out to try to get the fuss stopped and they were talking about wrestling as far as I know. I think Farris proposed to wrestle with Deft for a wager for some amt. Houser proposed then to bet him $50. at wrestling. Farris didnt want to bet as much I supposed and proposed he would bet him $5 and wrestle with him. Houser agreed he would wrestle for $5. and Mr D. then told him he would bet him $2.

he could whip him. they had a considerable quarrelling them. I could tell what it was insulting language used both sides. but they didnt wrestle or fight neither. After that as I recollect Mr Wyatt. started to leave there and wanted Mr Houser to go with her. he didnt start at that particular time. They got quarrelling &c. tried to settle it. I rather took Harris to one side. and advised him to let Mr Houser. alone. and let him leave if he wanted he told me he was so aggravated he had a good notion to slip up behind and knock him down. I told him that wouldnot do. or it was not right to do so. After that they got the matter a little settled and quieted down. and Mr Houser. agreed to go off. I went with him to a wagon bed that was there supposing Mr Wyatt. had left some goods that he was to take to hand them up to him but she had taken them they wasnt there. Mr Houser. got on his horse and then rode back to where these men were and told them he was going to leave there but he wanted them to understand. that he was not afraid of them. that he looked upon them as a trifling shabby set. and turned his horse them to leave and started off. Harris. 3 Duncans. and Beck. following of him and commencing to quarrel with him. They got some probably 100 yards from the store and they had considerable of a quarreling. I could hear them accusing Houser of being a coward. but I warnt near enough to see any rocks thrown. I heard a report of a pistol said to be shot off by Duncan. but I did not see it done. By this time it

67

was getting towards Evg. and I had closed my door, and was going through my apple orchard to my meadow towards a particular part of my farm. I had got probably 200 yds from my store house into my meadow. I saw Mr Houser, coming thro' the meadow towards my house and the store also. they were close together. I called to him but he made some answer. I dont know what it was and he walked right on towards house. I then of course turned back to the house and followed him he was before me some 50 yds perhaps. he had walked into my house and taken a gun down in one of the Rooms, and by the time he got out of the house in the yard with the gun I came up to him myself and told him he must give me up the gun which he at first refused to do. After I insisted on him giving it up. he then gave it up. first refusing until I told him he must give it up. after I had put the gun aside - I first blew in the gun and found it was empty - Dont know whether Houser knew it was not loaded. I then left him in the yard, and went down to the store house. The 2. Duncans and Beck, and this Paucky, were there at the Store present, I know when I went out. Mr Houser, in a short time came out also, When Mr Houser, came out I observed to them, now boys I want you to make this fuss all up. and well have no more about it. Paucky who was sitting by said he had been insisting all day they should make it up. Houser made reply you have been insisting all day to have it made up and then jumped at him with a knife. Squire Sullivan, and Mr McDaniel came up just before or at this time, and I

believe I told some of the persons to knock him down. Sullivan also said so. I did not do this out of ill will towards Houser. I thought it was the only way in which Pauckey's life would be saved. They threw some rocks at Mr Houser. 2 of those Duncans, Beck, and Pauckey. probably and one of them hit on the foot. bounced and hit him striking the ground probably. Mr Houser then got into the yard. there was nothing after that. after he had got in the yard. he threw down his knife. he had been running P. with in the yard and after he threw it Davis & Harris followed him in the orchard. I didnt see them catch him. they all came back together. After they had got back to the house Dr Sitton. and myself advised Mr Houser. to take thro the back way. and get his horse and go home and have no trial who supposed there hid have no trial about it. it would all drap. often did that way out in the country. Mr Houser. observed he would leave no place that way. that when we left he would go the Road and no back way. after they was setting on the porch a short time Mr Houser got up and went out at the yard gate into the public Road. towards the mouth of the lane travelling East to my house. Justice Sullivan, and Harris. and some others following of him with intention of taking him to his house to have him tried at least he said so (Sullivan when he started) and have him taken on what transpired) after that I know nothing about it. I did not go down to the end of the lane which is about 1/4 mile from my house. could not see the end of the lane at that time from my house. I could see about 1/2 way down the Road

69

to end of lane. Squire Sullivan. and McDaniel. 3 Duncans. Beck. and Pancky. all following Houser. when I last saw them they were not more that 50 yds behind him. all walking slowly all on foot when I last saw them. Houser. was travelling slowly when I last saw them. they were going East probably a little north of East. Houser had to travel South from my house to go home. East till he got to end of lane. They had been drinking that day at my house. all who were engaged in that difficulty. had drank some. Dont recollect how many times. more than once I think. I dont think Sullivan drank any. he came in too late. I did not let them have any when they got to quarrelling. Dont suppose Sullivan. was on the ground more than an hour. Dont Know what he came for. Dont think he had any business with me didnt name it. the store was closed when they came. Dont recollect whether I had a note on McDaniel or not. Had seen Houser about three times before that up to my place. I think I had an introduction to him from his aunt. I supposed he was a stranger to Duncans. and Pancky. these Duncans frequently came to my store and purchased I think they bought some few things that day. Harris bought some sugar and coffee that I recollect Houser bot some things that day at my store. Did not see Harris have a pistol that day. saw no pistol in the hands of any one of them Before Houser started. when I spoke of going to the wagon bed he went behind the counter and took a knife. He wrapped it up in a piece of paper and put it somewhere behind him. I objected to him taking it. His Answer to me was. I had it for sale and

took it. He threw it down in the yard. No he didnt have that knife when he finally left I am certain he did not have this knife when he finally left. Pretty near night sum probably ½ hour high. not more in the Evg. Squire Sullivan. Did not tell him he was a Justice of the Peace, in my presence. when I heard Sullivan. say he would take him to his house, and examine him Hauser, was out of hearing distance. I was on the ground when Hauser, was examined. I was not admitted on the ground, as I had been summoned there as a witness. I believe I was sworn. I was sworn on behalf of the prisoner. I understood I went there for the purpose of testifying. From the fact the Court decided it was unnecessary for me to give testimony.

Were there other parties summoned as witnesses
+ on behalf of the prisoner and whose testimony was rejected by the Justices.

Question objected. obj sustained and Exceptions.

Reason. I believe I heard them say there already sufficient given to convict him.

Dont know if either of the Justices were drunk that day. I dont recollect of seeing the Justice when I was called into testify. I did not consider them intoxicated. did not see whiskey on the ground. Hardly knew who were guards or not several of them. probably 6.8. or 10 men in the crowd around appeared to be some excitement like as if they had liquor aboard though. I saw none, some talking of mobbing some one thing and some another goodmany spoke as though he ought to be mobbed. they were passing up backwards and forwards out. I would think the prisoner cried sometimes

71 hear these Remarks. It is more than likely that some of the witnesses might have heard it. He started once home before he finally left for home- He got out of sight, he went off on horseback. Dont Know what brot him back again. It warnt very long. he might have paid for the knife I have not seen Mary Henson, for a long time she has left the Country I have learned she has gone to california.

E. Douglass Enoch Douglass, duly sworn on the part of the State. I Know Stephen H. Houser, have seen him for first time some time last fall, at Mr Heiblers, in Gasconade Co. Saw 10 or 11 miles from Heiblers in Gasconade. Co. Went down there dont recollect the day. I helped guard him for four 4 days. I was on guard the first day he was brot there - Summoned there by Mr Allen, Sheriff. I was at Heiblers. I understood they had brot him there and went there out of curiosity had no other business there. Mr Houser and Mr Richie, they lived in my neighborhood, went with me suppose there was 20 persons when I got there. I staid all night. I was one of the guards there. What was the delay. about a good many people there. I dont know how many 4 or 500 people there- I saw liquor on the ground, old man Mahaney had it. he was not a Constable there. I saw there Heibler, and Sullivan, drinking liquor, drank by themselves, drank out of a pint flask. Heibler had it, first I saw of it he had it in his hands. he handed it to Sullivan, this was on the morning of the Exn before breakfast, I dont know that he drank afterwards, Cant tell the hour of Exn. I suppose it was near 3 O'clock, before they got through. Cant tell the hour commencing Exn. I could not say as to whether they under any effect of liquor. I seen several bottles. Seen several drunken men there, Saw right smart Excitement in the crowd, about Houser. I suppose. I heard some such conversation

as about lynching.
What did the crowd or any part thereof say about
+ Lynching the prisoner. Here the Court interrupt-
ed the Counsel and Remarked, You might as well
ask, if any thing was said in any part of Gasco-
ade Co. about Lynching the prisoner, and refused
to permit the question to be put, or answered by the
defendant, by his Counsel excepted to the action and
remarks to the Court. They the people were talking
in a pretty loud tone - Cant say - whether any witness
es were present or not. Dont think all the witnesses
were inside the rope. Those by the rope were leaning
on the rope. A right smart part of the crowd were in-
side. There might have been five and thirty. Heard
these expressions inside the rope. The magistrates were
about six feet inside the rope. Heard talking outside.
Think witnesses stood up as they testified. Saw Mary
Henson testify. Think she was first. Think I
heard these threats as she testified. She was sit-
ting down I think. The persons that spoke were
further from her than I some four or five feet fur-
ther. There were no people between her and I. Crop
Examined. Heard no other threat but that he
ought to be hung while Mary Henson was testifying

Defence.

Defence Closed.

State Re-opens Case

Mr Matthews. Mr Matthews - x James A. - I was present at time of
Examination on Monday. Justices got together for the pur-
pose of going into Examination. That day the witnesses were
excluded, for the purpose of Examination with oneness with
them to keep them seperate from Each other with in-
structions not to talk with any others on the subject of the
murder of Harris. The instructions came from the Jus-
tices of the Peace, Squires Hibler and Sullivan. That

73.

order was in the A. M. abt 10 o'clock by my suggestion they agreed to wait till day to give Mr Clauser time to get his Counsel. I think they was kept under this instruction until they were Examined.

Jno Jones

Mr Jones Jno. As far as I saw they were kept under a separate guard . John Sanders. and myself were put under guard under some shade trees. in a corner of the Lot. I was not permitted to hear the testimony of any of the witnesses. Mr Gibler. and Mr Sullivan. put is under a seperate man to be taken so that we could not hear the testimony of witnesses as being Examined. This was all the Evidence in the cause. and the Counsel on both sides summoned up the Evidence. and argued the cause to the Jury. — and the defendant by his Counsel asked the Court to instruct the Jury as follows

Instruction Refused

The presumption of law against the prisoner arising from the fact of Killing. will ever hold him guilty of Murder in the Second degree. and if the State would elevate the offence to murder in the first degree. it is incumbent upon the State to bring the case by proof within the Class of wilful deliberate and premeditated Killing.

but the Court refused to instruct the Jury. and to the ruling of the Court. in refusing to instruct. as prayed for by him. the defendant by his Counsel excepted. and the Court of its own motion instructed the Jury as follows.

Instructions Given by the Court

The defendant is charged with having wilfully deliberately and premeditatedly Killed William D. Harris. in Bascomade County. in this state by striking cutting and thrusting him with a Knife.

The word wilful as here used means intentional not accidental - the word deliberate means in cool blood. that is not in a heat of passion caused by a lawful provocation and premeditated. means thought of before hand any length of time however short. — Malice in the law means such a wicked and malevolent disposition as shares a heart

regardless of social duty and fatally bent on mischief and passion means a heated state of the blood caused by a lawful provocation.— If you find that the deft in malice did wilfully or intentionally kill said Harris by striking cutting and thrusting him with a knife as alleged. and that when he did so he was in cool blood, that is, not in a heat of passion caused by a lawful provocation, and that he thought of the killing before hand any length of time however short, he is guilty of murder in the first degree and so you should find.

If you believe that the deft in the County of Gasconade in this State on or about the 26th day of July, A.D. 1853, did with malice assault and attempt to stab a man named Pauckey, with a knife, with the intent to kill him, or to render to him great bodily harm, such assault is a felony under the law of this State. And if you find Francis Sullivan, and the decd and others were then and there present, and said assault was committed in their view, and that Francis Sullivan, was then an acting Justice of the Peace, in and for the County of Gasconade, and that immediately after the assault said Sullivan, commanded deceased and others present to arrest Deft, to be examined before him for the assault, then the deceased alone or with others present under the circumstance was authorized to arrest deft to undergo an examination using no more force than necessary to effect that purpose. You are also instructed that if decd were only a private Citizen of Gasconade County and if Deft committed the assault above alluded to in his view, he was in his capacity as a citizen permitted by law to interfere to prevent injury being inflicted upon Pauckey, by Deft and to arrest him to prevent his escape, immediately thereafter and to take him before any Justice of that County for Examination according to law. And if the Deft knew that

75

he was being arrested to answer for the assault or was being kept in custody for that purpose, and that there was no more force used against him than necessary it became his duty to submit to the arrest and custody although the deceased may not have been acting in any official capacity, or acting under any written warrant or other written authority issued on that occasion. If you find that deft was arrested under the circumstances above stated and was placed in the custody of the deceased alone or with others for safe keeping until such time as the Justice could examine into the alleged assault and that Harris used no more force than necessary to keep him safely then such custody was lawful and no passion to mitigate the alleged homicide can arise therefrom, and if you find that Deft wilfully stabbed or cut and killed Harris, merely to free himself from that custody then the offence is murder in the first degree and so you should find. But if you believe Harris did not take the custody of the deft for the purpose above stated, or having so taken charge of him for that purpose he used more force than was necessary to safely keep and produce deft before the Justice then such custody or unnecessary force amounts to a lawful provocation and if you believe that deft killed decd for that reason while in a heat of passion arising therefrom, without a design to effect death by a dangerous weapon then you should find him guilty of manslaughter in the third degree. Although you may believe that Harris in in the first instance wrongfully arrested or took deft into custody; or after properly having him in charge Harris illtreated him by using more force than necessary to keep and produce him before the Justice, but that deft did not kill him in a heat of passion arising therefrom, but killed him in the manner alleged as a matter of retaliation

or revenge on account of any prior grudge or difficulty then such wrongfull arrest or ill treatment does not mitigate the homicide but the offence is murder in in first degree and so you should find.

+ If you find deft is not guilty of murder but is guilty of manslaughter then the question of limitation under our statute becomes material. If you find him guilty of manslaughter but that the indictment was not found within three years after the commission of the offence you must acquit him unless you believe that after the commission of the offence he fled from Justice, and was not an inhabitant of, or usually a resident within this state, a sufficient
+ length of time which when deducted from the period between the commission of the offence and the finding of the indictment the remainder will be less than three years. In other words you should find deft guilty of manslaughter unless you believe the indictment was found within three years after he committed the offence, but if you find that between the commission of the offence and the finding of the indictment the deft fled from Justice and was not an inhabitant of, or usually resident within this state any length of time, this length of time must be deducted from the time between the commission of the offence and the finding of the indictment and if the remainder is less than three years, then the offence of manslaughter is not barred. There is no limitation affecting the crime of murder in either degree in this state.

It is not necessary for a conviction that the State should prove deft killed decd by an eye witness thereof, the same may be legally proved by circumstantial evidence. The Jury ought not to find deft guilty unless the evidence in the cause and circumstantial satisfies them beyond a reasonable doubt that he committed the

offence with which he stands charged, and if you have a reasonable doubt of his guilt you should acquit. but a doubt to authorize and acquital on that ground should be a substantial doubt of defts guilt. and not a mere possibility of his innocence.

If you find deft guilty of murder in the first degree you will so state in your verdict and if you find him guilty of manslaughter in the third degree, and that it is not barred by limitation as above mentioned you will so state in your verdict and assess his punishment by imprisonment in the penitentiary not less than two, nor more than three years, or in jail not less than six months or by fine not less than five hundred dollars or by both a fine not less than one hundred dollars and imprisonment in jail not less than three months. The fact that this cause comes into this court by change of venue from Gasconade County is not for your consideration nor should you allow that fact in anywise to influence you in passing upon this case. The defendant is entitled to a fair and impartial trial at your hands upon the law and evidence in the cause under the instruction of the court, and your verdict should be a correct and faithful responce thereto without being moved by any influence.

And the Deft excepted to the instructions on the law of the case as instructed by the court, and it being about six o'clock in the evening the Jury retired to consider of their verdict and about nine o'clock of the same evening they (the Jury) returned into court, and in the absence of the prisoner, and stated to the court, that they did not understand the instructions upon the question of limitations. The court then in the absence of the prisoner but believing him present, re-read to the Jury the following portion of the instructions which had already been given.

Instruction re-read to the Jury. † If you find deft is not guilty of murder but is guilty of manslaughter. then the question of limitation under our statute becomes material. If you find him guilty of manslaughter but that the indictment was not found within three years after the commission of the offence you must acquit him unless you believe that after the commission of the offence he fled from Justice, and was not an inhabitant of, or usually a resident within this state, a sufficient length of time which when deducted from the period between the commission of the offence and the finding of the indictment the remainder will be less than three years. In other words you should find deft guilty of manslaughter unless you believe the indictment was found within three years after he committed the offence. but if you find that between the commission of the offence and the finding of the indictment the deft fled from Justice and was not an inhabitant of, or usually resident within this state any length of time must be deducted from the time between the commission of the offence and the finding of the indictment and if the remainder is less than three years. then the offence of manslaughter is not barred. There is no limitation affecting the crime of murder in
× either degree in the state.

and in addition drew and gave to the Jury the following instruction upon the same subject.

Additional Instructions given by Court. } The Statute of limitation prohibits a prosecution for manslaughter in the third degree unless the indictment be found within three years after the commission of that offence. and no conviction can be legally had for that degree of homicide under ~~the~~ such circumstances unless you believe that between the time of the commission of the offence and the finding of the indictment

79

the deft fled from Justice, and was not an inhabitant of, or usually resident within this State for a sufficient period which when deducted from the space of time between the Commission of the offence and the filing of the indictment the remainder be less than three years. That is to say, if he fled from Justice and was not an inhabitant of, or usually resident within this state, any period of time, that period must be deducted from the space between the Commission of the offence, and the finding of the indictment, and after making such deduction of the time between the Commission of the offence, and the finding of the indictment be less than three years, then the prosecution for manslaughter in the third degree is not barred. And you can find him guilty of that offence, if you find that he killed deceased, in a heat of passion as heretofore explained and without a design to effect death by a deadly weapon, but if you find, Deft did not kill deceased in a heat of passion but he wilfully killed him in malice then Deft is not guilty of manslaughter in any degree, but the offence is murder in the first degree,- after re-reading and giving the instructions last above set out, and just as the Jury were about to retire, it was discovered by the Court, that the Deft had not been present while this was being done. That he had been absent during the proceeding which took place at 9 O'clock. Thereupon the Court ordered the Jury to be seated in their box, and the prisoner was immediately sent for, and brought, and the same proceedings were then repeated in his presence which had taken place in his absence. The Jury then again retired to consult of their verdict. The Defts Counsel Mr Henry A. Glover, and Nathaniel McDonald, were both present during whole of the session at 9. O'clock, and were present, while the Court, was re-reading and giving the instructions last above set out in the absence of the prisoner and knew he was absent but never advised the Court, of that fact

or objected to the Court proceeding in his absence. But immediately after the instructions last above set out had been re-read and given to the Jury in the presence of the prisoner, and as the Jury were about retiring the prisoners Counsel remarked that they excepted to the whole of the proceeding which had taken place at the session at 9 O'clock.

And afterwards the Jury returned into Court with the following verdict

Verdict

We the Jury find the defendant Guilty of murder in the first degree as charged in the indictment.

John L. McBride. Foreman.

And afterwards on the day of May 1857. the defts atty filed the following motion for a New Trial.

Motion for New Trial.

The State of Missouri vs Stephen W. Houser. } In the St. Louis Criminal Court. May Term 1857. Indictment for Murder.

The defendant by his attorney moves the Court to set aside the verdict rendered in this cause, and that a new trial be granted him for the following reasons.

1. The verdict is against Evidence.
2. The verdict is against the weight of Evidence.
3. The verdict is against the Instructions of the Court, and against law.
4. The Court admitted illegal testimony to go to the Jury as evidence against the defendant, against objection of defendant.
5. The Court admitted the written deposition of Mary Henson, taken on the Examination of the prisoner on the charge of Killing. William D. Harris, without the fact being proven that Mary Henson, was dead or without the State, or without the Jurisdiction of the Court, against objns of Deft.

6. The Court refused to permit legal testimony to be given to the Jury in behalf of the prisoner.
7. The Court gave illegal instructions as to the law of the case to the Jury.
8. The Court refused to give legal instructions applicable to the case in behalf of the prisoner and as prayed for by him. The Court commented on facts.
9. The Court omitted and refused to charge the Jury upon the base of murder in the Second degree as it should have done, and as was prayed for by prisoner or with reference to any other offence than the law of murder in the first degree, and manslaughter in the third degree thereby preventing the finding by the Jury of any other offence than as stated by the Court.
10 The instructions of the Court were calculated to mislead and did mislead the Jury.
11. The Court instructed the Jury orally.
12. The Cause instructed the Jury as to law in the absence of the prisoner.
13. The prisoner was not permitted to be personally present during his trial, and the whole of his trial,
14. The Cause was tried in part in the absence of the prisoner.
15. Because upon the coming in of the Jury for instruction further as to the law of the case upon a point specified and stated by one of the Jury as the spokesman of their body to the Court, the Court instructed upon other points than as requested by the Jury, and this in the absence of the prisoner.
16. Because of the illegal and improper statements of the associate Counsel for the State in his opening to the Jury, and which made it necessary for the Court to instruct the Jury upon one of the points made by the Counsel in said opening.

17. Because the panel out of which the triers were selected was not a legal panel.
18. Because the defendant was entitled to be discharged from said prosecution long before the term at which he was put upon trial.
19. Because of other irregularities on the trial as shown by Bill of Exceptions.

A. McDonald
Atty for Deft.

The defendant moves for a New Trial for the further following reasons.
1. The Court had no Jurisdiction of the cause.
2. The Court ought to have quashed the indictment for the reason set forth in Deft motion.
3. There was no sufficient indictment.
4. There were witnesses examined on behalf of the State whose names were not endorsed on the indictment

A. McDonald
For Deft.

And on the day of May 1857, the following motion in arrest of Judgment.

Motion in Arrest of Judgment

State of Missouri, vs. Stephen B. Houser. } St. Louis Criminal Court.

Comes now the said Houser and moves the Court to arrest the Judgment herein for the following reason.
1. Because there was no sufficient indictment against him.
2. Because the Court had no jurisdiction of the cause.
3. Because the defendant was entitled to his discharge upon said indictment and was illegally tried.
4. Because judgment was for the wrong party upon the Record.

83

5. Judgment was for the State whereas it should have been for defendant.

6. For other reasons patent upon the Record

A. McDonald
Atty for Deft.

and the Court overruled both motions and rendered judgt of death against the prisoner to which deft then excepted. and asked the Court to sign and seal this his Bill of Exceptions which is done this 22 May 1857

Jas R. Lackland. (seal)

State of Missouri
County of St. Louis } ss.

I, Friederick Kretschmar, Clerk of the Saint Louis Criminal Court within and for the County of St. Louis aforesaid certify the foregoing to be a full and complete transcript of the Record and proceedings had in the above entitled cause of the State of Missouri versus Stephen N. Houser as the same now remain in my office.

Witness my hand and the seal of said Court hereto affixed at office in the City of St. Louis this 15th day of October A. D. 1857.

Fred. Kretschmar
Clerk

(1)

March. T. 1858

The State of Missouri
resp.

vs } Transcript

Stephen H. Houser
Appeal from St. Louis Criminal Court.

Filed 22d October 1857
Wm. S. Glanville
Ck.

Transcript $ 36.—
Cer + seal .50
$ 36.50

Rev. & demanded 24 June 58 / B. p. 460

Supreme Court.
On Appeal from
St Louis Criminal Court

State
vs
Stephen Hauser } Indictment for Murder.

Points made by W Wright of Counsel for Deft. in this Court.—

I The Panel of Forty was an illegal body.—

II The introduction of the Deposition of Mary Henson against the accused was a grave & manifest violation of the Bill of Rights of the People of this State.—

2 Jones (Folio) 53—
6 Howell's State Trials 771.
2 Russell Cr 888 (top page) note (ee)
8 Carr & P 167—
6 Cowan R. 163
5 Randolph 701.
14 Massachusets R. 237

III The court should have granted a New Trial for many reasons.—

First— It excluded proper evidence offered—

Second— It erred in permitting an inquiry to be made before the Jury, whether a brother of the accused, was at all connected with the absence of Mary Henson,— & in other respects permitted evidence to be thrown into the jury Box of hearsays touching her absence.—

Third— The instruction asked for the Defence should have been given.

~~Fourth— The court overruled a motion for a New Trial as [illegible] usually decisive of the fate of the accused in his absence.—~~

~~Fifth— The court without any solicitation from the jury— [illegible] after the retirement of that~~

Fifth — After the jury had retired to deliberate on their verdict, and had so deliberated for three hours — the Court discovering that the jury had concluded to find the defendant not guilty of Murder, and were only in doubt whether his instructions as to the limitation of Manslaughter covered the case — without solicitation, intervened between the body charged with the fate of the accused — and gave a new instruction that pushed them back to murder in the first degree. —

The power exercised gives to the Court, an influence over the deliberations of the jury in their retirement, at war with the policy of our law. — It may be so exercised by the Judge, as to ~~wer~~ solve every doubt in the minds of his triers of his guilt, or grade of guilt against the accused, and that is a power too dangerous to be lawful. —

The prohibition put upon the court against oral instructions — is not a charter to ply the jury with instructions to defeat a conclusion at which after retirement they have reached, or are on the point of reaching. —

The jury were

6th — The instructions given are not law — they take the case from the jury — and mislead them.

7 — The Court materially influenced the fate of the accused — by directions to the jury in his absence. —
The repetition of them in his presence — could not remove that effect — but rather confirm it. —

Whether the directions were given in his absence, by design or accident is an immaterial issue. —

On Record proper

IV — A motion in arrest of judgment was also overruled — and whether that was done in his presence or absence does not appear upon the record —
It must affirmatively appear to have been done in his presence.

V The Motion for a New Trial, was decided against the prisoner in his absence. —

State
v.
Stephen Houser.

Brief of Uriel
Wright of Counsel
for Deft in this Court —

6 Howell's State Trials 771
2 Jones (Folio) 53
2 Russell Cr. (888) Oct. note
(ee)
8 Carr & Payne 167.
6 Cowan 163
5 Ran. 701
14 Mass 237.

Filed 23 April 1858.
Wm L Glanville
Ch.

State of Missouri
Respondent
vs
Stephen D Houser
Appellant

The only point I deem it necessary to consider in this case is the action of the Court in permitting the testimony of Mary Hensew taken before the examining magistrate to be read in evidence.

It has been decided by this court, and decided too upon ample authority, that the Constitution of this State does not interfere with the admission of such testimony.

State vs O Blenis 23 Mo,
" " Bates " "

and the authorities therein cited.

The accused then has met the witness face to face. The examination was competent to be read in evidence under some circumstances, and its admissability is dependent entirely upon the rules of evidence. What rule is there which would authorize its exclusion under the circumstances of this case? Is it that which requires the production of the best evidence that the nature of the case will admit of? The State made every exertion in its power to secure the attendance of the witness. It could not possibly do more. If the witness were in fact dead, she would not have been further beyond the power of the State. This deposition was not only evidence, but the best evidence. What difference would it have made, if the death of Mary

Henson had in point of fact been established, for she would not have been further beyond the control of the State, and her death would not in the least degree have improved the character of the testimony.

Had this been a civil suit, there could have been no doubt of the admissability of this examination, under the facts presented.

1 Greenleaf's Evidence page 217, and the authorities therein cited,

1 Taylor on Ev page and the authorities therein cited.

But the rules of evidence in civil and in criminal cases are the same.

1 Greenleaf on Ev page 86 & 7.
1 Roscoe Crim Ev 73
2 Rep on Crimes 588
U. S. vs Macomb 5 McLean
Com vs Richards 18 Pick 437
Sharp vs State 15 Ala 755
Davis vs State 17 " 357
State vs Hooker 17 Vermont 658
U S vs Wood 3 Wash C.C. 444.
Rex vs Walton 2 Stark Reps 116
Lord Melvin's Case 26 Show State Tr 376
U. S. vs Britton 2 Mason 464, 468.

272

State of Missouri
Respondent
vs
Stephen D Houser
appellant.

Respondents brief
C G Munro
for Respondent.

Filed 14 April 1858
Wm L Glanville
Ch

State v. Howser

The principal question in this case is, whether the deposition of a witness, taken before the examining Court, can be used against the prisoner on his trial, it appearing that the witness is beyond the jurisdiction of the Court.

In the case of the State v. McOBlenis (24 M.R. 402) it was held, that where the witness was dead his deposition was admissible.

The propriety of this decision has been questioned, & the subject has again been elaborately discussed, with a view to its examination by this Court, as it is now constituted. This investigation has been made, & it will be perhaps sufficient to say, it has resulted in a conclusion to adhere to the former opinion.

Without undertaking to add any thing to the ~~argument~~ reasoning upon which the ~~opinion~~ decision of the Court was placed in the former opinion, I will merely advert to one or two historical facts which seem to confirm ~~the~~ view then taken of the subject.

Upon the passage of the Stamp Act by the ~~Sa~~ British Parliament, ~~was~~ one of the first of the Colonial assemblies that passed resolutions in regard to it, was the General Assembly of Virginia. In these resolutions the General Assembly asserts that they were entitled to enjoy all the rights & privileges which were secured to British subjects. They declared "That the first adventurers & settlers of this his Majesty's Colony & dominion of Virginia brought with & transmitted to their posterity & all other his majesty's subjects since inhabiting in this his majesty's Colony all the privileges & immunities that have been at any time held, enjoyed & possessed by the people of Great Britain"

They further resolved "That by the two Royal Charters granted by King James I. the Colonies aforesaid are declared entitled to all privileges of faithful liege & natural born subjects to all intents & purposes as if they had been abiding & born within the realm of England."

In 1774, the delegates from the Colonies assembled in Congress & one of their first acts was a Declaration of Rights of the Colonies. Among other resolutions, they declared: "That our ancestors who first settled those Colonies were at the time of their emigration from the mother country, entitled to all the rights, liberties & immunities of free & natural born subjects within the realm of England.

"That by such emigration they by no means forfeited, surrendered or lost any of those rights, but that they were & their descendants now are entitled to the exercise & enjoyment of all such of them as their local & other circumstances enable them to exercise & enjoy.

"That the respective Colonies are entitled to the common Law of England, & more especially to the great & inestimable privilege of being tried by the peers of the vicinage, according to the course of that law.

"That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have by experience,

respectively found to be applicable to their several local & other circumstances.

"That there his Majesty's Colonies are likewise entitled to all the immunities & privileges granted & confirmed to them by Royal Charters, or secured by their several Codes of Provincial Laws."

These ~~principles~~ declarations, & others not deemed necessary to be copied here, will be found to have been subsequently transfused into the Bills of Rights & Constitutions of nearly all the original thirteen states, & from there ~~been transfused~~ into the Constitutions of those states which have since been formed. One of the first, perhaps the first, was the ~~Const~~ Bill of Rights adopted by Virginia in June 1776, in which is to be found the clause almost literally copied in our Constitution. That clause is: "That in all capital or criminal prosecutions, a man hath a right to demand the nature & cause of his accusation, to be confronted with the accusers & witnesses, to call for evidence in his favor, & to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty &c"

It is thus seen, that these declarations were first made at a time when loyalty to Great Britain was professed & honestly entertained; - that so far from being supposed to introduce new principles, they ~~are~~ were expressly & carefully pronounced to be the ancient rights & immunities which they brought with them from G. Britain, & which they considered themselves entitled to in common with all the subjects of G.

Britain born within the realm of England. The common law, & acts of Parliament down to the 4th year of the reign of James I. adapted to their circumstances, & the local laws of each colony were the charters by which their ~~liberties~~ right to life, liberty & the pursuit of happiness was to be secured & tested.

When the Bill of Rights, drawn up I believe by George Mason, & the Constitution of Virginia, were ~~formed~~ adopted, Congress had not yet passed the Declaration of Independence. Although, so far as political principles & forms of government are concerned, we would of course look for material innovations upon such as had been previously established & which a ~~&~~ separation from Great Britain necessarily produced, yet it would hardly be expected, that, in the midst of a revolution, when the minds of all men would be chiefly drawn to these contemplated or effected political changes, attempts would be made in a Constitution or Bill of Rights to introduce new Codes of procedure ~~in the~~ or new principles of evidence to govern the progress of ordinary trials in civil or criminal cases. Our forefathers were satisfied with the common law, so far as its great leading features were concerned, - & they ~~&~~ considered them selves as securing every thing that was important & valuable in relation to mere mere civil rights of persons & property, when they solemnly & repeatedly adopted it ~~&~~ declared it to be their birth right. This common law they did not understand as the common law under the Plantagenets, or Tudors, or Stuarts - but as it was understood

at that day, both in England & this country, ~~with all the modifications it had received from~~ when the revolution of 1688 & the subsequent parliamentary & judicial constructions had restored it to its primitive purity & abolished its occasional abuses in bad times & under corrupt administrations.

Now it is admitted, that no case is to be found in England, in which the deposition of a ~~dead~~ witness, taken in the presence of the accused, has been excluded where the witness has died since the examination. Numerous cases have been cited, where such depositions have been admitted. It is true, that there may be a few cases, in which depositions taken before Coroners in England, without any opportunity of cross examination, have been used against the accused, where the witness subsequently died; but the authority of such cases is questioned, even in that country by their ablest ~~criminal~~ writers on criminal law+, & it is doubtful whether such testimony would be now received. At all events, such testimony has never been permitted in this country, & in England it has been altogether admissibly placed upon the peculiar dignity & importance attached to the office of Coroner, & no such reasons exist here. So in England the times ~~have~~ been, when the accused was not allowed witnesses, nor counsel - but such abuses of justice had been ~~long~~ swept away long before our ~~break~~ separation from that country. Many other abuses would probably be found, especially in prosecutions for political offences, but our ancestors did not adopt the constructions given to the law of England by Jeffries - but as it was understood in its purity - as it was settled in their higher courts

+ Starkie, Roscoe, Rupell.

in times when the rights of British subjects were well understood & thoroughly confirmed - & even then modified as it may have been to some extent by local laws & usages ~~then~~ in this country.

But we find further, ~~We see then~~ that not only is there no authority ~~to be found~~ in England which excludes the testimony of a deceased witness, under the circumstances occurring in the case of McO'Blenis, but none is to be found in this country. ~~I see~~ ~~of~~ case is referred to from Tennessee in the opinion of Judge Leonard, which ~~but although~~ I have not seen ~~the case~~ - but this case is overruled, & ~~I have seen~~ two cases are found from that state of a later date ~~have~~, which hold the law to be as it was decided in O'Blenis' case. It may be said then with propriety that there is no authoritative decision in this country ~~to the contrary~~ excluding such testimony.

I have referred particularly to the Virginia Bill of Rights, because it was the first that was framed in this country, following substantially & essentially, though more in detail, the ~~two~~ declaration made two years before by the congress of all the ~~states~~ colonies, ~~&~~ - which latter was in truth the ground work upon which ~~the~~ not only the Virginia bill of Rights, but nearly all the Constitutions & bills of Rights subsequently framed were based. Moreover, as in Kentucky, so in Mississippi our introduction of the common law was framed upon the model of the Virginia statute, & adopted the British

law, common & statutory, with the same modifications & up to the same period (the 4th year of James I) as had been adopted in Virginia. The provision now in our Constitution, now under consideration, is also manifestly a copy, substantially, of the Virginia bill of Rights — for it is not to be supposed, that the substitution of the words "face to face" for the word "confronted" was designed to make any change in the meaning.

In the case of Finn v. the Commwlth (5 Randolph) oral proof of what had been testified to by a witness before an examining Court, was offered, but excluded, on the ground that the witness (whose testimony was sought to be reproduced) was not dead. This would seem to concede, that if the death of the witness had appeared, the evidence might have been given. The principle is expressly recognized in Johnson v. The State (2 Yerger 58) Thompson v. The State (15 Ala. 752), Beeler v. The People (5 Hill.) Bostwick v. The State (3 Humph. 345) Ross v. Barber (1 Root) State v. Campbell (1 Rich.) There are other cases said to decide the same principle which I have not examined.

The admission of dying declarations, as they are termed, seems to me to occupy precisely the same ground as that of the deposition of the deceased witness. If the Constitution excludes the one, it must exclude the other. To say that the witness

who must meet the accused "face to face" is he who repeats what the dying man has said, is a mere evasion, & if the Constitution admits of this evasive interpretation in relation to dying declarations, it is just as easy to apply the same rule of construction to the deposition of the dead witness. It may with as much propriety be said, that the witness who rehearses, according to the rules which the law has provided ~~to govern~~ in such cases, ~~A~~ what has been testified to orally by a deceased witness in a former trial, in the presence of the accused, ~~or the witness who or~~ or the magistrate who certifies to the deposition where ~~it~~ the testimony has been reduced to writing, is the witness referred to in the Constitution, ~~H~~ whose presence "face to face" before the accused is provided for. But it is plain, that in neither case is he the witness whose testimony is to affect the life or liberty or property of the accused. It is the dying man who is speaking through him, ~~H~~ whose ~~words are the~~ evidence ~~which~~ is to have weight & ~~which may~~ efficacy, sufficient it may be to take away the prisoner's life. The living witness is but a conduit pipe - a mere organ through whom this evidence is conveyed to the Court & jury. So is the magistrate who takes the deposition - or the bystander who is able

to repeat what has been testified to on a former trial by a witness, in the presence of the accused. These two classes of testimony occupy the same ground, so far as the constitutional provision in question is concerned, except that in the case of dying declarations, the real witness is not on oath & his declaration need not be in the presence of the accused. In the case of the deposition, the witness speaks under the sanction of an oath & only in the presence of the accused, when an opportunity for cross examination is afforded.

The admissibility of dying declarations has not been questioned. They have been frequently received to in this state, as well as elsewhere, without any suggestion ever having been made of a conflict with this constitutional provision. To exclude them, on this ground, would not only be contrary to all the precedents, in England & here, acquiesced in long since the adoption of these constitutional provisions, but it would be without to that sense of justice & regard for individual security & public ~~safe~~ safety, which, in some cases would inevitably set at nought. But dying declarations, made under certain circumstances, were admissible at common law - & that common law was not repudiated by our constitution, in the clause referred to, but adopted & cherished. The deposition of the deceased witness, was also permitted at common law - & the same rule of interpretation, which allows the former under the

constitution, will admit the latter.

We shall not therefore disturb the decision of this Court in the case of McO'Blenis. I do not know that my colleagues adopt the reasons which I have suggested – but ~~we all~~ all the Court concur in letting the decision stand.

The point made in this case we do not however consider determined by the case of McO'Blenis. It may be, that so far as the constitutional provision referred to is concerned, the reason for admitting the deposition is just as conclusive in the one case as the other. If the witness is beyond the reach of process, his presence is as utterly unattainable, as though he was dead. But it does not follow that every kind of evidence which this provision of our Constitution does not exclude, is therefore legitimate testimony. The Constitution did not propose to lay down specific rules of evidence. ~~They only~~ Its framers only thought it necessary to declare general principles. To determine whether any particular testimony is to be admitted or excluded, we must look to the law as well as the Constitution. Although it may not conflict with the Constitution, it does not follow that it is therefore competent evidence.

The admissibility of depositions in civil & criminal cases depends upon different grounds. It has been urged, in this case, that with the exception of the constitutional provision which has been so often referred to, they both occupy the same grounds; such is not understood to be the law. If it was, then the deposition or testimony taken before the examining Court would be admissible in every case, where the witness was prevented by bodily infirmity from attending Court, or was at the time of trial more than sixty miles from the place of trial, or was a judge, engaged in his official business.

This question does is to be determined by the common law, & not by our statute, which applies only to civil cases.

In England, no authority is to be found, so far as this examination has discovered, where in a criminal case, a deposition taken under the Statutes of Phil. & Mary, was admitted, merely because the witness was beyond seas, or out of the reach of process of the Court. In Morley's case (Kelyng 55) the resolution of the Judges was, that in case of death, or absence by procurement of the prisoner or his friends, or in case of sickness from which there was no probability of recovery, the depositions could be used. It was at the same time held, that it was not sufficient to show that endeavors had been used to find the witness & that he could not be found. In Buller's N. P. (242) it is said that "if the witnesses, examined on a Coroner's

deposition. In Thorp v. The State (15 Ala) the same doctrine was asserted.

Upon principles of public policy, the admission of such depositions in the mere absence of the witness is extremely questionable, so that both principle & precedent concur in excluding them. If the absence of the witness was procured by the prisoner ~~or his friends~~, the rule would be different.

We do not deem it necessary to notice particularly the other points made in this case. As the case will be tried again it is not probable that such questions will occur ~~up~~ upon the second trial.

Sud^t. reversed & cause remanded.

W. B. Napton

I wish merely to add that I do not approve of the doctrine laid down in the case of the State vs McBlennis. but I do not propose hereafter to oppose it. for having received the sanction of the ~~Co~~ majority of the Judges who then composed the Court, and having been since affirmed by my Colleagues, the law may be considered as settled and the question at rest.

Jno C Richardson

191

State

v.

Hoover

Opinion

of the Court

Napton

Filed 24 June 1858.

Wm L Glanville Ch.