

The Columbian.

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NO. 39

Trial of Ellis Young.

In the Oyer and Terminer of Luzerne Co.

COMMONWEALTH

Indictment—
charging the murder
of Stewart C.
Robison.

VS.

Before Rice,
Pres. Judge, Sept.
16, 1891, case call-
ed at 4:30 p. m.

ELLIS YOUNG.

Mr. Darte District Atty., Mr. Mc-Cartney and Mr. James L. Lenahan, for the Commonwealth.

Mr. John G. Freeze, Mr. John T. Lenahan, for the Deft.

A jury was obtained at 11:45 on Thursday the 17th, and was as follows: Richard Jordan, William Claring, Daniel L. Davis, Samuel J. Morgan, James Brennan, M. J. Tigre, Roger McGarry, Wm. Bittenbender, Philip Cragle, Morgan Boyle, Solomon Hirsch, James M. Bolland.

James L. Lenahan Esq., opened for the Commonwealth, and the Dist. Atty. called Dr. John F. Chapin, who testified to having been called to attend Robison on the 31st of July, 1864, between 12 and 2 o'clock at night. He found him at Peter Laubauch's wagon shed, wounded on the right side, with 3 wounds, two in the inguinal region and one a little above, not quite a triangle—punctured wounds and seemed as if made with ball or buckshot, and he supposed them to be gun shot wounds. Robison was moved from there to Samuel Krickbaum's, and from there to Harvey's at Harveyville. Subsequently peritonitis set in and after some time an abscess formed upon the opposite side near the backbone which was lanced. Dr. Chapin gave it as his opinion that the death was caused by peritonitis, induced by the wounds. Robison died Nov. 3, 1864.

Capt. Robison, brother of the deceased testified to the date of shooting and of death and the nature of the wounds, &c.

Wm. Montgomery, testified to seeing the wounds, to the removal to Harvey's and to the abscess. He also testified that on handling the body after death a buckshot dropped from the body to the floor, that he picked it up, that it was slightly flattened, that he gave it to Mr. Harvey who gave it to Dr. Barrett, the attending physician, now dead.

Charles Dodson testified he was at the shooting, that they met at Fairmount Springs, that the party there was Solomon Taylor, Stewart Robison, Russel Buckalew, Isaac Harrison, Robert Montgomery, Eli Buckalew, Chas. Dodson; that Taylor and Robison are dead and the others in attendance; that they were mounted and proceeded to Dyer Moss' and there they were joined by James Seward, and Philander Harrington and Dyer Moss. From Moss they went to Raven Creek, visited Silas Karnes' house and from there to Jos. Hess' house and from there to Tom Smith's house. (Four or five) Dodson, Taylor, Eli and Russell Buckalew surrounded the house, Smith got out and got away from them, they went back to where they had left the horses, heard a party coming towards them, Robison, Buckalew and Dodson stood on right side of road, Taylor, and others on the other side. Three men came up to within 12 or 15 feet. Robison says "halt," Taylor says "no firing, no firing." The men fired three shots right at us. The men ran, Russell Buckalew and Dodson followed them, that he saw no signals, but that after they got to Smith's house, a horn was blown, nothing else.

Cross-examined he said that he left home before sundown, that he had no weapon then but went back home and got one, that Russel Buckalew, Robison, Taylor and witness Dodson had an arrangement to meet there, that they went by Moss' and by his, Dodson's, where he got his revolver, and that all the party was armed, that 6 of them surrounded Smith's house, that he did not see Smith, but heard something in the cornfield, that he, Dodson, had a six chambered revolver and that he fired five of them.

Isaac Harrison testified that he was with the party, that he saw lights, that he heard some one holler. That was all until the firing, that he was holding the horses, could not tell who fired first, that there were seven of them and that Robison was wounded.

Cross-examined, he said that he got to Fairmount about 5 o'clock in the evening, that Robison and Taylor and Buckalew were there, that Dodson came afterward and that they met by arrangement, that R. Montgomery joined at Moss', and Seward and Harrington met by arrangement. Went to Silas Karnes' house and some of the party dismounted, would not say they did not surround the house; proceeded to Jos. Hess', and thence to Tom Smith's house, came back in 15

minutes and started toward Aaron Smith's. Everything was then quiet, firing was 10 to 15 minutes after. I only heard the voices, I could not see. It was pretty dark, could not see 10 or 15 rods. I can't tell but I think I heard 10 or 12 shots about all at once. Can't remember that the party went by Dodson's.

Robert Montgomery testified that he was with the party, joined at Moss' and at shooting, was with the horses, saw two reddish lights. After coming from towards Tom Smith's they walked the other way, then in 10 or 15 minutes the shooting. I could not see the flashes, might have been 20 shots.

Cross-examined he said that he went at the request of Buckalew, that he did not know the party, that they visited 3 houses before they went to Smith's, that he guesses they went in but he was not looking, that he heard people making a racket talking in a high tone.

Russel Buckalew testified that he was present at the shooting, that at Tom Smith's house were rockets and a horn, thinks he did not get quite to the house, heard parties running across an old saw-mill, that he saw only a female form at T. Smith's, next heard parties on the other road, made threats to shoot the sons of bitches, were making a great racket, that the party that did the shooting came up from Aaron Smith's, did not make much noise, came with the threats, their shooting was just all at once, it was just like one report, one flash. We jumped after them, they went back towards Aaron Smith's.

Cross-examined he said he was with the party at Fairmount, denied that he was there by arrangement, said that Smith's was the first house they stopped at, then that they stopped at some other house, thought two, rapped at the door, that he did not get quite to Smith's house, that somebody ran out, that he saw a man jump out, and that Dodson and he were together, returned to the horses, stood there, heard a racket, when the party was over on the other side of the creek he heard the swearing, that they did not start towards the place the threats were coming, went 3 or 4 rods down the road, were standing still as the Smith party was coming up, went to the side of the road, they came up, Robison called "halt" the shots came as one, admitted that he had a horse pistol, that he took it to use if it was necessary, could not tell who gave it to him, that it was not his and that he fired several shots.

On re-examination said the party coming up did the first firing. We all had revolvers, I think Robison or Taylor gave me the pistol.

Richard C. Smith testified that he saw Young on the evening of the shooting near Miner Smith's, that that night he heard him at the house of his, witness' father, Aaron Smith, that he heard a noise which awakened him, and his name called by Ellis Young. He said, "Hello Rich., is your gun loaded, they are after Tommy." The witness asked where Tommy was. Thomas Smith answered "I am here." They started up the road, in 10 or 15 minutes I heard shooting, heard the whiz of bullets, two or three men ran towards our house, that was all I heard till morning. In the morning I found the gun in the barnyard; that he saw Young next morning about 10 o'clock and he said he had our gun and was present at the shooting and saw his man fall, and he put his hand in his pocket and took out buck-shot and slugs and he showed how he loaded his gun. The gun was not loaded when I found it.

Cross-examined he said, father, mother and brother were in the house, father and mother down stairs; was 10 or 11 o'clock when he went to bed. Heard noise in kitchen, father was awake and mother I think. Thought he could distinguish Young, said "Rich is your gun loaded?" No, sir. "They are after Tommy." "Where is Tommy?" "Here I am" Tommy said. Knew Young 2 years and saw him that evening. I told this story to Washington Knouse, did not know he was an enemy of Young till after I told him, did not tell it for 20 years, did not tell him that my uncles Miner Smith and Tommy Smith were accused of the shooting, he knew that, I did not tell him if we could put it on Young they would be cleared.

Mary E. Brink testified to being at Miner Smith's that night, that she knew Young, that he was there courting her and was with her all the evening, that there was an alarm, a bell or a horn towards Tommy Smith's, that Young and Miner started in the direction of the alarm. 20 minutes after Young and Miner left I heard the reports of guns, saw the flash.

Cross-examined she said Miner Smith was not in the country, that Tom Smith was her uncle and Rich-

ard her cousin and that she was related by marriage to Charles Dodson, and that her maiden name was Lutz. That Young and Miner were unarmed when they went away.

Thomas Smith testified that on the night of the shooting he was in bed with his wife, that about 11 o'clock the dog made an alarm, that he got up dressed himself and heard footsteps coming down the lane, and that he got out of the window and his wife handed him his gun, a heavy rifle, loaded. That he ran across the brook and fields towards a strip of woods and accidentally met his brother Miner Smith and Young. Miner had a gun, Young unarmed. That witness said he was going to the woods, as he was away from them. Nothing said about draft, that Young said "Let's go back and see what is going on," witness said "No," Young said "Come back, don't be a coward," that they went to Aaron Smith's, that witness sat on fence, Miner stood in the road, Young went into the house. Heard Young come out, was dark, could not see; Young asked Rich, if his gun was loaded. When Young came out he had the gun. We went down the road to my home, everything perfectly still, were halted. They said "Halt! lay down your arms," some one said "Fire," I think Young. I fired and ran, jumped the fence and ran into a piece of woods and lay there all night. Had no talk with Young about the shooting then or any time.

Cross-examined he said that he was a brother of Miner and Uncle of Richard, that Miner had been in Canada, did not know where he was now. That he did not know who was after him, that at Aaron's, Young went into the house, that he could not see Young nor Richard, that it was too dark, that on being halted he fired, they all fired, and the other firing was very quick.

Being recalled in chief he identified the rifles.

Cross-examined he said, was a dark night, pretty dark, did not see Miner till we met. He had a gun. I only say he had this gun because he owned this gun.

And on further cross-examination denied that he had any conversation with John J. McHenry about the shooting.

Richard Hess testified that he saw Young the next morning after the shooting, at the Jackson church, about six miles from Aaron Smith's, that Young said the soldiers, the Dodson party, made a raid last night, that he and Miner and Tommy Smith were together, near Aaron Smith's in public road, that they were halted, all fired, other party fired and that one man fell back across the road from where he stood.

Cross-examined he said he went to the Jackson church on Saturday, could not tell whether he staid at Daniel Young's or where he staid, nor when he left nor who he went to visit, was not sure that he saw Daniel Young, thought he went to visit Daniel, could not tell whose house he slept in nor any one he saw, nor for sure where he took breakfast, nor when he went to church, nor if there was a sermon, nor who preached if there was one, thinks the talk was before church, and that he had dinner after church but not sure, that he told the story to Bacon Hess, and that he is related to Lutz, the prosecutor in this case.

Samuel Kanouse testified that 1 or 2 weeks after the shooting Young wanted him to go along with him to a certain spring, and going along the way Young showed him the balls he had loaded with, said they had chased him from Miner Smith's, did not say who it was nor nothing about it, said the Smith boys and himself were the party. Left him at spring.

Cross-examined said he was 16 years old at the time, that 13 years ago he had a difference with Young, that they had been on the outs for last 6 years. We went to the spring about 10 or 11 o'clock, can't tell what we talked about except that. He said they were after him. The witness told the story to Washington Knouse about 4 years after, and to Alexander Kanouse about 8 or 10 years after, and to others, and to Lutz last March, and that he had heard that his brother Washington Kanouse and Young were enemies.

Commonwealth rests:

The defense opens and calls

Ellis Young, who testified that he lived in Columbia county, was born there and was about 53 years of age, was a married man and had one son. That on the night of the shooting he was at Miner Smith's, and had gone there by appointment with Miss Mary Lutz, whom he had been paying attention for a year or more. That he was with her all the evening. That sometime about midnight he heard a

horn blow and a woman scream in the direction of Tommy Smith's, that Miner was in bed but got up and took his gun, and they started in the direction of Tommy Smith's, that they got to Aaron Smith's house and that Tommy came to them there, and not in the field. That he did not go into Aaron Smith's house nor have the talk which Richard testified to. That Miner Smith gave witness his gun to go home with, and got the gun at Aaron's, and that witness did not. That the three, Miner, Tommy and witness started along the road in the direction of Tommy Smith's house which was also the home road of the witness. That everything was quiet until they were stopped by the Robison party crying "halt," that he fell back three or four steps, and the firing commenced. That he thought the Robison party fired first, and that as much as 5 or 6 shots had been fired when he lunged the gun off of his shoulder and fired, that he saw nobody when he fired, and as soon as he fired he ran back along the road, jumped over the fence, got into a piece of woods, and lay down there till morning. That he did not see either of the Smiths for sometime after and did not hear any one had been shot until the Wednesday or Thursday following. That he did not see Richard Smith the next morning about 10 o'clock nor at any time, and did not have the conversation detailed by him. That he did not see nor tell Richard Hess the story related by him, nor did he even tell Samuel Kanouse the story testified to by him. That he had never left the county on account of the shooting but had been logging on the West branch and with a sick brother in the west who died there, when he had returned home and had been here ever since.

Cross-examined he said he was at the shooting, had Miner's gun, a rifle, that he fired after the rest, and ran off into the woods, that he remained at home 6 weeks or 2 months then went up to Centre county with others to lumber, that in January 1865 he went west and stayed with a brother 1 year and five days, then came east, and stopped in Michigan about 5 months and then, August 3, 1866 returned to Columbia county, where he had been ever since.

John J. McHenry testified that he remembered the shooting, that the Smith's left after the shooting, and upon the return of Tommy in 1867, he talked with the witness about it. He said Tommy told him he had got tired of being harassed and driven about from pillar to post, that on the night of the shooting the gun he had was loaded with a ball and three buck-shot, that they all fired and ran and that he staid in the woods all night.

Cross-examined he said he had never told this to anybody, that Tommy had given him this in confidence and he would not violate it, and that it was only the present circumstances that induced him to tell it now.

Charles Hartman testified that he lived 6 or 8 miles from the place of the shooting, and that Ellis Young came to his house on Sunday between 10 and 11 o'clock and took dinner with him. That he did not know of the shooting and did not hear of it for several days, Wednesday or Thursday after.

Philip Creasy, Henry Shaffer, Rohr McHenry, Lewis Creveling, Abijah Hess, Benton Cole, Abram Kline, Charles Hartman testified to the good character of Young.

Defense rested.

At 5 o'clock Judge Rice began his charge to the jury. After some preliminary remarks, and defining the different grades of murder, and manslaughter, he said in substance: It is the duty of the jury to decide first whether the deceased came to his death from the gun-shot wound.

It is not necessary to prove that the defendant fired the fatal shot. If he was in the crowd from which the shots were fired, and aided and abetted them, he is responsible, even though the bullet from his gun did not inflict the wound. Should the jury find that the defendant aided and abetted as above mentioned, they must then inquire into the circumstances attending the commission of the crime.

Referring to the plea of self defense advanced by the defendant's counsel, the judge said that every man has the right to defend his life or property against grievous harm at the hands of another. There is no testimony in the case to show that Robison or his party had any authority to surround the house of Thomas Smith or any of the others. But conceding this it did not justify the defendant in taking up the quarrel and inflicting punishment on any of the party. His habitation was not attacked and he had no natural interest in the matter whatever. Was the defendant in danger of his life when the crime was committed? The

testimony of Young shows that when he heard the horn blown at Smith's house he went to Miner Smith's house and got Smith's gun and started down the road home. When he came upon the other party there was shooting. The others, he said, shot first, and then he shot. If this story be true it would seem to furnish a good case of self defense. The Commonwealth, however, present a different allegation of facts. Their testimony shows that as soon as Robison called "Halt!" Young and his party opened fire, the reports coming like a single flash, to use the language of one of the witnesses. A principle in the law of self-defense is that the danger itself must not be sought. The jury must decide whether Young and his party intended to meet the others when they came up the road from Aaron Smith's house. If as is sworn to by some of the witnesses, Young called Smith back from the woods, said "Let's go up, don't be a coward," it would in a measure indicate that the danger was sought and could have been avoided if necessary. If, however, he had reason to believe that he was in grave danger, and that there was no means of escape, and that he would be entitled to the benefit of a plea of self-defense.

The jury retired at 5:45 and after being out nearly four hours, sent in word that they had agreed. At 9:45 the clerk took the verdict which was as follows: "We find Ellis Young not guilty of any crime charged in the indictment."

ELLIS YOUNG.

Since the arrest of Ellis Young the following appeared in the *Mountain Echo*, viz: "The arrest of Ellis Young seems to have stirred the Fishingcreek confederacy to the very core and the well meaning people of that locality are likely to get their foot in it again as they did before."

Since the trial and acquittal of Mr. Young, the now wiser *Echo* man may have learned that under the civil law a democrat has recognition as well as a republican. That under the civil law there are two sides to every question, whereas, under military, despotic and arbitrary misrule there is but one. Now as the light was turned on the so called Fishingcreek confederacy the *Echo* man "got his foot in it" and not the "well meaning people of that locality." Try again F. M. Lutz, *Echo* man and Co.

WATSON.

In the issue of March 20th 1891, THE COLUMBIAN contained an article announcing the arrest of Ellis Young, and briefly stated the facts of the case, saying that Lieut. Robison and his party had no authority to arrest any one at the time of the shooting. This statement was met by the *Republican* in a very wrathful manner, charging us with "apologizing for crime" and characterizing the shooting as a "base murder." The article was calculated to inflame passion and excite prejudice against Ellis Young. In replying, THE COLUMBIAN said "The trial of the case will show which is right."

We are informed that Judge Rice, a republican, in his charge to the jury stated in substance just what THE COLUMBIAN said in the article above referred to. Will the *Republican* charge Judge Rice with "apologizing for crime" because the editor of that paper failed in his desire to have Ellis Young hanged?

This is not the first time that the editor of the *Republican* has been mistaken in his prediction of what was going to happen in court. The Bloomsburg School Board case in which he slanderously attacked the court, the counsel, and every body else who had a hand in ousting him and others from the board, is still well remembered, as is also his prediction of the "triumphant vindication" that awaited him in the Supreme Court. The vindication never came, and the opinion of that court deciding against him, is one of the most terse and scathing on record.

The trial of the Young case is over, and it has proven that our statements of the case at the time of the arrest were perfectly correct.

If Young had been tried in Columbia county and acquitted, there would have been a republican howl that prejudice and local feeling had procured his acquittal. But he was tried in a foreign county, before a strange jury, in a court whose sheriff was brother of the deceased, and who managed the trial and faced the jury: but he was even there found to be "not guilty."

A fifteen cent luncheon will be served on Friday evening, September 25th from 5 to 9 o'clock under the direction of St. Paul's Sunday School classes of the Misses Drinker, in Hendershot's store room, next door to Gilmore's.

PERSONAL.

Charles E. Howe was in Philadelphia last week.

C. B. Robbins went to Philadelphia on Tuesday.

Charles P. Elwell returned to Boston last week.

H. Bruce Clark was in New York this week, buying goods.

Miss A. D. Webb has been visiting friends in town the past week.

Robert, and Mrs. J. McBride spent Saturday and Sunday with friends at Benton.

J. W. Perry of Elk Grove Hotel went to New Jersey on Monday to spend a couple of weeks with relatives.

Mr. and Mrs. G. W. Sterner lost an infant, aged nine months, last week. It was buried on Thursday.

Mr. and Mrs. S. F. Peacock entertained thirty of their friends on Wednesday night. It was a very enjoyable occasion.

L. S. Wintersteen, C. C. Peacock, J. C. Brown and H. D. Edgar attended the convention of Republican clubs at Scranton on Wednesday.

C. E. Rice, Al. Derr, Dr. Gwinner and C. M. Creveling went to Philadelphia on Tuesday to buy a fast horse, but as somebody else bid \$1500 for it, they didn't get it.

Mr. and Mrs. E. P. Lutz are visiting their relatives here. It is twelve years since Mr. Lutz has been in Bloomsburg, and Mrs. Lutz has been here but once in that time. They notice many changes.

Mr. and Mrs. J. J. Brower passed the fiftieth anniversary of their marriage, their Golden Wedding, on Wednesday. Comparatively few people live to celebrate such an occasion.

A NEW FACTORY.

Another manufacturing enterprise is to be established in Bloomsburg. W. H. Schuyler, Theodore Redeker and J. E. Kiefer of Hughesville, propose to put up a furniture factory that will employ thirty to forty men. A site has been donated by the Land Improvement Company, consisting of ten lots on Seventh street, in the addition to the town, facing on the D. L. & W. R. R., between Spruce and Locust streets. Two brick buildings will be erected, two stories high, each 100 feet long and 50 feet wide, and an engine house 20x30 feet. A loan of \$20,000 will be made, which will be secured by bonds and mortgage on the plant, the bonds to be at 6 per cent, and to be guaranteed by the Land Improvement Company. Work on the buildings will begin at once, and it is expected that they will be completed by December 1st.

The parties interested in this enterprise are practical men with long experience in the furniture business. They will employ skilled labor mostly. The necessary amount of money is nearly all subscribed.

MIFFLINVILLE.

A. W. Snyder has improved the appearance of his store by a new glass front.

Hurrah for "Junius Jr." He gives us solid facts, hits the nail squarely on the head every time, and hard. Hit him again, J. J.

J. C. Brown of Bloomsburg, visited his mother on Sunday.

We are to be favored with a resident butcher, as C. E. Hartman has moved to town, and expects to engage in that business.

One morning last week a wreck occurred here in front of the depot, doing considerable damage. The fog being so dense the signal could not be seen.

A number of our people attended the funeral of George Kiefer in Main township, on Monday.

A child of Mr. R. Neyhart of Philadelphia was buried here last week.

Mrs. S. B. Hendershot and son of New Philadelphia, Ill. are visiting their parents, A. Sweppenhiser.

Samuel Fedder has given up his job on the railroad, and expects to try farming in Beaver township.

A report was circulated on Wednesday that William Snyder, son of C. W. Snyder deceased, is ill with typhoid fever in Salt Lake City, and that his physicians had given up all hope of his recovery. His relatives here have no such information, and it is possible there may be a mistake about it.

A new roof has been put on the Baptist church, and a vestibule built in front. While the roof was off, the rain damaged the walls so that it is necessary to repaper them. Van't a has the contract. The church will be greatly improved when completed.