

United States

vs

Indictment for Murder. No. 2428.

Martin Joseph

On this day on motion of the defendant it is ordered that the names of Ned Roberts, John Taylor and Frank Wilbur be substituted for those of Robert Cobb, Joseph Murray and Col Vinson in the subpoena for witnesses heretofore allowed in behalf of the defendant at the expense of the United States of America.

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United States

vs

Indictment for Murder. No. 2410.

Martin Joseph

On this day came the defendant <sup>March 15th, 1883.</sup> by his attorneys Duval & Cravens and files his motion for a continuance of this cause until the next term of the court.

( same order as above in cases Nos. 2427 and 2428. )

Same.

March 17th, 1883.

On this day comes on to be heard the application of the defendant heretofore filed for a continuance of the above entitled causes to the next term of the court and the court being well and sufficiently advised in the premises doth overrule said motion.

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March 19th, 1883

Order by the court that the indictments against the defendant in this cause numbered 2427 and 2428 be and the same are hereby consolidated and known as indictment No. 2427.

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March 29th--

On this day comes the defendant by his attorneys and files his motion to require the United States Atty to elect upon what count in the indictment for murder he will rely, and said motion coming on to be heard and the court being well advised in the premises doth overrule the same.

March 29th, 1883

On this day come the United States of America by Wm. H.H. Clayton Esq. Atty for the Western District of Arkansas and come the said defendant in custody of the marshal and by his attorneys, Messrs Duval & Cravens and Barnes & Mellette & James K. Barnes, Esq. and it appearing from the return of the marshal that the said defendant has been served with a duly certified copy of the indictment in this case and a list of the witnesses in this cause and has also been served with a full and complete list of the petit jury as selected and drawn by the jury commissioners for

for the present term of the court more than two entire days hitherto and having heretofore had hearing of said indictment and pleaded not guilty thereto it is on motion of plaintiff by their said attorney ordered that a jury come to try the issues joined; whereupon the whole of the regular panel of the petit jury were called into the box and now after challenge by both plaintiffs and defendant the following were selected for the trial of the cause, to-wit:

Allen Bobb, Alexander C. Cook, Hugh L. Lyons, Alexander May Edward Green, Daniel Sykes, Lenis Jesse, Abram Walker, C.G. Weigand, Dick Thompson, Fred Wernye, William Wiley

twelve good and lawful men of the district aforesaid who being duly selected, empannelled and sworn to try the issues joined and a true verdict render according to the law and the evidence after hearing a portion of the evidence and there not being time to further progress with the trial of this cause they are by consent permitted to separate under instructions of the court until tomorrow morning at 8 O'clock

Ordered that court adjour until tomorrow morning at 8 O'clock  
I.C.Parker, Judge

March 30th, 1883

Further hearing of evidence.

Mar 31st, 1883

Further hearing of evidence

On motion of the defendant it is ordered that an attachment be issued for Henry Stephenson returnable forthwith to bring him before the court here to answer for a contempt by him committed for not appearing as a witness in behalf of the defendant at the present term of this court when duly summoned thereto and now come Henry Stephenson in custody of the Marshal and this cause came on to be heard the court after being well and sufficiently advised in the premises doth find for the defendant;

It is therefore ordered that the attachment be dismissed and that the defendant be discharged of and from the custody of the marshal and that he go hence without day.

On this day on motion of the defendant it is ordered that a subpoena be issued for Drs. James E. Bennett, E.R. Duval & Leo E. Bennett (later U.S. Marshal for Indian Ter.) returnable forthwith, in behalf of said defendant at the expense of the United States of America.

Jury allowed to separate until 8 O'clock next morning.  
Same order as of April 3rd, 1883

April 4th, 1883;

On this day came the United States of America by Wm. H.H. Clayton Esq. Atty for the Western District of Arkansas and came the said defendant in custody of the marshal and by his Attys, Duval & Cravens, Barnes & Mellette and James K. Barnes, Esq. and now come the jury heretofore empannelled for the trial of the cause, to-wit:  
(same names as heretofore)

who took their seats in the jury box and after receiving the charge of the court retired in charge of the bailiff, duly sworn to consider of their verdict and after a short time returned into court here the following verdict upon indictment No. 2427, to-wit:  
"We the jury find the defendant guilty as charged in the within indictment.

(signed) A. Bobb, Foreman."

and also returned into court the following verdict upon indictment No. 2428, to-wit:

"We the jury find the defendant guilty of murder as charged in the within indictment."

(signed) A. Bobb, Foreman."

whereupon motion of defendant's counsel the jury was duly polled.

It is therefore ordered that the defendant be remanded to the custody of the marshal to await final sentence.

May 3 1883

On this day comes the defendant by his attys Duval & Cravens & James K. Barnes, Esq. and files his motion for a new trial and to set aside the verdict of the jury in this cause.

May 4 1883

On this day comes on to be heard the motion of the defendant for a new trial in above entitled cause and to set aside the verdict of the jury and the court being well and sufficiently advised in the premises, after hearing argument of counsel, doth overrule said motion.

May 5 1883

On motion of Wm. H.H. Clayton, Esq. Atty for the Western District of Arkansas the said defendant, Martin Joseph, was brought to the bar of the court in custody of the marshal of said district and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned against him by the jury in this cause on the 4<sup>th</sup> day of April, 1883 shall not now be pronounced against him he says he has nothing further or other to say than he has heretofore said

Whereupon the premises being seen and by the court well and sufficiently understood it is considered by the court here that the said marshal of the district aforesaid cause the said Martin Joseph to be taken hence and him the said Martin Joseph safely and securely keep from the date hereof until Friday the 29<sup>th</sup> day of June in the year of our Lord one thousand eight hundred and eighty three and on that date and between the hours of 9 o'clock in the forenoon and five o'clock in the afternoon of the said day the said marshal cause the said Martin Joseph to be taken to some convenient place within this district to be appointed by the said marshal then and there between the hours of nine o'clock in the forenoon and five o'clock in the afternoon on Friday the said 29<sup>th</sup> day of June in the year of our Lord one thousand eight hundred and eighty three cause the said Martin Joseph to be hung by the neck until he is dead.

And it is further considered by the court that the United States of America do have and recover of and from the said defendant all the costs in and about this prosecution laid out and expended and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment sentence and order which shall be returned by the marshal with a true and correct account of the execution of the same." Same order as to no. 2428.

United States of

vs

Indictment for Murder. No. 2410.

Martin Joseph.

July 2nd, 1883.

On this day the death of the defendant in this cause being suggested to the court it is ordered that this suit be abated."

( all the above from common law record 19 of the United States court for the Western District)

The certified copy is in the old files, certified to by Stephan Wheeler, Clerk and under the great seal of the court with its gold sticker.

And on the back of the old sentence is the return of the Marshal

United States of America  
Western District of Arkansas

I certify that I have caused execution of the within judgment sentence and order by hanging the within named Martin Joseph by the neck until he was dead, at Fort Smith in the Western District of Arkansas between the hours of 9 o'clock A.M. and 5 o'clock P.M. on the 29th day of June, A.D. 1883 as within I am commanded. In the presence of Drs. J.E. Bennett, Gilbert Eberle and others.

Thomas Boles, U.S. Marshal  
By C.M. Barnes, Deputy.

Endorsed on back: 2427-2428 The United States vs Martin Joseph. Murder. Judgment sentence and order. 29 June 1883, Filed Aug 24-1883 S. Wheeler, Clerk.

2410 indictment above was against Martin Joseph ( called Bully ) for the killing of one Henry Loftis-- No. 2427, for Killing Bud Stevens and No. 2428 for killing Love Stevens, wife of the above named Bud Stephens.

Indictment in No. 2428.

United States of America.  
Western District of Arkansas

In the District Court November, A.D. term 1882.  
United States

vs Murder.

Martin Joseph.

The grand jurors of the United States of America duly selected impaneled, sworn and charged to enquire in and for the body of the Western District of Arkansas aforesaid, upon their oaths present:

That Martin Joseph, a negro and not an Indian, on the 20th day of April, A.D. 1882 at the Chickasaw Nation, in the Indian Country, within the Western District of Arkansas aforesaid, with force and arms in and upon the body of one Love Stevens, then and there being, feloniously, willfully and of his malice aforethought, did make an assault; and that the said Martin Joseph with a certain gun then and there charged with gunpowder and one leaden bullet which said gun, he the said Martin Joseph in his hands then and there had and held, then and there feloniously, willfully and of his malice aforethought, did discharge and shoot off, to, against and upon the said Love Stevens and that the said Martin Joseph with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Martin Joseph discharged and shot off as aforesaid, then and there feloniously, willfully, and his malice aforethought, did strike, penetrate and wound her the said Love Stevens in and upon the left side of the head of her the said Love Stevens giving ~~her~~ to her the said Love Stevens then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the gun aforesaid, by the said Martin Joseph in and upon the left side of the head of her the said Love Stevens one mortal wound of the depth of four inches and of the breadth of half an inch; of which mortal wound she the said Love Stevens then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Martin Joseph her the said Love Stevens in the manner and by the means aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the

peace and dignity of the United States of America.

Wm. H.H. Clayton, U.S. District  
Attorney, Western District of  
Arkansas. ( in print.)

And on the back in the quaint old writing of the foreman:

"We the jury find the defendant guilty of murder as charged  
in the within indictment. A. Bobb, foreman."

Front side:

No. 2428--- A true Bill: James A. Jay, Foreman.

Witnesses: Wm. Loftis, George Bruner, Geo. Loftis, Chas. Henderson  
Geo. W. Pounds, J.H. Mershon ( the marshall is the last named)  
Filed Nov 14 1882 Stephen Wheeler, Clerk."

Loftis was killed July 9th, 1882. The other two April 20th.

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The motion for new trial in long hand, as all papers are follows:

In the District Court of the United States for the Western  
District of Arkansas.

The United States

vs

Martin Joseph.

The defendant moves the court to set aside the verdict of the  
jury and grant him a new trial in the above entitled cause:

First: Because the court erred to the prejudice of the defendant  
in overruling the motion of the defendant to require the govern-  
ment to elect upon which count in the indictment the prosecution  
would proceed

Second: Because the court erred in consolidating the two indict-  
ments for the murder of Bud Stevens and Love Stevens

Third: Because the court erred in admitting the testimony to be  
given at the trial as to the killing of Love Stevens and Bud  
Stevens which according to the testimony did not occur at the same  
time or at the same place.

Fourth:

Because the court erred in admitting improper evidence against the  
defendant.

Fifth:

Because the court erred in its instructions to the jury.

Jas K. Barnes & Wm. M. Cravens

Because the verdict of the jury in this case was contrary to the  
law and the evidence.

Wm. M. Cravens  
Jas. K. Barnes.

This last in different hand writing, probably that  
of Barnes. It looks to be.

Filed May 3/83. Stephen Wheeler, Clerk. G.S. Williams, Deputy

In 1875, this same defendant was charged in this court with  
Int. Spiritous liquors.

The attorneys filed a n application for witnesses at governments expense and in it amond other things said that certain witnesses therein required would swear that William Loftis and George Loftis went directly to the cave where th woman's body was found and to the spot where the skeleton of the man Bud Stevens was found and they seems familiar with the same. That defendant had been trading horses and guns, that accounting for the guns in some way.

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